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Status:  Positive or Neutral Judicial Treatment

R. v Human Fertilisation and Embryology Authority Ex p. Blood

Also known as:

R. v Human Fertilisation and Embryology Authority Ex p. DB

Court of Appeal (Civil Division)

06 February 1997

Case Analysis

Where Reported

[\[1999\] Fam. 151](#); [\[1997\] 2 W.L.R. 806](#); [1997] 2 All E.R. 687; [\[1997\] 2 C.M.L.R. 591](#); [1997] Eu. L.R. 370; [1997] 2 F.L.R. 742; [1997] 2 F.C.R. 501; (1997) 35 B.M.L.R. 1; [1997] C.O.D. 261; [1997] Fam. Law 401; (1997) 147 N.L.J. 253; Times, February 7, 1997; Independent, February 11, 1997

Case Digest

Subject: Health

Keywords: Artificial insemination

Summary: Artificial insemination; unlawful preservation of sperm taken from deceased husband without written consent; wife's right to obtain fertilisation treatment in another Member State

Abstract: B appealed against the dismissal of her application for judicial review of H's decision to refuse to release sperm taken from her husband before he died to enable her to be treated by artificial insemination. H had declined to licence the treatment on the basis that the donor had not given written consent, but B argued that by also refusing to grant her a licence to export the sperm abroad it had failed to take account of her rights under the Treaty of Rome 1957 Art.59 and Art.60 to obtain medical treatment in other Member States where written consent was not required.

Held, allowing the appeal, that although the storage and preservation of sperm from an unconscious man without his written consent was unlawful under the [Human Fertilisation and Embryology Act 1990](#), no criticism could be made of what was hitherto an unexplored legal situation. H had been right to refuse treatment in the UK, but it had failed to take into account B's rights under EU law. B had a directly enforceable right to receive cross border medical treatment which had been infringed by H's decision and she was entitled to receive treatment in Belgium in a clinic which adopted generally the same standards as the UK. H, who had not appreciated the position, would be asked to reconsider its decision to refuse an export licence.

Judge: Lord Woolf, M.R.; Henry, L.J.; Waite, L.J.

Counsel: For B: Lord Lester of Herne Hill Q.C., Peter Duffy and Michael Fordham. . For the authority: David Pannick Q.C. and Dinah Rose.

Solicitor: For B: Leigh Day & Co. . For the authority: Morgan Bruce (Cardiff).

Appellate History & Status

Queen's Bench Division

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[\(1996\) 93\(40\) L.S.G. 25](#); [\(1996\) 146 N.L.J. 1542](#); [\(1996\) 140 S.J.L.B. 227](#); Times, October 18, 1996; Independent, October 23, 1996

Reversed

Court of Appeal (Civil Division)

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[\[1997\] 2 C.M.L.R. 591](#); [\[1997\] Eu. L.R. 370](#); [\[1997\] 2 F.L.R. 742](#);
[\[1997\] 2 F.C.R. 501](#); [\(1997\) 35 B.M.L.R. 1](#); [\[1997\] C.O.D. 261](#);
[\[1997\] Fam. Law 401](#); [\(1997\) 147 N.L.J. 253](#); Times, February 7, 1997; Independent, February 11, 1997

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[\[1996\] All E.R. \(EC\) 877](#); [\[1996\] E.C.R. I-5755](#); [\[1996\] 3 C.M.L.R. 671](#); [\[1997\] I.C.R. 443](#); [\[1997\] I.R.L.R. 30](#); Times, November 21, 1996; Independent, November 14, 1996; ECJ; 1996-11-12

Dobson v North Tyneside HA

[\[1997\] 1 W.L.R. 596](#); [\[1996\] 4 All E.R. 474](#); [\[1997\] 1 F.L.R. 598](#);
[\[1997\] 2 F.C.R. 651](#); [\[1997\] 8 Med. L.R. 357](#); [\(1997\) 33 B.M.L.R. 146](#);
[\[1997\] Fam. Law 326](#); [\(1996\) 93\(31\) L.S.G. 29](#); [\(1996\) 146 N.L.J. 1458](#);
[\(1996\) 140 S.J.L.B. 165](#); Times, July 15, 1996; Independent, July 18, 1996; CA (Civ Div); 1996-06-26

Y (Mental Patient: Bone Marrow Donation), Re

[\[1997\] Fam. 110](#); [\[1997\] 2 W.L.R. 556](#); [\[1996\] 2 F.L.R. 787](#); [\[1997\] 2 F.C.R. 172](#);
[\(1997\) 35 B.M.L.R. 111](#); [\[1997\] Fam. Law 91](#); Fam Div; 1996-06-14

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[\[1997\] Q.B. 139](#); [\[1996\] 3 W.L.R. 787](#); [\[1996\] All E.R. \(EC\) 493](#);
[\[1996\] E.C.R. I-2553](#); [\[1996\] 2 C.M.L.R. 391](#); [\[1996\] C.E.C. 979](#);
[\(1996\) 15 Tr. L.R. 364](#); Times, June 6, 1996; Independent, June 24, 1996; ECJ; 1996-05-23

B (Minors) (Parentage), Re

[\[1996\] 2 F.L.R. 15](#); [\[1996\] 3 F.C.R. 697](#); [\[1996\] Fam. Law 536](#); Fam Div; 1996-02-15

Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano (C-55/94)

[\[1996\] All E.R. \(EC\) 189](#); [\[1995\] E.C.R. I-4165](#); [\[1996\] 1 C.M.L.R. 603](#);
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[\[1997\] I.N.L.R. 165](#); [\(1996\) 8 Admin. L.R. 477](#); [\[1996\] C.O.D. 54](#); [Times, December 8, 1995](#); [Independent, November 2, 1995](#); QBD; 1995-11-01

R. v Chief Constable of Sussex Ex p. International Trader's Ferry Ltd

[\[1996\] Q.B. 197](#); [\[1995\] 3 W.L.R. 802](#); [\[1995\] 4 All E.R. 364](#); [\[1995\] 3 C.M.L.R. 485](#); [\[1995\] C.O.D. 401](#); [\(1995\) 145 N.L.J. 1401](#); [Times, July 31, 1995](#); [Independent, July 28, 1995](#); QBD; 1995-07-26

Alpine Investments BV v Minister van Financiën (C-384/93)

[\[1995\] All E.R. \(EC\) 543](#); [\[1995\] E.C.R. I-1141](#); [\[1995\] 2 B.C.L.C. 214](#); [\[1995\] 2 C.M.L.R. 209](#); [Times, June 16, 1995](#); ECJ; 1995-05-10

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S (Hospital Patient: Court's Jurisdiction) (No.1), Re

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[\[1995\] Q.B. 353](#); [\[1995\] 2 W.L.R. 728](#); [\[1995\] 4 All E.R. 843](#); [\(1995\) 16 Cr. App. R. \(S.\) 748](#); [\[1995\] Crim. L.R. 347](#); [\(1995\) 159 J.P.N. 101](#); [\(1995\) 92\(6\) L.S.G. 38](#); [\(1995\) 139 S.J.L.B. 44](#); [Times, December 26, 1994](#); CA (Crim Div); 1994-12-13

TV10 SA v Commissariaat Voor de Media (C-23/93)

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Considered

U v W (Attorney General Intervening) (No.2)

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