

Re G (Children) (2014)

[2014] EWCA Civ 336

25/03/2014

Court

Court of Appeal Civil Division

The court was required to determine whether a shared residence order should be made in respect of twin girls. The appellant (X) and respondent (M) had entered into a same-sex relationship. X had donated her eggs to M and, using an anonymous sperm donor, M gave birth to twins. A few years later, using the same donor, X had a daughter (D). X was therefore the genetic mother of all three children, but lawfully only the mother of D. By virtue of the [Human Fertilisation and Embryology Act 1990 s.27\(1\)](http://www.lawtel.com/MyLawtel/Documents/AF4000059) M was the mother of the twins. M returned to work and X took voluntary redundancy and remained at home with the twins. The parties separated when the twins were aged four. The twins lived with M and her new civil partner. M granted her new partner parental responsibility in respect of the twins. By the time of the first hearing, the parties had agreed contact arrangements and X had abandoned a claim for a sole residence order. The judge was invited to determine, on the basis of submissions only, whether a shared residence order should be granted to X so that she could obtain parental responsibility. X maintained that she was the twins' genetic and psychological parent and should therefore have parental responsibility.

(1) It was helpful to consider the changing legal framework of parenthood including the following factors: (a) the [Human Fertilisation and Embryology Act 2008 s.42](http://www.lawtel.com/MyLawtel/Documents/AF0180611) provided that if a woman was party to a civil partnership at the time of the placing of the embryo into her, then her civil partner was to be treated as a parent of the child unless she did not consent to the process. Similarly, where two women agreed that both should be parents but they were not in a civil partnership, under [s.43](http://www.lawtel.com/MyLawtel/Documents/AF0180611) the other woman could be treated as a parent; (b) it was clear that "parental responsibility" under the [Children Act 1989 s.3](http://www.lawtel.com/MyLawtel/Documents/AF1616393) included taking decisions about aspects of the child's upbringing such as education, religion, medical treatment and holidays abroad. Where those with parental responsibility were in dispute over decisions about a child, the court could regulate the situation under [s.8](http://www.lawtel.com/MyLawtel/Documents/AF1616393) of the 1989 Act; (c) the categories of those who could acquire parental responsibility had broadened to include unmarried fathers, a woman who was a parent by virtue of s.43 of the 2008 Act and step-parents or civil partners; (d) the 1989 Act gave no guidance on when a court should make a parental responsibility order save that the child's welfare was the paramount consideration. Three particular features were important,

