

Research on the Application of the Principle of “Most Beneficial to Minor Children” in Dependency Disputes

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Abstract: In recent years, the protection of minors rights and interests is becoming more and more important. Our country's Civil Code stipulates the "principle of the best interest of the minor child" in the clause on maintenance disputes (namely Article 1084). However, due to the varying considerations, the rigid application of the law, and the neglect of the wishes of the minor children, this principle has not been effectively implemented in judicial practice. This article introduces two typical cases, raises the aforementioned issues and provides a detailed analysis of the reasons, briefly conducting a legal analysis of this principle. It also categorically discusses the provisions of Article 1084 of the Civil Code of our country. Finally, based on the advanced experiences at home and abroad, this article analyzes how to coordinate the application of the "principle of the best interest of the minor child" in maintenance disputes, in order to safeguard the actual interests of the minor children.

Keywords: Support Dispute; The Most Favorable Principle for Minor Children; Protection of Rights and Interests

1. Introduction

Relevant data show that the number of cases of protecting the rights and interests of minors has been increasing in recent years, generally showing an upward trend. Support dispute, that is, how to determine the ownership of the custody right of minor children, is more important and prominent because it is closely related to the particularity, complexity and difficulty of the interest protection of minor children.

The dependency dispute clause of our Civil Code (Article 1084) stipulates this, making it clear that the principle of "the most beneficial for minor children" is the fundamental compliance of the judgment. However, due to

the "best benefit principle for minor children" is not in place in the judicial implementation, some judgments in such cases sometimes damage the practical interests of minor children, which is extremely detrimental to the subsequent growth of children.

2. Typical Cases and Questions Are Raised

2.1 Typical Cases

2.1.1 Case 1: raising dispute case between Li and Jia 1

Li (female) and Jia 1 (male) married a son Jia 3, adult; a daughter Jia 2, has reached 8 years old. The two parties have been married for more than 20 years, and have repeatedly appealed to court for marriage and family disputes. Married daughter Jia Mou 2 after the birth of life and study has been taken care of by Li Mou, Jia Mou more than 1 years cheating, and Li Mou feelings breakdown. Jia 1 gave birth to a son with a third party in 2016. Jia 1 was sentenced to six months of detention for bigamy. Jia Mou 2 by the court of second instance inquiry, said willing to live together with Li Mou.

The first instance court ruled that the daughter Jia 2 lived with Jia 1. The first-instance court believed that Li Mou in the trial admitted that he had no source of income, married daughter Jia Mou 2 with Jia Mou 1 life is more appropriate.

The court of second instance changed the marriage daughter Jia 2 with Li life. The court of second instance held that after the divorce of the couple, the support of the minor children should be conducive to the growth of the dependant. In this case, Jia 1 lived with a third party in the name of husband and wife during the marriage, and the effective judgment of the Peoples Court of Linghai City, Liaoning Province (2021) Criminal judgment No.49 of Liao 0781 sentence is as follows: "The defendant Jia 1 committed the crime of bigamy and was sentenced to detention for six

months." Unable to fulfill the obligation of raising the two sides of the marriage Jia 2, and the two sides of the marriage Jia 2 clearly willing to live with Li, Jia 1 has children with the other party. In order to facilitate the growth of minor Jia 2 in the future, it should be appropriate by Li and Jia 2.

2.1.2 Case 2: raising dispute between Li and Chen

Li mou (female) and Chen 1 (male) met in 2015, the rural customs held the engagement ceremony, without marriage registration began to cohabitation, after the birth of illegitimate children Chen 2. At the end of 2021, the two sides began to live apart, and Chen 2 lived with Li, and now Li registered his marriage with others and was pregnant. On August 24, 2022, Chen 1 wanted to take Chen 2 on the grounds of Chen 2 overnight night, after that, Li repeatedly asked to video call with Chen 2, Chen 1 did not cooperate, and Li WeChat shielding, to hide the minor children for custody, On September 2, 2022, Li filed a lawsuit. The court found that Li did not work at present, Chen has a relatively stable source of income.

