

Ten Model Cases Published by the Supreme People's Court involving Protection of Rights and Interests of Elders Tried by the People's Courts

Area of Law: [Protection for the Elderly, Young, Women, and Disabled](#)
Level of Authority: [Documents of Judicial Interpretation Nature](#)
Issuing Authority: [Supreme People's Court](#)
Date Issued: 02-24-2021
Effective Date: 02-24-2021
Status: [Effective](#)
Topic: [Release of Judicial Cases](#)

Ten Model Cases Published by the Supreme People's Court
involving Protection of Rights and Interests of Elders Tried
by the People's Courts

最高人民法院发布人民法院老年人权益保护十大典型案例

(February 24, 2021)

(2021年2月24日)

Table of Contents

目 录

1. Case of dispute over return of original property (Tang A
and two other persons v. Yu)

一、唐某三人诉俞某某返还原物纠纷案

(Keywords: protection of the right of habitation; elders'
right to housing)

(关键词: 居住权保护、老有所居)

2. Case of dispute over compensation for property damage
(Wang v. __ Sub-branch of Beijing Branch of CICBC)

二、王某诉中国工商银行股份有限公司北京某支行财产损害赔偿纠纷
案

(Keywords: wealth management of elders; a financial
institution's obligations of giving a prompt and making an
explanation)

(关键词: 老年人理财、金融机构提示说明义务)

3. Case of dispute over void contracts (Gao v. Liu and Long)

三、高某诉刘某、龙某确认合同无效纠纷案

(Keywords: house-for-pension scheme; crackdown on "trap loans")

(关键词: 以房养老、打击“套路贷”)

4. Case of dispute over support for elders to Chen

四、陈某某赡养费纠纷案

(Keywords: "come back home often"; spiritual support)

(关键词: “常回家看看”、精神赡养)

5. Case of dispute over support for Liu Ya (part of name withheld)

五、刘某芽赡养纠纷案

(Keywords: children's obligation of supporting their parents; upholding prosecution by the people's procuratorate)

(关键词: 子女赡养义务、检察院支持起诉)

6. Case of dispute over a service contract (Xi, Zhou A, and two other persons v. __ Nursing Home of Linghai City and __ Branch of PICC Property and Casualty Company Limited

六、郗某某、周某四人与凌海市某老人之家、中国人民财产保险股份有限公司某分公司服务合同纠纷案

(Keywords: population aging; duty of reasonable care of a nursing institution)

(关键词: 人口老龄化、养老机构的合理注意义务)

7. Case of dispute over inheritance (Jia v. Li)

七、贾某诉李某某继承纠纷案

(Keywords: taking into account interests of an elder in the allocation of inheritance; good family tradition; diversified dispute resolution mechanism)

(关键词: 分配遗产中照顾老年人利益、优良家风家教、多元化纠纷解决机制)

8. Case of dispute over travel contract (Yu v. __ Branch of Beijing __ Travel Agency)

八、于某某诉北京某旅行社及其分公司旅游合同纠纷案

(Keywords: travelling by elders; group protection of rights and interests)

(关键词: 老年人旅游、团体性维权)

9. Case of dispute over infringement liability (Zhou v. Gong)

九、周某诉龚某侵权责任纠纷案

(Keywords: "forcibly living off parents"; protection of lawful property rights and interests of elders)

(关键词: "强行啃老"、保护老年人合法财产权益)

10. Case of application for designated custody of a person without capacity for civil conduct filed by the Social Welfare Home of Liuzhou City

十、柳州市社会福利院申请作为无民事行为能力人指定监护人案

(Keywords: a social welfare home; custody of elders)

(关键词: 社会福利机构、老年人监护)

Case No. 1

案例一:

Case of dispute over return of original property (Tang A and two other persons v. Yu)

唐某三人诉俞某某返还原物纠纷案

Keywords: protection of the right of habitation; elders' right to housing

关键词: 居住权保护; 老有所居

I. Basic Facts

一、基本案情

The house in question was originally a common property of Tang B, father of Tang A, and Han, their mother. Han passed away in 2007. In 2008, Tang A and two other persons acquired the ownership of the house in question through inheritance and bestowal of Tang B's house property rights, and they issued a letter of commitment, wherein they promised that, before the deaths of their father Tang B and Tang B's second wife, Tang B and his second wife shall have the right to dwell in the house free of charge during their lifetime. However, only Tang B and his second wife could live in the house, they had no right to dispose of it (including renting, selling, and lending it), so Tang and two other persons had no right to dispose of the house in question. Yu and Tang B got married at a registry and they jointly lived in the house. In January 2016, Tang B passed away and 64-year-old Yu still lived in the house. In June of the same year, Tang A got divorced and he asked for living in the house on the ground that he had nowhere else to live in, but Yu refused. Tang A and two other persons filed this lawsuit and requested the people's court to order Yu to immediately return the house in question under the name of Tang A and two other persons.

II. Judgment

案涉房屋原系唐某三人的父亲唐某某与母亲韩某某的夫妻共同财产。

2007年，韩某某去世。2008年，唐某三人通过继承遗产及唐某某的房屋产权赠与，取得案涉房屋所有权，并出具承诺书，承诺：父亲唐某某及其续弦未离世前，有终身无偿居住该房屋的权利，但此房只能由唐某某及其续弦居住，其无权处置（出租、出售、出借等），唐某三人无权自行处置该房产。后俞某某与唐某某登记结婚，共同居住案涉房屋。2016年1月，唐某某去世，64岁的俞某某仍居住在内。同年6月，唐某离婚，其以无房居住为由要求入住该房屋，遭俞某某拒绝。唐某三人提起本案诉讼，要求判令俞某某立即返还唐某三人名下的案涉房屋。

二、裁判结果

The People's Court of Luyang District, Hefei City, Anhui Province held that the commitment made by Tang A and two other persons in acquiring the ownership of the house in question was an expression of their true intentions, which did not violate the legal compulsory provisions; Yu shall have the right to continue to dwell in the house according to the commitment and Tang A and two other persons should perform their obligation according to their commitment. In the meantime, Yu committed no acts of renting, selling, or lending the house involved in violation of the letter of commitment. Therefore, the People's Court of Luyang District refused to support the claims of Tang A and two other persons that Yu should immediately return the house in question under their name and ruled to dismiss their claims.

