

Re O and J (Paternity: Blood Tests)

[2000] 1 FLR 418

24/01/2000

Court

Family Division

Summary

DNA testing of paternity

Facts

In each case a male applicant had obtained a direction under the Family Law Reform Act 1969, s 20(1) for the use of blood tests designed to determine the paternity of the child. In the case of O, the mother had first informed the man that he was the child's father, then told him that he was not, and was now resisting his contact application. In the case of J, the mother had informed the man that he was the father of the child and he wished to verify her claim. In each case the mother, as the person with sole parental responsibility for, and care and control of the child, refused her consent to the child's blood being tested. The applications raised the question: what, if any, order the court might make to enforce the direction that a sample of blood be taken from the child and were transferred to the High Court for a ruling to be made.

Held

Held – remitting both cases to the county court for further directions and/or adjudication – the Family Law Reform Act 1969, s 21(3) gave the person with care and control of a child the absolute right to refuse to allow a sample of blood to be taken from the child for the purpose of determining paternity. The court could not order that a sample of blood be taken from a child under its inherent jurisdiction, because that jurisdiction had been ousted by the statutory scheme under the 1969 Act. The order made in *Re R (Blood Test: Constraint)*, which delivered the child into the care and control of the Official Solicitor at a particular time and place, for the purpose of a blood test, and permitted the Official Solicitor to consent on the child's behalf, was impermissible because it was a device designed to circumvent the plain provisions of s 21(3) of the 1969 Act. It would be a wholly inappropriate use of the Children Act 1989, s 37 to order a report and to make an interim care order at the same time, for the sole purpose of enabling a local authority under an interim order to give consent to the child's blood being sampled. Therefore the court had no jurisdiction to compel the parent with care and control of the child to give consent to a sample being taken of the child's blood.

Per curiam : the current state of the law did not serve the best interests of children: if a direction for blood tests could not be enforced both the court and the children concerned were deprived of the means of acquiring knowledge about the children's paternity, and the court was thrown back on the unsatisfactory and blunt instrument of drawing an inference against the person with care and control. If

Parliament did not implement reform in this area, the law would continue to fail children. Reform might be achieved when the Human Rights Act 1998 came into force, by the point being taken that Part III of the Family Law Reform Act 1969 was not human rights compliant.

Permission

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