

Wrocław, 11th May 2017

The legal nature of an action to establish paternity

doctoral dissertation by mgr Justyna Jasińska

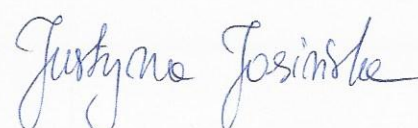
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Summary

Both the social and legal function of paternity are particularly important. The determination of the origin of the child is directly related to the right to know your origin which is an important element of the definition of the best interests of the child concept.

The subject of this Ph. D. dissertation is the legal nature of an action to establish paternity. This issue deserves particular attention as it is a matter of dispute arising in the doctrine. There have developed two positions regarding this issue according to which an action to establish paternity is described as setting or shaping action. The interpretive conflict outlined this way also refers to the legal nature of the judgment taking into account the action for paternity. Representatives of the doctrine that argue for the setting nature of the action concerned indicate that the judgment establishing paternity is of declarative nature. At the same time the second group presents the position that the determination of paternity as the action of shaping nature conditions the constitutive judgment creating its new legal status.

The content of the dissertation - except for the introduction and end - is divided into four chapters. Chapter 1 of this dissertation is mostly devoted to theoretical aspects, the general ways of determining the origin of the child. A detailed description of individual institutions, such as legal presumptions concerning paternity, denial of paternity and recognition of paternity and the way to dismiss it, indicate that it is not possible to equate them with the notion of paternity. Paternity is a completely separate institution and the use of the indicated concept within its global meaning that contains all the ways of determining the origin of the child bears the elements of an error. In addition, the included description allows to learn about the structures of creation and dismissing the legal relationship between the child and its father. Chapter 2 contains an analysis of strictly procedural issues. General considerations on the essence of the action, taking into account the objectives of an action to establish paternity, which allow to understand exactly what this doctrinal dispute



concerns. Legal types of actions cause the differences in the assessment of the legal nature of legal paternity, . The doctrine distinguishes three types, i.e.. an action for relief, to establish a right or a legal relationship and to shape a right or a legal relationship. Although the name of this paternity provides a basis to believe that the action is of setting nature, but contrary to the adopted name, it has been deducted that the position that action for the paternity is of a shaping nature is right. Chapter 3 of this dissertation is devoted to the course of proceedings for the determination of paternity in a dynamic approach. The information in it are theoretical and practical description of institutions, from the point of view of the objective which the judicial proceedings for determination of paternity is to serve. This chapter focuses on discrepancies between actions that determine paternity in relation to other civil proceedings. The author also focused on important evidence raised in actions to establish paternity. It was indicated that the high rank of DNA testing proves the role that biological fatherhood plays in determining legal paternity. The contents of Chapter 4 describe the nature of an action for a determination of paternity. In this respect, the author took into account the effects of the judgment specifying the origin, the relationship between the legal nature of proceedings, and the legal nature of the judgment and final assessment the legal nature of the proceedings to establish paternity.

The main thesis deducted in the dissertation is that an action for paternity is of shaping nature and the judgment that takes into account plaintiff's request is assessed in the constitutive category.

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