

# D v D (Fertility Treatment: Paperwork Error)

**[2016] EWHC 2112 (Fam)**

05/07/2016

## **Barristers**

Dorothea Gartland KC

## **Court**

Family Division

## **Practice Areas**

Private Children Law

The latest in the series of cases focusing on applications for a declaration of parentage on the birth of a child following fertility treatment.

## **Application**

This case concerned an application by (in effect) a couple, now married, for a declaration of parentage under s. 55A of the FLA 1986 in respect of a young child. Here – once again – a couple had suffered at the hands of a paperwork error made at a fertility clinic.

## **Paperwork error**

The precise difficulty in this case was identical to that in *In the Matter of the Human Fertilisation and Embryology Act 2008 Case J* [2016] EWHC 1330 (Fam). Each parent was asked by the fertility clinic to fill in and sign a form relating to the parentage of the intended child: for a female partner, this is Form WP; for a male partner, Form PP. On the Form WP, there is a declaration with a small tick box that reads, “I consent to my partner (named in section 2) being the legal parent of any child born from my treatment”. Separately, there is space for a signature. In this case, the female partner omitted to tick the declaration; the clinic did not pick up on this and there matters rested for several years – until an audit licensed by the Human Fertilisation and Embryology Authority following decisions by Cobb J and Theis J.

## **Remedy**

Here, the couple always consented to them both becoming the child’s parents: they participated in the fertility process with that as the bedrock and they brought up the child on the basis of that consent. In short, “the absence of no more than a centimetre of ink in a tick box is nothing more than an understandable error”, at [12].

Peter Jackson J found without hesitation that the statutory consent was given: he made a declaration that both are the legal parents of the child. By consent, it was ordered that the clinic pay the legal costs. The court made clear that the couple had nothing but praise for the clinical staff at the fertility clinic and that, despite the delays in alerting the couple, the clinic had now fully explained what had gone wrong, offered

an unreserved apology and itself taken responsibility for the legal costs.

#### Good practice

Following discussion with the President, Peter Jackson J set out three points of good practice. One, the HFEA is invited to consider whether the Form WP's use of a tick box in addition to a signature is necessary (or, in the words of the court, "superfluous at best and a potential trap at worst", at [15]). Two, the delay of the fertility clinic (8 months) in bringing the error, once discovered, to the attention of the couple could not be justified – and, couples should be able to get their own advice "in real time", at [17], with assurances as to legal costs. And, three, the filing and service of a clinic's statement from the embryologist (as the person responsible within the regulations for the management of the licensable activity) ought to take place at the earliest stage in the proceedings.

To read the judgment, please click [here](#).

#### Permission

 Family Law Week