

M (2013)

2013 EWHC 1901 (Fam)

05/07/2013

Barristers

Sam King QC
Matthew Persson

Court

High Court (Family Division)

Practice Areas

Private Children Law

Summary

Human Fertilisation and Embryology Acts 1990 and 2008

Mother [M] of child born after donation of sperm by donor [F] brings application under schedule 1 CA 1989 for maintenance against F ... M was married to H at time of the conception.

Facts

Preliminary Issue:

F argues that the donation was artificial insemination [AI] and that therefore H is the father for all purposes, pursuant to s35 et al HFEA 2008, and is the parent for the purposes of schedule 1 CA 1989.

M argues that the donation was by natural insemination [NI] and therefore the HFEA does not apply.

H argues that, in any event, he was not consenting to the 'treatment' at the time of the donation and that therefore the presumption of parenthood when his wife conceives by AI, per s35 HFEA 2008 is rebutted. H and M argue that, in that event, fatherhood reverts to F. F argues that in that event the child is fatherless.

Held

Judge finds that 1. Child was conceived by NI therefore F is the father. 2. In any event, H was not consenting at the time of the 'treatment'; also holds, rejecting the arguments of F that (i) there is a presumption of consent and (ii) H had to communicate that consent to all relevant parties, that the presumption in s35 HFEA 2008 is as to parenthood not as to consent and that consent at the relevant time is simply a fact to be determined; this is the first time that 'consent' in s35 has been considered by the HC.

Judge also considers and does not accept H's argument that s35 should not apply to unregulated private sperm donor arrangements although comments on and criticises the unattractive aspects of this

unregulated sector and adds that ... “If unlicensed AI is becoming more prevalent as a result of the internet, there may be a strong argument for reviewing a statutory scheme that has licensed AI as its paradigm. But what the law is and what it ought to be are two different questions”

To read the full judgement click [here](#)