III. Significance

安徽省合肥市庐阳区人民法院认为，唐某三人在取得案涉房屋所有权时作出的承诺系其真实意思表示，且不违反法律强制性规定，俞某某依据该承诺享有继续在案涉房屋居住的权利，唐某三人应按承诺履行其义务。同时，俞某某不存在违反承诺书中对案涉房屋出租、出售、出借的行为，故对唐某三人要求俞某某立即返还其名下案涉房屋的请求，不予支持，判决驳回唐某三人的诉讼请求。

三、典型意义

In this case, the proprietor bestowed a house property to others and the recipients committed themselves to allowing the granter and his second wife to continue to dwell in and use the house till their deaths. In accordance with the legal provisions now in force, the aforesaid commitment should be deemed as an obligation of bestowal at the time of the granter's bestowal of the house property and it can be called a conditional bestowal. After the house property has been transferred to the recipients through registration, the recipients shall have no right to unilaterally revoke their commitment. When the disputes in this case arose, there were no direct provisions on the right of habitation. Under such circumstances, the autonomy of will of the parties concerned should be fully respected. The judgment of this case is reasonable and consistent with the relevant spirit of the provisions of the newly-issued and implemented Civil Code of the People's Republic of China on the right of habitation, i.e., after the transfer of ownership of an immoveable property, the original proprietor will continue to use such immoveable property. This type of bestowal where the right to inhabit and use a house is reserved may be deemed as a contract with establishment of the right of habitation and the new proprietors shall have no right to unilaterally revoke the contract. The reasoning in this trial has implemented the requirements for rapidly developing a housing system with multiple types of suppliers and multiple channels for housing support as raised at the 19th National Congress of the CPC and it is conducive to solving housing disputes involved in support for the elders and marriage and family life, guaranteeing elders' right to housing, and effectively safeguarding the rights and interests of elders.

物权人将房产赠与他人，受赠人承诺允许赠与人及其再婚配偶继续居住使用房屋至去世。在现行法律规定下，该承诺应视为赠与人作出赠与房产时所附的赠与义务，或称之为附条件的赠与。在房产已经转移登记至受赠人后，受赠人无权单方撤销承诺。本案纠纷发生时我国法律并未直接对居住权作出规定，在此情况下，应充分尊重当事人的意思自治。本案的裁判结果不仅符合情理，也与新颁布实施的《中华人民共和国民法典》关于居住权规定的相关精神一致，即不动产过户后，原物权人继续使用不动产，该种保留房屋居住使用权的赠与，可视为设立居住权的合同，新产权人亦无权单方撤销该合同。这一审判思路贯彻了党的十九大提出的加快建立多主体供给多渠道保障住房制度的要求，有利于解决老年人赡养、婚姻家庭生活中涉及的房产问题，保障老有所居，切实保护老年人的权益。

Case No. 2

案例二：

Case of dispute over compensation for property damage
(Wang v. __ Sub-branch of Beijing Branch of CICBC)

王某诉中国工商银行股份有限公司北京某支行财产损害赔偿纠纷案

Keywords: Wealth management of elders; a financial
institution's obligations of giving a prompt and making an
explanation

关键词：老年人理财；金融机构提示说明义务

I. Basic Facts

一、基本案情

In 2015, 62-year-old Wang subscribed an HT Collective Asset Management product (with the amount of 1 million yuan) and an HA fund product (with the amount of 700,000 yuan) at a bank in Beijing. It was specified in the application form he signed that "... are not wealth management products issued by this Bank ... may produce risks and fail to realize the expected income from investments ... You shall assume investment risks on your own...." This Bank appraised Wang's risk tolerance as balanced. The HT product is a product of low risks and the HA product is a product of high risks. The risk level of the HA product is higher than the risk tolerance of Wang. After signing the electronic risk disclosure statement, Wang received the dividends of 50,000 yuan. In 2017 when he applied for redeeming the products, there were 1 million shares with the amount of 800,000 yuan. Wang filed a lawsuit and requested the people's court to order the bank to pay him the principal of 230,000 yuan, the interest of 160,000 yuan, and compensation three times of the principal of 680,000.

2015年，62岁的王某在北京某银行处申购HT集合资产管理计划产品（金额100万）和HA基金产品（金额70万），其签订的申请书载明：“.....不是我行发行的理财产品.....可能产生风险，无法实现预期投资收益.....投资风险由您自行承担.....”该行测评王某风险承受能力为平衡型，HT为低风险，HA为高风险，HA风险级别高于王某的风险承受能力。王某签署电子风险揭示书，后收取分红收益5万元。2017年其申请赎回时份额约100万份，金额约80万元。王某起诉请求判令该行赔偿本金约23万元、利息16万元并三倍赔偿68万元。

II. Judgment

二、裁判结果

The No. 2 Intermediate People's Court of Beijing

Municipality held that the Asset Management Contract and the Risk Disclosure Statement involved were regulatory documents the bank should comply with or standard contracts the bank developed and they were insufficient to prove full communications between both parties on the relevant information about the financial products involved.

The bank evaluated Wang's risk tolerance as balanced; however, the risk levels of the financial products involved indicated in the contracts were not low risks. The bank violated its obligation of giving a prompt or making an explanation, failed to make a good match among the products for sale, Wang's situations, and his own will, and failed to prove that it had conducted a face-to-face measurement of the financial consumer's risk perception, risk preference, and risk tolerance, truthfully informed Wang of and explained in detail the contents of the financial products and the major risk factors. Therefore, the bank should assume the legal consequences of failure to produce evidence. Wang had experience in investment and wealth management and he should know the efficacy of his signature for confirmation; the immediate cause for investment losses in this case was normal market fluctuation, such investment losses were not caused by the agency of this bank and Wang should also undertake some responsibility for such investment losses. Therefore, the people's court ruled that the bank should compensate Wang 70,000 yuan.

北京市第二中级人民法院认为，案涉《资产管理合同》及《风险揭示书》等均系银行依循的规范性文件或自身制定的格式合同，不足以作为双方就案涉金融产品相关情况充分沟通的凭证。银行对王某作出的风险承受能力评估为平衡型，但案涉金融产品合同中显示的风险等级并非均为低风险，该行违反提示说明义务，未证实购买该产品与王某情况及自身意愿达到充分适当匹配的程度；未能证明其已经对金融消费者的风险认知、风险偏好和风险承受能力进行了当面测试并向其如实告知、详尽说明金融产品内容和主要风险因素等，应当承担举证不能的法律后果。同时，王某有投资理财经验，应当知晓签字确认为行为效力；本案投资亏损的直接原因是金融市场的正常波动，并非该行的代理行为导致，王某亦应对投资损失承担一定的责任。故判决银行赔偿王某7万元。

III. Significance

First, the people's courts should specify the extent of a rule so as to protect the elders' financial consumption security, and the effects of this case as the first case of its

三、典型意义

kind are prominent. This case is included in the first group of cases safeguarding the rights and interests of financial consumers after the issuance of the Notice of Issuing the Minutes of the National Courts' Civil and Commercial Trial Work Conference (hereinafter referred to as the "Minutes of the Conference"). It is indicated that banks should examine investors' age, investment experience, and professional competence, take into consideration the peculiarities of elder consumers, and give special prompts to elder investors. In light of the spirit of the civil and commercial laws and the Minutes of the Conference and the actual social development situations, the judgment standards for obligations of financial institutions for giving prompts and making explanations and care obligations of financial consumers are raised. It is of positive significance in how to provide elders with a more legitimate and safer environment for investment, wealth management, and consumption. Second, the people's courts should respond to people's demands, carry forward the socialist core values, and reflect the progress of the times. With the rapid economic growth and aggravation of aging, there are emerging financial products of wealth management created for elders. The people's courts should implement the socialist core values in the trial of specific cases, properly handle and respond to new problems arising in the combination of consumption of financial products and IT application, implement the legislative spirit of the Civil Code, protect the elders' autonomy of contract, and establish an example for developing good financial market order and effectively safeguarding the rights and interests of elders. Third, the people's courts should practice judicial reform, innovate on the trial patterns, and boost social governance. In this case, the assistance of the reasoning group consisting of common people in the trial was applied and the professionalism of judges and the public's

