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CIVIL LIABILITY FOR AFFECTIVE ABANDONMENT IN THE LIGHT OF THE CASE LAW OF THE STJ[1]

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ABSTRACT

This article analyzes civil liability for affective abandonment from a legal and constitutional perspective, focusing on the full protection of children and adolescents. The research is structured in three main axes: initially, it presents the legal and constitutional foundations that support the duty of care in the family environment; next, it examines the doctrinal evolution of the thesis of civil liability for affective absence of parents; finally, it conducts an analysis of the jurisprudence of the Superior Court of Justice, identifying recurrent arguments and possible divergences in the decisions. The study adopts a qualitative approach, based on a literature review and jurisprudential survey, and concludes that liability for affective abandonment, although it receives constitutional and doctrinal support, still faces resistance in its practical implementation, requiring unequivocal proof of damage and causality. From this reflection, the work proposes a rereading of the parental duty in the light of the dignity of the human person and the social function of the family.

Keywords: Affective abandonment. Liability. Indemnity.

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INTRODUCTION

This article deals with the possibility of civil liability for affective abandonment within the scope of Family Law, with emphasis on moral damages caused to the child or adolescent in the face of the omission of the duty of care by one of the parents. The problem has gained notoriety in the doctrine and in the Brazilian courts, especially in the Superior Court of Justice (STJ), where there is still a certain lack of uniformity in jurisprudence.

The Federal Constitution of 1988, in its article 227, establishes that it is the duty of the family to ensure the child and adolescent, with absolute priority, the rights to family life, dignity, respect and education. From this perspective, affective abandonment is understood as a violation of these fundamental rights, which can generate compensation for moral damage when the link between the parent's omission and the damage suffered by the victim is proven (Brasil, 1988). The Statute of the Child and Adolescent (Brasil, 1990) and the Brazilian Civil Code (Brasil, 2002) also reinforce the legal and moral obligation of parents to participate in the integral development of their children.

The growing judicialization of cases of affective abandonment has led the Superior Court of Justice to face the challenge of defining clear legal criteria for the civil liability of omitted parents. However, the lack of uniformity in the reasons for deciding has compromised the coherence of jurisprudence, generating legal uncertainty and hindering the predictability of judicial decisions. As Püschel and Aquino (2019) observe, the mere standardization of results, without the proper harmonization of normative foundations, represents a risk of arbitrariness incompatible with the principles of the Democratic Rule of Law. Thus, it is essential to critically analyze the decisions of the STJ not only as to the outcome, but as to the arguments adopted, especially with regard to the existence or not of a legal duty of parental care capable of generating compensation for moral damages.

The centrality of affection in family relationships imposes the legal recognition of its violation as a potential generator of compensable damages. However, a legal controversy persists as to the possibility of imputing civil liability to the parent who, although materially absent, violates the duty of emotional care provided for in the Brazilian legal system. The absence of an express legal classification on affective abandonment and the oscillation of the judgments of the Superior Court of Justice raise the following question: **is it possible to hold the parent civilly liable for affective abandonment in light of the current jurisprudential understanding of the STJ?**

The present research seeks to investigate how the STJ has interpreted and judged cases involving affective abandonment, analyzing whether there is an argumentative

pattern in the decisions and what legal grounds have been used to admit — or rule out — civil liability. To this end, the constitutional principles that guide Family Law, the specialized doctrine and the most representative judgments of the higher court will be considered.

The methodology adopted is qualitative, based on the analysis of jurisprudence and bibliographic review. It starts with the definition of the central concepts of the study — such as civil liability, duty of care and affective abandonment — and then examines the applicable legal provisions, as well as the evolution of the jurisprudential interpretation on the matter.

With this, it is intended to contribute to the deepening of the academic-legal debate about the limits and possibilities of civil liability in the context of family relationships, especially when the affective bond is consciously and persistently neglected by one of the parents, causing psychic and social damage to the child.

To answer this problem, the article has been structured into three main sections. The first section presents the normative and constitutional foundations of civil liability in the family environment, with emphasis on the rights of children and adolescents. The second section examines the doctrinal construction of civil liability for affective abandonment and its reception in Brazilian Law. Finally, the third section performs a critical analysis of the jurisprudence of the Superior Court of Justice, identifying argumentative patterns and possible divergences in decisions on the subject. The research concludes with reflections on the limits and possibilities of civil liability in the face of parental affective absence.

