

AB v CD & C (2019)

[2019] EWHC 1695 (Fam)

02/07/2019

Barristers

Alex Verdán KC
Sam King KC
Jacqueline Renton
Michael Edwards

Court

Family Division

Practice Areas

Private Children Law

Case concerning at what stage a child should be informed that the man he believed to be his father was not his genetic father, and whether the identity of his biological father should be disclosed by the mother.

The case concerned a boy (C) who believed AB (the husband of his mother) to be his father. However, C was conceived whilst the mother was having an affair with X who was his biological father. The identity of X was not known to the court, nor to AB.

AB sought that the mother be ordered to disclose X's identity so that C could be told. The mother resisted both C being told that AB was not his father at this stage, and that she should be required to disclose X's identity.

During the parties' marriage C was treated as the much-loved child of the two spouses. After separation AB heard rumours that the mother had been having an affair around the time of C's conception and DNA testing confirmed that AB was not C's biological father. AB was devastated by the news but had decided that he wanted to remain a central figure in C's life which the mother was greatly relieved by. The mother was full of genuine remorse for the situation she had brought about. The news that AB was not C's biological father was widely known to family members, the staff in the parents' various residences, and their immediate social circle.

AB issued a raft of proceedings against the mother, including proceedings in the Chancery Division for breach of confidence, and proceedings in the QBD claiming back all the money he had spent on C together with seeking damages for his distress. The deluge of proceedings gave Cohen J concern as to how AB might intend to use the information of X's identity.

AB submitted that C needed to know who his father was as soon as possible, which meant telling him not only that AB was not his father, but also knowing the identity of X.

The mother submitted that C simply would not understand what was meant by the concept of him having two fathers in his life, and it was far better to wait for about 2 years when he would understand the genetic process.

A Guardian was appointed for C. She recommended that C be told about his paternity now, rather than waiting until he was older and risking him finding out via alternate means. She considered that as a young child the information was likely to have less of a devastating impact than if he were older. She did not support telling C at this stage that AB was not his genetic father, but deferring telling him who X was, given the risk of C feeling information was being kept from him and doubling the pain of having to tackle the two related issues at times chronologically apart.

Cohen J considered the starting point to be that C must be told sooner rather than later that AB is not his biological father. He agreed with the guardian that he was at an age when it would be easier for him to accept than it would be when he is older. He also agreed the real risk of him hearing rumours from others needed to be avoided if possible.

The much harder issue was that relating to the disclosure of X's identity. The difficulty with dealing with the two issues in one go (as the Guardian suggested) was that X was completely unaware of the proceedings and it was not possible to know how he would react and whether he would want to play any role in C's life or even meet him. His reaction would impact on what C was told.

Cohen J concluded that it would be wrong to disclose X's identity until answers about X's position were known. It was more in C's interest for the parties to be better equipped to answer such questions as he might ask, than to separate the two issues. The learned Judge therefore drafted a letter (subject to counsel's comments) to X which would be sent seeking answers. The matter was to be listed before Cohen J in 5-6 weeks' time by when he expected X to have responded. The position was buttressed with various orders including the grant of parental responsibility and a 'spend time' order to AB.

Permission

 Family Law Week