

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION II

CA 06-033

November 29, 2006

JENNIFER LINDER (JOHNSON)
APPELLANT

AN APPEAL FROM CLEBURNE
COUNTY CIRCUIT COURT
[NO. E-1998-133-4]

V.

HON. TIM WEAVER, JUDGE

DERON JOHNSON
APPELLEE

AFFIRMED IN PART; MODIFIED IN
PART; REMANDED IN PART

Jennifer Linder, formerly Jennifer Johnson, appeals from an order changing custody of her two children to their father, appellee Deron Johnson, and temporarily prohibiting her from having contact with her children. She claims that the change of custody was not in the children's best interests, challenges the conclusions of the expert witness who recommended that custody be changed, and asserts that the trial judge was biased. We affirm that portion of the trial court's order changing custody to Deron; modify that portion of the order concerning Jennifer's visitation; and remand for the trial court to prescribe supervised visitation for Jennifer.

I. Factual Background

The parties in this case were divorced on December 23, 1998, and Jennifer was

awarded custody of their two children: Keith Johnson, d.o.b. 10/25/91, and Sky Johnson, d.o.b. 10/21/93. Pursuant to the divorce decree, Deron was awarded standard visitation. After the divorce, an extensive series of motions and counter-motions were filed by the parties that culminated in the instant appeal.¹ Although this appeal is based solely on the order changing custody, it is helpful to review the relevant pleadings filed by the parties that led to the order.

Approximately one month after the divorce, on January 24, 1999, Deron filed a motion to modify the divorce decree and requested family psychological counseling. He alleged that Jennifer moved from Cleburne County without prior notification and that she failed to comply with that portion of the divorce decree ordering her to exchange meaningful information with him regarding the children and to keep him timely apprised of their daily activities. He objected to the move on the basis that he would not be able to exercise his mid-week visitation. He also requested psychological counseling because Keith, then eight years old, was displaying severe behavioral problems, such as physically attacking Deron, telling Deron that he was not Keith's father, and accusing Deron of stealing his toys and his dog. Deron's motion alleged similar behavior from Sky; stated that both children screamed and cried when he attempted to pick them up for visitation; and asserted that Sky's behavior was strongly suggestive of coaching. Deron voluntarily dismissed this motion on November

¹This is the second appeal in this case. Previously, Jennifer successfully challenged the trial court's ruling (in the same order upon which the current appeal is based) that she was in contempt of the court's prior orders because she deliberately interfered with Deron's visitation. *See Linder v. Weaver*, 364 Ark. 319, __ S.W.3d. __ (2005).

8, 2001.

Beginning in September 2001, Jennifer and the children began receiving psychological counseling from Dr. Bethel Thomas. The purpose of these visits was to help the children cope with their fear of visitation. These sessions continued into 2003. A FINS petition was filed by Susan Miles, a social worker who was counseling Deron, but the petition was later dismissed.

On December 28, 2001, Deron filed another petition. That petition requested a change in visitation, requested that Jennifer be held in contempt, and asserted that Jennifer had “systematically ‘poisoned’ the children’s minds with unreasonable fears and erroneous information about” him. He later filed an amended petition requesting a change of custody. Jennifer responded with a petition to modify custody, which alleged that Deron’s lack of parenting skills and actions toward the children had “engendered such fear that the children are afraid of him; and that his visitation should be curtailed and should be supervised by a mental health facilitator.”

Deron’s dismissal of his second petition was reflected in an order of continuance that was entered on October 22, 2002. In this order, the trial court ordered the parties to participate in counseling with a person other than the children’s current therapist, Dr. Thomas, or Deron’s therapist, Sheldon Rappaport. The court further ordered all parties to cooperate with and to follow the counselor’s recommendations. In addition, the court appointed Jerry Grady as the guardian ad litem for the children. The court indicated that the matter would be set for a final hearing upon notice of the parties or the ad litem.

Grady interviewed the children but spoke only briefly with Jennifer. Grady provided a copy of her report to the court and to the attorneys of record, in which she recommended continued, gradual visitation with Deron. Grady was discharged from the case on September 16, 2004. Jennifer subpoenaed Grady to appear at the hearing, but Grady filed a motion to quash the subpoena, based on attorney-client privilege. The court agreed and quashed the subpoena; Grady's report was ultimately withdrawn by Deron and thus, was not relied upon by the trial court.