PROTECTION OF THE FAMILY AND RESPONSIBILITY IN BRAZILIAN LAW

Family life, especially with parents, is fundamental for the child's affective development. According to Bowlby (1990), the bonds established in childhood are essential for the formation of internal models of functioning, which influence future social relationships. In the legal sphere, the principle of affectivity has been recognized as a structuring element of family relationships, promoting the dignity of the human person and family solidarity (Diniz, 2008).Affection is not linked precisely to the presence of "love", affection means the connection, interaction, relationship, the bond that must exist in the family environment, leading to a set of positive feelings of conviviality that result in a good development of the child.

In the current doctrine, it is stated that affection has legal value and is seen as a principle of great importance, as stated by jus psychoanalyst Giselle Câmara Groeninga:

> "The role given to subjectivity and affectivity has been growing in Family Law, which can no longer exclude from its considerations the quality of the bonds existing

> between the members of a family, so that it can seek the necessary objectivity in the subjectivity inherent to relationships. Affection is increasingly given importance in the consideration of family relationships; in fact, another principle of Family Law is that of affectivity."

Affectivity has been recognized as a relevant legal value and even as an intangible legal asset protected by Family Law. Its violation, according to the predominant interpretation of Brazilian doctrine and jurisprudence, may constitute an unlawful act, giving rise to civil liability and compensation for moral damages (Venosa, 2020).

In this sense, Dias (2021) states that affectivity has become part of the list of implicit constitutional principles that guide family relationships, even influencing judicial decisions in actions for recognition of socio-affective paternity and affective abandonment. Thus, the principles of human dignity, the best interest of the child, and family solidarity are essential foundations for the protection of affection as a legal value (Gonçalves, 2022).

Responsible Parenthood is a principle provided for in the Constitution and represents one of the bases of the family, and can be conceptualized as "a fundamental guarantee granted to infants, which is a vital need for the developing human being, to receive love and care (PIEDADE, 2020, p. 26). In this way, the Constitution ensures in its text the protection that must be given to children within the family, so that they are provided with basic care for their healthy development.

According to the doctrinaire Sumaya Pereira, the family works as a bridge to promote human dignity, in this way, it has become an instrument for the development and structuring of the personality of those who compose it, thus having the support of the Constitution as a place that develops the person and functioning as one of the formative institutes of the individual.

In the current constitutional scenario, the family is no longer understood as a mere formal or biological unit, but is now recognized as an instrument of personal, emotional and existential fulfillment of its members. The Federal Constitution of 1988 enshrines this perspective by providing, in article 226, that "the family, the basis of society, has special protection from the State", revealing its role as a nucleus of affection, solidarity and mutual care (Brasil, 1988).

Along these lines, Gagliano and Filho (2011, p. 98) maintain that the family is not an end in itself, but rather a means to achieve happiness in human relationships, thus fulfilling an eminently social function. For the authors, disregarding this role would be equivalent to denying the social value of society itself.

The recognition of the social function of the family is also reinforced by Pereira (2017), who states that contemporary family law must consider affections and subjective

bonds as central to the dignity of the human person. Thus, the omission of one of the parents in relation to the duties of care and coexistence can be interpreted as not only a moral violation, but also a legal one, especially when it compromises the full development of a son or daughter.

Therefore, family ties need to be analyzed from the perspective of responsibility and the affective function they perform. The family, in addition to being recognized as the basis of society, must fulfill its affective function, which goes beyond the simple material provision. According to Dias (2021), even when financial obligations are fulfilled, the absence of care and emotional presence can constitute non-compliance with the family's social function, which can lead to civil redress. In this context, affection is understood as a protected legal value, the violation of which gives rise to legal consequences, especially when the psychological damage caused by the omission of parental duties is proven (Venosa, 2020; Gonçalves, 2022).

