

Re F (A Minor: Paternity Test)

[1993] 1 FLR 598

05/02/1993

Barristers

Michael Sternberg OBE KC

Court

Court of Appeal

Facts

In 1991 the mother had given birth to a girl, E. At the time of E's conception, the mother had a sexual relationship with her husband and another man, Mr B. The relationship with Mr B had ended before E's birth and E had been brought up as a child of the family of the mother and her husband. E had no contact with Mr B. In 1992, Mr B had applied for a parental responsibility order and contact order in respect of E and stated that he believed that he was E's natural father. The matter had come before a High Court judge who had dismissed Mr B's application for blood tests to be taken to determine whether he was the father. Mr B appealed.

Held

Held - dismissing the appeal -

(1) The court had a judicial discretion by virtue of s 20(1) of the Family Law Reform Act 1969 whether to order that blood tests should be taken to determine paternity. This discretion had to be exercised on the principles set out by the House of Lords in *S v McC; W v W* (see below at p 601D). If the principles were observed, an appellate court should not interfere with the exercise of that discretion save within the limits of *Hadmor Productions v Hamilton* and *G v G (Minors: Custody Appeal)*.

(2) This case could be distinguished from *S v McC; W v W* on its facts (see below at p 602B).

(3) If the probable outcome of the proceedings would be the same, whoever was the father, then there could be no point exposing E to the possible disadvantages of a blood test.

(4) For the first few years of E's life, her physical and emotional welfare was inextricably bound up with the welfare of the family unit of which she formed a part. Any harm to the welfare of that unit would inevitably be managing to E.

(5) There were possible risks, where E's knowledge of her genetic make-up might be relevant, but the chance that those risks might operate so as to harm E's interests were infinitesimal when brought into balance against the harm that might be caused to her if Mr B were able to proceed with his applications.

(6) The court would not order a blood test to be carried out against the will of a parent who has, since the birth, had sole parental responsibility of E.

(7) E's welfare depended for the foreseeable future primarily on here relationship with her mother. Anything that disturbed that relationship or the stability of the family unit within which E had lived since birth was likely to be detrimental to E's welfare and unless that detriment was shown to be counter-balanced by other positive advantages to her, which an order for the taking of blood tests could confer, then the judge's refusal to order blood tests was an exercise his discretion with which the Court of Appeal agreed.

Decision of Judge Callman [1993] 1 FLR 225 upheld.

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