An attorney was retained for the children but the trial court did not allow her to participate in the proceedings. Jennifer thereafter filed a complaint against Judge Norman Harkey, the trial judge, and the case was transferred to Judge Tim Weaver, over Jennifer's objection, on September 15, 2004.²

Deron filed a petition for contempt on November 18, 2004. That petition alleged that Jennifer moved the children to Florida without prior consent of the court and without prior notification to him. He also alleged that Jennifer's "conduct is willful and malicious. She has engaged in the pattern and practice of continually alienating [Deron] from his children. This pattern of behavior has continued throughout the parties' divorce and throughout this proceeding." He requested that Jennifer be incarcerated for her conduct.

Jennifer responded with a counter-petition for contempt and modification. She

²Judge Weaver explained in a letter to the parties that the domestic-relations cases in Cleburne County were divided between him and Judge Harkey. Therefore, if Judge Harkey recused, Judge Weaver was the only judge left in that county authorized to hear a domestic-relations case.

requested that Deron be found in contempt for failure to pay child support and that his child-support obligation be increased.

Before a hearing was conducted on those motions, the court ordered Deron, Jennifer, and both children to undergo psychological testing with a court-appointed psychologist, Dr. Paul DeYoub. Dr. DeYoub submitted to the court a report on his evaluations of all of the parties and recommended that custody be changed to Deron, with supervised visitation for Jennifer. In contrast, Dr. Thomas, who saw the family for a two-year period beginning September 2001, recommended that custody be retained in Jennifer, with supervised visitation for Deron.

The hearings on the parties' motions were held on September 16, 2005, and September 20-24, 2005. The trial court relied heavily on Dr. DeYoub's conclusion that Jennifer made the children believe that Deron had abused them, thus systematically alienating the children from Deron. Immediately following the hearing, the trial court entered a handwritten order that transferred custody of the children to Deron and required the children to be transported to Methodist Behavioral Hospital for immediate assessment and in-patient care.

Another order was entered on October 5, 2005, in which the court determined that Jennifer had "willfully and wantonly refused to comply with visitation," and had "engaged in a protracted campaign to alienate the children from [Deron] and to inculcate a hatred of [Deron] in the minds of the minor children." The court further found that Jennifer interfered with Deron's visitation by failing to communicate with him regarding visitation, by refusing

visitation, and by asking him not to attend the children's extra-curricular activities.

The court subsequently submitted a written order, stating that it was in the children's best interest to have custody immediately transferred to Deron; it again ordered the children to remain in the Methodist Behavioral Hospital and to be placed in Deron's custody upon their release. The court also found both Jennifer and Deron in contempt, but determined that Deron had purged himself of contempt by paying his delinquent child support. However, the court ordered Jennifer to be incarcerated for one year, in part, for her "sustained campaign of alienating the children." The court further specified that after one year, Jennifer could petition for supervised visitation. Jennifer previously successfully challenged the contempt finding; thus, she now appeals solely from that portion of the trial court's order changing custody of the children and limiting her to supervised visitation.

II. Change of Custody

Jennifer argues that the change of custody was not in the children's best interests primarily by attacking the acceptability of Dr. DeYoub's diagnosis of Parental Alienation Syndrome and by comparing Dr. DeYoub's conclusions with Dr. Thomas's conclusions. Relatedly, she argues that the move to Florida was in the children's best interest. Finally, she asserts that the trial judge was biased.

In reviewing a change of custody, we consider the evidence *de novo*, but will not reverse a trial judge's findings unless they are clearly erroneous or clearly against the preponderance of the evidence. *Inmon v. Heinley*, 94 Ark. App. 40, ___ S.W.3d. ___ (2006).