The Federal Constitution of 1988, brings in its article 227, the basic rights that must be guaranteed by the family towards children and adolescents, such as life, food, dignity, family life, among other aspects, defending as the main idea the dignity of the human person. Thus, for the doctrinaire Maria Helena Diniz, the principle of respect for the dignity of the human person is seen as the basis of the family, so that the development and realization of the rights of family members can be guaranteed, especially the most vulnerable, the child and adolescent.

According to Maria Helena Diniz, parents have rights and duties with their children, because within the family there is family power, which would be a set of properties entrusted to parents, as a protective institution in minority, with the aim of developing and forming children, from a physical, mental and social point of view. The responsibility given to parents, authority, must be done through fundamental principles and rights, so as to lead them to responsible autonomy when they are older.

Affective abandonment may be subject to compensation for moral damages, as has already been observed in cases in Brazil, because the fact that parents do not observe and do not comply with the duties and obligations intrinsic to the exercise of responsible parenthood, thus violating the rights inherent to the child and adolescent and ignoring guiding principles and the dignity of the human person, which can generate trauma and psychic damage to the individual in the development phase. In view of the damage, there is the possibility of civil liability. According to Sérgio Cavalieri Filho, the damage needs to exist for there to be strict liability, without damage, there is nothing to talk about reparation, because it is the predominant element.

The great evolution of the psychological and social sciences has emphasized as decisive the influence of the family context for the healthy development of people in formation, in this case, children and adolescents. This reality can no longer be ignored, in view of the large numbers of paternal-filial abandonment, in view of this, the discussion about responsible fatherhood has become increasingly necessary. In this way, the coexistence of parents with their children is not seen as a right, it is a duty. There is no right to visit them, there is an obligation to live with them. The distance between parents and children produces serious emotional consequences and can compromise their full development. The feeling of pain and abandonment can leave permanent reflections on your life. (DIAS, 2016, p. 164).

According to Paulo Luiz Netto Lobo, the family life that article 227 of the Constitution brings and considers part of the best interest of the child and adolescent, is in fact linked to lasting social relationships, as the objective of family formation, which distinguishes them from other social relationships. Thus, according to him, affectivity is a legal duty to which parents and children must obey in their coexistence, regardless of whether there is real affection between them.

In the same line of reasoning, Maria Berenice Dias claims that affection is not just a bond that involves the members of a family. For her, family law has installed a new legal order for the family, attributing a legal value to affection. All families, in all their relationships, no matter how complex they may be, need affection, forgiveness, solidarity, among other points, everything that can provide a good coexistence in the family environment. Thus, for the development of our children, they need to be in a receptive, welcoming and healthy environment, in which they find protection, dignity and family affection.

According to article 3 of the ECA Statute, law 8.069/1990, children and adolescents enjoy the fundamental rights inherent to the human person, ensuring them the means and facilities for their full physical, mental, moral, spiritual and social development, in conditions of freedom. And in its article 4, it brings the duty of the family to ensure the realization of basic rights related to life, health, food, dignity, family life, among other aspects. Thus, by failing to provide assistance and neglecting the necessary care for the child, which can generate future emotional damage, it will affect the development of this individual and later generate trauma. According to Giselda Hironaka, the damage caused by affective abandonment is first and foremost a damage to the individual's personality, which later generates damage to the social formation of that person.

According to Sérgio Resende de Barros, it is not only affection that is the point analyzed for liability, he emphasizes that there must be another necessary point, which would be the causal link between abandonment and the damage caused to the child, that is, the damage must have a direct link to what happened, for the occurrence of civil liability for parental abandonment. Thus, this may be the harmful consequence that will be produced in the subjective sphere, the damage must be proven from the action of his father, who caused trauma to the son's psychic order.

CIVIL LIABILITY FOR AFFECTIVE ABANDONMENT

According to Maria Berenice, civil liability for affective abandonment refers to the legal possibility of demanding compensation for moral damages when one of the parents, even recognizing the filiation, fails to exercise his affective or care role with the child. This theory maintains that the duty of parents is not limited to the provision of material support, but also encompasses the attention, affection and emotional and social support indispensable to the formation of the child or adolescent.

