



Neutral Citation Number: [2018] EWHC 3178 (Fam)

Case number omitted

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 November 2018

Before :

SIR JAMES MUNBY (SITTING AS A JUDGE OF THE HIGH COURT)

In the matter of the Human Fertilisation and Embryology Act 2008 (Case AM)

Miss Deirdre Fottrell QC (instructed by Goodman Ray) for the applicant

Hearing date: 30 October 2018

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SIR JAMES MUNBY (SITTING AS A JUDGE OF THE HIGH COURT)

This judgment was handed down in open court

Sir James Munby (sitting as a Judge of the High Court) :

1. This case – Case AM – is the latest in the long line of such applications which have come before me since I handed down judgment in *In re A and others (Legal Parenthood: Written Consents)* [2015] EWHC 2602 (Fam), [2016] 1 WLR 1325. It is the thirty-ninth of these cases in which I have given a final judgment.
2. For the parents – the human beings – involved in this case, something which they had never expected to have to endure, it is of fundamental importance. Without ever losing sight of that human reality, however, and acutely conscious, as I am, of the stress, worry and anxiety burdening parents in such cases, and of the powerful human emotions that are inevitably engaged, this case is, from a legal perspective, straightforward and simple. It raises no new point of principle, and I can therefore be brief.
3. For the purposes of this judgment I shall take as read the analysis in *In re A* and the summary of the background to all this litigation which appears in *Re Human Fertilisation and Embryology Act 2008 (Case O)* [2016] EWHC 2273 (Fam), [2016] 4 WLR 148. For reasons which will by now be familiar, I propose to be extremely sparing in what I say of the facts and the evidence. The evidence, which there is no need for me to rehearse in detail, is clear and compelling. The answer at the end of the day is, in my judgment, clear.
4. The applicant, X, is a woman who was not, at the relevant time, married to or in a civil partnership with the respondent mother, Y. X seeks a declaration pursuant to section 55 of the Family Law Act 1986 that she is, in accordance with the relevant sections of the Human Fertilisation and Embryology Act 2008, the legal parent of their twin children, C1 and C2.
5. Just as in each of the other cases I have had to consider, so in this case, having regard to the evidence before me, I find as a fact that:
 - i) The treatment which led to the birth of the children, C1 and C2, was embarked upon and carried through jointly and with full knowledge by both the woman (that is, Y) and her partner (X).
 - ii) From the outset of that treatment, it was the intention of both X and Y that X would be a legal parent of C1 and C2. Each was aware that this was a matter which, legally, required the signing by each of them of consent forms. Each of them believed that they had signed the relevant forms as legally required and, more generally, had done whatever was needed to ensure that they would both be parents.
 - iii) From the moment when the pregnancy was confirmed, both X and Y believed that X was the other parent of the children. That remained their belief when C1 and C2 were born.
 - iv) The first they knew that anything was or might be ‘wrong’ was when they were contacted by the clinic.

6. I add that there can be no suggestion that any consent given was not fully informed consent. Nor is there any suggestion of any failure or omission by the clinic in relation to the provision of information or counselling.
7. The clinic, the Human Fertilisation and Embryology Authority, the Secretary of State for Health and the Attorney General have all been notified of the proceedings. None has sought to be joined. Given the nature of the issues (see below) I decided that there was no need for C1 and C2 to have a guardian appointed.
8. At the end of the hearing on 30 October 2018 I indicated that I was making the order sought. I now (23 November 2018) hand down judgment explaining my reasons.
9. The case relates to treatment provided by South East Fertility Clinic, now known as CARE Fertility Tunbridge Wells, a clinic regulated by the HFEA. X was represented by Ms Deirdre Fottrell QC. It was clear that Y is wholly supportive of X's application. Child care responsibilities prevented Y being present at the hearing. There was, in view of the conclusion I had come to, no need for X to give oral evidence and she did not.
10. Adopting the terminology I have used in previous cases, the problem in this case is very shortly stated. The Form WP was correctly completed. In the Form PP, which was otherwise correctly completed, the declaration in section 5 has not been signed. However, the consent box in section 3 has been ticked and the second page, which contains section 3, has been signed at the foot by X. The error in relation to section 5 is irrelevant; X's signature at the foot of the second page is sufficient to satisfy the statutory requirement: see *Re the Human Fertilisation and Embryology Act 2008 (Cases P, Q, R, S, T, U, W and X)* [2016] EWHC 2273 (Fam), paras 13 (Case Q) and 15 (Case R), *Re the Human Fertilisation and Embryology Act 2008 (Cases Y, Z, AA, AB and AC)* [2017] EWHC 784 (Fam), para 11 (Case AA), and *Re the Human Fertilisation and Embryology Act 2008 (Cases AD, AE, AF, AG and AH)* [2017] EWHC 1026 (Fam), paras 10 (Case AD) and 14 (Case AF). I should add, as Ms Fottrell points out, that the third page of the Form PP is not actually linked to the issue of consent to parenthood (dealt with on the second page); it relates to consent to *other* elements in the process, so that its presence or absence, completion or, as here, non-completion is for present purposes neither here nor there.
11. In these circumstances X is entitled to the declaration she seeks.
12. When the parents registered their children's births, the Registrar (it would seem erroneously) advised them that only Y, as the biological and gestational mother, could be registered. X is therefore not shown as their parent on their birth certificates. In consequence, X, although, as I have declared, she is the parent of both C1 and C2, does not have parental responsibility. In these circumstances, X seeks parental responsibility orders under section 4 of the Children Act 1989. Y agrees that I should make such orders. It is plainly right that I do so, to remedy the consequences of the clinic's error and that of the Registrar.
13. It was for these reasons that, at the conclusion of the hearing, I made declarations and parental responsibility orders in the terms sought by X.

14. The clinic, which it is right to record has behaved very well throughout since it discovered its error, has very properly agreed to pay X's reasonable costs.