

Study on the Reasoning of Family Related Judgments

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Abstract

Family related cases are common but very important. The reasoning is an essential dimension for evaluating the quality of judgments. This article analyses the problems of family related judgments in judicial practice. The reasoning of some family related judgements is inadequate, while others are excessive. The application of the reasoning templates can lead to rigidity of expression sometimes. Then this article examines the reasons for the problems in judicial practice. Influencing factors include: the family related cases are more complex than ordinary civil cases. Theories of reasoning are difficult to apply in judicial practice. Judges have individual differences. Finally, several optimization methods are recommended. The courts can develop practical guidelines, enhance the training of judges and improve the relevant judicial system.

Keywords

Legal reasoning, Family related cases, Judgments, Judicial reform.

1. Introduction

In recent years, the Central Committee of the Communist Party of China is leading many judicial reforms. Enhancing the reasoning of judgements and improving the quality of judgements is one of the most important part of the judicial reforms. President Xi Jinping has stressed that judicial work should not only focus on the application of law, but should also explain the factual reason and emotional reason. In order to implement the spirit of "Outline for Building Law-based Society (2020-2025)". The Supreme People's Court of the People's Republic of China has issued "the Guiding Opinions on In-Depth Promotion of Integration of the Socialist Core Values into Interpretation of Law and Reasoning in Judicial Rulings and Judgments". This judicial interpretation attaches great importance to the reasoning of judgments. It plays an important guiding role in judicial practice.

As the smallest unit of the country, families are not only concerned with the rights and duties of the civil code, but also with social relations based on ethical relationships. In this way, maintenance of stable family relations is regarded as one of the standard measures of social governance. In addition, family related cases usually include the factor of protection of vulnerable groups. This also means moving the interest from a relatively private space to the public interest. For a long time, China has attached great importance to the reform of family trials. The reasoning of family related judgements converges with the humanistic concern of judicial reform. Gradually, the reasoning plays a more and more important role in solving disputes, fixing family relations and ensuring social harmony and stability.

The reasoning of family related judgments carries the double impetus for reform, one is the reasoning of judgments and the other is the reform of family trials. This research takes the reasoning of judgments as a start, then analyses the reasons behind the problems, and finally provides solutions. This article can develop the traditional reasoning logic and provide theoretical support for the judges in the courts. From the point of view of judicial practice, this

article seeks the solution to the problems of reasoning. It is hoped that this study will contribute to optimal the reasoning of family related judgments.

2. Problems of Family Related Judgments in Judicial Practice

2.1. The reasoning of family related judgments is inadequate

In the past, Chinese judges paid more attention to substantive issues. This led to two questions: first, we didn't care much about procedural issues if the parties were satisfied about the results; second, if we won the case, we didn't care about the wording or reasoning of the judgments. However, in family related cases, where personal rights are at stake, it is difficult to measure the sacrifices made by relatives in their daily lives. In this situation, the importance of reasoning is highlighted. Some judgments without reasoning may cause dissatisfaction among the parties. For example, in a divorce case, the defendant in the first instance appealed against the judge for not giving any reason for the evidence in the previous judgment (2023. Xinjiang Province 28 Minzhong No.607). In fact, inadequate reasoning is more common. In Shandong Province, the reasoning part of a post-divorce property dispute says: "The behavior does not meet the requirements of the socialist core values of citizens, the defendant really should not do this. (2022. Shandong Province 1502 Minchu No.9522)" Because the judge found that the defendant had acted in violation of good faith. The judge directly quoted socialist core values without explaining anything. The statement of reasons should have explained how the behavior was contrary to the value. We could not use the explanation of the facts found to reach the conclusion on the value dimension. From a legal point of view, this would also lead to a serious problem. Is the socialist core value the basis of this judgment? We know for sure that the judge had a good intention and tried to combine value factors in his reasoning. However, the inadequate reasoning may cause unexpected problems. In conclusion, the reasoning requires sufficient and accurate words to describe the family related cases.