According to Lôbo (2019), this affective omission constitutes a violation of the duty of care and family coexistence, provided for in article 227 of the Federal Constitution, which imposes on the family the priority responsibility of ensuring the integral development of the children (Brasil, 1988). In practice, the most recurrent cases involve parents who, after marital separation, form a new family and start to neglect the children of the previous relationship, ignoring their emotional and affective needs.

Although both the father and the mother can be held responsible for this type of conduct, it is observed, according to doctrine and jurisprudence, that the most frequent situations involve the father figure, revealing a cultural pattern still marked by the neglect of affective paternity, according to Rodrigo da Cunha.

It is important to highlight that the thesis of affective abandonment is not related to the default of obligations of a patrimonial nature, such as the payment of alimony. The parent can be up to date with these duties and still be held responsible for not exercising coexistence and affection. In these cases, the unlawful act arises from the omission of the moral duty of presence and participation in the child's life, which can generate psychological distress that can be repaired through compensation for moral damage (Silva, 2019).

In the context of family relationships, the institute of civil liability gains new contours as the legal system begins to recognize the damages arising from the omission in the exercise of responsible parenthood. The Federal Constitution of 1988, in its article 229, imposes on parents the duty of assistance, upbringing, education and coexistence with their

children, values that are not restricted to the material aspect, but include, with equal importance, the duty of moral and affective care (Brasil, 1988).

When this duty is not fulfilled — whether by negligent, omissive or intentional conduct — especially with regard to emotional disinterest and absence of affective bond, the so-called affective abandonment can be configured, with potential legal consequences. The doctrine has highlighted that this omission can seriously compromise the psychic and emotional development of the child or adolescent, legitimizing, in certain circumstances, compensation for moral damages (Rangel, 2016, v. 147).

Civil liability for affective abandonment is based on the idea that the family bond is sustained not only by legal patrimonial obligations, such as the payment of alimony, but also by subjective duties of presence, guidance and affection, the violation of which can generate lasting sequelae in the formation of the child's personality. Therefore, the father or mother who unjustifiably omits to live with and provide emotional support to the children violates the legal duty of care, and may be held liable under the terms of article 186 of the Civil Code, provided that the classic requirements of subjective liability are demonstrated: unlawful act, damage and causal link.

For the configuration of civil liability in affective abandonment, the presence of the essential elements is essential: omissive conduct of the parent, psychic damage to the child and the causal link between both. According to Gonçalves (2022), the omission of the duty of care and moral support can generate significant psychological distress to the child, constituting an injury to the right of personality. In this sense, Venosa (2020) highlights that moral damage resulting from the absence of paternal affection, when proven, is legally reparable, as long as the assumptions of subjective responsibility are present.

STJ JUDGMENTS ON AFFECTIVE ABANDONMENT

In this topic, we will deal with civil liability for affective abandonment from the perspective of the Superior Court of Justice. Thus, some judgments of the STJ between 2005 and 2021, which bring the constitutional parameters presented above, will be analyzed.

This topic is still controversial, both in the legal literature and in the STJ itself. The Superior Court of Justice has already expressed itself several times on the issue of affective abandonment and despite having several judgments of the STJ on the subject, there is still no very clear, pacified understanding of this Court on civil liability in these cases. Thus, the intention of this analysis is to show the paths taken so far by the STJ, showing what has already been decided on the subject, thus pointing out issues that still need to be clarified.

Thus, the STJ's judgments and what they have decided on the subject to date will be analyzed below. In the STJ, the first to consider the issue of civil liability for affective abandonment was the Fourth Panel in two judgments.

A) RESP 757.411/MG, 4th Panel, 11/29/2005:

The Special Appeal was judged by the Fourth Panel of the Superior Court of Justice and deals with the possibility of civil liability for affective abandonment of a father in relation to his child. In the case, it was discussed whether the absence of affection and coexistence could constitute an unlawful act and, consequently, generate compensation for moral damages. By majority, the STJ understood that it was impossible to pay compensation. The majority view maintains that affective abandonment does not constitute, in itself, a civil offense under the terms of article 159 of the Civil Code of 1916 (corresponding to article 186 of the Civil Code of 2002), since affection cannot be legally imposed or quantified pecuniarily.