We give due deference to the superior position of the trial court to view and judge the

credibility of the witnesses. *Id.* This deference to the trial court is even greater in cases involving child custody, as a heavier burden is placed on the trial judge to utilize to the fullest extent his or her powers of perception in evaluating the witnesses, their testimony, and the best interest of the children. *Id.* Our law is well settled that the primary consideration in child-custody cases is the welfare and best interest of the children; all other considerations are secondary. *Id.*

A judicial award of custody should not be modified unless it is shown that there are changed conditions that demonstrate that a modification of the decree is in the best interest of the child, or when there is a showing of facts affecting the best interest of the child that were either not presented to the trial court or were not known by the trial court at the time the original custody order was entered. *Id.* Generally, courts impose more stringent standards for modifications in custody than they do for initial determinations of custody. *Id.*

We affirm that portion of the trial court's order changing custody to Deron, but modify that portion of the order pertaining to visitation and remand for the trial court to prescribe supervised visitation for Jennifer. We address Jennifer's first two arguments together and hold that, on the record before us, the trial court was amply justified in granting Deron's motion to change custody, based on Dr. DeYoub's findings and other testimony. The cumulative evidence demonstrates that Jennifer engaged in an unjustified, deliberate, pervasive pattern of conduct aimed at alienating her children from their father and that her conduct had the intended effect. As such, the trial judge was justified in concluding that the move to Florida was not in the children's best interests but was merely part of Jennifer's

scheme to deprive Deron of visitation and to further alienate the children from him. The trial judge was also justified in ordering the children to be immediately transported to the Methodist Behavioral Hospital and to prohibit Jennifer, at that point, from having contact with her children. Finally, we do not consider Jennifer's bias argument because it was not raised below.

The testimony in this case is voluminous and, in many respects, is what one would ordinarily expect to hear in a child-custody case. Each parent remarried. Jennifer married Billy Cockrill in August 1999 but they apparently divorced in late 2000. Deron married his current wife, Amber, in March 2001; her son, Preston, who is two years younger than Sky, and their son, Landon, born in June 2001, also lives with them.

Each side presented evidence that each parent was a fit parent, loved the children, was financially able to provide for the children, etc. Jennifer presented testimony to establish that she did not interfere with visitation and, to the contrary, that she encouraged visitation, but that Deron did not attempt to regularly exercise visitation. Deron presented contrary evidence that he attempted to exercise visitation, but was thwarted because Jennifer was difficult to contact, consistently asserted that she or the children had scheduling conflicts with the visitation, and moved out of the county and even out of state without informing Deron.

Nonetheless, this case is unusual in that the facts present what seems to be a Hobson's choice for the trial court: either the children have been abused by their father or their mother has convinced the children that they have been abused by their father. The abuse that

Jennifer alleged can be summarized as follows:

- 1) Deron whipped the children with a “spiked ping-pong paddle”;
- 2) Deron’s mother locked the children out of her house for hours during the rain, causing the children to be covered in ticks, which were not properly removed;
- 3) The children were not fed while in Deron’s or his parents’ care;
- 4) The children were placed in time out for excessive periods of time; Sky was placed in time-out so long that she urinated on herself;
- 5) According to their “punishment chart,” the children were spanked “six times” for refusing to call Deron “dad”;
- 6) Deron grabbed Keith by the ear so hard that it left “a hole” in Keith’s ear;
- 7) Deron’s wife, Amber, struck Keith in the face with her cell phone;
- 8) Deron and his parents threatened to have the children locked up in a mental hospital;
- 9) Amber’s six-year old son, Preston, attempted to touch Sky under her clothes, but Deron and Amber did not attempt to stop him; Keith stopped him and was punished for it; and
- 10) During one visitation exchange, Deron brought along a social worker, Susan Miles, who got into the car with the children and attempted to “deprogram” the children by chanting things like, “Johnson, Johnson, your name is Johnson” and “Deron is your father”; the children were told their mother was going to jail; Deron forcibly removed the children from the car and carried them to his parents’ house; and the children were physically restrained during the entire two-hour visit to prevent them from leaving, which left bruises and red marks on them.

Not only was abuse alleged by Jennifer, but it was also alleged by the children, who testified against their father. Nonetheless, this case simply turns on the credibility of the witnesses and whether the trial court erred in relying on Dr. DeYoub’s conclusions instead

of Dr. Thomas's. We hold that the trial court did not err in relying on Dr. DeYoub's conclusions.

