SPC Guiding Case No. 141: Zhi Mou 1 et al. v. Beijing Yongding River Management Office (Dispute over Rights to Life, Health, and Body)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / dispute over the right to life / public place / duty of safety protection

Holding

A stilling basin is a water conservancy engineering facility closed to public entry and does not fall within the "public places" under Article 37, paragraph 1 of the Tort Liability Law. Where the manager and owner of a stilling basin have taken reasonable safety warnings and protective measures, and a person with full capacity for civil conduct enters without authorization and causes damage to himself or herself, the people's court shall not support a request that the manager and owner bear compensation liability.

Basic Facts

On January 16, 2017, the Lugouqiao Police Station of the Fengtai Branch of the Beijing Municipal Public Security Bureau received a 110 report from Li Moumou stating that Zhi 3 had gone out to walk the dog and had not returned, and that Li Moumou suspected Zhi 3 had fallen into the ice. After receiving the report, the police rushed to the scene to search, and that night discovered a man dead in the stilling basin in front of the second sluice gate, counting from west to east, of the Yongding River sluice dam; the family confirmed the deceased to be Zhi 3. When the deceased was found, the surface of the water in the stilling basin on the south side of the Yongding River sluice dam was frozen, the ice surface was basically level with the edge of the basin walls, and the river channel outside the stilling basin had no water. On January 20, 2017, the Fengtai Branch of the Beijing Municipal Public Security Bureau issued an investigation conclusion on the death of Zhi 3 (Feng Gong Zhi Wang Cha Zi [2017] No. 021), the main content of which was: based on the work carried out (on-site inspection, forensic appraisal, and interviews with the public) and the evidence obtained, the following conclusions were reached: first, the person's death was consistent with drowning; second, the person's death was not a criminal case. Zhi 3's family had no objection to the cause of death. The place where Zhi 3's body was found was the stilling basin on the west side of the sluice gate, downstream of the Yongding River sluice dam. The stilling basin was a component of the Lugouqiao flood-diversion hub water conservancy project (the sluice dam). The daily management, maintenance, and operation of the Yongding River Lugouqiao flood-diversion hub project was the responsibility of the Beijing Yongding River Management Office. The Beijing Municipal Water Affairs Bureau stated that protective railings had been installed around the site of the incident and that multiple warning signs had been placed in conspicuous locations, the signs noting the management unit as the "Beijing Yongding River Management Office." Zhi 3's parents Zhi 1 and Ma Moumou, his wife Li Moumou, and his daughter Zhi 2 brought a lawsuit in court, requesting that the Beijing Yongding River Management Office bear liability for damages.

Judgment

On January 28, 2019, the Fengtai District People's Court of Beijing rendered Civil Judgment (2018) Jing 0106 Min Chu No. 2975: dismissing all the claims of Zhi 1 and the other three plaintiffs. After the judgment was pronounced, Zhi 1 and the other three plaintiffs appealed. On April 23, 2019, the Beijing Second Intermediate People's Court rendered Civil Judgment (2019) Jing 02 Min Zhong No. 4755: dismissing the

appeal and affirming the original judgment.

Reasoning

The main disputes in this case concerned the verification of the location where Zhi 3's drowning death occurred, the determination of the corresponding management authority, and whether that management authority should bear tort liability. The principal facts and legal disputes in this case were determined as follows:

I. The factual determination of the location of Zhi 3's death and the management authority

First, as to the cause of death, the public security authority determined through appraisal that Zhi 3's death was caused by drowning; as to the scene of the accident, the place where Zhi 3's body was found was the stilling basin in front of the Yongding River sluice dam. Based on the work records issued by the police station that handled the search for the missing Zhi 3, it could be determined that the location of Zhi 3's drowning was within the stilling basin on the south side of the Yongding River sluice dam. Second, as to the management authority of the stilling basin, it had been established that the Beijing Yongding River Management Office was the management authority of the Yongding River sluice dam; the Beijing Yongding River Management Office also accepted this and expressly confirmed that the stilling basin fell within its jurisdiction. On this basis it was determined that the Beijing Yongding River Management Office was the party responsible for managing the location of Zhi 3's drowning. Given that the Beijing Yongding River Management Office is a public institution established in accordance with law and may independently bear the corresponding civil liability in accordance with law, the Beijing Municipal Water Affairs Bureau, the Fengtai District Water Affairs Bureau, and the Fengtai District Yongding River Management Office were none of them proper defendants in this case; the claim of Zhi 1 and the other three plaintiffs that these three defendants bear joint and several compensation liability had no factual or legal basis and was not supported.

II. The determination of whether the management authority, the Beijing Yongding River Management Office, should bear tort liability

First, the provision on the duty of safety protection in the Tort Liability Law does not apply in this case. There is often a relatively close relationship between the person protected by the duty of safety protection and the duty-bearer, including a contractual negotiation relationship, a contractual legal relationship, and the like; the tort of breaching the duty of safety protection is a tort committed by a person bearing such a duty through failing to perform the duty of safety protection within a reasonable scope. According to the facts established, the location of Zhi 3's drowning was the stilling basin beside the Yongding River sluice dam. In nature, the stilling basin was part of the Yongding River sluice dam, fell within the category of water conservancy engineering facilities, and was not an ice rink open to the public; in location, the stilling basin was situated in the middle of the Yongding River channel below the sluice dam; and in terms of the access route, the normal route to the stilling basin required descending the stairs from the Yongding River embankment to reach the river channel and then walking along the river channel to below the sluice dam. Therefore, whether judged by the nature of the stilling basin, its location, or the route to reach it, it was difficult to find that the stilling basin was a public place. Nor was the Beijing Yongding River Management Office an organizer of mass activities; the appellate claim of Zhi 1 and the other three plaintiffs that the four appellees had failed to perform the duty of safety protection was contrary to law. Second, as to the elements of tort liability, a party claiming that the other party bears tort liability must bear the burden of proving the elements of tort liability, namely that the other party committed an unlawful act, was subjectively at fault, and caused damage, and that there was a causal relationship between the unlawful act and the damage. The Yongding River channel was not a normal place for activities or passage; according to common sense, entering the river channel or walking on the ice surface readily gives rise to danger to personal safety, and the foreseeability of such dangerous consequences can be known without any specialized knowledge. Zhi 3, fully aware that entering the river channel or walking on the ice involved risks, still entered the area and thereby caused his own drowning death; subjectively his conduct conformed to negligence through overconfidence, and he should

bear the corresponding damaging consequences himself. An adult should be the first person responsible for his or her own safety and cannot rest his or her safety on the constant reminders of state agencies. Outdoor activities should seek advantage and avoid harm, and not casually entering places not meant for mass activities is a norm of conduct that every citizen should consciously observe. In summary, the Beijing Yongding River Management Office was not at fault for Zhi 3's death and should not bear compensation liability. It should be noted here that, as a result of Zhi 3's accidental drowning death, Zhi 1 and Ma Moumou lost a son in old age and Zhi 2 lost a father at a young age; the court understands and sympathizes with their family circumstances. However, whether the party liable for compensation committed an infringement must be strictly defined in law and supported by evidence, and the loss cannot be shifted, guided by sentiment or outcome-based liability, onto a party that does not constitute an infringer.

Relevant Legal Provisions

Article 37, paragraph 1 of the Tort Liability Law of the People's Republic of China.

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