

A Study of the Legal Issues of Stepchildren Support Their Stepparents

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Abstract—As long as the formation of the actual foster relationship between the stepparents and the stepchildren is fictional blood relatives, the rights and obligations are the same as those of the biological parents and children. But at present the criteria for the foster relationship between stepparents and stepchildren are still unclear in our state laws. And the source of support obligations in practice cases are also controversial. The purpose of this paper is to explore the legal issues of the stepchildren's fostering for the stepparents. The first is to determine that the main source of the stepchildren's duty to stepparents is the actual foster relationship between the two sides. However, the fostering obligation under the principle of equal rights and obligations cannot be completely excluded. The second is to define the meaning of the fostering and the criteria for the actual foster relationship between the stepparents and stepchildren. The author gives some reasonable suggestions based on various viewpoints and practice cases.

Keywords—*Stepparents; Stepchildren; Foster relationship*

I. INTRODUCTION

The divorce rate in China is rising, and more and more people are remarried. The corresponding generation of stepparents and stepchildren is also growing. Compared with the biological parents and children, the legal relationship between the stepparents and stepchildren is more complicated. The Marriage Law of the People's Republic of China has made relevant provisions on the rights and obligations of the stepparents and stepchildren, but many of the problems are still unclear [1-3]. For example, the formation of the de facto foster relationship between the stepparents and the stepchildren is fictional blood relatives, they have a legal relationship of rights and obligations, however, the relationship of the stepparents and stepchildren who do not form a de facto foster relationship do not create legal rights and obligations. But what is the criterion for judging that the two sides have formed a de facto foster relationship? There are no clear rules in the law. In addition, the conditions for stepchildren support their stepparents cannot be generalized in judicial practice. The main source is that the two sides form a de facto foster relationship, but it needs to be considered whether the principle of equal rights and obligations can form the support obligation. Unclear legislation will directly affect the handling of judicial cases, which will affect the stability of remarried families and the protection of the rights and interests of the parties [4-5]. Therefore, it is urgent to make clear regulations on relevant laws.

II. THE QUESTION

Case: When the defendant Xiao was 6 years old, her father died. Two years later, the mother Dong and the plaintiff Wang remarried, Xiao also came to the stepfather's family with his mother, and then Dong and Wang also gave birth to a boy. After that, Xiao's tuition, living expenses and other expenses were shared by Dong and Wang. However, after Dong and Wang were married for six years, the two had problems with their feelings. The two sides quickly handled the divorce procedure. In terms of child support, Dong and Wang agreed that the daughter Xiao was raised by Dong and the son was raised by Wang. Both parties do not need to pay child support to the other party [6-8]. At that time, Xiao was 14 years old. After 30 years, Dong and Wang have become old people. Wang retired at home, because the unit's benefits are not good, so the pension cannot be paid on time, and he and Dong's married child suffered a car accident in his youth for many years, and now Wang lives. In the absence of an economic source and no child support, Wang asked Xiao to ask her to fulfill her obligation to support herself, but Xiao refused to support Wang. The reasons are as follows: First, the two sides have no blood relationship; the second is that their mother has divorced from Wang; the third is that when the mother Dong and Wang were divorced, they just turned 14 years old and have not yet reached adulthood, so Wang did not Raise yourself into adulthood. Because of these three reasons, Xiao believes that she does not have the obligation to support Wang, and does not have to pay alimony. In the unsuccessful negotiations, Wang filed a lawsuit with the court and asked Xiao to fulfill his obligation to support himself.

After the trial, the court held that Wang and Xiao's mother had been living with Xiao since they got married, and together with Dong, they took Xiao's life, education and medical expenses [9-10]. Wang and Xiao lived together for six years. In the year, the two sides have formed a relationship of de facto support. According to Chinese law, the rights and obligations between Wang and Xiao apply the provisions of the Marriage Law on the rights and obligations of parents and children. Although Wang and Dong are divorced, this does not affect both parties. The relationship between rights and obligations. The final court ruled that the defendant Xiao should fulfill his obligation to support Wang, and Xiao paid Wang's maintenance fee of 800 yuan per month.

The focus of the dispute in this case is: Does Xiao have an obligation to support Wang? Is the source of the obligation of support based on the foster relationship between the two parties or the principle of coordinate rights and obligations? In the question of support, whether the two sides form a de facto relationship is essential, then what is the criterion for forming a de facto foster relationship?

