

# Case L (Human Fertilisation and Embryology Act 2008)

**[2016] EWHC 2266 (Fam)**

14/09/2016

## **Barristers**

Private: Hassan Khan

## **Court**

Family Division

## **Practice Areas**

Public Children Law

Application for a declaration that one party is not the legal parent of the child, in accordance with s.55A Family Law Act 1986, where the mother's partner did not sign the requisite forms.

This case concerned X (a woman) and her partner Y (also a woman). Using the same sperm donor, Y gave birth to C1 and X to C2 a few years later. As C1 was born before the Human Fertilisation and Embryology Act 2008 (HFEA 2008) came into force, only Y was registered as C1's birth parent. X subsequently gave birth to C2 after the HFEA 2008 came into force, and X and Y intended that both of them would be the legal parents of C2. However, they were later informed by the clinic that Y was not the legal parent of C2 because of "anomalies" in the clinic's paperwork: although X signed Form WP, Y did not sign Forms PP or IC.

In the interim, the relationship between X and Y had broken down, and Y had remarried and given birth to another child. X and Y agreed a parenting plan in respect of C1 and C2, and a pattern of shared care was agreed. As part of that parenting plan, X and Y also agreed that neither would be the legal parent of, or have parental responsibility for, the other's biological child. As such, X sought a declaration of parentage that Y was not the legal parent of C2, pursuant to s.55A of the Family Law Act 1996. Y did not oppose her application.

The President relied on the statutory framework and legal principles that he had laid down in *Re A and Others (Legal Parenthood: Written Consents)* [2015] EWHC 2602 (Fam), and decided that C2 needed to be joined and a guardian appointed. The President accepted the following as fact:

- i) The treatment which led to the birth of C2 was embarked upon and carried through jointly and with full knowledge by both the woman.
- ii) From the outset of that treatment, it was the intention of both X and Y that Y would be a legal parent of 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 Y was the other parent of the child. That remained their belief when C2 was born.

iv) X and Y, believing that they were entitled to, and acting in complete good faith, registered the birth of their child, as they believed C2 to be, showing both of them on the birth certificate as C2's parents, as they believed themselves to be.

v) The first they knew that anything was or might be 'wrong' was when, some while later, they were contacted by the clinic.

The President concluded that Y never gave her consent in writing in such a way as to satisfy the requirements of HFEA 2008. As such, X was entitled to obtain a declaration of "non-parentage."

The President then went on to consider whether a declaration of "non-parentage" was in C2's best interests or, as preferred by the Guardian, whether the child's birth certificate could be amended, removing Y as the second parent, without the declaration. After reminding himself of the provisions of the Births and Deaths Registration Act 1953 as amended, as well as the Registration of Births and Deaths Regulations 1987, SI 1987/2088, the President concluded that he could not utilise s.29(3) of the Births and Deaths Registration Act 1953 to amend C2's birth certificate. As such, he needed to grant a declaration that Y was not his parent, which he did.

## Permission

 Family Law Week