SPC Guiding Case No. 228: Zhang [X] v. Li [X] and Liu [X] (Guardianship Dispute)

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Keywords

Civil / guardianship / minors / during the existence of the marriage relationship / equal guardianship rights

Holding

1. Where, during the period of separation of a married couple, one party or a close relative of that party takes away the minor child without authorization, thereby making it impossible for the other party to see the minor child, this constitutes an infringement of the rights arising from the performance of guardianship duties by the other party.

2. For a guardianship dispute during the period of separation of a married couple, the people's court may, by reference to the relevant provisions of the Civil Code on the upbringing of children after divorce, temporarily determine the upbringing arrangements for the minor child, and make clear that the party temporarily directly raising the minor child has the obligation to assist the other party in performing guardianship duties.

Basic Facts

Zhang [X] (female) and Li [X] registered their marriage in May 2019, and after the marriage they resided in a certain community in Baoding City, Hebei Province. In November 2020, the couple gave birth to a daughter, named Li [X]. From April 19, 2021, Zhang [X] and Li [X] began living separately, and their later agreed-upon divorce was unsuccessful. On July 7 of the same year, the father of Li [X], Li [X], and the paternal grandmother, Liu [X], took Li [X] away without the authorization of Li [X]'s mother, Zhang [X], and returned to a village in Dingzhou City, Hebei Province. At that time Li [X] was still within the breastfeeding period, and Zhang [X]'s repeated requests for visitation were refused by Li [X]. Zhang [X] subsequently brought divorce proceedings, and the court ruled on January 13, 2022, that the couple were not permitted to divorce. Although the marriage relationship of the parties remained in existence, they had in fact separated, during which time Li [X] lived with Li [X] and Liu [X], and Zhang [X] was unable to visit the child for a long period. On January 5, 2022, Zhang [X] brought a lawsuit on the ground of a guardianship dispute, requesting an order that Li [X] and Liu [X] return Li [X], and that she herself continue to exercise guardianship over Li [X] in accordance with the law.

Judgment

On March 22, 2022, the Dingzhou People's Court of Hebei Province rendered a civil judgment, dismissing the claims of the plaintiff Zhang [X]. After the judgment was pronounced, Zhang [X] was dissatisfied and appealed. On July 13, 2022, the Baoding Intermediate People's Court of Hebei Province rendered a civil judgment: (1) the first-instance civil judgment of the Dingzhou People's Court of Hebei Province was revoked; (2) Li [X] shall be temporarily raised directly by the appellant Zhang [X]; and (3) the appellee Li [X] may visit Li [X], and the appellant Zhang [X] shall assist and cooperate with the appellee Li [X]'s visitation with Li [X].

Reasoning

The focal point of dispute in this case was whether the act of Li [X]'s father, Li [X], and the grandmother, Liu [X], in taking Li [X] away without authorization constituted an infringement, and how to properly handle the issue of raising and guardianship of Li [X] while the parties were still in the marriage relationship but had in

fact separated.

First, on whether the act of Li [X]'s father, Li [X], and the grandmother, Liu [X], in taking Li [X] away without authorization constituted an infringement against Li [X]'s mother, Zhang [X]. Article 34, paragraph 2, of the Civil Code provides: "The rights arising from the lawful performance of guardianship duties by a guardian shall be protected by law." Article 1058 provides: "A husband and wife shall equally enjoy the rights to raise, educate and protect their minor children, and shall jointly bear the obligations to raise, educate and protect their minor children." The parents are the guardians of the minor children, and both parties equally enjoy the rights to raise, educate and protect the minor children. In this case, Li [X] and Liu [X] took away Li [X], who was still within the breastfeeding period, without authorization and refused to return Li [X] to Zhang [X]'s side, causing Zhang [X] to be unable to visit the child for a long period and also causing Li [X] to be forced to stop breastfeeding and be unable to receive the care of her mother. The conduct of Li [X] and Liu [X] was not only detrimental to the physical and mental health of the minor, but also constituted an infringement of the rights arising from Zhang [X]'s performance of her guardianship duties. The first-instance court dismissed the claims on the ground that Zhang [X] had no evidence proving that Li [X] had failed to raise and protect Li [X] properly, which was improper application of the law.

Second, on how to handle the raising and guardianship of Li [X] during the existence of the marriage relationship. In this case, from birth until she was taken away by her father, Li [X], and the grandmother, Liu [X], Li [X] had always been breastfed by her mother, Zhang [X], and at the time before the lawsuit she was not yet two years old, being a low-age minor. Although both parents have equal guardianship rights over the child, the specific exercise of guardianship rights shall conform to the principle of being most beneficial to the ward. Although the current law and judicial interpretations do not expressly and specifically provide for the exercise of guardianship rights within marriage, considering that the parties were in a state of separation in which conflicts were prone to intensify, and in order to protect the interests of the minor child to the greatest extent, by reference to Article 1084 of the Civil Code, which provides that "after divorce, a child under the age of two shall, in principle, be directly raised by the mother," it was appropriate for Li [X] to be temporarily raised directly by Zhang [X]. During the period in which Zhang [X] directly raises Li [X], she shall assist and cooperate with Li [X]'s visitation with Li [X].

Relevant Legal Provisions

Articles 34, 1058, 1084 and 1086 of the Civil Code of the People's Republic of China.

Articles 4 and 24 of the Law of the People's Republic of China on the Protection of Minors.

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