第一，明确规则尺度，保护老年人金融消费安全，首案效应突出。本案是《全国法院民商事审判工作会议纪要》发布后首批维护金融消费者权益案件之一，指出银行应就投资者的年龄、投资经验、专业能力进行审查并考虑老年消费者情况等，对老年投资者应给予特别提示，结合民商事法律、《会议纪要》精神和社会发展实际提出了金融机构提示说明义务和金融消费者注意义务等判断标准。对如何为老年人提供更加合法、安全的投资理财消费环境，具有积极意义。第二，回应人民需求，弘扬社会主义核心价值观，体现时代发展。随着经济快速发展和人口老龄化程度加剧，针对老年群众的金融理财产品层出不穷。要将社会主义核心价值观具体贯彻到审判中，妥善处理 and 回应金融产品消费与信息化结合中产生的新问题，贯彻民法典立法精神，保护老年消费者的契约自由，为构建良好金融市场秩序、切实维护老年人权益树立典范。第三，践行司法改革，创新审理模式，助力社会治理。本案适用百姓评理团辅助审判，更好地结合法官专业性和公众的价值理念。

values and views were better combined.

Case No. 3

案例三:

Case of dispute over void contracts (Gao v. Liu and Long)

高某诉刘某、龙某确认合同无效纠纷案

Keywords: house-for-pension scheme; crackdown on “trap loans”

关键词: 以房养老; 打击“套路贷”

I. Basic Facts

一、基本案情

In 2016, Gao joined in a wealth management program of “house-for-pension” through reference by someone else and signed a Loan Contract with Wang, in which they agreed that Wang would lend 2.2 million yuan to Gao. Gao entrusted Long to sell and handle the mortgage registration of the house in question. If Gao fails to repay the loan as agreed, Long shall have the right to sell the house for repaying the principal and interest of the loan. The relevant matters were notarized upon entrustment by both parties. Long then handled the mortgage registration of the house as the agent of Gao and sold it to Liu. After the house was transferred to and registered under the name of Liu, Long claimed that he was a relative of Liu and entrusted a realty broker to look for a buyer again. In the meantime, Liu handled house mortgage registration formalities and Li became the registered mortgagee. During the transaction in this case, there were intensive transfers of funds in large amounts among Wang, Long, and Li, et al. Gao then filed a lawsuit and requested the people's court to rule that the house sale contract signed by Long on his behalf was invalid and Liu should transfer the ownership of the house at issue back to Gao.

2016年, 高某经人介绍参加“以房养老”理财项目, 与王某签订《借款合同》, 约定王某出借220万元给高某。高某将案涉房屋委托龙某全权办理出售、抵押登记等, 如高某不能依约归还, 则龙某有权出卖案涉房屋偿还借款本息, 双方对相关事项进行了公证。后龙某作为高某的委托代理人为案涉房屋办理抵押登记, 并出卖给刘某。房屋转移登记至刘某名下后, 龙某自称系刘某亲属, 委托房屋中介机构再次寻找买家, 同时, 刘某为房屋办理抵押登记, 登记的抵押权人为李某。王某、龙某、李某等人在本案交易期间存在大额、密集的资金往来。后高某起诉请求判决龙某代理其签订的房屋买卖合同无效, 并判令刘某将案涉房屋过户回高某名下。

II. Judgment

二、裁判结果

The People's Court of Chaoyang District, Beijing Municipality held that Wang, Long, Li, and other persons had close economic interest connections among themselves, the five persons concerned formed a interest group, and they had maliciously colluded with one another in the sale of the house in question. Long became the agent to sell the house by evading the statutory procedures for mortgage. Besides, he abused his agency, colluded with the buyer Liu, and signed a house sale contract on Gao's behalf, which harmed Gao's legitimate interests. It should be determined that the house sale contract signed by Long on behalf of Gao with Liu was invalid. Therefore, the people's court ruled that the contract on the sale of the house involved should be confirmed as void and Liu should assist in altering the registration of ownership of the house at issue back to Gao.

北京市朝阳区人民法院认为，王某、龙某、李某等人存在十分密切的经济利益联系，相关五人系一个利益共同体，就案涉房屋买卖存在恶意串通。龙某以规避实现抵押权法定程序的方式取得出卖案涉房屋的委托代理权，且滥用代理权与买受人刘某恶意串通签订房屋买卖合同，损害了高某的合法权益，应当认定龙某代理高某与刘某就案涉房屋订立的房屋买卖合同无效。故判决确认案涉房屋买卖合同无效，刘某协助将案涉房屋变更登记至高某名下。

III. Significance

三、典型意义

In recent years, there have been frequent cases of wealth management fraud in the scheme of "house-for-pension". Many elders mortgaged their houses as an investment in wealth management programs, including "house-for-pension," as a result of which they were given a huge debt, and lost their houses due to the malicious collusions of the colluders, resulting in their loss of both the house and the investment. One reason for difficulties in eradicating "trap loans" was that the colluders often market their business under the disguise of a wealth management program of "house-for-pension" in areas where there is no or unclear provisions by taking advantage of the elders' peculiarities in personality and their eagerness to find investment and financing channels so that they could illegally occupy the housing properties of the senior people. While using criminal law to combat against "trap loans," the people's courts should attach importance to legally safeguarding the legitimate property rights and interests through civil trials so as to ensure that the senior people don't have to worry about their life and housing and could effectively enjoy benefits of the national policy of "house-for-pension plan." Senior people should also be cautioned to remain rational and calm at all times and prudently select investment and financing products so as to avoid falling into "traps."

近年来，“以房养老”理财骗局事件频发。许多老年人为投资“以房养老”理财项目，将自有房产进行抵押，背负巨额债务，又在行为人的恶意串通之下失去自有房产，导致房财两失。此类“套路贷”难以根除的原因之一，是行为人常常在法律空白或者规定不明确的领域，利用老年人性格特点以及寻求投、融资渠道的迫切心理，披上“迷惑外套”伪装成“以房养老”理财项目，进而非法占有老年人房产。人民法院在对“套路贷”采取刑事手段打击的同时，亦应注重通过民事审判依法维护老年人的合法财产权益，保障人民群众老有所养、住有所居，切实享受到国家“以房养老”政策的红利。同时，也提醒老年人，还需时刻保持理性和冷静，审慎选择投、融资渠道，以免落入“请君入瓮”的“套路”之中。

Case No. 4

案例四：

Case of dispute over living support to Chen

陈某某赡养费纠纷案

Keywords: "come back home often"; spiritual support

关键词：“常回家看看”；精神赡养

I. Basic Facts

一、基本案情

Chen and his wife got married in 1952 and they gave birth to two sons and three daughters after marriage. His wife and two sons had passed away. At present, Chen lived together with his youngest daughter. Chen was advanced in years and feeble and sick. He wished that his daughters could come back home often to take care of him. Since his daughters did not agree to pay for medical expenses and his living expenses, he requested the people's court to order that his eldest daughter and second daughter to visit him at least once each month and the three daughters must look after him on a rotation basis during the period when he's bed-ridden; and the three daughters must jointly pay for his medical expenses and living expenses.