2.2. The reasoning of family related judgments is excessive

Some family judges are too meticulous in writing the reasoning part. The reasoning in these family related judgments is beyond the necessary limits. For example, in a divorce case (2017. Hebei Province 0924 Minchu No.690), the judgment has 239 words to express the court's opinion. However, the judge didn't respond to the plaintiff's complaint about the fact that "the couple did not establish a really deep emotional foundation." And he gave a direct rejection on this issue. According to the plaintiff's statement, the defendant had a bad temper and hit the plaintiff. The judgment doesn't give any reason for that either. However, this judgment spends 106 words to responding to the defendant's claim that the child suffers from cerebral palsy. The reasoning part argues that the divorce will cause psychological harm to the disabled child, that the couple should not "go their separate ways" which means divorcing. The remaining 115 words claim that our court is dedicated to preserving safeguarding equal, harmonious and civilized marriage. The goal is to encourage the public to establish a correct concept of marriage and family. The court also encourages the basic ethical norms of the couple to respect and love each other. They must strengthen the responsibility of the family and society. The aim is to promote virtue, goodness, and good customs. Ultimately, making the family should become a strong fortress where the members can work together in harmony and cooperation, rather than a temporary partnership where each family member look out for his or her own interests. From this example, we can see that if the reasoning is too excessive, the judgments are difficult to keep in balance among different parts. And the reasoning is hard to convince the parties because the main part of the judgments is explanation for the society. In other words, the excessive words are easy to confuse the target of reasoning. Therefore, the judge must pay attention to the amount of words used in the reasoning to achieve a perfect balance between

the facts found, the law applied and the emotional reasons. Otherwise, the judgment will become a prose poem with excessive reasoning about values.

2.3. The application of reasoning templates is rigid

Although most of judges are aware of the importance of reasoning in family related judgments. Out of various reasons, they use the templates rigidly. We can see many examples in the public judgments on the Internet. First, some arguments are used repeatedly regardless of the specific facts of the case. For example, "it is both an excellent traditional virtue of the Chinese nation and an unshakable legal obligation" is one of the most popular arguments in alimony disputes. It has been widely cited in the reasoning as long as the cases are related to their elders. Until October 2023, China Judgements Online has 342 judgments that fully use this phrase. Second, some arguments are used for both positive and negative points of view. In divorce disputes, "Marriage and the family are the cells of society and the basis for maintaining social stability." is a common used argument. Whether the judgment grants or denies the divorce, there are instruments to be cited. The typical example of granting the divorce is a case in Shanxi Province (2022. Shanxi Province 0728 Minchu No.1250). While the denying cases are seen more in Henan Province (2018. Henan Province 0581 Minchu No.6119). This kind of phenomenon shows that the argument actually has no influence on the outcome of the case. It is just a statement of value-based guidance. Third, some courts repeatedly use the same argument in cases involving the same cause of action. The People's Court of Linzhou City, Henan Province has 79 judgments quoting the above sentence. The reasoning templates seem to be an established format for divorce cases.

3. Reasons for the Problems of Family Related Judgments in Judicial Practice

3.1. The complexity of family related cases

Although family related cases occur in everyday life, the content of the disputes always has a fair share of unremarkable daily chores. However, when these daily problems accumulate to produce qualitative changes, that is, when they become family related cases, they can become very complex. Family related cases are a combination of affection, morality and ethics. This situation poses difficult questions that go beyond legal issues. In addition, even if the legal issues are resolved, the parties are likely to be dissatisfied because a sense of injustice. Because the emotional toll in family life is basically impossible to measure. In this situation, reasoning of family related cases could be very tricky for judges, especially for those young judges who are not yet married. In addition, most civil cases deal with the facts that happened in the past, whereas the family related cases need to reconstruct the relationship of the family members in the future.

What's more, family related cases affect the public interest of society. For example, China has a system of personal safety protective orders, which is a kind of compulsory measure. According to Anti-Domestic Violence Law, the order can prohibit the respondent from committing domestic violence. The main victims of the domestic violence are minors, the elderly and the disabled. Therefore, the interest of the vulnerable people must also be need to be reflected in the reasoning part. However, the family related judgments are usually private interest disputes. This poses a difficult question to the judges: how to integrate a public interest factor into a civil case. The reasoning must into account these two different types of interests in one judgment. If the public factor is given priority, there is a risk of disregarding the basic principle of the civil procedure. On the contrary, if we don't care about the public interest, the case may not be able to convince the parties.

There is no denying that different countries have different ethical standards and codes of conduct, but the logic behind the solution of family related cases is similar. The judge needs to find a plan that is in accordance with current legislation, in line with national ethical requirements and have better to satisfy public expectations. In China, the Civil Code has written different types of family related rights. Each type of family cases has its own difficulty in reasoning, such as applying the law, determining the facts and coordinating the family members. The judicial practice sessions must clearly define the characteristics of different cases clearly. In this way, the judge can deconstruct the complex family related cases and reason reasonably to each element.

