

Notification of Judgement - Kilgore v. Boyd (U.S.)

An important test in that a US court found that PAS now met the Frye test for scientific acceptability in court.

from Richard Gardner

I am pleased to report that on Wednesday, November 22, 2000, a family court in Tampa, Florida, ruled that the PAS had gained enough acceptance in the scientific community to satisfy Frye Test criteria for admissibility. Richard Warshak and I both testified at the Frye hearing, which lasted two days. H Michael Bone was also involved in the case and provided valuable assistance. I believe that my website list (www.rgardner.com/refs) -- which includes approximately 100 articles on the PAS in peer-review journals and 38 courts of law that have recognized PAS -- played an important role in the court's decision. The citation for use in future cases: Kilgore v. Boyd, 13th Circuit Court, Hillsborough County, Fl., Case No, 94-7573, November 22, 2000. I believe that this is the first case in which a court has so ruled. There is good reason to believe that this case will serve as a precedent. I am grateful to those who have sent me scientific literature references and legal citations. Please keep them flowing; the list can never be too long. Richard Gardner

Extract from the judgement

from http://www.rgardner.com/pages/kg_excerpt.html

(Excerpt taken from Kilgore v. Boyd, Circuit Court of the 13th Judicial Circuit of the State of Florida, Hillsborough County, Family Law Division. Case no. 94-7573, Div. D)

THE COURT: ... If I do have to apply a Frye test he has passed the Frye test. And I find that parental alienation syndrome has passed the Frye test in my courtroom, which is a Circuit Court Courtroom in the Family Law division, based on the evidence and the argument before me. The evidence and the argument before me, the testimony and the CV of Dr. Gardner, together with an excerpt of his writings. There was also proffered an article from the Florida Bar Journal which, quite frankly, I read when it came out and at the time I read it I placed some credibility in it. I'm also impressed by the fact that Dr. Gardner is cited in the footnote in at least one of the cases, I believe it's Schultz vs. Schultz hang on a second. Off the record a second. (There was a discussion off the record.)

THE COURT: It has also been proffered that the state of Texas gives it credence in its book of evidence and as Dr. Warshak testified the-- I cannot cite exactly the group, but it's some national psychologist organization, cites it approvingly and cites Dr. Gardner's writings approvingly in its child custody evaluation criteria.

Weighed against that was the testimony of Dr. Carter, who is a psychologist who seems to have no national criteria and whose opinion was bolstered by Dr. Whyte. I know Dr. Whyte, I have a very high opinion of Dr. Whyte's capabilities and quite frankly, based on their testimony I could see only that there only seems to be some sort of disciplinary

turf battle between psychologists and psychiatrists, and just because psychologists don't approve of the parental alienation syndrome and because they cite that it's not in the DSM-IV doesn't mean that his test is not widely accepted in the relevant scientific community of child psychiatrists. Based on the evidence before me I have every reason to believe that it does.

Furthermore, Dr. Gardner's argument that it's not in the DSM-IV his argument is it's not in there yet because the DSM-IV hasn't been updated since 1994. Both of the examples cited, that is the fact that AIDS was widely discussed and treated and diagnosed before it was included in the DSM-IV, as was Tourette's syndrome, is persuasive.

The study by Dr. Gardner has been around since 1985, which is fifteen years. He testified that he's had some successful results, he's run some studies. His testimony was bolstered by Dr. Warshak, who is a psychologist and is also a full professor at a fairly prestigious university.

So based on the totality or that I find that even though I might not have to have the test meet the Frye criteria that it does meet the Frye criteria, and therefore I'm denying the former wife's motion to strike the testimony and evidence in the reference to parental alienation syndrome.

A few have asked: "What is the Frye Test?"

In the early 1920s, a man named James Frye was found guilty of murder on the basis of a new lie-detector test based on the theory that when a person lied, the systolic blood pressure would be elevated. In 1923, the Washington D.C. appeals court ruled that before a new scientific principle or discovery could be used as evidence in a court of law, it "must be sufficiently established to have gained general acceptance in the particular field in which it belongs." The court ruled that the blood-pressure test had not gained such acceptance, and so Frye's conviction was reversed. On the basis of the two-day Frye hearing in Tampa, the court ruled (primarily on the basis of the 100 peer-reviewed articles on the PAS and 38 court rulings in which the PAS had been accepted by the judge) that the PAS had gained general acceptance in the fields of psychology and psychiatry and can thereby be used as evidence in courts of law. Courts are free to accept evidence that has not passed the Frye test--and this has certainly happened with the PAS--but such acceptance is more easily appealable. Now such cases will be more difficult to appeal.

Notification of Judgement - Berg v. Perlow (U.S.)

We've just received copy of the above judgement, Berg v. Perlow, Case No. CD 98-1285-FC, 15th judicial circuit in Palm Beach County Florida dated March 15, 2000, specifically recognizing Parental Alienation Syndrome, Some quotes include *"the wife seeks sole parental responsibility and to eliminate any contact between husband and child based upon the Parental Alienation Syndrome"*. Husband diagnosed as psychopath, with copious quotes from DSM-IV. Father diagnosed as psychopath and child diagnosed with moderate to severe PAS by mental health professionals including Ellinger, Heller, Gardner and Bush. Court order includes such items as:

"The Husband...shall have absolutely no contact with the parties' child (now 8) until the child reaches age 14. No contact with the child forthwith shall include but not be limited to (the court will specifically reserve jurisdiction as to this issue as the husband will probably find a way to somehow circumvent this order, so that the Court will enter additional orders on behalf of the Wife so as to require strict compliance with this order) the following:

- A. No telephone contact*
- B. No e-mail contact*
- C. No computer contact*
- D. No videos*
- E. No visitation*
- F. No visits at school*
- G. No records from school*
- H. No records from any health care providers*
- I. No contact indirectly by third parties on behalf of the Husband, whether they are relatives or not."*

Other quotes include:

"The Court finds that the order of the Court in which the Wife should not disparage the Husband to the child is now becoming a detriment to the child. The wife needs to be as truthful to the child as possible taking into consideration the child's youth, but that the wife should advise this child of this Court's specific findings and why this Court has done what it has done, including but not limited to the husband's extensive background involving his deceitfulness, his lack of remorse, his arrests, his poor behavior control and impulsivity, his lack of empathy, and his total anti-social personality disorder".