陈某某与妻子1952年结婚，婚后育有二子、三女，妻子及两个儿子均已去世。现陈某某同小女儿生活。陈某某年事已高且体弱多病，希望女儿常回家探望照顾自己，因女儿不同意负担陈某某的医药费及赡养费，故诉请判令长女和次女每月探望其不少于一次，患病期间三女儿必须轮流看护；三女儿共同给付陈某某医疗费、赡养费。

II. Judgment

二、裁判结果

The People's Court of Qianjin District, Jiamusi City, Heilongjiang Province held that: Children are obliged to support and help their parents. When children do not perform the obligation of supporting their parents, the parents without working capacity or having difficulties in living shall have the right to require them to provide support. The children cannot ignore their parents only because their parents have retirement income or a certain source of income. Otherwise, it would violate both the legal provisions and the traditional virtue of the Chinese people that filial piety is the foundation of all virtues. Children should pay a certain amount of support to their parents who do not live with them according to their practical living needs, affordability, and general level of living in the locality. In this case, Chen was advanced in years and bed-ridden. As supporters of Chen, his three daughters should perform the obligations of providing him with economic support, daily care, and spiritual consolation. Therefore, the people's court ruled that Chen's eldest daughter and second daughter should visit him at least once each month and pay for his living expenses, and the three daughters should jointly pay for his medical expenses.

黑龙江省佳木斯市前进区人民法院认为，子女对父母有赡养扶助的义务，子女不履行赡养义务时，无劳动能力或生活困难的父母，有要求子女给付赡养费的权利。子女不能因为父母有退休收入或者有一定的经济来源就完全将父母置之不顾，这不仅违反法律规定，也不符合中华民族“百善孝为先”的传统美德。子女对于不在一起生活的父母，应根据其实际生活需要、实际负担能力、当地一般生活水平，给付一定的赡养费用。本案陈某年事已高且身患疾病，三个女儿作为赡养人，应当履行对其经济上供养、生活上照料和精神上慰藉的义务，故判决长女和次女每月探望陈某某不少于一次，并给付陈某某赡养费，三女儿共同负担陈某某医疗费用。

III. Significance

三、典型意义

In recent years, with the improvement of living, the elders have less and less demands on economic support from their children. More and more elders attach importance to spiritual demands and the number of cases involving "spiritual support" has also increased. The enforcement in this type of cases is much more difficult than that those involving monetary payment and the effects of enforcement are much less satisfactory than those of voluntary performance. It is a hearty act of children to "come back home often" rather than the result of enforcement. "Spiritual support" and "material support" are of equal importance. The elders' claims for visits of their children on a regular basis are wishes for being pleased by their children, which are lawful, have embodied the traditional filial piety of the Chinese people, and should be upheld. "Filial piety is the foundation of all virtues." The support for elders can by no means be accomplished only with a judgment and all children should be expected to come back home often and pay more attention to the spiritual needs of their parents.

近年来，随着生活水平的不断提高，老人对子女经济供养方面的要求越来越少，越来越多的老人更加注重精神层面的需求，涉及“精神赡养”的案件数量也有所上升，该类案件执行情况远比给付金钱的案件要难得多，且强制执行远不及主动履行效果好，希望“常回家看看”是子女们发自内心的行为，而不是强制执行的结果。“精神赡养”和“物质赡养”同样重要。老人要求子女定期探望的诉求，是希望子女能够承欢膝下，符合法律规定，体现中华民族传统的孝道，应当得到支持。“百善孝为先”，对老人的赡养绝不是一纸冷冰冰的判决就可以完成的，希望所有子女能够常回家看看，多关注老年人的精神需求。

Case No. 5

案例五：

Case of dispute over support for Liu Ya (part of name withheld)

刘某芽赡养纠纷案

Keywords: children's obligation of supporting their parents; upholding prosecution by the people's procuratorate

关键词：子女赡养义务；检察院支持起诉

I. Basic Facts

一、基本案情

Liu Ya (part of name withheld) and his wife had four children, who were all grownups and got married. Liu Ru (part of name withheld) was their son and lived adjacent to the house of Liu Ya. In 2010, Liu Ru accidentally got injured. He thought that his parents failed to take care of him during the period of rehabilitation and they came into a conflict. After that, the conflict aggravated step by step. Liu Ru had failed to pay living expenses to his parents for a long time and he also failed to take care of his parents in daily life. In 2019, his mother passed away due to illness. Liu Ru refused to make funeral arrangements and pay for the relevant expenses. The relevant funeral arrangements were jointly made by Liu Ya and his other three children. Mediated by village cadres, Liu Ru still refused to make support payments and take care of Liu Ya's daily life. Since Liu Ya was advanced in years, had heart disease and was unable to move freely, the People's Procuratorate of Xin'gan County dispatched procurators to appear in court for prosecution, alleging that Liu Ya was 80 years old; without working capacity, his source of income was the aid of his other children, which was insufficient to cover the living and medical expenses; that children had the obligation of supporting their parents; Liu Ya's claim for Liu Ru's payment of support for elders and funeral expenses should be upheld.

刘某芽与妻子共生育四子女，均已成年并结婚。刘某如系其子，与刘某芽相邻而居。2010年，刘某如意外受伤，认为父母在其受伤休养期间未对其进行照料，产生矛盾，此后矛盾日益加剧，刘某如长期不支付父母的生活费，亦未照顾父母生活起居。2019年，母亲因病去世，刘某如拒绝操办丧葬事宜，亦未支付相关费用，有关丧葬事宜由刘某芽与其他三子女共同操办。经村干部调解，刘某如仍拒绝支付赡养费及照顾刘某芽的生活起居。因刘某芽年迈且患有心脏病，行动不便，新干县检察院指派检察员出庭支持起诉，认为刘某芽现年80岁，已无劳动能力，生活来源仅靠其他子女接济，尚不足以负担生活及医疗费用，子女有赡养老人的义务，刘某芽要求刘某如支付赡养费及丧葬费的诉请应得到支持。

II. Judgment

二、裁判结果

The People's Court of Xin'gan County, Jiangxi Province held that it is an admirable tradition of the Chinese nation to be filial to and respect parents; and children should perform the unconditional obligation of supporting their parents. Liu Ya was advanced in years, ailing, and had no source of income and no working capacity. Liu Ru thus should legally perform the obligations of supporting Liu Ya. The obligations of supporting parents not only include economic support and daily care for parents, but also spiritual consolation. After deaths of their parents, children should properly arrange for their funeral in a timely manner. Liu Ru's refusal to pay the funeral expenses was unlawful and violated the morals. Therefore, the people's court ruled that Liu Ru should pay Liu Ya support each year and paid for the expenses of his mother's funeral.