The first-instance court ruled that the illegitimate child Chen 2 should be raised by Chen 1. The court of first instance held that although the cohabitation relationship between Li and Chen 1 is not protected by law, both parties as parents have the right and obligation to bring up their minor children. For the raising of the daughter Chen 2, it should be determined from the healthy growth of children's body and mind, and the protection of the legitimate rights and interests of children, combined with the upbringing ability and conditions of both parents. Given li mou married with others now pregnant, after birth to illegitimate female XXL 2 life, education is difficult to care, now without the actual situation, and unmarried female XXL 2 now with XXL 1 life, if change the living environment will not be conducive to the healthy growth, XXL 1 existing relatively stable source of income, and no marriage and other children, in raising conditions significantly better than li mou, so illegitimate female Chen 2 should be responsible for XXL 1 is appropriate. (After the second search of the second instance judgment on the Chinese judgment documents online, I do not know whether the parties appealed.)

2.2 Case Analysis and Problem Raising

In case 1, the main basis of the court of the marriage was the economic conditions of both parties. Only considering the economic situation of both parents, the practice of awarding to the other party just because Li has no source of income is obviously inappropriate. In this case, the married daughter, Jia, had reached 8 years old, and the court made a judgment without asking Jias wishes, which violated the provisions of Article 1084 of the Civil Code. The verdict did not take into account Jias suspicion of bigamy and having children with a third party, and failed to put the best interests of the minor children first. If other factors, Li is more suitable for raising Jia 2, even if Li has no source of income, Li can also be given an appropriate time to find a job, by Jia 1 first bear most of the maintenance. Therefore, in the second trial, the judge considering jia 1 committed bigamy, was sentenced to criminal detention for six months, unable to fulfill the obligation of raising marriage female Gu Mou 2, and jia 1 has children with a third party, and li mou has found a job, after asking jia 2 will, it made it clear that willing to live with li mou, according to the most conducive to minor children principle, commuted marriage female Gu Mou 2 with li mou life.

In case 2, for the ownership of the custody of Chen 2 born out of marriage, the judgment factors of the first-instance court include Li registered marriage with others, Li is not working, and Chen 2 is living with Chen 1, so it was decided that Chen 2 was raised by Chen 1. But the author does not fully agree with the verdict, the first-instance judgment ignored the XXL 1 may exist domestic violence, and "XXL 2 now with XXL 1 life" the fact that the present situation, is 1 XXL citing want to XXL 2 take the night for XXL 2 from li, after repeatedly refused to li mou video call request, and li mou WeChat shield, to hide the minor children. In this case, at the end of 2021, after the two parties began to separate, Chen 2 lived with Li. On August 24, 2022, Chen 2 took Chen 1 away. By the day when the judgment was made, Chen 2 lived with Chen 1 for only one month. The court can not apply the law mechanically, only to see the result of "Chen 2 now live with Chen 1", and ignore the cause of this situation. Although Li has no job, his

in-law loves Chen 2, and has the willingness and ability to help Chen 2. Considering multiple factors, according to the principle of being most beneficial to minor children, the author thinks that Li is more suitable for raising Chen 2.

In case 2, there are many and more similar cases in real life. The "Purple Ribbon mother" refers to a group of mothers who have no contact with their children, with a large number but a weak voice. In order to gain strong support in the fight for custody, one couple (often the man) will forcibly take the child away and hide from the partner, and cut off the child from the other in order to create the established fact of a "long life term."

The above two typical cases are reflected in the judicial practice, the court in dealing with minor children custody cases, did not really to "the most beneficial to minor children principle" as the most important factors, lead to this kind of case sometimes damage the practical interests of minors, for the future growth of minor children is very bad. Through the analysis of the above case, can be found that the judge in that "most beneficial to the minor children" considerations have different considerations, some decisions too seriously both parents of the economic factors, the judge rigid use of the law, and the neglect of the minor children will, lead to the principle of judicial implementation does not reach the designated position, often appear with the phenomenon of different sentence. Therefore, how to better apply the "most beneficial to minor children" so as to protect the practical interests of minor children is an important issue in the current judicial practice, which is worth our in-depth study and discussion.[1]

3. Legal Analysis of "the Principle of being most Beneficial to Minor Children"

3.1 Connotation of "the Principle of being most Beneficial to Minor Children"

The "the principle of being most beneficial to minor children" is a localized expression of "the principle of maximizing childrens interests" based on Chinas national conditions and legal cultural tradition. As early as 1959, the Declaration of the Rights of the Child put forward the "principle of the maximization of childrens interests", which defined the purpose and scope of the best interests of children.

