

Rebuttal of Paternity Presumption through the Recognition by Biological Father: A Comparative Law Observation

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Abstract

The presumed marital paternity can be rebutted through action of contestation, if the said paternity does not conform with parentage. The mechanism of rebuttal through recognition in main legislations has been in development since the mid-1970s. This mechanism combines the function of recognition and action of contestation. Therefore, the biological father is conferred the right to rebut existing paternity through the autonomous agreement between biological father and consent holders. All procedures of litigation in the courthouse are not required under the said mechanism. However, exercise of this rebutting right might result in the rebuttal of paternity which conforms with parentage. To avoid this, it is necessary to introduce procedures to examine the parentage by administrative authorities. As such, there is hardly any difference between rebuttal through recognition carrying in administrative authorities and through action of contestation carrying in the courthouse when it comes to the time consumed and financial expenditure caused. In conclusion, the advantages of having these two co-existing regulations are limited. The integration of this rebutting right into the existing mechanism of the action of contestation is required.

Biological father has legitimate interests to rebut existing paternity which does not conform with parentage. Therefore, biological father should *de lege ferenda* be conferred the contesting right under the action of contestation of Article 1063 paragraph 2 of the Civil Code of Taiwan. In the meanwhile, the exercise of

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the contesting right by the biological father should also be restricted to ensure the protection of sustained interests of the mother's husband and the child. Also, it would be more flexible to adopt restrictions such as requiring the rebuttal of paternity not to influence or even conform the interests of the child, rather than to adopt rigid criteria on restriction. In addition, it is also viable to confer contesting right to the biological father while the husband and the child both agree, so that the will of the husband and child is taken into consideration.

Keywords: presumption of paternity, paternity, recognition, rebutting right, action of contestation, contesting right, biological father, connection of parentage