

Re D (Paternity)

FLR 2007 2 26

20/10/2006

Barristers

Teertha Gupta KC
Lucy Cheetham

Court

High Court

Summary

The teenage mother had consistently identified a particular man as the father of the child; the man had recognised his paternity of the child, and also of the mother's two other children. Shortly after birth, the child had been placed with the man's mother on the basis that she was the child's paternal grandmother; eventually the grandmother figure had been granted a residence order in her favour. The child had had occasional contact with the man believed to be his father but had had very little contact with the mother, and had always relied on the grandmother figure for parenting. Two other children lived with the paternal grandmother, one child believed to be the child's full sibling, and a cousin. The child had had a troubled childhood; he had a number of educational and behavioural problems and the evidence of the social worker and the guardian was that he was an angry young person struggling to deal with various difficulties of his own. During a visit to the child on his tenth birthday, the applicant, who had undoubtedly known the mother at about the time of conception, was presented by a third party to the child as the child's real father. Shortly afterwards the applicant sought residence and contact orders, and a parental responsibility order. The child's adamant response was that he wanted nothing to do with the applicant, that the applicant was not his father, and that he would not participate in scientific testing. The residence was withdrawn, but the applicant still sought to establish his paternity by scientific testing under s. 20 of the Family Law Reform Act 1969 (the 1969 Act).

Held

Held – ordering scientific testing to establish paternity, but staying the order in relation to the child without limit of time but with liberty to restore –

(1) There were reasonable grounds for believing that the applicant might be the child's father, sufficient to warrant investigation by scientific testing.

(2) Although the child was not competent in the Gillick sense, he did understand the essence of the issue between the adults, what testing meant and what its conclusions might be; his strong opposition to scientific testing was his own, and the whole issue of paternity was a big issue at a highly emotive stage of his life. The applications had to be understood in the context of the child's life; they had challenged

the only emotional security the child had ever known.

(3) Under s. 21 of the 1969 Act the court could exercise its compulsive powers to override a lack of consent to the tests only if it would be in the child's best interests for the sample to be taken. It was in the child's best interests to know the truth about the disputed paternity, and to know sooner rather than later, as this was an issue that he would neither forget, nor be able wholly to repress. However, it was not in his best interest to press the issue now, given the other turbulence in his life and his deep resistance to testing.

(4) The court directed that the applicant provide samples to be stored, and made the order for a sample be taken from the child, but stayed that order without limit of time but with liberty to restore. As the obtaining of such a sample was strongly in the long-term interests of the child, this approach had the effect of securing fairness to the man whilst protecting the position of the child in terms of removing pressure from him at the present time.

(5) The guardian was to see the child, and explain that the issue of paternity should not be indefinitely put off, and that, in the end, truth was easier to live with than doubt, but that in recognition of the pressures facing the child, the court did not wish to ask the child to do anything in this regard until he felt ready to do so. If at any stage the child agreed to provide a sample and was tested, it would be the obligation of either the social worker or the guardian to inform the applicant of the results.