A. Dr. DeYoub's Recommendation

Dr. DeYoub met with Deron three times, for a total of six hours; met with Jennifer two times, for a total of eight hours; met with Keith one time, for a total of two hours; met with Sky one time, for a total of two hours; and met with Deron's wife one time, for a total of one-and-one-half hours. These totals do not include the time spent conducting diagnostic evaluations. Although Dr. DeYoub met with the parties for a briefer period than Dr. Thomas did, the statements to Dr. DeYoub made by the children and Jennifer support his conclusion that Jennifer deliberately and successfully alienated her children from Deron. Based on those statements, Dr. DeYoub concluded that this case was "an egregious" case of parental alienation.³

Because Dr. DeYoub concluded that Jennifer projected her sense of rejection onto the children "from the minute the marriage ended," it is helpful to examine the circumstances of the parties' separation. Keith was six and Sky was four when the parties separated. Unsurprisingly, Jennifer and Deron gave different versions of why they separated. Deron

³Much of the testimony and much of the parties' arguments are devoted to establishing or discrediting Dr. DeYoub's theory of Parental Alienation Syndrome. We do not address the acceptability of this theory as a diagnostic theory. Nor do we base our decision on Dr. DeYoub's conclusion that the children were alienated from their father based on this theory. Rather, we are convinced that Dr. DeYoub's conclusions regarding the parties' behavior are consistent with the statements the parties gave to Dr. DeYoub and the testimony offered at the hearings.

testified that he was feeling stressed and wanted to go for a drive. He told Jennifer that he would be back in a while; she told him to be back in thirty minutes. Deron said that when he returned an hour later, Jennifer met him at the front door; informed him that he had not returned in thirty minutes as she had insisted, and told him, in front of the children, that he could find another place to live. Deron said the children were beating on the front door, crying and yelling, and wanted out.

Jennifer, on the other hand, said that she and Deron had just returned from their overnight, second honeymoon after renewing their wedding vows, and that Deron went to the airport for a flying lesson. She was upset because she felt he should want to spend time with the children after being apart from them for one day. According to her, Deron did not return home and did not call until four days later. She said that she begged him to come home and did not lock him out. However, Keith offered yet another version of the story – he said that Jennifer told the children they were divorcing because Deron had an affair with the children’s babysitter.

There is clear and convincing evidence that Jennifer attempted to thwart visitation and keep the children from their father beginning with the children’s first visit following the separation. Dr. DeYoub found it “critical” that Jennifer was unable to explain why the children resisted visitation from the *first* visit with Deron, which, according to Jennifer, was preceded by the children screaming so loudly that the neighbors wondered whether to call the police. This is quite telling in light of the fact that Jennifer admitted Deron had a good relationship with Keith during the parties’ marriage; that she did not specifically allege that

any abuse took place during the marriage; and, in fact, did not specifically allege child abuse in her pleadings until August 2005, in her responses to Deron's motion for contempt.

As Dr. DeYoub noted, it is normal for any child with separated parents to have mixed feelings about visiting the noncustodial parent. However, even if Deron, in theory, began abusing the children at the earliest opportunity – *during the first visit* – there would be no apparent reason for the children to be intensely predisposed against seeing him on the *exchange for that visit* – except that, according to Deron, on the first visit, the children told him that Jennifer had told them he would kidnap them and would not bring them back; and that he would take their toys and their clothes.

Deron told Dr. DeYoub that the visitations themselves were “pretty normal” but that the exchanges continually worsened, as it would take longer and longer to convince the children to come with him. The children would refuse, would cry, would tell him they hated him, and sometimes, would hit him. He maintained that Jennifer never encouraged visitation and refused to correct the children's behavior during the exchanges. During the last visit in November 2004 (after the children moved to Florida), Deron said that the children “had a stone cold face” and were disengaged and negative. After approximately fifteen minutes, Keith called Jennifer to come get them. Dr. DeYoub concluded that “everything regarding the children's demeanor Mr. Johnson reports is credible because I have seen the children, and know that these reports are consistent with their psychological functioning.”

Deron testified that Jennifer was difficult to contact; that she consistently alleged scheduling conflicts; and that she moved out of county and out of state without notifying him.

After the children moved to Florida, Deron's telephone calls went unanswered; he did not know where the children were and did not see them for nearly one year. Deron also related an incident that took place during earlier visitation in which Sky wanted to spend an extra weekend with him, but when he asked Jennifer about it, she raised her voice to Sky, demanding, "Do you want to see your dad?" Sky's response was to hold her head down; Jennifer responded, "I told you."