III. Significance

江西省新干县人民法院认为，孝敬父母是中华民族的优良传统，子女应当履行赡养义务，不应附加任何条件。刘某芽年事已高，身患疾病，无生活来源、无劳动能力，刘某如应依法对其承担赡养义务。同时，赡养父母的义务不仅包含给予父母经济供养及生活照料，还应给予父母精神上的慰藉，也应当在父母百年之后及时妥善地办理丧葬事宜，刘某如拒绝支付丧葬费，不符合法律规定，亦违背伦理道德。故判决刘某如每年支付刘某芽赡养费，并支付其母亲办理丧葬事宜的费用。

三、典型意义

Children's support for their parents is not only the foundation of morality, but also an obligation specified by law. In family life, although there may be conflicts among the family members, supporting parents is a statutory obligation, children should provide the elders with economic support, daily care, and spiritual consolation and pay for the medical expenses of their parents with economic hardship and may not refuse to perform the obligations of supporting their parents on any ground or excuse. Caring the elders and making them feel the warmth of justice is the bounden responsibility of justice. Under normal circumstances, only the party whose civil rights and interests are infringed on or who has dispute may file a civil lawsuit. No other organization or individual may step in. Under special circumstances, where the entity or individual dares not to or fails to independently protect its or his lawful rights and interests and it is necessary for the relevant organization to provide support, social forces should apply to assist disadvantaged groups in litigation. The principle of upholding prosecution has broken the relativity of civil subjects. The people's procuratorate having no interest is allowed to participate in litigation, which enables the people's procuratorate to effectively safeguard the rights and interests of disadvantaged groups when their interests are infringed on.

Case No. 6

Case of dispute over a service contract (Xi, Zhou A, and two other persons v. __ Nursing Home of Linghai City and __ Branch of PICC Property and Casualty Company Limited)

子女赡养父母不仅是德之根本，也是法律明确规定的义务。在家庭生活中，家庭成员之间虽有矛盾，但赡养父母是法定义务，子女应当对老年人经济上供养、生活上照料、精神上慰藉，以及为经济困难的父母承担医疗费用等，不得以任何理由和借口拒绝履行赡养义务。关心关爱老年人，让老年人感受到司法的温暖是司法义不容辞的责任。民事诉讼在一般情况下只能由民事权益受到侵害或者发生争议的主体提出，无需其他组织或个人干预。在特殊情况下，受到损害的单位或个人不敢或不能独立保护自己的合法权益，需要有关组织给予支持，运用社会力量帮助弱势群体实现诉讼权利。支持起诉原则打破了民事主体之间的相对性，允许无利害关系的人民检察院介入到诉讼中，能够在弱势群体的利益受到侵害时切实为其维护权益。

案例六：

郝某某、周某四人与凌海市某老人之家、中国人民财产保险股份有限公司某分公司服务合同纠纷案

Keywords: population aging; duty of reasonable care of a nursing institution

关键词：人口老龄化；养老机构的合理注意义务

I. Basic Facts

一、基本案情

Xi was Zhou B's wife. Zhou A and three other persons were children of Xi and Zhou B. On January 17, 2017, nearly 80-year-old Zhou B and his son signed an elder care contract with the __ Nursing Home of Linghai City and Zhou B checked in the same day. It was recorded in the check-in assessment form that Zhou B had been recently discharged from hospital and he had a record of getting astray; he was hospitalized due to frostbites and cerebral infaction. When he was admitted to hospital, he had frostbites on both hands and feet; and the nursing level was partially disabled. On January 27, 2017, Zhou B went out of his room, got to the dining room through the unlocked fire path, walked out of the building from the south gate, and walked to the road on the east side of the nursing home. On January 28, 2017, the __ Nursing Home of Linghai City called the police and police officers found Zhou B dead under the Daling River Bridge in Linghai City. Xi, Zhou A, and two other persons thus requested that the __ Nursing Home of Linghai City should pay 199,954 yuan as compensation for their economic losses.

郝某某系周某某妻子，周某四人系郝某某与周某某子女。2017年1月17日，近80岁的周某某及其儿子与凌海市某老人之家签订养老服务合同，周某某当日入住。入住评估表记载：老人刚出院，此前在家中走丢，因冻伤住院治疗合并有脑血栓，入院时手脚均存在冻伤，护理等级为半自理。2017年1月27日，周某某自居住的房屋内走出，通过未上锁的防火通道门至餐厅，从南门走出楼房，后走到养老院东侧道路。凌海市某老人之家于2017年1月28日报警，民警在凌海市大凌河桥下发现周某某已死亡。郝某某、周某四人为此诉请凌海市某老人之家赔偿经济损失199954元。

II. Judgment

二、裁判结果

The People's Court of Linghai City, Liaoning Province held that: being aware that Zhou B had a record of going astray and the fire path was not allowed to be locked, the nursing home still failed to enhance safety protection measures and take any prompt and warning measures. Although there were monitoring facilities in the nursing home, the personnel on duty failed to timely discover and effectively prevent Zhou B from leaving the facility in the nighttime. The nursing home failed to perform the corresponding duty of care and it should assume 60% of the economic losses, 116,972.4 yuan. The __ Nursing Home of Linghai City covered a liability insurance for institutions providing nursing services for elders and the insurance company should compensate for losses within the limit of liability. Therefore, the people's court ruled that __ Branch of PICC Property and Casualty Company Limited should compensate Xi, Zhou A, and two other persons 116,972.4 yuan in a lump sum, the __ Nursing Home of Linghai City should return Xi, Zhou A, and two other persons the nursing service fee and guarantee deposit of 2,000 yuan in total.

III. Significance

辽宁省凌海市人民法院认为，养老院明知周某某有离家走丢的经历且安全防火通道门不允许上锁的情况下，仍未能增加安全防护措施，无提示、警示措施，虽安装有监控设施，值班人员也未能及时发现并有效防止老人在夜间走丢。养老院未能尽到相应的注意义务，应承担经济损失的60%责任，即116972.4元。凌海市养老院在保险公司投有养老服务机构责任保险，该公司应在责任限额内赔偿损失。故判决中国人民财产保险股份有限公司某分公司一次性赔偿郝某某、周某四人116972.4元，凌海市某老人之家一次性返还郝某某、周某四人养老服务费用及押金合计2000元。

三、典型意义

Due to population aging in China, the population of elders is on the rise and increasingly more elders have chosen to live in a nursing home. How to safeguard the rights and interests of elders has become an issue requiring addressing and the reflection of the whole society. Where a nursing home fails to perform the corresponding duty of care, which led to the accidental death of an elder, the nursing home should assume the corresponding compensatory liability for damages. The judgment of this case has sounded an alarm to nursing institutions for elders. The nursing institutions for elders should perform their responsibilities, exclude potential safety hazards for elders' life and health, raise the management level, improve the quality of nursing service capability of nursing practitioners, and fully safeguard the safety of the lives and property of elders. This case is of active significance for promoting the standardized operation of nursing institutions, comprehensively improving service quality of nursing homes, and ensuring that the elders live a happy life.

