

Re P (Disclosure: Criminal Proceedings)

[2004] 1 FLR 407

14/07/2003

Court

Family Division

Facts

A child was conceived through artificial insemination at home. The applicant sperm donor was the brother of the mother's former female lover. He delivered donated sperm to the mother and she in turn inseminated herself with a syringe. The mother said that it was never intended that the applicant would play any part in the child's life. The applicant wanted contact with the child. The mother made allegations of harassment and common assault against the applicant and there were concurrent criminal proceedings. Fearing the mother would disappear with the child, the applicant made the child a ward of court and passport orders were made. The mother surrendered her UK passport, but removed the child from the jurisdiction using a US passport. After a number of applications the mother and child returned to the UK. The applicant applied for contact orders and a guardian was appointed for the child. The matter was listed for hearing and procedural directions were agreed, which included a direction, without reference to the Criminal Prosecution Service or criminal solicitors, that the applicant was to 'serve all evidence in the criminal proceedings that (his solicitors) have in 7 days'. The applicant's solicitors subsequently applied to the court for further directions as to whether the disclosure was appropriate.

Held

Held - there should be no disclosure of the prosecution statements into the wardship proceedings at this stage -

(1) There was nothing in the existence of the criminal process which prevented or inhibited the mother setting out her case fully (see para [24]).

(2) Disclosure of the prosecution statements into the wardship proceedings at this stage (prior to the conclusion of the criminal proceedings), would be a breach of long-standing criminal practice and would run the risk of compromising the criminal process (see para [25]).

(3) There did not need to be disclosure of the criminal statements to the guardian only. Issues of fact would be for the court to resolve and disclosure ran the risk, at the lowest, of giving the appearance of unfairness and was unnecessary for the proper performance of the guardian's duties (see para [26]).

(4) The court in the wardship proceedings, as well as the applicant, needed to know the entire case advanced by the mother on the contact issue and all her objections to contact. Her statement should set out the objections in full and not by reference to her criminal statement (see para [33]).

Permission

Reproduced with kind permission from Justis 