

# Case V (Human Fertilisation And Embryology Act 2008) [2016]

**[2016] EWHC 2356 (Fam)**

30/09/2016

## **Barristers**

Andrew Powell

## **Court**

Family Division

## **Practice Areas**

Private Children Law

Court made a declaration of parentage pursuant to s.55A FLA 1986 following the relevant form having been lost or mislaid. Comments from Munby P about ensuring these cases are dealt with as quickly and smoothly as possible, and potential for the court to be invited to make costs orders 'as the case goes along'.

This was an application by X for a declaration pursuant to s.55A Family Law Act 1986 that she is, in accordance with sections 43 and 44 HFEA 2008, the legal parent of Z. The application was supported by Y, her same sex partner, who had given birth to Z following IVF treatment provided by the clinic.

The Court found:

- i) The treatment which led to Z's birth was embarked upon and carried through jointly and with full knowledge by both X and Y.
- ii) From the outset of that treatment, it was the intention of both X and Y that X would be a legal parent of Z. Each was aware that this was a matter which, legally, required the signing by each of them of consent forms. Each of them believed that they had signed the relevant forms as legally required and, more generally, had done whatever was needed to ensure that they would both be parents.
- iii) From the moment when the pregnancy was confirmed, both X and Y believed that X was the other parent of the child. That remained their belief when Z was born.
- iv) X and Y, believing that they were entitled to, and acting in complete good faith, registered the birth of their child, as they believed Z to be, showing both of them on the birth certificate as Z's parents, as they believed themselves to be.
- v) The first they knew that anything was or might be 'wrong' was when, some while later, they were

contacted by the clinic.

Although X signed, at the appropriate time, a Form PP in proper form, no Form WP signed by Y could be found in the clinic's records relating to Y's treatment. The Court found that the records sufficiently evidenced a Form WP, signed by Y at the appropriate time and in proper form, which had been lost or mislaid.

Munby P considered the answer to be clear: X gave the relevant consent, so did Y, and X was entitled to the declaration. In addition, both X and Y had signed a Form IC and in the circumstances, the application of the principles set out in earlier authorities meant X was, in principle, entitled to the declaration sought.

X and Y were unstinting in their praise for the clinic's medical and nursing staff, and were grateful to the clinic for having put them in touch with specialist solicitors and for having agreed, in principle, to pay their costs. Unhappily there was initial delay on the part of the clinic in disclosing the medical records (generating unnecessary legal costs), and X and Y had suffered considerable and needless anxiety as a result of the practical difficulties their solicitors had in extracting payment of their costs.

The Court set out that the bureaucrats, administrators, and lawyers involved needed to understand the immense emotional impact on the ordinary people unwillingly caught up in these cases of the sudden and profoundly disturbing discovery that something has gone 'wrong'. Munby P said that "We must, everyone involved in the process must, do everything appropriate to ensure that, once the proceedings have started, these cases are dealt with as quickly and smoothly as possible. It may be that, as part of the approach, the court should in future be invited to make costs orders 'as the case goes along.'"

## Permission

 Family Law Week