

SUMMARY OF THE DOCTORAL DISSERTATION

"Representation of a minor in inheritance matters"

The subject of interest of the dissertation is civil non-litigious proceedings, or more precisely the second largest category¹ of cases examined in this mode, those are inheritance cases and the position held by minors in succession proceedings. The purpose of the study was to determine the sources and scope of rights of entities that may act as a legal representative of the underage as part of succession and the broadly understood consequences of possible deficiencies in fulfilling their obligations as a representative. In addition, the author, based on the conducted research combined with theoretical and legal considerations, identified problems that are revealed during the resolution of such cases. The above constituted the basis for further considerations and formulation of *de lege ferenda* conclusions. On the other hand, the final effect of the work is the answer to the question whether the minor is properly represented in succession proceedings and whether this representation can be considered consistent with the broadly understood good of the minor, and at the same time corresponding to international recommendations, guidelines and legislation.

The considerations regarding the title problem refer to the current legal status as of March 1, 2020. They were discussed in five chapters, in which a broad analysis of the provisions of national and international law, case law of the Supreme Court, common courts and views of representatives of the doctrine was conducted. In addition, the author presented and discussed the conclusions from the file research carried out for the purposes of this study which, although not having the character of statistical surveys, allowed to identify the problems that appear during the resolution of such cases and build the basis for further consideration and formulation of conclusions *de lege ferenda* .

Having regard to the multitude of proceedings included in the catalogue of inheritance cases, in order to guarantee greater transparency and insight of the study, consideration of the work focuses primarily on matters related to: ascertainment of inheritance acquisition, inheritance division, evasion of the legal consequences of not making a declaration, submitting a declaration of how to accept or decline rejection. In addition, the following were thoroughly analysed: guardianship proceedings for a consent to carry out activities exceeding the ordinary

¹ W. Siedlecki, Z. Świeboda, *Postępowanie nieprocesowe*, Warszawa 2001, p. 207

management of the minor's assets or for consent to carry out the so-called important matters and to appoint a guardian to represent the minor. Juxtaposing the abovementioned inheritance proceedings with the indicated guardianship proceedings allowed to identify the most significant problems arising in the context of representing a minor in inheritance cases. The results of the analysis thus marked also allowed for answering research questions posed in this work.

The concept of "minor", like the term "child", although used repeatedly in legislation, has neither a national nor international legal definition. The legislator uses many terms to describe a person who is not an adult. Determining the upper age limit of a minor does not raise greater problems. This issue was regulated differently only under the criminal law. The subject of the broad and still unresolved discussion is the determination of the beginning moment of the child's life. Therefore, for the purposes of the dissertation, it became necessary to define the concept of "a minor" - as was done in chapter one.

A proper understanding of the role of a statutory representative towards a minor required the presentation of the evolution of the provisions of civil substantive law, family law and procedural law in matters related to the problem of child representation. The second chapter is devoted to considerations taking into account the last hundred years of Polish legislation.

The third chapter discusses issues related to the participation of a minor in inheritance proceedings, describing in detail the specifics of the proceedings for the confirmation of the acquisition of an inheritance, proceedings for the division of the inheritance and evasion of the legal effects of a declaration of will, which by their nature constitute the best background for discussing related issues with the representation of a minor in matters of succession. Therefore, the considerations of this dissertation are largely limited to research done against the background of regulations regarding the above mentioned cases. This chapter also compares for the first time theoretical considerations with the results of empirical studies relating to the position of a minor in the indicated categories of proceedings.

The next chapter defines of the concept of "representation" and presents the standards to be met by representation of minors in accordance with international regulations. In addition, entities that can act as the legal representative of a minor were identified. The source of their legitimacy, general assumptions about the manner of performing the representation by each entity, and statutory exclusions of statutory representation were discussed. Theoretical considerations were

once again compared with the results of empirical research, while making a critical assessment of how to exercise statutory representation in practice. The mechanism of representation of the minor's interests developed by the legislator, only in theory, seems to be properly refined. The picture was changed by the conducted file research. It revealed that the vast majority of minors² were represented in the analysed proceedings by parents³ whose mode of operation raises reservations. Circumstances such as the inactivity of the minor's representatives and a lack of interest in the proceedings come to the fore. Parents do not show any special evidence initiative, they rarely use the option of submitting pleadings. The key, however, is the far-reaching inconsistency of parents who decide to accept inheritance by a minor with the benefit of inventory, although they themselves previously rejected the inheritance⁴. Such a picture of proceedings in comparison with the content of parents' declarations made in cases of evading the legal consequences of the statement led to the formulation of a *de lege ferenda* request for the extension of the jurisdiction of the court conducting the inheritance case to the possibility of appointing an attorney ex officio even without the participant submitting an application in this subject.

