SPC Guiding Case No. 229: Sha [X] v. Yuan [X] (Visitation Rights Dispute)

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

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Keywords

Civil / visitation rights / minors / grandparent visitation / elderly parents who lost their only child

Holding

Where one parent of a minor has died and the paternal or maternal grandparents bring a lawsuit before the people's court requesting visitation with the grandchildren, the people's court shall, adhering to the principles of being most beneficial to the minor and conducive to family harmony, support the request in accordance with the law on the condition that the minor's normal life and physical and mental health are not adversely affected.

Basic Facts

Sha [X] is the mother of Ding [X]. Her only son, Ding [X], married Yuan [X] in March 2016, and in January 2018 the couple gave birth to twin boys, Ding [X]jia and Ding [X]yi. In July 2018, Ding [X] passed away from illness. Ding [X]jia and Ding [X]yi had thereafter been living with Yuan [X]. Sha [X] contacted Yuan [X] on several occasions wanting to see the children, but was refused each time. Sha [X] therefore brought a lawsuit requesting that she be allowed to visit the children on the 1st and the 20th of each month, for two hours each time.

Judgment

On June 18, 2021, the Xincheng District People's Court of Xi'an, Shaanxi Province, rendered a civil judgment: the plaintiff Sha [X] may visit Ding [X]jia and Ding [X]yi once in the first week of each month, for no more than two hours each time, and Yuan [X] shall provide cooperation. After the judgment was pronounced, Yuan [X] was dissatisfied and appealed. On September 28, 2021, the Xi'an Intermediate People's Court of Shaanxi Province rendered a civil judgment, dismissing the appeal and affirming the original judgment.

Reasoning

Sha [X] is the paternal grandmother of Ding [X]jia and Ding [X]yi, and her visitation with the two children constitutes grandparent visitation. Although China's law does not expressly provide whether paternal or maternal grandparents enjoy the right of grandparent visitation, the right of visitation is a right closely related to personal relationships and usually arises on the basis of blood ties; where one parent of a child has died, the close kinship relationship between the grandparents and the grandchildren is not extinguished by the death of the parent. Grandparent visitation is an extension of the parent-child relationship, conforms to the traditional family ethics of China, and conforms to the core socialist values and public order and good morals. In addition to satisfying the emotional needs of adult relatives toward the minor, grandparent visitation is also a means by which the minor receives more care from relatives. In particular, in this case, where Sha [X]'s only son Ding [X] has passed away, Ding [X]jia and Ding [X]yi are not only the children of Ding [X] and Yuan [X], but also the grandchildren of Sha [X]. Through visiting her grandchildren, Sha [X] obtains spiritual comfort and continues the family affection between grandparents and grandchildren, and this will also give the two children more care, which is conducive to the healthy growth of the minors, and Yuan [X] shall provide cooperation. At the same time, grandparent visitation shall be carried out on the premise of being conducive to the growth and physical and mental health of the minor and not affecting the

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normal life of the minor and of the minor's mother, Yuan [X], and communication shall be made before the visitation.

Relevant Legal Provisions

Articles 10, 1043, 1045 and 1086 of the Civil Code of the People's Republic of China.

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