Later, the 1989 Convention of the United Nations on the Convention on the Rights of the Child reaffirmed the principle of maximizing the interests of the child, which has increasingly become a guiding principle for the protection of childrens rights on the international scope.

In China, the principle of "most beneficial to minor children" clearly stipulates that in the Civil Code (Article 1084), it not only follows the core concept and content of "the principle of maximizing the interests of children", but also has certain Chinese characteristics. This principle is directly from the perspective of literary interpretation, that is, centered on the interests of minor children. From the perspective of academic interpretation, some scholars in China believe that the connotation of this principle is the organic integration of the interests of minor children and the greatest interests of minor children. The author agrees with this point of view, "the interests of minor children first" refers to the characteristics of the physical and mental development of minors, compared with the interests of adults, protection and special protection; "the best interests of minor children" reflects the concept of minors is the subject, the protection of the development interests, including privacy and personal information, to adapt to the laws and characteristics of the physical and mental health development of minor children, listen to the opinions of minor children.[2]

3.2 Article 1084 of the Civil Code of China

In order to minimize the harm of minor children in the dispute of custody, Article 1084 of the Civil Code of China defines the principle of "most beneficial to minor children" and makes basic provisions on the ownership of custody of minor children.

The article reads: " After divorce, children under the age of two shall be raised directly by their mothers. If a child has reached the age of two and the parents fail to agree on the upbringing issue, the peoples court shall make a judgment according to the specific circumstances of both parties and in accordance with the principle of being most in favor of the minor child. If the child has reached the age of eight, his true wishes shall be respected." in this regard:

3.2.1 Children who are under two years old
Children under the age of two shall be brought

up by their mothers. Infants under two years of age are directly breastfeeding and raised by the mother, which can promote the growth and development of infants, and establish a good relationship between mother and child. Therefore, this is essentially the requirement of "the most beneficial to minor children".

Accordingly, when the mother is not suitable to bring up, the father may also request the child directly; or the parents agree that the child under the age of two shall be brought directly up by the father/foster, And have no adverse effect on the healthy growth of the children, may be brought up by the father.

3.2.2 Children who are over two years old

For minor children who have reached the age of two, both parents shall first negotiate on the issue of upbringing. On the premise that it is conducive to the protection of the interests of the minor children, both parents may agree to directly bring up the children in turn.

If the parents fail to negotiate, the peoples court shall, according to the specific conditions of both parties, comprehensively measure multiple factors and make a judgment according to the principle of being most beneficial to the minor children. If both parents require to directly support the children, one party has the priority conditions stipulated in Article 46 and Article 47 of the Marriage and Family Interpretation (I), including one party has undergone sterilization surgery and the child lives with one party for a long time, etc., the court may give priority.

3.2.3 Children who have reached eight years old

Has eight minor children of age, is also the first by both parents to negotiate, negotiation fails, by the peoples court in accordance with the principle of the most favorable minor children, however, whether parents consultation, or court decision, should respect the true will of minor children, respect the personal dignity of minor children, this is essentially "most beneficial to minor children principle" requirement. Since minors over the age of eight have the corresponding capacity to express their true wishes, the future life of the raised children is determined without knowing whether they are really willing to follow their father or their mothers, which may violate the original intention of realizing the best interests of the minor children.

