

Leeds Teaching Hospitals NHS Trust v A and B

[2003] 1 FLR 412

04/11/2002

Court

High Court

Summary

Parentage of child after IVF mix-up.

Facts

Both couples, Mr and Mrs A and Mr and Mrs B, were referred to the Assisted Conception Unit at Leeds General Infirmary for fertility treatment. The two couples attended the clinic on the same day and both went through the same procedures, which involved taking samples of male sperm, injecting male sperm into the female eggs, and shortly afterwards implanting the eggs back into the woman. Mrs B did not give birth to a child as a result of the treatment, but Mrs A became pregnant with twins. After the birth of the twins, it became apparent that the children had a different skin colour to that of Mr and Mrs A. Subsequent DNA testing showed that while Mrs A was the biological mother of the children, Mr A was not the biological father. It was realised that at some stage in the process there had been a mix-up, and that Mr B's sperm had been used to fertilise Mrs A's eggs. The Leeds Teaching Hospitals NHS Trust responsible for the clinic sought directions from the court as to how to proceed, and the Human Fertilisation and Embryology Authority, the clinic's licensing body, issued proceedings to establish who ought properly to be named as the children's father in the register for which it is responsible. The court made orders to protect all the individuals concerned from intrusion into their privacy. The court ruled that Mr and Mrs B had to be told what had happened, and gave directions as to how this should be done; Mr B took part in DNA testing which established that he was the biological father of the twins. Following its own investigation into the clinic's activities, the Human Fertilisation and Embryology Authority imposed a number of conditions on the clinic's licence, including restrictions on the number of egg collections and frozen embryo transfers performed, a requirement to adhere to witnessing protocols (now mandatory for all centres) and a requirement for urgent revisions to the clinic's quality assurance and other laboratory procedures and protocols. It had been confirmed that the clinic was complying with these additional licence conditions, and that there was ongoing monitoring by the Human Fertilisation and Embryology Authority of the activities of the clinic.

Held

Held – directing that the legal issues raised should come back to the same court for detailed consideration early in 2003 –

(1) The next stage in the legal proceedings would be to establish the legal parentage of the twins, in particular whether the Human Fertilisation and Embryology Act 1990 applied to these facts, and if it did

whether it was compliant with the Human Rights Act 1998 (see para [15]).

(2) Because this public judgment had named the clinic and NHS Trust concerned, there was no continuing restriction upon that information being made public. In this way, the order restricting publicity would continue to protect both couples and the children from coming into the public eye, but not in any way restrict discussion and debate about the important subject of fertility treatment or the general issues raised by this difficult and unusual case (see paras [17], [19]).

Per curiam : there were no family proceedings before the court and no welfare concerns relating to the twins, who lived in a happy and loving environment. No one was suggesting that the twins should be uprooted from Mr and Mrs A's care. These events may have caused concern and anxiety to other families who had received fertility treatment, and the court referred anyone seeking information to a helpline set up by the NHS Trust, and to NHS Direct, which had been briefed appropriately (see para [16]).

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