III. THE SOURCE OF SUPPORT OBLIGATIONS

Do the stepchildren have to support their stepparents? Article 27 of The Marriage Law of the People's Republic of China stipulates: "The rights and obligations of the stepfather or stepmother and the stepchildren who are being educated by them shall be governed by the relevant provisions of this Law on the relationship between parents and children." Thus, the stepchildren should support the stepparents. The obligation to support is fulfilled, but such obligations are premised. They must be the stepchildren of their upbringing education, that is, the de facto foster relationship between the two parties. Legally speaking, one is the relationship between the stepparents and the stepchildren, which is a relationship between the parents and the children. This relationship of parenting education indicates that stepparents care about their stepchildren's life, economic support and growing education, and correspondingly, after the stepparents is old, the stepchildren has to fulfill its support obligations, such as economic subsidies, mental comfort and so on. In this case, the two sides are no different from their biological parents except for their blood relationship. The other is that the stepchildren have no legal obligation to support the stepparents. It is generally because when the stepparents are married to the biological parent, the stepparents have no independent education for the stepchildren during the independent life or living together. There is no de facto foster relationship between stepparents and stepchildren, just for affinity. Correspondingly, after the stepparents is older, the stepchildren have no natural obligation to support. That is to say, only the stepchildren who are preparing the fictional blood relationship have the obligation to support the stepparents, because they apply the same as biological parents and children in the 21st and 36th articles of the Marriage Law. "Children have the duty to support and assist their parents." "The relationship between parents and children is not eliminated by the divorce of the parents." However, the children of stepparents who are affinity have no corresponding rights and obligations because the two parties do not have a de facto foster relationship. Therefore, the stepchildren of the affinity have no obligation to support the stepparents.

So, is the duty of stepchildren to stepparents judged only by the de facto foster relationship between the two sides? To form a de facto foster relationship requires a variety of conditions as described above, but whether stepparents have the right to ask the stepchildren to perform certain maintenance obligations if the stepparents have the intermittent upbringing and education of stepchildren or short-term care for the stepchildren?

This point has no clear relevant provisions in the current law. However, the author believes that according to the principle of coordinate rights and obligations, the relationship between stepparents and stepchildren takes place whenever the stepparent marries the biological parents, regardless of whether

the de facto foster relationship between stepparents and stepchildren is formed. Stepparents who have no upbringing or have a short period of upbringing and education for their stepchildren, they are still affinity. However, as stated in Article 12 of the Inheritance Law of the People's Republic of China: "The widowed daughter-in-law and the widowed son-in-law who have fulfilled their primary duty of support to their father-in-law and mother-in-law may be the first in the line of succession." In that case, the stepparents and stepchildren who are affinity, when the stepparents have raising education not enough to form the de facto foster relationship, but still have a certain amount of pay, when the stepparents are old, the stepchildren should also have a certain duty of support obligations. Perhaps this incomplete support obligation is mostly due to moral constraints, but the author believes that in judicial practice, it can also be appropriately reduced according to the full support obligation, which can not only alleviate the hardships of some stepparents who have no children in their later years. It can also promote the harmony of family relationships between stepparents and stepchildren.

IV. THE CRITERION FOR THE ACTUAL FOSTER RELATIONSHIP

A. *The meaning of "fostering"*

Chinese legal scholars have different opinions on the meaning of fostering. Professor Yang Dawen and others believe that "the legal fostering has a broad and narrow sense. The fostering in the broad sense refers to the economic mutual existence between specific relatives according to the clear provisions of the law. The rights and obligations of supporting and living in mutual support, it includes the 'raising' of the elders' relatives, the "fostering" between the relatives of the same generation and the "support" to the relatives of the elders. In the narrow sense of fostering, it refers to the relationship between economic support and living support rights and obligations between the relatives of the same generation, especially between husband and wife, and has the specificity of the subject. "Professor Tao Yi and others believe that "the fostering in the usual sense refers to the financial support for the weak or the support for life." "Legal fostering, that is, a certain rights and obligations includes range of relatives provide mutual support and support in economic and life according to law. The party receiving the support is the right holder or the dependent person; the party providing the support is the obligor, or the supporter." Professor Wang Hong believes that "fostering refers to the legal relationship between a particular relative and a party's obligation to support the living. The person providing the support (the supporter) is the obligor, and the person who enjoys the support (the dependent) is the right holder. "Mr. Shi Shangkuan believes that "fostering, that is, those who have financial ability among certain relatives, should support those who are unable to live by the identity relationship. Those who have the obligation to support, called the fostering obligor, have the right to be supported, called the right holder." The above points indicate different understandings of the meaning of fostering, but they all express that fostering is a legal relationship of rights and obligations, and the relationship between support occurs between specific relatives.

Generally speaking, according to the age and seniority of the supporter and the dependent, the fostering can be divided into raise, narrow fostering and support. Raising and raising education is derived from the "Historical Records of the Sixth Five-Year Wu Qi biography": "Mingfa trial, donation of the imperfect officer, alienation of the public to raise the fighting warrior." After the referral to the elders to the younger generation upbringing and education. Raising directional judgments, therefore, can only be used to "raise children" and not to "raise the elderly." The narrow sense of fostering is to support and assist, which stems from the "Women biography Wei Mancu Ci": "Meng Wei's wife, Wu Zi's stepmother, Ci Renyi's support for the fake son." After the referee refers to the support and assist between the generations, mostly refers to the husband and wife." Henan's four kings and four wives are born with three men, and they have the right to feed." The original refers to the supply of life, and then refers to the service of parents or other relatives. The donation also has a directional judgment, which is the next right. The significance of distinguishing between raising, fostering and nourishment lies in the fact that the three exist in different generations in addition to material support and are also associated with different types of spiritual support.