4. In Chinas Judicial Practice, the Implementation of the Principle of Minor Children is not in Place

4.1 Judges shall Have Different Considerations when Applying the Principles

In addition to article 1084 of the civil code, article 4 of the protection of minors, and the marriage and family explanation (a) article 46 is the provisions of the principle, but there is no clear disputes in the dispute of the principle of specific measures, there is no clear measure of order and weight, the judge discretion is larger, in the process of judicial easy subjective, different regional judge, even the same judge at different time to apply the principle of considerations will be different.[3] It is precisely because of this, in the current judicial practice, often appear in the same case of different judgment phenomenon. At the same time, the author found that there are several prominent problems in the factors that judges consider when determining the ownership of custody:

4.1.1 Too much emphasis on economic factors

The above two typical cases reflect the problem, especially in case 1, the court of first instance even only for mother party no economic source, the child to the father, even if the father was sentenced, even if the childs true will is to follow the mother life, the sentence is undoubtedly against the principle of "most beneficial to minor children".[4]

Indeed, foster people good economic ability to meet the childrens material life, but in the process of the healthy growth of minor children, in addition to the material life, and spiritual life, to avoid heavy material light spiritual raising consciousness, can not the economic factors as the only or primary considerations, should also consider the children psychological emotional belonging, children habit life environment, for childrens company and education, etc. Too much attention to economic factors is likely to be contrary to the original intention of the judges judgment, and is not conducive to the practical interests of minor children.

4.1.2 The concept of "parental standard" is deeply rooted in peoples hearts

The concept of "parental standard" puts the interests of parents first. Because of the possibility of harming the interests of the

minor children, it should be abandoned. However, due to the influence of Chinese traditional ideas, the concept of "parent-standard" is deeply rooted in peoples hearts. For example, Chinas Interpretation of Marriage and Family (1) Article 46 stipulates the priority of custody, including "one party has undergone sterilization surgery or fertility for other reasons", "one party has no other children, while the other party has other children", such provisions reflect the idea of "parent standard". In case 2 above, one of the considerations that the court awarded the child to the man was that the man had no other children and the woman was pregnant. However, is such a regulation really reasonable? From the perspective of the parents, both the men and the women in case 2 were still young. Although the woman was pregnant at the time of the decision, the man only had no other children at the time of the court decision, and he was highly likely to develop a new relationship after the court decision and have other children. From childrens point of view, the companionship of siblings is also likely to be more conducive to the healthy growth of minor children.

In Britain, with the development of social, political economy and the spread of humanistic thoughts in the middle and late 16th century, the concept of family changed and paid more attention to the interests of children. The first article of the Child Law adopted in 1989 puts forward the principle of the best interests of children, and lists the judges to determine the ownership of custody of the minor children, including: 1) the emotion and will of the children; 2) the material, spiritual and educational conditions of the children; 3)the sex and age of the children;4)the influence of environmental change on the children; 5)the court considers the ability of both parents or other third parties to meet the needs of the children; 6) the scope of authority to safeguard the best interests of the children in litigation. This article stipulates that each factor listed in the article is considered from the perspective of children, which to a great extent reflects the consciousness of "child standard". Chinese judges should abandon the concept of "parental standard" when deciding the ownership of custody, and can refer to the above factors of British judges.

In addition, when there are multiple children, the judges in practice generally tend to judge that the children should be raised by their parents respectively, which also reflects the concept of "parental standard" to some extent. Brothers and sisters growing up together are forced to live separately and separate from their loved ones, which often causes deeper harm to their minor children.

4.2 Judge Application of the Law

The court decision in case 2 above reflects the judges rigid application of the law. Due to the marriage and family explanation (a) "stipulated in article 46" children with a party life longer "party priority custody, in real life is the man to the strong support for custody, the child away from the woman, and cut off the child with the woman, in order to make" long life " established facts, and the court in the judgment sometimes rigid applicable law, that the fact, and not to investigate the reasons behind the child directly to the man, but obvious this practice not only hurt the woman, but also may cause indelible adverse effects on the child.[5]

As the saying goes, the law is dead, but people are alive. The judge should judge according to the specific situation of the case and life experience, see the essence through the phenomenon, flexibly use the law, actively collect and investigate the real situation of the case, and follow the original intention of "most beneficial to minor children" and make a judgment. Therefore, the failure of the judge to correctly exercise the discretionary power and the rigid application of the law is also an important reason for the failure of "the principle of minor children" in the judicial implementation.

