4PB, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

Re O (Human Fertilisation & Embryology Act 2008) (2016)

[2016] EWHC 2273 (Fam)

13/09/2016

Barristers
Dorothea Gartland KC

Court
Family Division

Practice Areas
Private Children Law
Revocation of an adoption order and declaration of parentage by Munby P after the clinic mislaid forms and the child was subsequently adopted by the parent.

X and Y were civil partners and X underwent IUI treatment with Y's consent. Some years later, grave deficiencies in the clinic's record keeping were uncovered. The clinic had lost or mislaid two forms (including the important Form PP) signed by Y. There was a Treatment Checklist which recorded that Y attended, consented to treatment and that the forms were completed.

Munby P, in applying the earlier authorities of Case A, F, and H, concluded that the Treatment Checklist evidences a Form PP. X gave consent, as did Y, and so X was entitled to a declaration that Y is the legal parent of the child.

This case was more complex than others as when X and Y were told of the error, they were advised that the only solution was for Y to adopt the child. Believing this was the only route to legal certainty for the child, an adoption order was made (this being before the important judgment of Theis J in X v Y (St Bartholomew's Hospital Centre for Reproductive Medicine Intervening) [2015] EWFC 13, [2016] PTSR 1, and it being commonly thought that adoption was the only option in such circumstances). As such, the parents now sought a revocation of the adoption order and a declaration of parentage.

Munby P considered that the child's welfare demanded the adoption order be revoked: "common humanity to X and Y demands the same". He drew on case law to argue the court could revoke an adoption order in "highly exceptional and very particular circumstances". It was noted that the present case is unprecedented as Y was in fact and in law, already the child's mother. Everyone, including the District Judge that made the adoption order, was laboring under a fundamental mistake and the entire adoption proceeded on a false basis in law.

In this case, the consequence of an order revoking the adoption order is different from any other case –

the child will remain with the same people who have always been the parents. Public policy demanded the making of this order which was so manifestly in the child's best interests.

Clarification was sought from the Government Legal Department as to the position regarding the child's birth certificate. The parents understandably wanted to ensure that any future birth certificate is not marked "adopted". It was confirmed that any certificate of the entry in the register of births subsequently issued, will not refer to the adoption. The court had also managed to retrieve the child's original birth certificate, unmarked, which was returned to the parents.

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