

Brief analysis of the inheritance relationship of stepparents and stepchildren

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Abstract. The relationships between includes pure affinity, adoption and support. The nominal kinship relationship between stepparents and stepchildren does not form a relationship of dependency and cannot be inherited by each other; the adoptive step-parent and step-child relationship asserts legal inheritance in accordance with the presumption of parent-child relationship by blood relatives; and the support relationship between asserts its inheritance right on the condition of forming a "relationship of dependency". However, the law does not provide for this inheritance right in detail, resulting in different decisions in practice. This article analyses the jurisprudential debate, the legal basis and the requirements for the formation of inheritance rights between dependent step-parents and children, in the hope that the law will provide clearer guidelines for its application in this regard.

Keywords: inheritance, dependency, proposed blood relatives, step-parents and children.

1. Background and significance of the legislation

With the continuous emancipation of social thinking, people's marital values have changed dramatically compared to those of the past, marital and family relationships have become progressively more complex and diverse, reorganized families have gradually increased, and the diversity of marital relationships has become more tolerated by more people. This has led to disputes between stepchildren and step-parents regarding the acquisition and assumption of rights and obligations, especially inheritance rights. According to the judgments of case related to children of step-parents included in the Chinese Judicial Documents website (shown as Figure 1), it can be seen that in judicial practice, disputes between step-parents and children have been increasing from 2011 to 2020, and that the issue of disputes between step-parents and children has been further resolved legislatively after the Civil Code is officially implemented in 2021.

According to the Ministry of Civil Affairs of the People's Republic of China's Statistical Bulletin on the Development of Civil Affairs in 2020, China's marriage rate has gradually declined since 2016, from 8.3% to 5.8% in 2020, while the divorce rate remains high, at around 3.2%. This shows the modern attitude towards marriage: abandoning the old concept of "living together" and pursuing the happiness that marriage brings. If the current relationship does not meet the expectations of both spouses, more people choose to divorce and start a new marriage with their children from the previous marriage. The high incidence of disputes over stepparent-child relationships is a derivative of this era of high frequency of divorce and remarriage, and the legal and regulatory issues associated with them are not only relevant to the happiness and harmony of family life, but also have a constant impact on the stability of society. At present, it seems that the provisions on the legal relationship between step-parents and children in China are too abstract and general or contradictory. As the number of remarried families in China continues to rise, it is imperative that the law relating to stepparent and children is adjusted and improved on a jurisprudential and legislative level. This article will analyze and discuss this issue in the hope that it will contribute to the further development of the inheritance of marital families. There is no doubt that further exploration of the legal relationship between step-parents and children is conducive to improving the legislative guidance and judicial practice of marriage and family in China.

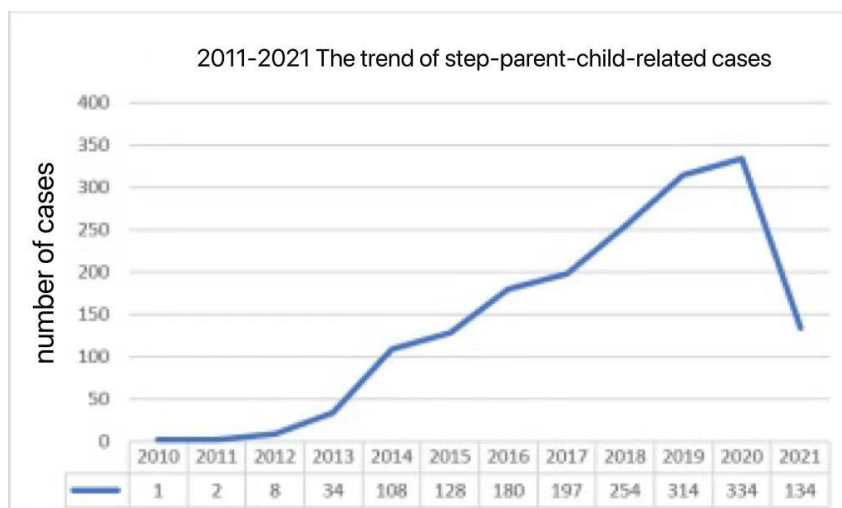


Figure 1 The number of related cases

2. Analysis of the legal basis of the right of legal succession

According to the relevant articles of the Civil Code of the People's Republic of China, the step-children and step-parents who have formed a relationship of dependency with the decedent can participate in the inheritance as legal heirs, but what impact does the different legal relationship between the step-parents and children have on the determination of the legal right of inheritance, what is the legal logic and legal basis behind the formation of this legal right of inheritance, and how is the "relationship of dependency" defined? However, the law does not clearly define the legal relationship between stepparents and children, the legal logic and legal basis behind the formation of this legal right of inheritance, and how to define the "relationship of support", and the citation and interpretation of the relevant legal provisions in real-life cases are also controversial.