3.2. The complexity of reasoning theories

The theories of reasoning are almost a puzzle for civil law countries. Firstly, the reasoning is part of the judgment, so the structure of the judgment also influences the layout of the reasoning. According to Article 155 of the Civil Procedure Code, a written judgment includes the reasons for the facts found and the laws applied. However, there are no standardized rules as to whether the reasoning should be independent of the facts and laws or combined with them together. Second, reasoning has its own rhetorical methods, but within the framework of legality, how to write appropriate reasoning sentences becomes a problem that is difficult to define. This leads to the third point, if the length is too long, the judgement may become literary work and lose the seriousness of the judgement. These two issues are not purely legal theories; they are also related to the study of logic. Literary theory may also have to be applied limited extent in the reasoning part of judgments. Finally, the citation of reasoning is another difficulty in judicial practice because China is such a large country, we have so many regional customs and traditions. Are they suitable for citation in the judgments? I'm afraid that this question cannot be resolved in the daily work of individual judges.

What's more? One of the most peculiar features of judicial practice in China is that there are few judges for many cases. In this situation, judges are under great pressure to decide cases. When it comes to reasoning, there are so many theoretical aspects to consider and different interests to balance. If they made some mistakes or adopted controversial theories, the academic world would take it as negative model in their essays. Especially in family related cases, it is difficult enough to distinguish right from wrong between parties in everyday life. Although the judge upholds the principle of fairness and impartiality, he is not the person who has actually experienced life. As a result, even if we use the most sophisticated theory of reasoning, we cannot articulate all the specifics of the case.

Therefore, we can see that the reasoning has a barrier from theory to practice. The theory seems dedicated to solving almost philosophical questions of reasoning, the conclusions are inevitably go to abstract. The world of judicial practice desperately needs simple and convenient methodology. This research gap is difficult to fill in if there is no one who does research on both theory and practice at the same time. The most ideal situation is that a very experienced family case judge spends a lot of time on researching the reasoning theories of the continental law system. This is because he has all the qualities necessary to complete a full marks reasoning model: a lot of experience of family life, a lot of judicial practice experience, and a deep theoretical foundation. While in reality, this type of judges is hardly seen.

3.3. Differences among individual judges

On the one hand, individual judges vary from place to place. As mentioned above, China has a vast territory. Relatively speaking, east coast part of China and urban areas provide more job opportunities for law school students because of economic factor. Law school graduates tend to choose these areas to work in order to seek better salary and professional development potential. This means that courts in economically developed areas along the east coast are more likely to attract new judges continuously. This results in differences among individual judges in

different areas. However, as a public judicial product, the reasoning of judgments doesn't have different standards for judges in different provinces. We use the same criterion to evaluate judgments. This may lead to unfairness for judges in relatively backward area. Because they may not have as many learning, training, and communication opportunities as other courts. When it comes to family related cases, judges would be more confused if they belong to regions where minority nationalities live. This is because it becomes even more difficult to decide whether the social customs and practices are appropriate to cite in the reasoning part of the judgment.

On the other hand, judges are different from each other. In China, judges are civil servants. Most of judges uphold the spirit of the rule of law and continue to study to constantly improve their level of analysis of legal and factual issues. However, an extremely small percentage of judges are not strict with themselves. The dismissal of judge is relatively rare in the absence of serious violations of laws and regulations. Under these circumstances, some judges have no motivation to improve their reasoning in judgments. They adhere to the principle of not making mistakes about the facts found and the laws applied in the judgments. As for the reasoning, they adopt a conservative attitude. This condition also gives rise to the problem of inadequate reasoning. In family related cases, they may treat with them as the ordinary civil cases. In this way, they just focus only on the distribution of rights and duties, which could significantly reduce their workload.

3.4. Inadequacies of the relevant judicial system

Firstly, there is a lack of diversification in the reward mechanism of reasoning. Although many courts have carried out selection activities of outstanding judgments. In most cases, the reward remains to be a certificate of merit. It doesn't seem to be cost effective to spend a lot of time on improving the reasoning of judgements compared to setting more cases. This is because the number of cases settled is one of the considerations for a judge's monthly or annual performance. This is directly linked to the salary. Moreover, the reward mechanism is the same for different types of cases. It is difficult to say that we have a scientific system to reward the excellent judgments. Therefore, a diverse system of reward mechanism is important to increase the motivation of judges.