The justices pointed out that, although the legal system imposes a duty of care on parents, the already existing accountability mechanisms — such as the loss of family power (article 1,638, II, of the CC/2002) and the maintenance obligation — would be sufficient to punish omissive conduct. For the majority, the creation of compensation for moral damages resulting from the lack of affection goes beyond the limits of judicial action, that is, the justice could not force the father to love the child, thus stating that compensation with this justification would not bring positive consequences.

The unsuccessful vote, delivered by Justice Barros Monteiro, presented a divergent understanding, arguing that moral abandonment, when unjustified, constitutes an unlawful act and generates damage to the child's personality, and is, therefore, subject to civil reparation. From this perspective, the non-compliance with the duty of moral assistance would be a legitimate cause for the application of subjective civil liability. The decision highlights the conflict between the principle of human dignity and the limits of judicial action in the field of affective relationships, being a relevant milestone for the discussion on the legality of emotions and parental obligations in contemporary Family Law.

B) RESP 514.350/SP, 4th Panel, 04/28/2009:

The special appeal analyzes the request for compensation for moral damages resulting from paternal affective abandonment. The demand arose in the midst of a paternity investigation action, in which the recognition of filiation was granted, but the claim for moral reparation for the alleged emotional abandonment was rejected by the lower courts, a decision that the STJ upheld when it did not hear the appeal. According to the summary and the vote of the rapporteur, Justice Aldir Passarinho Junior, the STJ reaffirms

the orientation that affective abandonment, by itself, does not constitute an unlawful act subject to compensation based on article 159 of the Civil Code of 1916 (equivalent to article 186 of the CC/2002).

The decision is based on the logic that affection is not legally enforceable, so its absence does not automatically characterize unlawful conduct under the terms of civil liability. Thus, for the Panel, it is not a matter of omission of a legal duty, but of a social or moral expectation.

However, a significant part of the doctrine contests this limitation. For Gomes (2021), affective abandonment may represent a concrete violation of the parents' legal duty to provide care and presence, under the terms of article 22 of the Statute of the Child and Adolescent (Brasil, 1990). The intentional and repeated absence of affection, when proven, can generate psychological suffering equivalent to or greater than that of other forms of moral damage, which would justify its pecuniary reparation.

In summary, these judgments adopted fundamentally the same arguments. In these two precedents, the Fourth Panel denied that affective abandonment could give rise to the father's liability, for some reasons. First, the panel stated that there was already a sanction applicable to the father who disrespects his duty of custody and his duty of education, which would be loss of family power, provided for in article 1638, item II, of the Civil Code. The fourth panel also said that the conviction could bury once and for all the possibilities of conciliation between this father and this son, but the most important argument was presented at the end of these decisions, the fourth panel stated that there is no way for the judiciary to force a father to love his son and that therefore the compensation would not bring any positive consequence to this litigation.

Thus, for a long time these two rulings were the only paradigms of the STJ on the subject of affective abandonment. Until 2012, the issue reached the Third Panel of the Court, and this formation adopted an understanding opposite to that of the Fourth Panel and thus granted compensation for affective abandonment.

C) RESP 1.159.242/SP, 3rd Panel, 04/24/2012:

In this judgment, the Third Panel of the STJ, under the rapporteurship of Justice Nancy Andrighi, decided on the possibility of compensation for moral damages resulting from affective abandonment. The decision represents a milestone in Brazilian jurisprudence by expressly stating the applicability of the rules of civil liability in the context of family relationships.

According to the rapporteur, there are no legal impediments to the application of the provisions of the Civil Code that deal with the reparation of damages (articles 186 and 927

of the CC/2002) in parental relationships, especially when the violation of the legal duty of care is proven. The Minister argues that "care" is an objective legal value, implicitly recognized in several constitutional provisions, with emphasis on article 227 of the Federal Constitution of 1988, which enshrines the duty of the family to ensure the full development of children.

Parental omission, in these terms, constitutes an unlawful act subject to reparation when it affects legally protected assets, such as the dignity, psychic integrity and moral formation of the child. The court recognizes that, although there are multiple reasons that can justify absences in the upbringing of a child, there is a minimum core of affective and psychological obligations whose non-observance constitutes a violation of the legal and moral duties of the parents (STJ, REsp 1.159.242/SP, 2012).

