HOUSING RELATIONS BETWEEN PARENTS AND CHILDREN
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Abstract: *in this article the problem of housing relations between parents and their underage children is considered. Examples are given from court practice for 2012, 2014, 2015, including decisions of the Plenum of the Supreme Court of the Russian Federation. The legislative acts of the Russian Federation on this issue have been analyzed. The separate rights of underage children in the field of housing legislation are analyzed, cases of a minor removed from registration records. On the basis of the conducted research the problem of permission of housing relations between parents and their minor children is sued by the author.*
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Housing relations between parents and children are regulated by the norms of the Civil Code of the Russian Federation, the Family Code of the Russian Federation and the Housing Code of the Russian Federation.

Chapter 11 of the Family Code of the Russian Federation is devoted to the rights of underage children. Among the personal non-property rights, consisting in living in a family, in communicating with parents, in protection, in expressing one's opinion, the right to a name, patronymic and surname; the property rights are also defined - the child has the right to own the income received by him, the property received by him as a gift or by a way of inheritance, as well as to any other property acquired with the child's funds, is entitled to maintenance.[5]

Moreover, the Family law clearly delineates the property rights of children and parents, pointing out in the same article - a child does not have ownership rights to the property of parents, parents do not have ownership of the property of a child. And in the case of sharing property between parents, children can not claim a share, for example, in an apartment.

Consider the rights of minors who are not owners of a dwelling. When a child appears in the family, within a month, from the moment of his birth, the parents must issue him all the necessary documents, including the registration of the baby at his place of residence. According to the provisions of article 20 of the Civil Code of the Russian Federation, children under 14 live with their parents. This rule is mandatory and does not require the consent of the apartment owner or other citizens residing in the apartment.

The right of a child to stay in apartment with his parents is maintained until the parents change their address of residence and registration or the child does not reach the age of fourteen.

According to the general rule, acting on the part 4 of article 31 of the RF Legislative Code (LC) in the event of termination of family relations with the owner of housing, the right to use this dwelling space for the former family member of the owner of this dwelling space is not retained, unless otherwise established by owner's agreement with a former member of his family. This means that the former members of the owner's family lose the right to use the living quarters and must release it (part 1 of article 35 of the RF LC). In the reverse situation the owner of a dwelling is entitled to demand their eviction in court without providing another dwelling. From this it follows that the owner can eliminate such encumbrance of his apartment. To the former members of family of the owner of the housing are the persons the owner has terminated his family relations with. Under the termination of family relations between spouses should be understood the dissolution of marriage in the bodies of registration of acts of civil status, in court, the recognition of marriage invalid.The refusal of other persons to maintain a common economy with the owner of a dwelling, the lack of common household items, the lack of mutual support, etc., as well as departure to another place of residence, may indicate the termination of family relations with the owner of living premises, but should be evaluated in conjunction with other evidence submitted by the parties. The question of recognizing a person as a former member of the family of the owner of a dwelling in the event of dispute is decided by the court, taking into account the specific circumstances of each case. Moreover, taking into account the provisions of part 1 of article 31 of the LC of the RF, it should be borne in mind that since the management of a common economy between the owner of a housing and the person settled by him into a given dwelling premise is not a prerequisite for recognition this person as a family member of the owner of a dwelling, then the lack of common management of economy by the owner of a dwelling with the said person or the termination of their management of a common economy (for example, by mutual agreement) can not in itself testify to the termination of family relations with the owner of a housing [7].

This circumstance should be evaluated in conjunction with other evidence presented by the parties in the case.