Deron told Dr. DeYoub that visitation reached a "pivotal point" after his son, Landon, was born in June 2001. At this point, Keith was almost ten and Sky was nearly eight. By September 2001, Jennifer had openly stated (as she admitted to Dr. DeYoub) that she was not going to make the children see Deron anymore.

In addition, Jennifer admitted that she told the children's school not to call Deron in case of an emergency and that she told Deron not to come to school. She also told Dr. DeYoub that *the children* chose to call Deron by his name, instead of "dad," and that *the children* made that choice independently, *at ages four and six*, when their parents separated. Dr. DeYoub noted that Jennifer "seems to think it is perfectly natural for them to make a decision like that." The children also used the name "Linder" at school, instead of "Johnson." Jennifer insisted that she discouraged the children from informally changing their name from Johnson to Linder; yet, Keith told Dr. DeYoub that, approximately one month after the separation, Jennifer told him she would not discipline him for not calling Deron "dad."

The statements Keith and Sky made to Dr. DeYoub also support that Jennifer

alienated them from their father. The children were interviewed by Dr. DeYoub on September 7, 2005; the last time they had seen Deron was in November 2004, for the fifteen-minute visitation previously noted. Keith was nearly fourteen years old when his evaluation was conducted; Sky was nearly twelve. Each child expressed the desire to have no further contact with their father, expressed unequivocal animosity toward Amber and Deron's parents, and expressed no interest in seeing Landon, their half-brother (who was four years old at the time of Dr. DeYoub's assessment).

Referring to Deron getting custody, Keith began the interview with Dr. DeYoub by saying, "I'm hoping he doesn't get it with all my heart." Keith described Deron as having no feelings or emotions for anyone; he believed that Deron feels he can do anything to anyone. Keith also said that Deron cannot think for himself and that Deron's parents are "calling the shots." He also said that Deron could kill someone and not worry about it. Keith stated that Deron is "killing" Keith's maternal grandparents with the custody case. Keith said that he would rather be in a mental hospital or foster care than in Deron's custody.

Dr. DeYoub described Sky as tearful and emotional during her interview. Sky corrected the doctor when he referred to Deron as "her father," stating that she would rather call him "Deron." She said that she and Keith begged her mother to move to Florida and that she felt "normal" in Florida because she did not have to worry about visitation. She said that during the Miles incident, Miles slapped her and that while her grandfather held her, she screamed so much that her throat bled; however, neither of these allegations were reported to the police.

Sky said that she and Keith had to convince Jennifer that they were being abused; and that Jennifer called the Arkansas Department of Human Services (ADHS) and the child-abuse hotline but received no response. Sky told Dr. DeYoub that she did not want to go to her father's wedding, but she had to go because he got a court order. She told Dr. DeYoub that the "happy" pictures taken while in Deron's custody are fake; she testified that she and Keith were often whipped before pictures were taken to assure that they appeared to be happy. Sky also said that Amber encouraged Deron to whip them.

Like Keith, Sky maintained that Jennifer never obstructed visitation. When Dr. DeYoub asked Jennifer if she moved to Florida to avoid the court case, she did not deny it, but justified the move by stating that all of Cleburne County was against her.⁴ Keith reported to Dr. DeYoub that they decided to move to Florida "after the last court" and that Jennifer's lawyer told her to look for a job in Florida. While Jennifer testified at trial that she was unsure of the visitation requirements while she was in Florida, her second husband, Cockrill, testified that Jennifer was in touch with her lawyer while she lived in Florida and that her lawyer advised her to arrange visitation and warned her that she would be in trouble with the court if she did not. Remarkably, both children indicated that they would not have talked to Deron on the phone if he had called them while they were in Florida.

Both children expressed fear for their lives and threatened to run away if Deron was

⁴Jennifer maintains that there is a conspiracy in Cleburne County against her involving Judge Harkey, Judge Weaver, the police department, Susan Miles, Jerry Grady, and even Jennifer's former attorney. Dr. DeYoub noted that not only do the children recite "chapter and verse" the abuse allegations but they are also well-versed in Jennifer's conspiracy theory.

awarded custody. Dr. DeYoub, while recognizing that Deron was not a perfect parent, found the allegations of abuse to be “preposterous.” He did not discount the children’s threats of running away but noted that if they did so, then Deron would be required to seek help for them.