Thus, the main point highlighted by the Third Panel is that it was not a problem of non-compliance with an alleged duty of affection, as the Fourth Panel had declared, but rather the father's failure to comply with a legal duty of care. According to the third panel, the duty of care would be inherent to parental relationships, the father and mother would have the duty to contribute to the development of the personality of their minor children, to support them morally, to help their growth and education.

Thus, the father who fails to comply with his legal duty of care and causes moral damage to the child, this father would be obliged to repair this damage. In the opinion of the third panel, all the requirements of civil liability would be present, the fault, the nexus and the damage, there would then be no grounds to exclude the duty of reparation just because this damage occurred in the midst of a family relationship.

Thus, it was evident, therefore, from these precedents that there was an impasse between the two private law panels of the STJ. Thus, given that there was no uniformity of understanding, each of these two groups ended up following its own course, so this analysis will show the paths followed by each class.

Thus, the 4th panel maintained its understanding that there is no civil liability for affective abandonment and in a way it countered the thesis presented by the 3rd panel, stating that the duty of care that is provided for in Brazilian legislation would only cover the duty of support, the duty of custody and the duty of education of children, that is, for the 4th Panel, affection would not be part of the duty of care, so this duty would be exhausted in material benefits. What happened here, therefore, was a certain debate between the two groups. In the judgments of 2005 and 2009, the 4th Panel first stated that the father would have no obligation to give affection to the child, in 2012 the third panel replied that it was not a duty of affection, but a duty of care, and the Fourth Panel retorted that the duty of care

covers only the material benefits and not the affective benefits. This opposition of the Fourth Panel to the thesis of affective abandonment was especially emphasized in this 2017 precedent presented below.

D) REsp 1.087.561/RS, 4th Panel, 06/13/2017

This judgment was carried out by the Fourth Panel, reported by Justice Luis Felipe Salomão, representing an important precedent in the recognition of material abandonment as an unlawful act that can be compensated. The case involved a father, a guy who had good financial conditions, a farmer, owner of real estate in an upscale neighborhood in Rio de Janeiro and allowed his son from a previous relationship to live in a situation of misery. The son lived in a shack, where he didn't even have a bed to sleep in, he barely had anything to eat and this father only paid alimony when he was threatened with arrest.

The Fourth Panel sentenced the father to repair the moral damages suffered by his son, not least because there was evidence that the penury to which this child had been subjected caused psychological damage to him. The Panel made a point of emphasizing that this was not a case of affective abandonment, but rather a hypothesis of serious non-compliance with the duty to provide maintenance, which ended up generating irreparable moral damage to the child.

The Court understood that the voluntary and unjustified omission in the duty to provide material assistance, even if there are financial conditions to do so, frontally violates article 186 of the Civil Code of 2002, characterizing it as an unlawful act. The decision recognizes that the parent's omission directly affected the dignity, physical, psychic and intellectual integrity of the child**,** in violation not only of the infra-constitutional legislation (articles 1,566, IV, and 1,634, I, of the CC/2002), but also of the constitutional principle of the dignity of the human person, provided for in article 1, III, and article 227 of the Federal Constitution (Brazil, 2002; Brazil, 1988).

The decision also makes express reference to articles 18-A, 18-B and 22 of the Statute of the Child and Adolescent (ECA), which reinforce the legal duty of parents to guarantee not only the sustenance, but also the full care and protection of their children (Brasil, 1990).

As contemporary doctrine argues, the omission in the duty of support should not be seen only as a matter of Family Law, but as an affront to an existential minimum, which does justify the intervention of civil liability (Carvalho, 2020). The absence of material support, especially when intentional, breaks with the pillars of family solidarity and reveals abuse of parental rights.

E) REsp 1.887.697/RJ, 3rd Panel, 09/21/2021

In the judgment of this appeal, the Third Panel of the Superior Court of Justice, under the rapporteurship of Justice Nancy Andrighi, reaffirmed the legal possibility of compensation for moral damages resulting from affective abandonment, provided that the elements of civil liability are demonstrated: unlawful conduct, damage and causal link.