Thus, at the request of the interested person (the owner or employer), through the court, a child may be recognized as having lost the right to use the apartment and withdraw from the registration record in the event that for a long time he does not live in this apartment, his parents do not participate in the payment of the content

housing, and the most important - if his parents have the opportunity to register a child at a different address. That is, in the presence of all the above circumstances, removal from the registration of a minor is possible.[8]

Here are some examples from practice:

Kotova T.A. petitioned Petukhova Y.V. and her minor son Petukhov M.A., ... year of birth, about termination of the right to use one-room apartment with a total area of 34 square meters, residential - 17.4 square meters, located at: ... region, ..., ...In support of the claim, she pointed out that she is the owner of this apartment after she purchase ditunder the sale contract of 2 June 1998. She, her son Kotov S.V. and daughter Petuhova Y.V. moved into the apartment. Since 2006 Petukhova Y.V. does not live in the disputed apartment, does not pay utility bills, got married, created her family, is not a member of the plaintiff's family. On May 20, 2010 Petukhova Y.V. without the consent of the plaintiff registered in the disputed apartment her minor son Petukhov M.A., who never entered the apartment, lives with his parents at different address.

By decision of Voscresenskiy Town Court of Moscow Region of January 27, 2011, the claim was partially satisfied. The defendants retained the right to use the residential premises at: ... region, ... until July 27, 2011, and from July 28, 2011 the right of Petukhova Y.V. and Petukhov M.A.to use the indicated dwelling is terminated, and they are subject to removal from the registration record. In order to meet the demands for recognition of minor Petukhov M.A. not acquired the right to use the living quarters.

The determination of the Judicial Board for Civil Cases of the Moscow Regional Court on April 14, 2011 on the decision of the first instance court was abolished, and a new decision on the refusal to Kotova T.A. was made in meeting the stated requirements.

In the supervisory complaint, the applicant Kotova T.A. raises the issue of the transfer of the complaint with the case for consideration in a court session of the Civil Chamber of the Supreme Court of the Russian Federation for the abolition of the ruling of the second instance court and the decision of the first instance court left unchanged.

Having checked the materials of the case and discussed the reasonableness of the supervisory complaint arguments, the Judicial Board for Civil Cases of the Supreme Court of the Russian Federation finds the complaint to be satisfied, as there are grounds for cancelling the judicial ruling in the order of supervision. The grounds for the cancellation or change of judicial decisions in the order of supervision are significant rule violations of substantive or procedural law that affected outcome of the case, without the elimination of which it is impossible to restore and protect violated rights, freedoms and legitimate interests, as well as protection of public interests guarding by law (article 387 of the Civil Procedure Code of the Russian Federation). The Judicial Board for Civil Cases of the Supreme Court of the Russian Federation concludes that in the present case of this nature a significant violation of substantive law was admitted by the second instance court, which was expressed in the following. As established by the court and is seen from the materials of the case, Kotova T. A. purchased the apartment under the contract of sale of June 2, 1998 at the address: ... a region, ... a district, ..., with a total area of 34 sq. m. meter, including residential - 17.4 square meters. On July 7, 1998 Kotova T.A. received a certificate of state registration of ownership of the apartment. At the time of the trial KotovaT.A., her son Kotov S.V., her daughter, the defendant in the case, Petukhova Y.V., ... of the year of birth, and the defendant's son Petukhov M. A., ... year of birth, were registered in the disputed apartment.The court of first instance, satisfying the lawsuit of Kotova T.A. on the termination of the right to use the disputed accommodation of Petukhova Y.V. and Petukhov M.A., proceeded from the conclusion that for this purpose there are statutory grounds, since the defendant ceased to be a member of the owner's family, so as Petukhova Y.V. does not live in a disputable living quarters since 2006, has created her family and left for her husband Petukhov A.Y., conduct a common economy with Tatyana Kotova., does not pay for communal payments, underagePetukhov M.A. was registered in the apartment without consent of Kotova T.A., and therefore, by virtue of part 1 and part 4 of art. 31 of the HC of the RF, neither Petukhova Y.V., nor her minor son are not family members of the owner Kotova T.A., and therefore, as former family members of the owner of the living housing, they have lost the right to use the living quarters. By refusal to Kotova T.A. in satisfying the claims to Petukhov M.A. on the recognition him as a person who did not acquire the right to use the living quarters (disputed apartment), the court of the first instance pointed out that Petukhov M.A., being a minor under the age of one year, could not exercise his rights independently and took actions aimed at acquiring the right to use of living accommodation and fulfillment of obligations arising from it, in accordance with art. 54of the Russian Federation has the right to live with parents and be brought up in the family. Abolishing the decision of the first instance court and adopting a new decision on the refusal to satisfy the claim for the termination of the right of Petukhova Y.V. and minor Petukhov M.A. to use the disputable housing, the court of the second instance concluded that the court of the first instance did not have grounds to terminate the right of Petukhova Y.V. to use the residential premises about which the dispute arose, because, based on the status of family relationship, children and parents can not be ex-members of the family and, within the meaning of part 1 and part 4 of art. 31 of the HC of the RF, children retain the right to use the living accommodation, owned by the parents, regardless of their common economy.

