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G (Children) (Children: Sperm Donors: Leave to Apply for Children Act Orders), Re

Z (A Child), Re

Also known as:

T v X

S v D

Family Division

31 January 2013

Case Analysis

Where Reported

[2013] EWHC 134 (Fam); [2013] 1 F.L.R. 1334; [\[2013\] H.R.L.R. 16](#); [2013] Fam. Law 530

Case Digest

Subject: Family law **Other related subjects:** Human rights

Keywords: Artificial insemination; Civil partners; Contact orders; Fathers; Right to respect for private and family life; Same sex partners; Sperm donors

Summary: When deciding an application by a biological father for leave to apply for an order under the [Children Act 1989 s.8](#) in respect of a child conceived using his sperm by a woman who, at the time of the artificial insemination, was party to a civil partnership, the court could take all relevant matters into account, including the reforms implemented in the [Human Fertilisation and Embryology Act 2008](#), the policy underpinning those reforms and the factors identified in [s.10\(9\)](#) of the 1989 Act.

Abstract: The applicant men (S and T) applied for leave to apply for contact orders under the [Children Act 1989 s.8](#) for children conceived using their sperm by women in a civil partnership. S agreed to provide sperm to his friends (D and E) who were a lesbian couple wishing to have children. D and E stated that they made it clear to S that he would have no parental title, no parental responsibility and no financial commitment. In March 2008 E became pregnant. D and E entered into a civil partnership in September 2008 and a daughter (F) was born in December 2008. S visited them in hospital and thereafter there was regular contact. In August 2008, S's partner, T, provided sperm to a lesbian couple (X and Y) who were in a civil partnership and who were friends of D and E, and X gave birth to a son (Z). X and Y stated that they wanted to have the same arrangement as D and E had with S and they wanted T to be a role model for Z. In September 2009 S and T entered a civil partnership. D, E and F were seated at the top table at the reception. D, E, S and T then discussed a sibling for F and S again agreed to provide sperm and a son was born (G) in September 2010. Following the [Human Fertilisation and Embryology Act 2008](#), D's name was included on the birth certificate. S and T continued to see F and G frequently. Disagreements then began as to the amount of contact S and T could have. Neither S in the case of G nor T in the case of Z was entitled to apply for a contact order as they were not legal parents following the 2008 Act so they needed the court's leave to make the application. S was F's legal

father. D, E, X and Y contended that it was the intention of Parliament to protect same sex families who had conceived with sperm donors and their status as parents should be exclusive and absolute. S and T argued that the 2008 Act did not eradicate their status as genetic parents who might be allowed by the court to play a role in the life of the child.

Applications granted. When deciding an application by a biological father for leave to apply for an order under s.8 in respect of a child conceived using his sperm by a woman who, at the time of the artificial insemination, was party to a civil partnership, the court could take all relevant matters into account, including the reforms implemented in the 2008 Act, the policy underpinning those reforms and the factors identified in [s.10\(9\)](#) of the 1989 Act and the prospects of success were not decisive, [B \(A Child\) \(Paternal Grandmother: Joinder as Party\), Re \[2012\] EWCA Civ 737, \[2012\] 2 F.L.R. 1358](#) followed. The policy of the 2008 Act put lesbian couples and their children in exactly the same legal position as other types of parent and children. The relationship between a same sex couple constituted family life for the purposes of the European Convention on Human Rights 1950 art.8 which was entitled to respect, [Schalk and Kopf v Austria \[2010\] ECHR 995](#) considered. Each case was fact specific. S and T were not strangers to G and Z. As a result of choices made by D, E, X and Y both S and T had regular and frequent contact with G and Z. D and E chose S, an old friend, to provide sperm to enable them to have a child. They wanted their second child to have the same genetic background. They involved S in the preparations before the birth and allowed him contact. Equally X and Y selected T to provide sperm to enable them to conceive a child and allowed him frequent contact. It was also significant that they expressly wanted T to be a role model for Z. D, E, X and Y had exercised their parental responsibility to facilitate some sort of relationship between the children and their biological fathers. It was arguable that they had allowed S and T to establish a family life with the children under art.8. Disputes between the parties about the frequency of past conduct could only be resolved by a substantive fact-finding hearing. On the facts of the instant case, the most important factor was the connection that S and T were allowed by D, E, X and Y to form with each child. S and T had a good arguable case for contact orders and they were granted leave to make applications for contact orders in respect of G and Z. S was refused leave to apply for a residence order. It did not follow that any substantive order for contact would be made. Decisions on contact would be made applying [s.1](#) of the 1989 Act (see paras 63-65, 113-118, 120, 126, 129, 132-137 of judgment).

Judge: Baker, J.

Counsel: For S: Madeleine Reardon. For D and E: Deirdre Fottrell. For X and Y: Alison Russell QC. For T: Samantha King.

Solicitor: For S: Withers LLP. For D and E: Goodman Ray. For X and Y: Natalie Gamble Associates. For T: Burton Woods.

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Civil partners; Contact orders; Same sex partners; Sperm donors.

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