Secondly, the responsibility mechanism of judges can be improved. Nowadays, the minimum requirement for judges is not to make mistakes in the facts found and laws applied. In other words, if judges write down the result of facts and laws without reasoning, we can only say that there is room for improvement in the choice of words. As long as there are no serious errors of fact, the judge won't be punished for the weakness of the reasoning. In fact, this implies that the responsibility mechanism for reasoning has not been established. However, judges also face troubles that are reluctant to discuss. If they spend more time on reasoning, no matter how serious they are, it gives the parties more opportunity to argue their errors. Some of them may go to public complaints and proposals administration to ask for judges to be held accountable. Especially in family related cases, the parties are more likely to be emotional. If the reasoning is far from their own expected results. They will spare no effort to find the loopholes in the judgment. Without an appropriate mechanism of responsibility mechanism, reasoning becomes something that judges willing to do, but not afraid to do.

Thirdly, the evaluation criterion of reasoning needs to be specified. In fact, the improvement of reasoning in our country is often a summary of practical experience rather than the application of reasoning theories. Therefore, different regions have developed different useful experiences in reasoning. Since 2019, the Supreme People's Court has sponsored the double 100 selection activity, that is, 100 excellent judgments and 100 excellent trials. The political, legal and social impact is very excellent. The judgments are collected in *The Form and Spirit of Double 100 Excellent Judgments – Judging Method and Reasoning Skills*. In the civil part of the book, there is

a chapter on family related cases. There is no doubt this gives a good model for reasoning. But these books can only be read as learning materials, social life is constantly changing and it is difficult for the books to cover every family related case. At the same time, the existing reasoning instruction has no compelling force. An explicit evaluation criterion with appropriate guidance may be a better choice to improve reasoning.

4. Optimization Methods for Reasoning of Family Related Judgments

4.1. Developing practical guidelines on reasoning

Firstly, given the circumstances of few judges for many cases, and uneven regional development. The most practical way of optimizing the reasoning of family related judgments is to develop practical guidelines for judges. There are countless family situations in the whole country. Each family case has its own particularities that require special attention. We can follow the family related rights of the Civil Code and find the greatest common divisor for different types of family cases. Apply the guidelines according to the specific facts of the cases. Besides, the society develops faster than regulations, and practical guidelines are not the golden rules that can't be updated forever. Judges have experience of judicial practice. They know the sore points of the parties. What we need is an appropriate way to mix the theories of reasoning with the experience of family related cases. The guidelines can play a role in reminding them the of the essential parts of reasoning. This is conducive to the application of reasoning theories to real cases.

Secondly, from the point of view of the judges, there is an urgent need to reduce their workload. One possible way to provide convenience for judges is to improve the case management system. Take the legal elements as the keywords for searching similar cases. In this way, judges can save a lot of preliminary work. Then we use highlights to indicate places for reasoning. The judges can now easily see which part of the judgment is usually the place for reasoning. In family related cases, the reasoning on the facts is an essential part. Therefore, we can focus more on the reasoning on evidence. For example, developing different guidelines for direct and indirect evidence can solve the problem that judges do not know how to write the reasoning part of the judgment.

Thirdly, we can use information technology to supplement the content of the guidelines. We could use artificial intelligence technology to generate a template for similar case, leaving space and instructing the judge to think about the reasoning in the key parts. In addition, machine learning technology can collect the existing judgments from different places, withdraw the reasoning parts, analyze the logic of reasoning and develop a more scientific way of reasoning. Machine learning can also predict the future development of reasoning. In this way, we can organically integrate judicial work and modern technology, and improve the level of reasoning of family related judgments.