However, the Judicial Board for Civil Cases of the Supreme Court of the Russian Federation believes that it is impossible to agree with the conclusion of the second instance court, because it is based on the

misinterpretation and application of substantive law to the relations of the parties. According to part 1 of art. 31 of the LC of the RF the members of the housing owner family are the spouse residing together with the owner, as well as children and parents of the owner. In the event of termination of family relations with the owner of the housing, the right of the former family member of the owner of this dwelling space to use it is not preserved unless otherwise established by agreement between the owner and the former member of his family (part 4, article 31 of the RF LC).As a general rule, in accordance with part 4 of art. 31 of the LC of the RF in the event of termination of family relations with the owner of the living quarters the right to use this dwelling space for former family member of the owner of this accommodation is not preserved unless otherwise established by the owner's agreement with former member of his family. This means that the former members of the owner's family lose the right to use this housing and must release it (part 1, article 35 of the RF LC). The refusal to maintain a common economy of other persons with the dwelling owner, the lack of common household items with them, the lack of mutual support, etc., as well as departure to another place of residence, may indicate the termination of family relations with the owner of housing, but should be evaluated in conjunction with other evidence submitted by the parties.The question of recognizing a person as a former family member of the dwelling owner in the event of a dispute is decided by the court, taking into account the specific circumstances of each case. Moreover, taking into account the provisions of part 1 of article 31 of the LC of the RF, it should be borne in mind that since the management of common economy between the owner of housing and the person who has infiltrated it into a given dwelling premise is not a prerequisite for the recognition as a family member of the dwelling owner, the lack of management of the general economy by the owner of premise with the said person or the termination of their management of common economy (for example, by mutual agreement) can not in itself testify to termination of family relations with the owner of housing. This circumstance should be evaluated in conjunction with other evidence submitted by the parties in the case (article 67 of the Civil Procedure Code of the RF) (paragraph 13 of the Plenum Resolution of the Russian Federation Supreme Court of July 2, 2009 № 14 "On some issues that arose in judicial practice in the application of the Housing Code of the Russian Federation").

Based on the provisions content of the parts 1 and 4 art. 31 of the RF HC and the above explanations of the resolution of the Plenum of the Supreme Court of the Russian Federation on their application imply that family relations from the position of the RF HC can be terminated also between related persons.

The first instance court, resolving the dispute, found that Petukhova Y.V., accommodated in 1998, by the owner Kotova T.A., as a member of her family, did not reside in the disputed residential building since 2006 due to the departure to her spousePetukhov A.Y. in residential area at the address: ... the region, ... belonging to him on the right of ownership. She did not pay communal payments on the disputed apartment, did not communicate with her mother Kotova T.A. after departure. Minor Petukhov M.A. permanently resided in the apartment of his father Petukhov A.Y. and visited the children's city polyclinic at the place of residence, which follows from the conclusion of the Guardianship and Guardianship Agency of the Ministry of Education of Moscow Region for the Voskresenskiy Municipal District. Taking into account the established circumstances and norms of part 1 of art. 31 of the HC of the RF, the first instance court made a legitimate conclusion about termination of family relations between the plaintiff and the defendant. Since there was no agreement on the use of the disputed accommodation between the plaintiff and the defendant after their family relationship had been terminated, the right to use the disputed accommodation for Petukhova Y.V. and Petukhov M.A.was terminatedby the first instance court(on the basis of part 4 of art. 31 of the HC of the RF).