4.3 To Ignore the True Will of the Minor Children

In judicial practice, there is not a few phenomenon of ignoring the true will of minor children. It can be seen that the right of opinion of minor children has not been fully respected, which is also an important reason for the judicial implementation of the principle of minor children, which is not in place.

According to the author understands, outside almost every country, in raising dispute attaches great importance to the will of the children, for example: the British created a

special appointment system, the American judge will communicate with minor children, German judges will entrust juvenile bureau or other childrens rights and interests protection agency to listen to the opinions of their children, the French judge will arrange according to the choice of children to listen to the opinions of their children or inform minor children it can choose aid lawyers instead of their will, etc.

Article 1084 of Chinas Civil Code also stipulates that "for children who have reached the age of eight years of age, their true wishes shall be respected". Has reached the full year of age eight minors is still a limited capacity for civil conduct, but can engage in civil activities with its age, intelligence, because custody ownership involves the practical interests of minor children, has the full eight years of life minor children have the ability is necessary to express their ideas, the court should also respect the true will. The minor children in the above case 1 were over eight years old, but the first instance judge ignored the understanding of the childs real thoughts, and did not show the willingness to respect the children in the judgment.[6]

Law in our country is not specified, the judge if not respect the minor children real will have what consequences, there is no specific provision, the judge should how and how much respect the real will of minor children, and subject to different individual growth environment and psychological development of maturity, minor children in different choice of different periods and circumstances, the real will difficult to explore, which leads to the provisions of article 1084 of the "civil code" formal surface, to carry out the difficult.

In addition, not only when the court judgment, even when the parents negotiate the ownership of custody, should also pay attention to the true will of the minor children, can not ignore the idea of the children, can not be the wishes of the children to be directly attached to the agreement of the parents. In judicial practice, when parents agree on the ownership of custody, judges often do not take the initiative to consult the opinions of minor children.

4.4 Lack of Procedural Guarantee

In recent years, the number of cases in Our country is huge and rising rapidly. Because the custody disputes are family disputes, they are

more personal and emotional than other ordinary civil cases. Therefore, the ordinary litigation procedures are difficult to meet the needs of maximizing the interests of minor children. In practice, although some courts have made some meaningful explorations in the field of family cases, the exploration intensity is not strong and the scope is small. In addition, due to the particularity of the identity of minor children, the lack of the subject of litigation and the lack of special agents in procedural law is also the reason for the failure of the principle of minor children in the judicial implementation:

4.4.1 Lack of status as the subject of litigation for minor children

Raising dispute judgment and the interests of the parents and the interests of the children are closely related, the interests of the parents and the interests of the minor children is not completely consistent, both parents are the legal litigation subject, and minor children as the direct stakeholders of the verdict, should also have the subject qualification, but usually only as an object passive accept the verdict. The lack of subject qualification of minor children leads to their inability to strive for and safeguard their own interests in litigation, which obviously violates the principle of "most beneficial to minor children".

4.4.2 Absence of special agents AD litem for minor children

In the case that the appeal right of minor children can be exercised, it is also necessary to guarantee their normal, reasonable and effective expression of demands. And minor children as no litigation capacity, generally by the parents as legal guardian, safeguard its interests, but in raising disputes parents are likely to stand in the opposite of the interests of minor children, and the judge as a neutral judge, unable to act as the interests of minor children, appeal expression. Therefore, in the dispute of custody, there should be the special litigation agent of the minor children, who exercises the litigation rights and conducts the litigation activities on behalf of the minor children.

5. The Coordination and Application of the Principle of "Most Beneficial to Minor Children" in Custody Disputes

5.1 Factors to be Judges to Consider when

Applying the Principles

Chinese judges should uphold the consciousness of "child standard" when deciding the ownership of custody, put their interests in the first place and consider them from the perspective of children. On the basis of absorbing foreign advanced experience and China's current judicial interpretation, combined with China's basic national conditions and specific cases, the author believes that judges can consider according to the degree of severity and positive and negative factors:

5.1.1 Affirmation factors (from heavy to light order)

(1) The true wishes of the minor children.