2.1. The relationship between step-parent and step-child

The reasons for the formation of the stepparents and stepchildren relationship vary, and the jurisprudence divides the relationship into three forms:

Nominal affinity, a kinship relationship mediated by marriage only, in which the step-parent is not supported by the step-child and the step-child does not need to be supported by the step-parent, and no relationship of support is formed between the two parties.

Adoption. According to Article 103 of the Civil Code Marriage and Family Inheritance Part, "A stepfather or stepmother may adopt a stepchild with the consent of the biological parents of the stepchild." The adoption relationship between the stepchild and the step-parent is formed and the rights and obligations of the biological parents are extinguished.

Upbringing and support type. That is, when the biological father (mother) remarries, the stepchild still needs to rely on the support of the step-parent to survive, following the biological father (mother) and the step-parent to live together, and the step-parent has spent part of the cost of living and education; or the stepchild has provided the necessary support and maintenance to the step-parent, and a relationship of support has been formed between the two parties.

Generally speaking, the most basic relationship between step-parents and children is that of affinity, a nominal kinship formed by virtue of remarriage, which is not regulated by law (the rights and obligations conferred by law on this relationship are not strict). As the time spent with the step-parents increases and the step-parents assume the main responsibility for the upbringing of the step-children, or the step-children fulfil the important obligation to support the step-parents, the nominal kinship between the parties is transformed into a dependency kinship, at which point the rights and obligations provided for by the law are formed and regulated by the law.

From the three types of step-parent-child relationship mentioned above, it is clear that the parent-child relationship formed on the basis of a purely affinal relationship is only nominally a parent-child relationship and is not regulated by law (step-parents and children in this case do not automatically enjoy the right to legal succession); whereas the step-parent-child relationship established by adoption, the provisions of the Civil Code on parent-child relationship apply from the date of adoption. Finally, the third relationship between step-parents and children is presumed to be based on the formation of a relationship of support between the step-parents and children, so whether such step-parents and children are entitled to legal inheritance and how "formation of a relationship of support" is defined will be discussed below. The following is a discussion of this.

2.2. Based on the understanding of articles 1072 and 1070 of the Civil Code

Article 1072, Paragraph 2 of the Civil Code stipulates: "The relationship of rights and obligations between a stepfather or stepmother and the stepchildren who are raised and educated by him shall be governed by the provisions of this Law on the relationship between parents and children. "In China, the majority of scholars believe that the provisions of this law concerning the parent-child relationship apply to the rights and obligations between a step-parent and a step-child who has been raised and educated by him/her. Thus based on the fact of the step-parent's upbringing and education of the step-child, it is presumed that the mimetic blood relationship applies and that further legal provisions relating to the parent-child relationship apply, such as article 1070 of the Civil Code: "Parents and children have the right to inherit from each other." The presumption is undisputed only in the literal sense of the legal provisions, but this is not in line with the rigor of the law itself and does not resolve real-life disputes over inheritance rights. Therefore, some scholars have argued to the contrary: even if a relationship of support is formed between the children of step-parents, the relevant provisions of the proposed blood relatives cannot be applied, i.e. there is no direct legal right of succession.

A filiation is a kinship that is not related to blood, but is created by law with rights and obligations similar to those of natural blood relatives. It is created by law and replaces natural blood relatives, and the personal rights and obligations established by the relationship are no different from those of natural blood relatives [1]. However, to presume the formation of a proposed blood relationship between the children of step-parents merely by the fact of formation of upbringing and education, which is only a factual act as a constituent element of the formation of a proposed blood relationship, is not rigorous and too hasty; and in Article 54 of the Interpretation (I) of the Supreme People's Court on the Application of the Marriage and Family Part of the Civil Code of the People's Republic of China: " When the biological father and the stepmother or the biological mother and the stepfather divorce, the stepchildren who have been raised and educated by them shall still be raised by the biological parents if the stepfather or stepmother does not agree to continue to raise them." It can be seen that this mooted blood relation can be dissolved by virtue of the will of the step-parents, without any legal guarantee, to the detriment of its regularity and stability.