由于我国人口老龄化，老年人数量增多，且老年人选择在养老院生活、居住的情况亦有增加趋势，如何保障老年人的权益成为整个社会必须关心和思考的问题。养老院未尽到相应的注意和照管义务，致使老人发生意外死亡，应当承担相应的损害赔偿赔偿责任。本案裁判对社会上的养老机构敲响了警钟，养老机构应当尽到责任，排除危害老人生命健康的安全隐患，提高管理水平、提升护理人员素质和护理服务能力，充分保障老年人人身、财产安全。本案对于促进养老机构规范化、标准化运行，全面提升养老院服务质量，保证老年人晚年生活幸福具有积极意义。

Case No. 7

案例七：

Case of dispute over inheritance (Jia v. Li)

贾某诉李某某继承纠纷案

Keywords: taking into account interests of an elder in the distribution of bequest; good family tradition; diversified dispute resolution mechanism

关键词：分配遗产中照顾老年人利益；优良家风；多元化纠纷解决机制

I. Basic Facts

一、基本案情

Li, almost 70 years, old, was mother of the deceased Cao. Jia was Cao's wife, who were married at a registry on June 4, 2019. On August 7, 2019, Cao passed away due to a sudden illness in the sport activities organized by his employer. Cao's father had passed away and Cao had no other inheritors. After death of Cao, his bequest includes some residential properties, bank deposits, and compensation and pension given by Cao's employer during his lifetime. Jia claimed for equally dividing the bequest. In the course of trial of this case, the people's court introduced a professional psychotherapist to participate in the pretrial preparation, gradually eased the mental state of the elder who lost the only child, was unwilling to respond to litigation, and refused communication, conducted psychological intervention of the plaintiff, and eased the antagonism between the plaintiff and the defendant. In the court trial, the people's court conducted patient psychological work, popularized the good family tradition of the Chinese people, and got rid of the misunderstanding and estrangement between both parties for losing of the dearly family member. Although the parties did not reach a settlement in court, after the judgment was pronounced, both parties expressed their satisfaction to the collegial bench several times and voluntarily performed the judgment of the first instance after it took effect.

II. Judgment

李某某系被继承人曹某某母亲，年近七十。贾某系曹某某妻子，双方于2019年6月4日登记结婚。2019年8月7日曹某某因所在单位组织的体育活动中突发疾病去世。曹某某父亲已于之前去世，曹某某无其他继承人。被继承人曹某某去世后，名下遗留房产若干、存款若干元及其生前单位赔偿金、抚恤金若干元。贾某诉请均分曹某某遗产。本案在审理过程中，人民法院引入了专业的心理咨询师参与庭前准备工作，逐步缓解失独老人不愿应诉、拒绝沟通的心态，同时也对原告进行心理介入，疏导其与被告的对立情绪；在庭审中做了细致的心理工作，宣解中华传统优良家风，修复了双方因失去亲人造成的误解和疏远。本案虽然并未当庭达成和解，但在宣判之后，双方当事人多次向合议庭表达满意，并在本案一审判决生效后自行履行完毕。

二、裁判结果

The People's Court of Xincheng District, Xi'an City, Shaanxi Province held that the inheritance at issue is one of intestacy, so it should be conducted under statutory inheritance procedures. The inheritor that performed major support obligations or lived together with the deceased may take a bigger share. In light of such factors as the hard work of Li in bringing up Cao, the duration in which Jia and the deceased got married and lived together, and the daily family contributions of Li and Jia, the people's court determined that Jia should be allocated 20% of the bequest, and Li, 80%. The work-related death compensation does not fall within the scope of bequest and the employer of the deceased had taken Li's situations into consideration in light of the actual circumstances. Therefore, Li and Jia should be each allocated 50% of such compensation.

陕西省西安市新城区人民法院认为，本案被继承人无遗嘱，应按照法定继承进行遗产分配。对被继承人尽了主要扶养义务或者与被继承人共同生活的继承人，分配遗产时，可以多分。结合对子女抚养的付出及贾某与被继承人结婚、共同生活时间、家庭日常贡献等因素，酌定遗产分配比例为：贾某分配20%，李某某分配80%。工亡补助金部分不属于遗产范围，被继承人单位已考虑实际情况对李某某予以充分照顾，故二人各分配50%。

III. Significance

三、典型意义

The deceased in this case left no will and his bequest should be allocated in accordance with provisions on statutory inheritance. The inheritor that performed major support obligations or lived together with the deceased may be granted a bigger share in inheritance. Li, mother of the deceased, worked hard to bring the deceased up. She lost the only child and also lost the person who would take care of her in her remaining years. Li should be allowed to have a bigger share in inheritance. In the trial of such cases involving protection of the rights and interests of elders and disputes over inheritance, the people's courts should attach importance to psychological counseling of the parties concerned, give them a good counseling of the legal provisions, publicly explain the good family traditions, and ease the antagonistic relations between both parties; resolve domestic conflicts by applying the diversified dispute resolution mechanisms, carry forward the Chinese culture of filial piety, and demonstrate such harmonious family traditions of properly supporting elders, respecting elders and taking good care of children, and maintaining family affection.

本案被继承人无遗嘱，应以法定继承进行遗产分配。对被继承人尽了主要扶养义务或者与被继承人共同生活的继承人，分配遗产时可以多分。被继承人母亲将其抚养长大，付出良多，痛失独子，亦失去了照顾其安度晚年的人，理应在遗产分配时予以照顾。法院在审理此类涉及保护老年人权益案件及遗产继承纠纷案件时，应注重对当事人进行心理疏导工作，充分释明法律规定，宣讲优良家风，修复双方的对立关系；利用多元化纠纷解决机制，化解家庭矛盾，弘扬中华孝文化，体现老有所养、尊老爱幼、维护亲情的和谐家风。

Case No. 8

案例八：

Case of dispute over travel contract (Yu v. Beijing __ Travel Agency and its branch)

于某某诉北京某旅行社及其分公司旅游合同纠纷案

Keywords: travelling by elders; group protection of rights and interests

关键词：老年人旅游；团体性维权

I. Basic Facts

一、基本案情

In December 2019, 20 elders discussed with Zhang, a party not involved in the case, about forming a travel group to Fujian Province. Zhang was responsible for arranging the signing of contracts and handover. As the representative of the group of elders, Yu paid the travel expenses to Zhang through WeChat transfer. He then received an electronic copy of the contract sent by the travel agency. Since the group members changed several times, the contract was altered accordingly. The electronic contract sent by the travel agency to him was affixed with the special seal for contract uses. In January of the subsequent year, the travel agency sent an electronic contract again, the plaintiff affixed his signature to the contract for confirmation on behalf of the 20 elders. The contract includes stipulations on both parties to the contract, the name of the tourist product, the dates of travel, and the travel expenses, etc.. Besides, information on identities of tourists and an itinerary were affixed to the contract. The elders failed to travel due to the COVID-19 epidemic. Yu communicated with Zhang on matters of refund. Zhang refused to refund the paid expenses on the ground that the travel agency did not return the funds to him. The twenty elders filed a lawsuit with the people's court. The travel agency contended that Zhang was not its employee and Zhang's acts of communicating and signing a contract with Yu were not acts of performing duties authorized by it and Zhang had no right to act on behalf of the travel agency and collect travel funds.