The corresponding age and cognitive ability of different individuals should be combined: for minor children over the age of eight, "may" should be respected; for children under the age of eight, "may" should be respected.

(2) Relationship between minor children and their parents, compatriots and siblings and other family members.

Specifically include: first, in addition to the situation that should not live with the mother, the children under the age of two should be raised by the mother. Second, when there are multiple children, the brothers and sisters of the principle. Third, the degree of attachment of minor children to their grandparents and maternal grandparents is also an important factor to consider.

(3) The ability of parents to meet the needs of their minor children (including emotional needs and material needs).

Emotional needs are parents care and care of their children, the sense of familiarity and security of their children, etc. Material needs are the children's living conditions, educational conditions, etc.

(4) Change the impact of the existing environment on minor children.

Not simply and mechanically on the grounds of maintaining the status quo, but to comprehensively consider the environmental conditions provided by the parents and the adaptability of the minor children to the environment, to judge the impact on the minor children.

(5) The possibility of collaboration between parents in raising their children.

In addition to "separate support", there are also forms of "rotation" support. When there is a

high possibility of cooperation between the parents and it is beneficial to the minor children, both parties can be judged to "take turns to raise" the children, so that the children can get a relatively balanced company from their parents in the process of growing up.

(6) Other factors that benefit the minor children.

5.1.2 Negative factors (from heavy to light order)

(1) Minors have suffered or are likely to suffer domestic violence, sexual assault and other injuries that are not conducive to healthy growth.

(2) Whether parents have bad habits that affect the healthy growth of their children (taking drugs, gambling, drinking, etc.), whether parents have incurable infectious diseases or other serious diseases.

(3) Whether parents have their children's spiritual, spiritual harm, such as ignoring their children, abusing their children without justifiable reasons.

(4) Other factors that are detrimental to the healthy growth of minor children.

5.2 Fully Respect the True Wishes of the Minor Children

The true will of minor children is a very important factor for the judge in determining the ownership of custody. Chinese judges can learn from some appropriate practices of countries, and protect the opinions and expression of minor children: first, the author thinks, different individual growth environment, different degree of psychological development, expression ability is different, the legal "eight" boundary line does not represent the appropriate age of all children, because the true will of minor children is very important, for the age of eight, "should" respect the will; and for children under eight, the judge should "ask" the will, then according to the specific situation of the case, decide whether to listen, and not apply the law. Second, minor children may have different choices in different periods and in different situations. Therefore, the practice of Germany can be used for reference. Judges should listen to the opinions of minor children more than once, and should listen again after each period of time, and follow the principle of "face to face listening". Third, both Germany and France have introduced third parties to help

their children express their wishes. Chinese judges can also learn from this method. When their children cannot or are inconvenient to express their wishes, third-party professionals can help the judges to listen to their wishes or help their children to express their wishes. fourth, Hearing of the true wishes of the minor children shall be reflected in the judgment documents; if otherwise, he shall also state the reasons in the judgment documents. However, if the judge has not even asked him about the wishes of the minor children throughout the case, the judge should be held accountable according to the relevant regulations. Fifth, even when the parents reach the ownership of custody, the judge should take the initiative to consult the opinions of the minor children. Sixth, when asking the wishes of minor children, they shall not induce or force them to make statements, try to make them free from the interference and influence of their parents, and if necessary, they can invite child psychological counselors, school teachers and other teachers to accompany them.[7]

5.3 The Family Court may Take Special Measures

Because family cases are personal, property, emotion and privacy, they are more complicated than ordinary cases. Many countries outside the region have set up family courts to hear cases related to family affairs such as support disputes, such as Britain, Germany, France, Japan, etc.