B. Identification of the foster relationship between stepparents and stepchildren

The stepparents and stepchildren relationship of the "foster relationship" is based on the de facto behavior of the stepfather or stepmother raising the stepchild. According to the current law in China, the legal fact that the biological parents remarry does not necessarily lead to the same rights and obligations between stepparents and stepchildren as between the biological parents and children. When the foster relationship is formed between stepparents and stepchildren, they can form a parent-child relationship at the legal level. There are no corresponding regulations in China's laws on how to determine whether there is a foster relationship between the parents and their parents. There are also disputes in theory and practice. Some scholars believe that the stepparents pay the full or part of the living expenses and education expenses of the stepchildren; some scholars believe that the stepparents and the minor stepchildren live together, and the stepchildren are educated and taken care of in life. Even if they do not bear the cost of their support, they should be considered to have formed a relationship of parenting education. Some scholars believe that as long as the stepparents and stepchildren live together, they can be considered to have formed a relationship of parenting education. However, the author believes that it is necessary to have the following three conditions for the existence of a foster relationship between the stepparents and stepchildren:

1) When the stepparents are married to the biological parents, the stepchildren need to be raised.

Some scholars believe that as long as the stepparents and the biological parents are married, the stepchildren's minors can be counted as the criteria for forming a foster relationship. However, the author believes that it is not possible to simply define the minority of a stepchildren as a condition. First, with the development of education, young people still attending college are everywhere after 18 years of age, while most of the

students in the Chinese mode. They are all living expenses given by their parents. Therefore, it cannot be concluded that the stepchildren in adulthood do not need to be raised at home. Secondly, Article 18 of the General Principles of Civil Law of China stipulates that: Adults who are fully capable of civil conduct may independently implement civil legal acts. Minors over the age of 16 who regard their own labor income as their main source of income are regarded as persons with full capacity for civil conduct. It can be seen that even if you are underage, if you are 16 years old, you can use your own labor income as your main source of income, and you may not need family support.

2) The stepparents bear the full or partial raising expenses of the stepchildren

Whether the stepparents bear the raise cost of the stepchildren is the key to determining the formation of the foster relationship. In real life, there are cases in which the child's life, education and other support expenses are borne by the biological parents. If the stepparents do not bear the raisings expenses of the stepchildren, even if they live together, they cannot be considered to have a foster relationship. Moreover, the proportion of parental expenses that the stepparents' bears should also be considered. The expenditure for such support should be continuous and multi-faceted, and should not be given only once or only a few times.

3) The duration of raising requires a certain length

Regardless of whether the stepparents and the stepchildren are living together, as long as the stepparents bears the cost of raising the child's life, education, etc., and the duration is a certain length. For the definition of this length, some scholars have suggested that stepparents should raise their stepchildren for more than five years before they can form a foster relationship. And Professor Wang Liming presided over the drafting of the "Civil Code Scholars Proposal" Article 508 advocates that stepfather or stepmother and stepchildren live together .It can last for more than 3 years. The author agrees to define the standard for continuous parenting education for more than 3 years, because today's society with the rapid development, the floating population in each city has also increased year by year. The opportunities for studying abroad have emerged in an endless stream. The five-year time limit is too long, and three years is appropriate. Of course, it is also necessary to meet the above two conditions at the same time, in order to determine the de facto foster relationship between the stepparents and stepchildren.

V. CONCLUSION

In the case, Xiao is obligated to support Wang because Wang had raised his education and life for a long time, and until he lived independently, the two sides formed a de facto foster relationship. In addition, the author also believes that stepparents have intermittent raising education or short-term care for stepchildren, even if it didn't form the de facto foster relationship, stepchildren are not only required to be brought up by the family when the stepparents marry their biological parents, but also required to be brought up for a certain length of time, so as to form the de facto foster relationship. However, the formation of this de facto foster relationship is not easy. If

the stepparents is old and weak and has no source of income, stepchildren who have been brought up intermittently or taken care of for a short time should also perform a proper part of the support obligation. This is conducive to the stability of remarried families and the protection of the rights and interests of the parties.

REFERENCES

- [1] Yang Dawen. Marriage and Family Law[M]. Renmin University of China Press,2001.
- [2] Tao Yi. The New Marriage and Family Law[M]. Higher Education Press,2002.
- [3] Wang Hong. Marriage and Family Law[M]. Law Press,2003.
- [4] Wang Hong. Marriage and Family Law[M]. Law Press,2003.
- [5] Gao Liuzhi. Research on Maintenance System[M].Law Press,2006.
- [6] Yu Yanman. The Law of Relatives and Law[M].Law Press,2007.
- [7] Chen Wei, Hu Ping. Marriage and Family Inheritance Law[M].Chongqing University Press.,2002.
- [8] Wang Liming. Chinese Civil Code Scholars' Proposal Draft and Legislative Reasons - Personality Rights, Marriage and Family Editing, Inheritance[M]. Law Press,2005.
- [9] Fang Shaokun, Zheng Qian, Rational Thoughts on the Right of Succession between Stepparents and Stepchildren[J]. Social Science Front, 2014-06.
- [10] Li Jialun, Reconstruction of the System of Claims for the Discretion of Heritage in the Compilation of Civil Code[J]. Law Review,2017-03.