Dr. DeYoub further explained that the children saw no redeeming characteristics in Deron or his family. The doctor found the children’s complete animosity and lack of ambivalence toward their father as “unnatural, if not absurd.” Although belied by the children’s testimony at trial and the photographs admitted into evidence, the children expressed to Dr. DeYoub that they never had any good times while in Deron’s custody and that they desired to have absolutely no contact with Deron or his family, including their own half-brother, Landon. Dr. DeYoub stated that the children’s lack of interest in their own brother (who is completely blameless) is another example of how the children have been alienated from their father.

The doctor also observed that “[b]oth children assert with great pride that their decision to reject [Deron] is their decision alone.” Dr. DeYoub further stated in his report that “The three, both children and the mother, use the same language and scenarios reflecting the same terminology that they all have in common . . . [t]he mother and children do not respond to reason.” For example, Keith asserted, as did Jennifer, that Deron’s father-in-law, a deputy sheriff, was unfairly involved in the case; that Judge Harkey had appointed his “best friend,” Judge Weaver; and that the ad litem was unfair and named Jennifer as an abuser (which the ad litem did not do). Dr. DeYoub felt that Keith’s statement that Deron’s parents

are calling the shots were “adult statements from his mother.” He also noted that in remarking about Deron’s father-in-law, Keith “did not miss a beat in relating everything his mother did.”

Dr. DeYoub reviewed the transcript of a secret audiotape of the children’s visit with Deron and his parents made by Sky and concluded that the children were highly disrespectful of Deron, Amber, and Deron’s parents.⁵ Dr. DeYoub noted:

The father and the grandfather, in spite of the mother’s own account of this incident, were in my view, making every reasonable attempt to convince the children they loved them and they wanted to visit with them and even live with them. It is true they accused the father of abusing them, but the father has reason to believe that the mother is coercing the children against the visitation. The transcript shows the children to be completely irrational regarding the visitation and the reason for their refusal. Yet, the mother thinks the children are engaging in rational thought and she is harming them by her refusal to over the last seven years to challenge their erroneous thinking. . . . She is paranoid, she believes everyone is against her, she files charges against everyone who challenges her, and she is a covert aggressive who portrays herself as victimized and misunderstood along with her children. . . .

(Emphasis added.)

With regard to the children being coached, DeYoub noted that:

[T]he children cite chapter and verse consistent with the mother’s allegation, children who were 4 and 6 years of age at the time the separation occurred, who apparently are demonstrating incredible memories beyond what any child this age is developmentally capable of. The reason they have such a photographic memory for these events is that they are not remembering the event itself, but countless replays and rehashing of exaggerated trauma.

(Emphasis added.) The doctor further stated that the children “are both extremely protective of their mother to the point of pathology. She does no wrong and when I asked these

⁵We did not find this audiotape or transcript in the record.

children how they are disciplined by their mother, they said they are not.”

Dr. DeYoub concluded that Jennifer “has very significant histrionic, narcissistic, and paranoid personality traits”; that she is ready to “see herself” as a martyr because she indicated to the doctor several times that she would not cooperate with forced visitation, even if the court ordered it. He said that Jennifer denies any responsibility for the problems in the marriage, divorce, or the problems that arose subsequent to the divorce. Dr. DeYoub said that

[s]he sees herself as flawless, a victim of her ex-spouse, and with a more mature defensive structure, she would see her history in this marriage as a more reasonable way with less need to deny any responsibility. . . . She sees her decision not to require her children to have visitation as a virtue, rather than a disorder. *She has absolutely no insight, and I mean zero, regarding her contribution to this problem. She thinks the only mistake she ever made was supporting the visitation.*

(Emphasis added.)

Deron’s diagnostic scores indicated to Dr. DeYoub that Deron was less defensive, more forthright, and overall, that he did not project any significant emotional problems. Dr. DeYoub found Amber to be an honest woman and he did not believe that she was abusive toward the children. Dr. DeYoub recommended that custody be changed to Deron, with supervised visitation for Jennifer.