2019年12月，20位老年人与案外人张某某协商组团前往福建旅游事宜，张某某负责安排签订合同及对接，于某某作为老年人团体的代表，通过微信转账向其交付旅游费用。后收到旅行社发送的电子合同，因参团人员变动多次发生修改，旅行社数次向其发送的电子合同均带有合同专用章。次年1月，旅行社再次发送电子合同后，原告代表20人签字予以确认。合同对签约双方、旅游产品名称、旅游日期、旅游费用等进行约定，并附有游客身份信息和旅游行程单。后因疫情未能出行。于某某与张某某沟通退款事宜，张某某以公司未向其退款为由拒绝退还，20位老人均诉至法院。旅行社辩称，张某某并非其员工，与于某某沟通签约并非经其授权履行的职务行为，无权代理及收取旅游费用。

II. Judgment

二、裁判结果

The People's Court of Jing'an District, Shanghai Municipality held that: in this case, after Yu paid Zhang the travelling funds on behalf of 20 elders and altered the contract several times, he received the electronic contract in a timely manner and the contract was affixed with the seal of the travel agency, and Zhang's commitment to reduction and exemption of travelling costs was consistent with the stipulation of the contract. Yu and his group had good reason to believe that Zhang was an employee of the travel agency and their signing of the travel contract and payment of the travelling costs were in goodwill and they had no fault therein. The acts of Zhang had the appearance of authorization, making Yu and his group believe that Zhang had the power of attorney, and they paid the travelling costs to him. The acts of Zhang should have the same legal effect as that of an authorized agency. Therefore, the people's court ruled that the travel agency should return the aforesaid expenses to Zhang.

上海市静安区人民法院认为，本案中，于某某所代表的20位老年人向张某某支付旅游费用及多次修改合同后，均及时收到电子合同，合同均有旅行社的签章，张某某承诺减免的旅游费用也与合同一致，于某某等人有理由相信张某某系旅行社员工，其签订旅游合同及交付旅游款项系善意且无过失。张某某的行为具有已被授予代理权的外观，致使于某某等人相信其有权而支付旅游费用，应发生与有权代理同样的法律效力，故判决旅行社向张某某返还上述费用。

III. Significance

三、典型意义

This is a case of protecting the group rights and interests involving a complex legal issue where the elders didn't have someone to represent them in court. With social development, the elders have strong desires for happy life. After their retirement, they have more leisure time. Travelling with good friends becomes a normality of their lives. When they suffer losses in travelling and do not know how to file complaints, they have to seek legal recourse. Difficulties in protection of their rights and interests are features of this type of cases. The timely and proper handling of such cases are conducive to effectively protecting the rights and interests of elders. This case may also effectively guide travel agencies in signing contracts according to law, regulating their signing of contracts, and voluntarily observing the market order. In the meantime, this case reminds elders that when they sign a travel contract, they should examine whether their counterpart has the corresponding power of attorney and the authority to sign contracts and protect their own rights and interests through litigation. It is of positive guiding roles in protecting the rights and interests of elders and regulating the tourist industry.

本案系老年人在无代理人情况下涉及复杂法律问题的团体性维权类案件，具有典型示范意义。随着社会的发展，老龄团体追求愉悦生活的愿望强烈，退休后，老年人闲暇时间较多，约上好友外出旅游成为常态，而在旅游中遭受损失投诉无门时只能走法律途径，维权困难成为此类案件特点。此类案件及时、妥善处理，有利于切实保护老年人权益。此案也能有效引导旅游机构依法订立合同，规范签约行为，自觉遵守市场交易秩序。同时提醒老年人在签订旅游合同时，要注意审查相对人是否有相应的代理权和签约资质，并及时通过诉讼途径维护自身权益，对老年人维权、规范旅游行业具有积极的引导作用。

Case No. 9

案例九：

Case of dispute over infringement liability (Zhou v. Gong)

周某诉龚某侵权责任纠纷案

Keywords: "forcibly living off parents"; protection of elders' lawful property rights and interests

关键词：“强行啃老”；保护老年人合法财产权益

I. Basic Facts

一、基本案情

On January 13, 2017, Gong Hua (part of name withheld) and her daughter Gong took 92-year-old Zhou, mother of Gong Hua, to a business office of a rural credit cooperative to report loss under Zhou's account, withdrew Zhou's deposit of 240,000 yuan, and deposited it to Gong's account. Zhou was illiterate. The aforesaid counter operations were all handled by Gong. When the bank clerk required taking a picture of Zhou for purposes of confirmation, Gong pushed Zhou in wheel chair to the front of the camera on the counter, then pushed her back to the waiting seat, and delivered the material to the bank clerk after Zhou printed her fingerprint on it. Neither Gong nor the bank clerk communicated with Zhou. Zhou filed a lawsuit with the people's court and alleged that Gong Hua and Gong cheated her in taking her to the bank and transferred her deposits on the ground of assisting her in handling her bank deposits. After knowing that her deposits had been transferred, she asked Gong to return, but Gong refused. Therefore, she claimed that Gong should return the aforesaid deposits.

II. Judgment

2017年1月13日，龚某华及其女儿龚某将龚某华的母亲，92岁的周某，带至农村信用社某营业厅，对其账户进行挂失，取出存款24万元并存入龚某账户。周某系文盲，上述柜台业务办理均由龚某操作，银行业务员需要周某拍照确认时，龚某将坐在轮椅上的周某推到柜台摄像头前拍照，再推回等候席，将材料让周某捺完印后再交给银行业务员。龚某、业务员均未和周某进行交流。周某诉至法院称，龚某华及龚某以帮助办理银行存款为由，将其骗至银行并转走存款，周某得知后，要求龚某返还，遭到拒绝，故诉请龚某返还上述款项。

二、裁判结果

The People's Court of Nanhu District, Jiaxing City, Zhejiang Province held that: Zhou knew nothing about Gong Hua's withdrawal and transfer of her deposit. Without the consent of Zhou, Gong Hua transferred Zhou's deposit to an individual account for illegal occupation. Such act had infringed upon Zhou's property ownership and Gong Hua should return the funds. The contention of Gong that the deposits involved were bestowed by Zhou to her was not corroborated with relevant evidence. According to the statement of Zhou, she was unwilling to grant Gong Hua the deposit funds. Therefore, Gong's contention should not be upheld. The People's Court of Nanhu District ruled that Gong should refund Zhou 240,000 yuan.