4.2. Enhancing the training of judges

Regular training is sustainable way of improving reasoning on family related judgments. New types of cases are emerging every day. For example, the Beijing Chaoyang District People's Court heard the first case of a single woman freezing her ovum. This case involves the reproductive rights of single woman, which has attracted widespread attention. How to properly protect the reproductive rights under the current legal framework has stimulated both the academic world and the world of judicial practice. With their knowledge and experience, perhaps even the most senior judges couldn't give a full mark reasoning plan, let alone the new types of family related cases have so many theoretical disputes not yet resolved. Therefore, regular training for the judges provides them with a platform where they can communicate the issues during the daily process. The judicial committees can take this

opportunity to communicate the latest rules of reasoning. With this long-term training, the overall level of reasoning can improve over time. The court can also strengthen the communication between different levels of courts, inviting experts on reasoning to share their experiences. They can hold training sessions on different topics. Besides, since the reasoning is a complex problem, perhaps a cross-domain seminar between the academic world, the judicial practice world can collision inspiration. In the long run, we can see a clear improvement on the quality of reasoning on family related judgments.

In addition, the forms of training can have multiple ways. To improve the reasoning level of family related judgments, the lecture courses may be the most traditional method. However, we can make some innovations in the means of training. For example, we can hold seminars on relevant topics. Each participant shares an academic paper that has potential for application to judicial practice. Or judges can share the experience of reasoning on typical cases from time to time. This concept may increase judges' workload. However, it is not an obligation for them. Higher level People's Courts may publicize the training on the internal network. The staff of the people's courts under their jurisdiction can choose whether or not to attend. If judges really benefit from these seminars, we can promote them to more palaces. In this way, we can have more scholarly judges.

4.3. Improving the relevant judicial system

In fact, China has many excellent judicial systems. They are based on a lot of empirical research and sufficient theoretical research. And as a result they do play an important role in promoting the rule of law. However, we can do more to make these systems being perfect. For example, China has the world's largest online platform for publishing judgments. This means that the public can access to judgments at the lowest cost. This is a good opportunity for the judiciary accept supervision. However, family related cases can choose not to be published online if the case concerns divorce proceedings or involves the upbringing and guardianship of children. In fact, we can choose some technical way to protect the privacy of the parties, such as using code to replace their real names. If we hide the judgments completely, the reference value for the academic world, the world of judicial practice and society would be reduced. Because the core socialist values will be more easily accessible and accepted if the public can see and compare different reasoning contents.

In addition to improving the existing system, we can explore a mechanism to safeguard reasoning. In view of the problem that judges do not dare to reason, this gives the possibility of not being punished, which can mobilize the enthusiasm of judges to reason in their judgments. For example, if the family members are not satisfied with the reasoning and go to public complaints and proposals administration. After investigation, we find out that the judge did not do anything wrong in the reasoning or made very small mistakes which can be corrected. We cannot hold the judge accountable. With the safeguard mechanism, those judges who are afraid of making mistakes can freely express their opinions, the quantity and quality of reasoning must have improved a lot. Because this mechanism is aimed at freeing the judges from worries about being punished for not particularly appropriate reasoning. Finally, with all the relevant judicial system, the efficiency and the quality of reasoning in judgments can increase day by day.

5. Conclusion

In order to improve the reasoning of family related judgments, there is a need for further research on the reasoning theories. However, the academic research seemed to be too independent from the world of judicial practice in the past. As a result, it is difficult to apply the latest theoretical findings to judge's daily reasoning work. Therefore, we should focus more on the applied research. Summarizing the problems from the judicial practice and searching for a

suitable theory to guide the reasoning. Otherwise the academic world will build castles in the air. The judicial practice world would become more conservative.

The reasoning in the judgments is a massive question. We can't accomplish the whole task at one stroke. It is easy to summarize the reasoning in the judicial system. However, the judicial system is like a precise machine. If we fix only one part, other parts may have a butterfly effect. Therefore, we cannot simply copy the experience of other countries. There is a Chinese saying that to the south of the Huaihe River grow oranges, while to the north grow bitter oranges. This means that if we transplant systems, the result may not be worthwhile because the base is not the same between different countries. We should carefully make proposals on the basis of in-depth practical research. Only in this way can we build the most suitable judicial system for ourselves.

President Xi Jinping stressed that, the people's courts must strive to make the people feel fair and just in every judicial case. This is also the requirement for the reasoning of family related judgments. The aim of the reasoning part of the judgments is to reason to the public, to express the disputed issues in the cases to everyone. If the parties are satisfied in every family related case, the society will have a good atmosphere. In this way, we can find a Chinese-style path to modernize the rule of law.

Acknowledgments

This thesis is the result of the 2022 Applied Jurisprudence Theory Research Project of the Supreme People's Court of the People's Republic of China, Research on the Problems of Enhancing the Quality of Judgments (Project No. 2022YF02).

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