On the other hand, adoption, the typical mimetic blood relationship, is established and dissolved under strict legal provisions and many restrictive conditions that guarantee the stability and seriousness of the blood relations between each other [2]; and when it is established, the adopted child is given the same legal status as a natural child, no different from that of a natural blood relative. If stepparents and children are considered to be mimetic blood relatives, then adoption is a legal mimetic blood relative, but the legal norms and moral norms that govern them are very different; adoption is created and dissolved according to a strict censorship, whereas the relationship between stepparent-children is very liberal. Therefore, the presumption of a proposed blood relationship based solely on the relationship of upbringing and education is inconsistent with legal doctrine. The parent-child relationship involves significant personal interests and should be carefully regulated and taken seriously so that the status of the step-parent-child relationship can be stabilized and the proposed blood relationship no longer arises or disappears by mere factual acts or unilateral expressions of intent. It is a necessary social trend to ensure the stability of the status of step-parents and children,

in order to avoid contradictions in legislation and to maintain harmony and stability between plural families.

The fact of support will lead to multiple parents and the possibility of conflicting parental rights, which in turn will lead to a lack of clarity in the relationship of rights and obligations. This could easily lead to a situation where the biological parents and the step-parents could pass the buck to each other, to the detriment of the healthy physical and mental development of the step-children [3].

As the personal rights of individuals are exclusive, Article 1111, paragraph 2, of the Civil Code states that "the relationship obligations between the adopted child and the biological parents and other close relatives is eliminated by the establishment of the adoption relationship." However, this is not provided for in the relationship between the children of the step-parents, whose legal relationship with the biological parents continues, and then a situation may arise in which the step-children are legally related to more than one parent and have a double right of succession. This kind of parental authority makes it easy for conflicts and contradictions to arise between families regarding inheritance, maintenance and support, or to shirk each other's duties, contrary to the ideological connotation of the parental authority system, and leading to contradictions between laws: Article 27 of the Civil Code stipulates that parents are the guardians of minor children, and that if the parents of a minor are dead or incapable of guardianship, they shall act as guardians in the order of grandparents, grandparents, brothers and sisters, etc. The guardianship of a minor child shall be in the order of the grandparents, brother or sister. If the step-parent is the biological parent of the step-child in the legal sense of the term, can he or she be granted guardianship? If so, in what order? Will the stepparent or the grandparent be granted custody? It is not known.

In addition, according to the judicial opinion of the Supreme People's Court, the relationship of rights and obligations between the stepparent and the stepchild cannot be terminated naturally after the dissolution of the marriage. If the step-parent remarries several times in this case, will there be multiple parents, which not only violates human decency, but also gives rise to a large number of conflicts of rights and obligations, and does not meet the original purpose of the legislation.

Marriage and family relations are a subset of civil legal relations and their appearance should be based on the will of the parties. If a step-parent wishes to establish a proposed blood relationship with his or her step-children, it is up to the parties to determine this through an expression of intent. Although it is not uncommon for minors to live with their step-parents, it would be too hasty to assume that the parties intended to establish a proposed blood relationship between them. It is possible that the step-parents may accept the relationship due to conjugal ties, while the minor is in a passive position, following the biological parents, and it cannot be assumed that they have the will to establish a parent-child relationship with the step-parents. It would be contrary to the principle of autonomy if a mere "act of maintenance" were to be used to establish a fictive blood relationship without respecting the will of the person concerned.

2.3. Based on the understanding of Article 1127 of the Civil Code

In Article 1127 of the Civil Code, the prerequisites for a stepparent or stepchild to claim inheritance rights are the existence of affinity and the formation of a relationship of dependency. In other words, the existence of the stepchildren is a prerequisite for the existence of the in-law relationship, and the stepparents and stepchildren relationship is extinguished with the extinction of the in-laws relationship, and therefore the right to inheritance. There are divergent views in the academic community on how to define the dependency relationship, and no unified conclusion has been formed. In the Interpretation of the Supreme People's Court on the Application of the Civil Code of the People's Republic of China to the Inheritance Part (I): "If a person has provided the main economic resources for the life of the decedent or has given the main support in terms of labor, etc., he or she shall be deemed to have fulfilled the main duty of support or the main duty of maintenance." However, in these two rules, the definition of "main" is not clarified, is it monetary or living? There are no clear criteria, so in practice the determination of "maintenance relationship" is mainly based on the "rule of the heart" of the judge. It can be seen that the ambiguity in the legislation has led to debate in the

theoretical community and inconsistency in judicial practice in terms of the standards of discretion. In the author's view, in addition to the fact of maintenance, other factors such as the will to maintain and the duration of maintenance should also be taken into consideration.