Proceeding from the foregoing, the Judicial Board for Civil Cases of the Supreme Court of the Russian Federation considers that the second instance court did not have legal grounds for canceling the decision of the first instance court and issuing a new decision on the refusal of the claim. In this regard, the determination of the Judicial Board of Civil Cases of the Moscow Regional Court of April 14, 2011 can not be considered as a legal one and it is subject to reversal while the decision of the first instancecourt was upheld.

The Judicial Board for Civil Cases of the Supreme Court of the Russian Federation, guided by art. 387, 388, 390 of the Civil Procedural Code of the Russian Federation, defined the following: determination of The Judicial Board for Civil Cases of the Supreme Court of the Russian Federation of February 28, 2012 № 4-B11-42. The court quashed the Judicial Board decision to refuse satisfying the claim, leaving the decision of the first instance court in force by which the claim for termination of the right to use the living quarters is partially satisfied, so as the conclusions of the second instance court are based on the misinterpretation and incorrect application of substantive law to relations of the parties.

Let's give an example of a similar case, when the owner of the apartment is a grandmother or grandfather and a minor is registered, can a grandmother or grandfather write such an underage grandson or granddaughter?

This case is not rare, but courts take different position each time here - again, you need to go to court through part 4 of article 31 of the RF LC (loss of family relations). In such cases it will be necessary to gather information about the parents place of registration, their property and housing situation, and that the child did not actually live in the apartment and never used it, and also to prove in court that child’s parents lost relative relationship with the grandparents, do not help with money and there is a conflict...

The Supreme Court of the Russian Federation recognized the decision of the first instance court as lawful to satisfy the grandmother's claim about the termination of the right to use the dwelling, cancelling registration at the apartment ofher grandson, who had never lived with her, after the death of his father, her son [2].

Let's give the opposite example from the court practice:

According to the decision of Krasnogorsk City Court of 15 January 2014 on the case № 2-117/14, the decision of the Judicial Board for Civil Cases of Moscow Regional Court of April 14, 2014 in case № 33-8038/2014) concluded that parents and children are not former members of a family.

The Plaintiff, Sh.O.A., being the owner of a controversial housing estate, instilled in her house an adult daughter with her husband and minor grandchildren. Having lived together for some time, it became obvious that conflict relations between the plaintiff and the defendants appeared and common management of the joint farm was completely absent. As the plaintiff stated in the court session: "the defendants do not take good care of her, they use physical and psychological violence, do not help anything, do not pay utility bills, do not give money to keep the house, joint living is absolutely impossible". The court of first instance recognized these facts as confirmed and stated in the decision of January 15, 2014: "Evaluating the testimony of witnesses, the court considers them reliable insofar as there are conflicting relations between the parties in the case, as these circumstances are confirmed by the parties themselves in explanation of the case" . At the same time, the conclusion of the Krasnogorsk city court that "... since the defendants are in kinship with to the plaintiff, son-in-law and grandchildren of the plaintiff, they can not be recognized as former members of the family of the owner of the dwelling ..." justified and lawful.

Refusing to satisfy the claim for termination of the defendants right to use the living quarters, eviction, removal the registration at the accommodation, the court proceeded from the fact that the defendants are members of the plaintiff's family because of kinship relations, and the conflicts that arose between them are not grounds for transferring the defendants to category of former family members.

The appellate instance agreed with conclusions of the first instance court, pointing out: "... based on the status of family relationship, children and parents can't be recognized as former members of the family."

Proceeding from the above, it is possible to write a minor child, but it is necessary to recognize him as a former member of the family in court, referring to Article 31 of Part 4 of the RF LC (loss of family relations) and reinforcing such evidence as: information on the place of registration of parents, their property and the fact that the child did not actually live in the apartment and never used it, and also to prove in court that the parents of the child have lost a relative relationship with their grandparents, do not help with money, etc.

Thus, in order to recognize minor as a former member of the family, on the opinion of Sergei Viktorovich Romanovsky,the Judicial Board Chairman for Civil Cases of Moscow Regional Court, is decided by the court, taking into account the specific circumstances of each case [3].

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