In fact, many courts in China have already had a practice. For example, the Peoples Court of Fangcheng County, Nanyang City, Henan Province, the Peoples Court of Jiawang District, Xuzhou City, Jiangsu Province and other courts have set up "family courts" to specialize in family cases, and the facts have proved that the effect is quite good.[8]

Based on the particularity of family cases, the author puts forward the following measures: First, the court should pay more attention to the mediation procedure and set up a special family mediation center. Japan has set up special "family mediation procedures" for family cases. The Wenling Peoples Court of Taizhou City, Zhejiang Province, where the author previously practiced, now plans to set up a marriage and family mediation center to change the trial mode of marriage and family cases. Because for the minor children, the

feelings of the parents to get back together, no longer quarrel and divorce, have a complete family, is the best interest. Second, special investigators for family affairs, judges flexibly use the law. The UK has set up family investigators and relies on public authorities to help children. Judges in the United States and France also ask professionals to investigate the specific circumstances of their families and issue investigation reports to provide guidance for court decisions. Chinese judges can learn from this by collecting the family information of the parties through family investigators and allowing them to have a direct dialogue with their minor children. The investigation report issued by family investigators can be used as a reference for the judges. Third, family judges should take the initiative to substantially review the terms of the support agreement between the parents. Judges in the United States, The United Kingdom and Taiwan have the right to intervene, and judges have the right to agree with both parents The child support agreement shall be reviewed to ensure the interests of the children. Chinese judges can learn from this and take the initiative to review the terms of the support agreement. If the agreement does harm the interests of the children, they can inform the parents to provide evidence on the content of the agreement or reach a new agreement. If the evidence can not be provided or a new agreement can not be reached, the judge can make a judgment to safeguard the interests of the children. Fourth, introduce the mechanism of psychological counseling. Minor children in the parents divorce litigation will be affected, the judges psychological professional ability is limited, therefore, the judge should coordinate with psychology professor or child psychological consultant, in every family case do focus on the psychological change of minor children, timely provide psychological counseling, the maximum protection of minor childrens mental health

5.4 Ensure the Implementation of the Principle of "Most Beneficial to Minor Children"

Based on the particularity of family cases, it is necessary to explore the establishment of special procedures for family affairs, and ensure the implementation of "the principle of being most beneficial to minor children" in the

procedures. Mainly include: first, judges should pay attention to the protection of the personal information and privacy of minor children in the process of hearing cases. Second, minors who guarantee their interesting ability to participate in litigation. The Japanese Civil Code stipulates that, when the interests of the minor child are violated, the court may change the dependant according to the request of the child. [9] In Britain, judges also protect the right of minors to participate in litigation, allowing them to voluntarily participate in family trials. Chinese judges can learn from this, refer to the provisions of minors opinions, and take "eight years old" as the boundary age, allowing minor children with interesting abilities to participate in litigation and make appeals. [10] Third, to provide special agents AD litem for minors. Many countries outside the region have relevant regulations in this regard. For example, the UK has set up a "guardian AD litem" system, the United States has established a "childrens interest agent", Germany has established the "childrens interest protector" system, and Japan has set up a "special agent AD litem" system. Some district courts in China have also started the trial trial and achieved results. [11] Therefore, judges in China can learn from it, when the interests of parents may conflict with the interests of minor children Or when the child makes a request, the government or social welfare institutions may provide special funds, and the judge shall select a special agent AD litem for the minor children from among the lawyers who understand the childs psychology. The agent shall always stand in the position of the minor child, investigate the child, listen to his true opinions and defend his rights.[12]

6. Conclusion

To sum up, in order to ensure the effective application of the principle of "most beneficial to minor children" in support disputes, the author combines the external experience and practical cases to put forward the positive and negative factors that judges should consider when applying the principle, which fully embodies the consciousness of "child standard". At the same time, the judge should take measures to protect the right of opinion and expression, and fully respect the true wishes of the minor children. In addition, in family courts, judges should pay more

attention to mediation, collect case information through family investigators, and provide timely psychological counseling for minor children. When parents reach the terms of the support agreement, judges should also take the initiative to intervene in the review. Finally, in terms of procedure, minors with interesting ability should be guaranteed to participate in litigation, and special litigation agents should be provided to reflect the rights subject status of minors, and truly achieve the priority and maximum interests of minor children.

Minors are the future of the country and the nation, and the judicial application of the principle of "most beneficial to minor children" is not only related to the healthy growth of children, but also related to the development and destiny of the country. I firmly believe that the protection of minors rights and interests will be paid more and more attention, and we will all have a bright future.

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