

Re T (Paternity: Ordering Blood Tests)

[2001] 2 FLR 1190

10/05/2001

Court

Family Division

Facts

The mother and her husband were unable to conceive a child together. They agreed that, in order to become pregnant, the mother would have sex with someone else. The mother had sex with the applicant, a good friend of the family, on many occasions over a 3-month period, but no pregnancy resulted. The mother appeared to resign herself to being childless, and the sexual relationship with the applicant ended. Some 10 years later, the mother made another attempt, and had sex with the applicant, and with three other men. She became pregnant, and had a child, who was raised as the husband's child. For a time after the birth the applicant saw the child regularly, in his role as friend of the family, but the mother eventually considered that the applicant was becoming too demanding, and ended the visits. Later someone, possibly the applicant, gave a photograph of the child to the applicant's adult daughter, with information casting doubt on the child's paternity. The applicant's daughter passed the information to others, including the mother's niece and nephew, who attended the local school. The husband responded by asserting his paternity of the child, and the applicant proclaimed himself publicly as the child's father. On the applicant's application for parental responsibility and contact orders, the family proceedings court refused to order DNA tests, concluding that the child would be confused by another father, and that the tests would harm the mother's marriage. Six years later the applicant again applied for blood tests including DNA tests, as a preliminary to an application for parental responsibility and contact orders, relying upon the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

Held

Held – making the order for blood testing –

(1) Under domestic law, the child's best interests were to be weighed against the competing interests of the adults affected. In most cases it was likely to be in the child's best interests that the truth about paternity was known. In a case such as this, in which (a) doubts about the child's paternity were already in the public domain, giving rise to a significant risk that the child would be informed about them sooner rather than later, (b) the relationship between the mother and her husband was a stable one, and both were already aware of the paternity doubts, and (c) blood tests (depending on how they turned out) might actually determine the applications for contact and parental responsibility, DNA testing would be in the child's best interests. Balancing the child's best interests against the interests of the mother and husband, blood tests, including DNA tests, ought to take place.

(2) Under Art 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, all parties had the right to respect for private and family life. The child had a right to know his true identity and to have the possibility of contact with each of his natural parents; also a competing right to have the current stability of his family life protected. Similarly, the mother and her husband, and the applicant for parental responsibility, had conflicting rights. When the various Convention rights pulled in different directions, the rights and best interests of the child concerned fell particularly to be considered, and in this case the child's right to know, perhaps with certainty, his true identity, emerged as the weightiest consideration. The interference with other rights which would result from going ahead with the tests was proportionate to the legitimate aim of providing the child with the possibility of certainty as to his real paternity.

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