According to the principle of subjective-objective agreement, the determination of the relationship of maintenance must take into account the subjective factor. The will to support should be the intention of both parties to support and accept support, and the relationship of support can only be established when the intention is agreed.

The fact of upbringing and support, as an objective factor, accounts for a large part of the relationship, but it cannot be arbitrarily assumed that only the "fact of upbringing and support" is required to establish a relationship of maintenance. The facts of maintenance are clearly defined in the law and can be categorized as financial support, care and education: (1) financial care is the easiest to prove, but it would be biased to determine maintenance only on the basis of financial care. "However, in practice, the supporting party bears the main financial costs of the parties, but for various social reasons, such as working outside the home, accommodation for children, etc., it may not be possible to live together for a long time, and it is not appropriate to presume that there is no relationship of support between the parties. Living together" is an important reference point for the formation of a relationship of support, but not a necessary condition. (2) The fact that the step-parents provide each other with the necessary support in daily life, such as transporting their minor step-children to school, can be considered as upbringing and support. (3) Finally, the relationship between step-parents and children should not only be a simple legal one, but should also provide each other with emotional values and attach importance to spiritual and psychological communication, which is the human value and expectation given to "family" and "family" on a sociological level. This is one of the most important factors in the determination of the relationship of support. It is clear, however, that spiritual communication between step-parents and children is difficult to demonstrate through the existing body of evidence.

Finally, the duration of support is also a quantifiable factor in determining the relationship of support. However, after the step-parent-child relationship has arisen, the duration of maintenance is subject to objective factors and is highly flexible. It is debatable how long maintenance is required to form a relationship of support and it is not appropriate in practice to adopt a rigid duration as a standard [4] to avoid a rigid and inflexible adverse situation.

Admittedly, the shortcomings of the legislation have led to dilemmas in practice, and the lack of uniformity in standards has easily led to the criticism of different judgments in the same case. Ultimately, it is necessary to rely on the judge's heart rule and interpretation of the application of the law, taking into account the education, support, support will and time of both parties, specific analysis, comprehensive and prudent to be determined.

3. Discretionary estate regime

A discretionary system of inheritance is a system of appropriate shares of inheritance in proportion to the support of the decedent or of non-heirs who are more dependent on the decedent [5]. The system is based on the relationship of support, and serves the important function of balancing individual cases by rewarding or compensating non-statutory heirs (including stepchildren) for caregiving arising from their close relationship [6]. In contrast to the "mimetic blood relationship", the discretionary inheritance system avoids the contradiction of the status relationship and recognizes and compensates for the act of maintenance; it preserves the right of expectation of the maintenance party, clarifies the relationship between adoption and stepchildren, and legally maintains the consistency of the inheritance rights of stepchildren and adopted children, in article 1131 of the Civil Code. The discretionary system of inheritance provides a mechanism for the use of compensation, which compensates step-parent-children who have fulfilled their maintenance obligations in a more appropriate manner, and also provides a certain incentive for step-parent-children to be dedicated to the maintenance of the parties.

In summary, Article 1131 of the Civil Code already provides a favorable protection path and adequate compensation mechanism for step-parents and step-children who have actual maintenance obligations but are not legal heirs, without the need to defend the expectation rights of step-parents and children through the interpretation of the "mimetic blood relatives theory". This is part of the reason why the number of step-parent-child cases has plummeted since the implementation of the Civil Code in 2021, preserving the harmony and stability of family relations in society and fulfilling the original intent of the legislation

4. Conclusion

With the gradual increase in the number of remarried families in China, the issue of legislation on step-parent-children needs to be improved. In remarried families, the family structure of the step-parent-child relationship, which is built up on the basis of marriage, is more fragile and cannot stand up to the fire, salt and wind. Therefore, how to maintain the harmony and stability of the family by improving the legislation is the area we focus on. From the above discussion, the simple presumption of step-parent-child relationship as "proposed blood relatives" is biased and untenable in terms of jurisprudence. Such an artificial presumption would lead to confusion in the field of parental authority and would be contrary to autonomy. "The "weak right of care" is a reasonable definition of the legal status of the stepparent, including the right to make joint decisions on daily life, the right to act in the event of delayed danger, etc. This right is a secondary right of care, which is naturally not comparable to the right of care of the biological parents, but also the legal status of step-parents and children in relation to each other is clarified, so that the relationship between the biological parent, the parent in fact and the child is balanced. In addition, the fact that the step-parent and child form a relationship of support can be rectified under the "discretionary property regime", thus meeting the expectations of both parties.

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