The decision recognized that the rules of civil liability (articles 186 and 927 of the Civil Code/2002) are fully applicable in the context of family relationships, and that the exercise of parenthood must be concrete, responsible and continuous, especially with regard to the psychological and affective formation of the child. The mere fulfillment of formal obligations (such as alimony) or the loss of family power do not remove the duty to indemnify, when the damage is proven (Brasil, 2002).

In the specific case, it was evidenced that the parent, after the separation, abruptly broke ties with his daughter, still a child, maintaining only a protocol and negligent contact. An expert report and other evidence showed significant psychological damage, with anxiety and the need for psychotherapy since the age of 11, which led the Court to recognize the father's responsibility for the suffering caused, setting the compensation at R$30,000.00.

Thus, the 3rd Panel took a different course from the 4th Panel, reaffirming its understanding that affective abandonment does generate reparable damage, this was especially clear in this judgment mentioned above, in which this panel practically repeated the arguments of the 2012 precedent. On the other hand, in other judgments, the 3rd Panel granted a restrictive interpretation to civil liability for affective abandonment, especially judgments that imply that civil liability for affective abandonment would only apply to situations in which there is a previous relationship between the father and the child and this relationship was abruptly interrupted due to the father's fault, usually after the couple's separation. Although these judgments are not very categorical on this issue, this understanding seems to have been adopted in two precedents, which will be addressed below.

F) REsp 1.557.978/DF, 3rd Panel, 11/03/2015

In this Special Appeal, the Court reaffirmed the need for technical rigor in the configuration of civil liability for affective abandonment, as the causal link between the parent's omissive conduct and the alleged psychological damage suffered by the child must be demonstrated. The STJ, however, dismissed the special appeal, on the grounds that the requirements of subjective liability, in particular the direct and immediate causal link required by article 186 of the Civil Code, were not duly proven.

In addition, the Court pointed out that there was no break in the bond, but rather the late beginning of the paternal-filial relationship, since paternity was only judicially recognized when the daughter was ten years old.

The decision also mentions that the absence of a psychosocial or expert report proving the origin of the alleged psychological trauma prevented the characterization of the damage and the causal link. Applying the theory of direct and immediate damage, the STJ understood that the parent cannot be held responsible for omissions prior to the recognition of paternity, as he did not hold, until then, a legal duty of care.

G) REsp 1.493.125/SP, 3rd Panel, 02/23/2016

In the judgment of this Special Appeal, the Third Panel of the STJ, unanimously, reaffirmed that compensation for affective abandonment requires concrete demonstration of an unlawful act, in accordance with article 186 of the Civil Code of 2002. The appeal was partially heard and dismissed, and the decision that rejected the request for compensation for moral damages was maintained.

According to the rapporteur, civil liability for affective abandonment does not automatically arise from the absence of coexistence between father and child, and the causal link between the omissive conduct and the alleged psychological damage suffered must be clearly demonstrated, which did not occur in the present case. The Court highlighted that, in order to avoid the "commodification of feelings", prudence is necessary in the application of civil liability in family relationships (STJ, REsp 1.493.125/SP, 2016).

With this, the judgment reinforces the thesis that compensation for affective abandonment should be seen as an exceptional measure, restricted to cases in which intentional or culpable omissive conduct, significant damage and direct causal link are proven, respecting the objective limits of subjective civil liability, provided for in the Brazilian Civil Code. Which was not proven in the case.

In short, in these two judgments, the third panel denied the son's request for reparation, stating that the father and the child never had a close relationship and that therefore there would be no rupture of a relationship of cohabitation capable of justifying the father's liability. This understanding greatly reduces the scope of responsibility for affective abandonment, so that we would then have not exactly a responsibility for affective abandonment, but a responsibility for the rupture of a previously existing relationship of coexistence.

H) REsp 1.374.778/RS, 3rd Panel, 06/18/2015

In the present appeal, the request for compensation for emotional abandonment was dismissed, based on the absence of an unlawful act and a causal link, as required by article

186 of the Civil Code of 2002. The case involved an action for compensation filed by a son against an alleged father, alleging emotional abandonment by omission.