III. Significance

Citizens have the right to occupy, use, enjoy earnings, and dispose of their personal property according to law. For physical conditions and the mobility of elders, it is often difficult for them to effectively manage and dispose of their own property. Under such circumstances, their children should not infringe upon their property rights and interests by means of stealing, cheating, and forcibly claiming their property. The judgment of this case has manifested the value orientation of objecting to "forcible living off parents" by children and such value orientation conforms to the traditional virtue of the Chinese people and the socialist core values. In the trial of cases involving infringement upon rights and interests of elders, the people's courts should fully ascertain the true will of elders, adhere to protecting the lawful rights and interests of elders, enter judgments by following the principle of protecting the lawful rights and interests of elders, and effectively settle the disputes.

浙江省嘉兴市南湖区人民法院认为，周某在龚某华将其存款取出并转移时对该项事实并不知情，龚某华在未取得周某同意的情况下，擅自将周某的存款转移到个人账户占有，其行为侵害了周某的财产所有权，应当返还存款。关于龚某认为案涉存款系周某赠与给龚某华的抗辩，并无相关证据予以证实，且根据周某的陈述，龚某华取得其存款的行为并非出于其自愿给付，故对龚某的抗辩，不予采信。该院判决龚某返还周某24万元。

三、典型意义

公民对个人的财产依法享有占有、使用、收益和处分的权利。老年人由于身体状况、行动能力等原因，往往难以有效管理、处分自有财产，在此情况下，子女更不得以窃取、骗取、强行索取等方式侵犯父母的财产权益。本案体现了反对子女“强行啃老”的价值导向，符合中华民族传统美德和社会主义核心价值观。人民法院在审理此类侵犯老年人权益的案件时，应当充分查明老年人的真实意愿，坚持保障老年人合法权益，秉持保护老年人合法财产权益的原则进行判决，有效定纷止争。

Case No. 10

案例十:

Case of application for designated custody of a person without capacity for civil conduct filed by the Social Welfare Home of Liuzhou City

柳州市社会福利院申请作为无民事行为能力人指定监护人案

Keywords: a social welfare home; custody of elders

关键词: 社会福利机构; 老年人监护

I. Basic Facts

一、基本案情

The respondent, Sun, is mentally disabled since childhood. Incapable of taking care of himself, he lived together with his mother. In 2008, Sun's mother became bed-ridden due to seniority in age. The employer of his mother voluntarily sent Sun and his mother to the Social Welfare Home of Liuzhou City and handled the formalities for enrollment at their own expense. In 2011, his mother passed away due to illness and Sun stayed there since then. For the purpose of better performing the custodian responsibility, the social welfare home gave feedback to the civil affairs bureau and the residents' committee of the community where Sun lived. Upon consultations among several departments, it was held that, as the whereabouts of Sun's family members cannot be found, it was better for the social welfare home to continued to take care of him. In March 2018, the social welfare home entrusted the Guangxi Brain Hospital to provide judicial expertise respect to Sun's physical conditions. In May, the social welfare home filed an application with the people's court for declaring Sun as a person without civil capacity and for designating the social welfare home as his lawful custodian.

被申请人孙某某, 自幼智力残疾, 生活无法自理, 一直随其母生活。2008年, 孙某某母亲年迈卧床, 其所在单位主动将母子二人送至柳州市社会福利院, 并办理自费入院手续。2011年母亲因病过世后, 孙某某在福利院的照看下生活至今。福利院为了更好尽到监护职责, 分别向民政局和孙某某所在社区居委会反映情况, 经多部门协商认为, 在找寻孙某某亲人无果的情况下, 继续由福利院照顾较好。2018年3月, 福利院委托广西脑科医院对孙某某身体情况进行司法鉴定。5月, 福利院向法院申请依法宣告孙某某为无民事行为能力人, 并指定福利院作为其合法监护人。

II. Judgment

二、裁判结果

In the trial, the People's Court of Liubei District, Liuzhou City, Guangxi Zhuang Autonomous Region held that: the respondent Sun was identified as a person without capacity for civil conduct in the forensic psychiatric assessment conducted by the Judicial Expertise Center of the Guangxi Brain Hospital. In addition, the People's Court of Liubei District found in an investigation conducted according to its authority that the respondent Sun had been living in the Social Welfare Home of Liuzhou City for eight years and he had no spouse or children; the personal archives of Sun's mother showed that Sun had close relatives including father and elder brother, but there was no specific information of their whereabouts. Sun had been in a situation of no custody for a long time, the Social Welfare Home of Liuzhou City had actually protected his physical health and taken care of him, managed and protected his property, and conducted management and education of him. For purposes of better protecting Sun's interests, the Social Welfare Home of Liuzhou City was designated as the lawful custodian of Sun. If Sun's father and elder brother appeared, they may separately claim rights according to law.

广西壮族自治区柳州市柳北区人民法院审理认为，被申请人孙某某经广西脑科医院司法鉴定所法医精神病鉴定为无民事行为能力人。另，法院主动依职权调查查明，被申请人孙某某在柳州市社会福利院居住生活了8年，无配偶、无子女；其母亲人事档案显示，孙某某的近亲属有父亲、哥哥，但无二人具体信息。孙某某长期置于无人监护的处境，柳州市社会福利院已实际保护被监护人的身体健康，照顾被监护人的生活，管理和保护被监护人的财产，对被监护人进行管理和教育等。为更好地维护孙某某的利益，指定柳州市社会福利院作为孙某某的合法监护人。若孙某某的父亲、哥哥出现，可依法另行主张权利。

III. Significance

三、典型意义

The elders are a disadvantaged group in society and safeguarding their lawful rights and interests is the joint responsibility of the whole society. Under the circumstances where the legal custodians have been missing for years and no person performs the custodian responsibility, from the perspective of fully protecting and implementing the lawful rights and interests of a person without capacity for civil conduct, the social welfare home that has provided long-term basic living dependence and actually assumed the custodian responsibilities should be designated to serve as a custodian under legal procedures. It is a beneficial attempt and exploration for legally protecting the rights and interests of elders and has achieved good legal effect and social effect. The trial of this case has implemented the principle of diversified handling of family cases. The joint efforts between the people's court and the relevant government department have reflected the efforts of the relevant functional department in protecting and safeguarding the lawful rights and interests of elders in judicial ways.

老年人是社会的弱势群体，保障其合法权益是全社会的共同责任。在法定顺位监护人多年缺失，无人履行监护职责的情况下，从充分保护和落实无民事行为能力人合法权益的角度出发，经法律程序指定、已形成长期基本生活依赖且担负实际监护责任的社会福利机构作为监护人，是依法保障老年人权益的有益尝试和探索，取得了良好的法律效果和社会效果。本案审理贯彻了家事案件多元化处理原则，法院与政府相关部门之间通力协作，体现了相关职能部门通过司法途径维护和保障老年人合法权益的努力。

©Pkulaw: (www.pkulaw.com) provides various professional solutions in such fields as legal information, law knowledge and legal software. Pkulaw provides you with abundant reference materials. When you invoke articles of laws and regulations, please check them with the standard texts. You are welcome to view all our [products and services](#).

[Pkulaw Express: How to quickly find information you need? What are the new features of Pkulaw V6?](#)



Scan QR Code for instant access to the original text

Original Link: https://www.pkulaw.com/en_law/896b9abda9a99002bdfb.html