B. Dr. Thomas’s Recommendation

Dr. Thomas met with the various family members over a two-year period, beginning in September 2001. In sharp contrast to Dr. DeYoub, he believed the children’s allegations of physical and psychological abuse and did not believe the children were coached; he did

acknowledge that the children's descriptions of the abuse, such as the spiked ping-pong paddle and Deron causing a hole in Keith's ear, may have been exaggerated. Dr. Thomas stated that the threat the children felt from their father "was very real to them" and that it would take a "very intentional, conscious, systematic effort at reducing that fear."

Dr. Thomas admitted that his purpose in meeting with the family was not to make a clinical judgment about Jennifer and that he did not diagnose her. He testified that the purpose of his visits was to help the children cope with their fear of visitation. He also testified that he was baffled by the fact that the children had been frightened from the early visitation phase. In contrast to the entire family's testimony, Dr. Thomas did not believe that the children's negative and fearful attitude manifested until the *second* visitation, during which the allegations were made that the children were locked out of their grandparents' house. His impression was that Jennifer had encouraged visitation and had reacted as any parent would "who has been fighting for her children." He believed that the children's protection of Jennifer was normal but did not feel that their "all or nothing" attitude toward their father was unusual.

Dr. Thomas read Dr. DeYoub's report. He was "shocked" that Dr. DeYoub had reached the conclusions that he had reached after meeting with them for such a limited time. Dr. Thomas felt that Dr. DeYoub was "biased against the expression of the children and the mother" and was too quick to label the situation as one involving parental alienation syndrome, which, in Dr. Thomas's opinion, is not a "recognized diagnostic syndrome." He recommended that the children remain in Jennifer's custody with "reasonable visitation" for

Deron, if such visitation could be accomplished in such a way that it would not traumatize the children. He flatly stated that changing custody to Deron “would be the worse thing that could happen for the children.”

C. Analysis

We hold that the trial court did not err in relying on Dr. DeYoub’s opinion rather than Dr. Thomas’s. Although Dr. DeYoub spent considerably less time with Jennifer and her children, unlike Dr. Thomas, Dr. DeYoub did interview Jennifer and perform diagnostic tests on her with the intent of diagnosing Jennifer and the children. Further, the statements of Jennifer and her children to Dr. DeYoub support Dr. DeYoub’s conclusion that Jennifer alienated the children from Deron from the first visitation. The evidence supports that the children’s allegations match the mother’s allegations because the children have been coached by their mother. The children’s telling testimony at the hearing was essentially consistent with the statements they made to Dr. DeYoub. However, at the hearing, Jennifer largely denied that she made similar statements to DeYoub or asserted that he misrepresented what she said – presumably because her statements to him amply demonstrate how she alienated her children from their father.

Further, to reverse based on Jennifer’s allegations would require us to believe what the trial judge did not believe – that Jennifer encouraged visitation despite the children’s allegations of abuse and that she reported the abuse but that the police and ADHS were unresponsive because of the conspiracy against her in Cleburne County. Jennifer stated that she could not “blow off” that her children were being abused, yet she insisted that she had

an “open-door” policy and that Deron could come get the children at any time and take them anywhere they wanted to go, except to his home. The existence of such an “open-door policy” defies belief where the mother also maintains that her ex-spouse is horrifically abusing the children.

Dr. Thomas, too, recognized that something “systematic” was being worked on the children, although he believed the source to be Deron, and not Jennifer. He stated: “It was a systematic . . . breaking of trust with the children, systematic uncertainty, a systematic sort of punishing response as opposed to what I would consider a loving and caring response.”

Yet, even Dr. Thomas believed that, despite the children’s descriptions of visitation, they had positive experiences with their father. Dr. Thomas recognized that the children were reluctant to show a lot of excitement about anything that happened with Deron, “because they felt like it would be used against them” – more evidence that the children had been coerced into denying that they wanted visitation with their father.

To be sure, Deron and his parents have not acted in an exemplary manner. Regrettably, the “deprogramming incident” did occur; the parties differ with regard to their opinion as to the nature of the conduct involved and the degree to which the children were harmed.⁶ Nonetheless, even this incident supports that the children were coached into

⁶Jennifer and the children testified that, during this incident, at Miles’s continual direction, Deron forcibly removed the children from the car and that he and his father physically restrained them by holding them in their laps during the two-hour visitation to keep the children from running away. This testimony contradicts the children’s other assertions that they were taken from room to room and told things like, “this is your room, this is your home.”

exaggerating or lying about actual events.

