

Re R (A Child) (IVF: Paternity of Child)

[2005] 2 AC 621

12/05/2005

Court

House of Lords

Summary

Parentage of IVF child.

Facts

B and the mother, D, who were not married, sought IVF treatment involving the removal of eggs from D and their fertilisation by sperm provided by an anonymous donor. D signed a consent form for the treatment, and the form was countersigned by B, acknowledging that he would become the legal father of any resulting child. The treatment was initially unsuccessful, and by the time D returned to have a further set of embryos implanted she and B had separated. She continued with the treatment without B's knowledge. The implantation of the second set of embryos was successful, and D gave birth to R. On B's application, Hedley J declared that under section 28(3) of the Human Fertilisation and Embryology Act 1990 B was R's legal father. The Court of Appeal allowed an appeal by D.

On appeal by B—

Held

Held, dismissing the appeal, that for section 28(3) to apply the embryo had to be placed in the mother at a time when treatment services were being provided for the woman and the man together; that it was important that the legal relationship of parenthood should not be based on a fiction, especially if deception was involved, and section 28(3) should only apply to cases falling clearly within the statutory language; and that, although treatment services had originally been provided for D and B together, they had not been so provided at the relevant time, namely when the implantation had taken place that had resulted in the birth of R (post, paras 1-3, 19-20, 33, 39, 41-43, 45).

Per curiam. More reliable safeguards are needed in a matter directly affecting a child's parentage. If an unmarried man is to become the legal father of a child of which he is not the biological father, that must be brought home to him as clearly as possible (post, paras 1-4, 26, 35).

Decision of the Court of Appeal [2003] EWCA Civ 182; [2003] Fam 129; [2003] 2 WLR 1485; [2003] 2 All ER 131 affirmed.

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