

SUMMARY

Key Words: guardianship, civil litigation, family disputes, protection of children's rights

Subject matter: Guardianship authorities as participants in the civil process.

Author: Motsuev Sheikh-Mansur Shamilyevich

Supervisor: dock.polit.sciences, kand. jus. sciences, associate professor of civil law and process G.V. Stankevich

The supervising organization: Legal Aid Center "Family", FE Abramenko G.I.

The relevance of the research topic The Russian Federation, both at the constitutional level (part 1, article 38, part 1, article 39 of the Constitution of the Russian Federation) and at the international level (part 1, 2, article 25 of the Universal Declaration of Human Rights) establishes child welfare and persons who are legally incompetent or partially capable. The main bodies implementing it are the guardianship and trusteeship bodies. One of the most important authorities protecting the rights of the child in Russia is the guardianship authority. The child is given the right to apply for protection of his violated rights to the guardianship and guardianship authorities, and upon reaching the age of 14 years to the court. The activities of the guardianship and trusteeship bodies are aimed at ensuring optimal living conditions for orphans and children left without parental care, as well as children who do not have normal living conditions, providing orphans in need, family forms of care, ensuring the protection of property and personal non property rights of minors. The law distinguishes categories of litigation, the consideration of which is necessarily carried out with the participation of guardianship and trusteeship bodies. Judicial protection is one of the direct areas of activity of the guardianship and trusteeship bodies, therefore, this work is devoted to the problems associated with the implementation of such protection. One of the problems seems to be the determination of the procedural nature of the participation of these bodies in the trial. In this regard, it is required to determine their procedural position in the civil process, the forms of participation and actions carried out by them in the framework of the trial.

The need to find a solution to the problems of legal regulation of the procedural status of guardianship and trusteeship bodies reflects the importance of conducting research in this area, which determined the topic of this study. The chosen topic is relevant and has not only theoretical, but also practical significance. The study of this problem will strengthen the guarantees for the protection of the rights and legitimate interests of children, as well as other persons in need of protection by the guardianship and guardianship authorities, improve the quality of consideration and resolution of civil cases by the courts, and improve legislation.

The purpose of the work: analysis of the procedural legislation governing the procedure for filing a lawsuit in a court of general jurisdiction and the identification of legal problems associated with this.

Objective: to identify the objectives and grounds for the participation of guardianship and trusteeship in the civil process; determine the procedural position and grounds for the participation of guardianship and trusteeship bodies in civil proceedings; to investigate the forms of participation of the guardianship and guardianship bodies in the civil process; to analyze the rights and obligations of guardianship authorities in civil proceedings.

The theoretical and practical significance of the research. The results can be used later in a scientific analysis of the problems of legal regulation of the institution of participation of guardianship and trusteeship bodies in the civil process and writing scientific articles related to these problems, as well as in the course of practical activities.

Results of the study:

1. Guardianship and trusteeship bodies are an indispensable element of the social and legal state, and their participation in the trial guarantees the protection of the rights and legitimate interests of children.
2. Analyzing the legislation governing the participation of guardianship and guardianship bodies in the civil process, as well as scientific literature on this issue, it should be noted that the task of

guardianship and trusteeship bodies is to protect each child in creating the conditions for the best realization of his rights and legitimate interests.

3. The participation of the guardianship and trusteeship authorities in the consideration of civil cases by the courts is impossible without justification, that is, such conditions under which the participation of the guardianship and trusteeship authorities in the civil process becomes possible or appropriate. Among these grounds are certain categories of cases, during the consideration of which the court necessarily involves the indicated bodies in the case.

4. The determination of the legal status of the guardianship and trusteeship body does not cause any particular difficulties for process scientists and does not cause discussion due to clarifications from higher courts. However, the judicial practice of courts of general jurisdiction, reflecting the prevalence of involving them as third parties that do not state independent claims, indicates a low level of court interaction as an element of the judicial system of the Russian Federation as a whole.

5. Guardianship and trusteeship bodies participate in the trial in two forms:

1) in the form of procedural plaintiffs, when they independently initiate proceedings in court in order to protect the rights and legitimate interests of children and other persons;

2) in the form of an authorized body of authority, when the court draws them to the case for the purpose of examining the child's place of residence, drawing up an inspection report and a conclusion on the case.

Recommendations:

1. To indicate the procedural position of the guardianship and trusteeship body in a civil proceeding, it is advisable to use only one concept - "an authorized body of state power", as it characterizes the person participating in the case as an independent person and does not allow him to "be mixed" with other participants civil proceedings, which have completely different procedural rights and obligations, as well as the purpose of participation in the trial.

2. In connection with the insufficient regulation of the procedural status of the guardianship and trusteeship bodies in a civil proceeding, we present it as appropriate to fix in part 1 of Article 47 of the Code of Civil Procedure of the Russian Federation the following: "In cases provided for by federal law, state bodies, local self-government bodies enter into a decision by the court of first instance a case on its own initiative or on the initiative of persons participating in the case as authorized bodies of authority, to give an opinion on the case in order to fulfill the duties assigned to them and protect the rights, freedoms and legitimate interests of other persons or the interests of the Russian Federation, constituent entities of the Russian Federation, municipal entities".

3. Supplement part 1 of article 78 of the IC of the Russian Federation with the upper paragraph of the following content: "In the event of a dispute related to the upbringing of children and in the absence of the possibility of the authorities of custody and guardianship to try on its parties, they have the right to go to court." Thus, the guardianship and trusteeship bodies will be able to fully realize their mediating potential and help the courts to save time.

4. To fix the following in part 2, article 78 of the IC of the Russian Federation: "The guardianship and trusteeship body is obliged to conduct an examination of the living conditions of the child and the person (s) both applying for his upbringing and the person (s) disputing the applicant's requirements, as well as present them to the court inspection acts and the general conclusion based on them on the merits of the dispute."