The STJ understood that there was no affective abandonment, because the father did not know that he was a father and the son took more than 20 years to resume the paternity investigation action. As there was no bond or attempt to get closer, the father cannot be held responsible. In order to have compensation, it would be necessary to prove that he acted with fault or willful misconduct, that there was real emotional damage and a direct link between the conduct and the suffering – which was not proven in the case. Thus, the recognition of paternity alone does not mean that the father must pay compensation. For this, it is necessary to prove that he committed an unlawful act, caused damage and that there is a connection between the two.

I) AgRg in Ag REsp 766.159/MS, 3rd Panel, 06/02/2016

In the case in question, the STJ understood that there is no civil liability for affective abandonment when the alleged father has not yet formally recognized paternity. The Court highlighted that the duty of care, which includes support, custody and education, arises only after the legal recognition of the paternal-filial relationship. Therefore, it is not possible to impute to the alleged parent the obligation to compensate for moral damages resulting from affective abandonment prior to this recognition.

Thus, the decision is in line with the case law of the STJ, which designates that civil liability for affective abandonment requires the existence of a recognized legal bond between father and child. Without this recognition, there is no way to configure the legal duty of care and, consequently, it is not possible to speak of an unlawful act subject to compensation.

Likewise, in these two judgments, the third panel declared that there is nothing to speak of affective abandonment before the formal recognition of paternity, only after the paternity relationship was legally recognized would the duties of care to be fulfilled by the father arise and only then could the responsibility for affective abandonment arise. Even though the father suspected that that child was in fact his daughter.

Once again, this interpretation restricts the scope of civil liability for affective abandonment, it in a way removes the risk that the request for compensation for affective abandonment becomes an accessory request in actions for recognition of paternity, which is a common fear among opponents of the thesis. There is a certain fear that, once the civil liability for affective abandonment is assimilated by the courts, every action for recognition of paternity will be culminated in a request for reparation for affective abandonment. This understanding of the Third Panel dispels this fear.

In summary, what is the panorama of affective abandonment in the STJ today?

On the one hand, we have a panel that categorically rejects this thesis and, on the other hand, we have another panel that admits in principle the reparation for affective abandonment, but that seeks to establish guidelines to restrict the application of this hypothesis of responsibility. Thus, it is to be expected in the not too distant future, the issue will be settled by the STJ, it is worth remembering that this Court whose main function is precisely to standardize the interpretation of federal legislation throughout the country.

CONCLUSION

The theme analyzed in this article consisted of the study and bibliographic collection on civil liability for affective abandonment, based on Brazilian legislation, showing the constitutional principles that support the protection of children and adolescents within the family environment. The study was also based on how the doctrine positions itself on the subject, showing perspectives of different authors, thus listing a range of doctrinaires who defend the thesis.

It can be inferred, therefore, that the doctrine recognizes that civil liability for affective abandonment arises from the omission of one of the parents regarding the duties of care for the child, even if he fulfills his material obligations. Thus, from the moment the filiation is recognized and unjustifiably abstains from exercising the role of care and coexistence with the child, thus generating emotional damage, it is possible to repair when the damage suffered is proven. The study showed that, according to the doctrine, in order to prove and justify civil liability, it is necessary that the elements of liability are present, indicating the unlawful act, that is, the conduct of the father; the damage suffered and the causal link between these two points, indicating that the damage is directly linked to the father's conduct, according to the Civil Code.

It is possible to conclude that the discussion of the topic is of great relevance. This became even more evident, in view of the discussion and analysis of the existing judgments on civil liability for affective abandonment, in which there are several decisions rendered, but there are still contradictions. The Superior Court of Justice is responsible for pacifying the interpretation of Brazilian legislation. However, on the subject in question, there are divergences between the Panels of the STJ. On the one hand, we have a panel that expressly rejects this thesis and, on the other hand, we have another panel that admits in principle reparation for affective abandonment, but seeks to establish concrete guidelines to restrict the application of this hypothesis of liability. Thus, it is expected that in the future,

the issue will be settled by the STJ and thus bring a unanimous understanding, facilitating the trial and fair accountability for those who neglect their parental duties.

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