After the incident, Jennifer contacted Mark Holland, a Highway Patrol Officer whom she knew, because she had telephoned the Cleburne County Sheriff's Department before and felt that their response had been unsatisfactory. It is notable that Officer Holland, a twelve-year police veteran whom Jennifer trusted enough to call, expressly testified that he believed that the children were coached. He thought it was "unusual" because when he would ask them a question, "they would go into their thought process, thinking about what to answer to me, their faces would literally contort, as if they're just really thinking about what they need to say, or what to say." Officer Holland said that when he asked Sky a question, she looked to Keith "as if for guidance." He characterized the children's behavior as "strange"; said that they told him things he knew to be "untrue" or "totally ridiculous," and said that they became "agitated" at the mention of Deron's name.

While this incident is inexcusable and probably frightened the children, there was no evidence that they suffered lasting harm. Rather, it appears to be an isolated incident which, absent additional credible evidence, does not support reversal. To the contrary, the testimony of the officer supports that, as with the other allegations of abuse, the children were coached into fabricating allegations or exaggerating the actual events.

On these facts, we agree that custody should be changed to the father. Dr. DeYoub

The investigating officer indicated that the children had red marks and bruising on their bodies, which he described as not "aggressive" and that he rated as a "2" on a scale of "10." The mild bruising was apparently the result of the children resisting when their father tried to remove them from the vehicle and being restrained during the visitation.

determined that Jennifer completely alienated Sky and Keith from Deron; that custody should be changed to Deron; and that Jennifer should have supervised visitation. He based his conclusion, in part, on research showing that children who had been completely alienated from their parents tend to remain completely alienated unless their access to the restricting parent is reduced or eliminated. Thus, the trial court was justified in changing custody to Deron, the alienated parent, and in temporarily restricting the children's access to Jennifer, the parent who caused the alienation. The trial court was not required to ignore Dr. DeYoub's report, the harm Jennifer has inflicted on her children, Jennifer's express intent to continue to violate the trial court's orders, and her skewed view of the events in this case. Accordingly, we affirm that portion of the trial court's order changing custody to Deron.

However, because of the time that has elapsed since the trial court's order has been entered, we modify that portion of the trial court's order relating to visitation and instruct the trial court on remand to prescribe supervised visitation for Jennifer. In so doing, we encourage the trial court to condition the mother's right to supervised visitation on evidence that she is actively engaged in psychological counseling and is demonstrating that she is not continuing in her paranoid tendencies that produced the ill effects in this case. We leave it to the trial court's discretion to determine whether to award Jennifer unsupervised visitation at some future point.

Finally, we readily dismiss Jennifer's argument that the trial judge, Judge Weaver, was biased. Jennifer admits that she is not questioning whether Judge Weaver should have recused from the case but maintains that she is attempting to show that his evaluation of the

credibility of the witnesses was impaired, as demonstrated by the manner in which he questioned her witnesses, and by the fact that he quashed the subpoena for Grady, the ad litem. Regardless, Jennifer did not below assert that Judge Weaver questioned the witnesses in a biased manner or otherwise handled the case in a biased manner. Therefore, she is now precluded from making such an argument for the first time on appeal.⁷

Affirmed in part; modified in part; remanded in part.

GLOVER, J., agrees.

PITTMAN, C.J., concurs without opinion.

⁷Jennifer's assertion that the Judge Weaver is biased because he was prepared to change custody before she presented her case evinces her lack of understanding of evidentiary procedure, rather than bias on the part of the trial judge. Judge Weaver denied her motion to dismiss, which was necessarily filed *before* Jennifer presented her evidence, merely stating that DeYoub's testimony demonstrated a change of circumstances. He thereafter considered her evidence before determining whether the change of circumstances warranted a change of custody. Further, any arguments that Judge Weaver exhibited bias in not allowing Jennifer to question the ad litem is also without merit because the ad litem's report was withdrawn by Deron and thus, was not part of the evidence in this case. Finally, our review of the record reveals that there was nothing improper in the manner in which Judge Weaver questioned the witnesses.