In this chapter it was also noted that in inheritance proceedings the courts also fail to see the potential for conflicts of interest between a minor and his parent appearing in a dual role, i.e. as the legal representative and the participant. The consequence of such interpretation of Art. 98 § 2 and 3 of the Family and Guardianship Code is a small number of analysed cases in which there was an appointed guardian pursuant to Art. 99 of the Family and Guardianship Code as a statutory representative. In addition, it should be noted that the case studies conducted for the purposes of this dissertation relate to cases heard in the years 2008 - 2018, i.e. even before the amendment to Article 99 and the next Family and Guardianship Code regarding the requirements to be met by the guardian. However, their result, in the scope relating to guardian appointed for the minor to represent his rights in proceedings, confirms the validity of the amendment made.

Chapter Five refers in detail to the activities that statutory representatives are authorized to take on behalf of a minor in matters of succession. A distinction was made between the above for

² In total, 196 minors took part in all the analyzed cases, of which 174 were represented by their parents.

³ The number of children in whose name the legal guardian appeared in the case was so small that it was impossible to make any considerations based on it.

⁴ Of the 42 minors who became heirs, the parents of the 27 minors had previously rejected the inheritance.

activities exceeding and not exceeding the scope of ordinary management of the minor's assets. At the same time, guided by the results of empirical research, the author pointed out that proceedings for obtaining a permit from a guardianship court were conducted pursuant to Article 583 or Article 593 of the Civil Procedure Code are in fact fictitious. Pointing to irregularities in the actions of courts, and whereas the exercise of supervision by the guardianship authority over statutory representatives of minors has significant legal and practical value, a postulate *de lege ferenda* was formulated for constructing solutions that would force the guardianship court to become more familiar with the situation of the minor. It seems reasonable to oblige guardianship courts to commission an environmental interview as to the conditions in which the minor whose property is affected lives. In the case of evidentiary proceedings conducted by guardianship courts in cases of granting permission for rejection of an inheritance or acceptance of an inheritance, a postulate for obliging the courts to determine the actual composition of the estate shall be justified.

The above considerations made an introduction to the empirical study results-based description of the cases for authorization to carry out activities beyond the ordinary management of the minor's assets. In addition, a reference was made to the issue that has been a subject of a wide discussion, that is the impact of proceedings on granting a permit on the possibility of submitting a statement on behalf of a minor pursuant to Article 1015 § 1 of the Civil Code. The results of the conducted research show that, contrary to the views of the representatives of the doctrine and jurisprudence, the basic source of problems in this respect is the tardiness of statutory representatives, who, when applying for a permit too late, in fact prevent themselves from obtaining a permit from the guardianship authority in the time given in the Article 1015 § 1 of the Civil Code. The above justifies the postulate submitted in the paper about the need to instruct legal representatives of minors who are not professionals by the guardianship court, regarding the content of Article 1015 § 1 of the Civil Code and the need to make a statement on how to accept or reject the inheritance, if the guardianship court issues a decision granting the application for a permit.

A comprehensive analysis of the issue of representation of a minor in inheritance proceedings allowed the formulation of the indicated conclusions expressed at the end of each chapter. At the end of the work, summarising the above considerations, it was also emphasized that limiting the work to only the theoretical part would allow for a final, positive assessment of existing regulations and assuming that the interests of a minor in succession proceedings are currently

properly protected. The juxtaposition of theoretical assumptions contained in the provisions of substantive and procedural law with the results of empirical research allows, however, to identify significant problems arising in the context of the representation of minors in inheritance matters in practice, which change the overall positive assessment of statutory solutions. These problems are discussed in detail in this paper, becoming the basis for formulating *de lege ferenda* conclusions. They show the need for further changes in legislation that will be aimed at protecting the rights of minors. The considerations confirm the importance of file research for the development of law. This kind of control of the functioning of law in practice allows verification of the accuracy of introduced solutions and drawing appropriate conclusions for the future.