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Title :	R v E (Female Parents: Known Father)
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R v E (Female Parents: Known Father)

Family Division

12 February 2010

Case Analysis

Where Reported

[2010] EWHC 417 (Fam); [2010] 2 F.L.R. 383; [2010] Fam. Law 587

Case Digest

Subject: Family law

Keywords: Best interests; Children; Parental responsibility orders; Same sex partners; Shared residence orders

Summary: In cases outside the ordinary run of parental disputes on separation, it was particularly important to remember that parental responsibility applications remained subject to the overriding provisions of the [Children Act 1989 s.1](#); where a child's nuclear family with his mother and her same sex partner had never included the biological father, the child's best interests clearly lay in refusing the father parental responsibility and shared residence.

Abstract: The applicant father (R) applied for parental responsibility and shared residence orders in respect of the subject child (D). The respondent mother (E) and her civil partner (P) applied for a joint residence order in their favour. D had been conceived with the aid of fertility treatment, with the agreement of R's partner and P. D had lived with E and P since birth and was seven years old at the time of the instant application. E had granted parental responsibility for D to P pursuant to the [Children Act 1989 s.4A\(1\)\(a\)](#). R lived in the United States with his partner, but had been regularly involved in D's life, including significant periods of shared contact, and had been consulted on all major decisions regarding his upbringing until two years before the instant application, when he and E fell out because of disagreements over D's upbringing. The parties resolved their difficulties to some extent after that time, having agreed arrangements under which R could enjoy staying contact with D, but the issues in relation to their substantive applications remained. R's opposition to the application by E and P was based in part on his contention that any shared residence order in their favour would cease to have effect after six months, having regard to [s.11\(5\)](#) of the 1989 Act.

Application refused, cross-application granted. (1) It was in D's best interests that a joint residence order be made in favour of E and P and that R's application for shared residence be refused. The everyday reality of the arrangements which had been agreed and implemented were that E and P acted as D's parents, and that he regarded them as his parents. E and P had taken responsibility for D and had made all the decisions in relation to his upbringing. Although R had played an important role in D's life, there was no evidence to establish co-parenting or that D regarded R as his parent. Moreover, the evidence showed that, prior to D's conception, it had been agreed between all the parties that E and P were to be D's parents. D's home was with E and P. Against that background, R's application for shared residence was misconceived and an unjustified escalation of the dispute between the parties. (2) R's submission in relation to s.11(5) of the 1989 Act was misconceived. That provision only applied where the parties were living apart at the time the shared residence order was made but subsequently

resumed living together for a period of more than six months. It had no application to a situation where the parties were living together at the time of the order. (3) In cases outside the ordinary run of parental disputes on separation, it was particularly important to remember that parental responsibility applications remained subject to the overriding provisions of s.1(1) of the 1989 Act, [D \(Contact and Parental Responsibility: Lesbian Mothers and Known Father\), Re \[2006\] EWHC 2 \(Fam\), \[2006\] 1 F.C.R. 556](#) and [B \(Role of Biological Father\), Re \[2007\] EWHC 1952 \(Fam\), \[2008\] 1 F.L.R. 1015](#) considered. (4) D's nuclear family clearly consisted of himself, E and P. R was not, and had never been, a part of that nuclear family; therefore, to grant him parental responsibility would create the potential for future conflict and would not be in D's best interests.

Judge: Bennett, J.

Counsel: For the applicant: Ayesha Hasan. For the respondents: Peter Jackson QC.

Solicitor: For the applicant: Glazer Delmar. For the respondents: Manches.

Significant Cases Cited	<p>B (Role of Biological Father), Re</p> <p>[2007] EWHC 1952 (Fam); [2008] 1 F.L.R. 1015; [2008] Fam. Law 411; Official Transcript; Fam Div; 2007-08-09</p> <p>D (Contact and Parental Responsibility: Lesbian Mothers and Known Father), Re</p> <p>[2006] EWHC 2 (Fam); [2006] 1 F.C.R. 556; (2006) 150 S.J.L.B. 128; Official Transcript; Fam Div; 2006-01-12</p>
All Cases Cited	<p>B (Role of Biological Father), Re</p> <p>[2007] EWHC 1952 (Fam); [2008] 1 F.L.R. 1015; [2008] Fam. Law 411; Official Transcript; Fam Div; 2007-08-09</p> <p>D (Contact and Parental Responsibility: Lesbian Mothers and Known Father), Re</p> <p>[2006] EWHC 2 (Fam); [2006] 1 F.C.R. 556; (2006) 150 S.J.L.B. 128; Official Transcript; Fam Div; 2006-01-12</p>
All Cases Citing	<p>Mentioned by</p> <p>A v B (Contact: Alternative Families)</p> <p>[2012] EWCA Civ 285; [2012] 1 W.L.R. 3456; [2012] 2 F.L.R. 607; [2012] 1 F.C.R. 510; [2012] Fam. Law 644; Times, June 13, 2012; Official Transcript; CA (Civ Div); 2012-03-14</p>
Significant Legislation Cited	<p>Children Act 1989 (c.41) s.1</p> <p>Children Act 1989 (c.41) s.11(5)</p> <p>Children Act 1989 (c.41) s.4A(1)(a)</p>
Legislation Cited	<p>Children Act 1989 (c.41) s.1</p> <p>Children Act 1989 (c.41) s.11(5)</p> <p>Children Act 1989 (c.41) s.4A(1)(a)</p>

Journal Articles

Lesbian mothers, fathers and other animals: is the political personal in multiple parent families

Artificial insemination; Contact orders; Fathers; Parental responsibility; Parents; Residence orders; Same sex partners.

[C.F.L.Q. 2013, 25\(4\), 451-470](#)

Tangling the web of legal parenthood: legal responses to the use of known donors in lesbian parenting arrangements

Assisted reproduction; Parental responsibility; Same sex partners; Sperm donors.

[L.S. 2013, 33\(3\), 355-381](#)

How many parents?: A v B and C

Fathers; Parental contact; Parental responsibility; Parents; Same sex partners; Sperm donors.

[Fam. Law 2012, 42\(Jun\), 714-716](#)

How many parents does a child need?

Artificial insemination; Fathers; Parental responsibility; Same sex partners; Step-parents.

[Fam. Law 2012, 42\(Mar\), 313-318](#)

Not straight forward: parental disputes within same-sex families

Agreements; Fathers; Intention; Parental contact; Parental responsibility; Parental wishes; Same sex partners; Sperm donors.

[Fam. Law 2012, 42\(Oct\), 1239-1245](#)

A new parenthood paradigm for twenty-first century family law in England and Wales?

Assisted reproduction; Birth parents; Certainty; Fairness; Jurisprudence; Parentage; Parental responsibility.

[L.S. 2012, 32\(3\), 347-368](#)

Alternative families and changing perceptions of parenthood

Artificial insemination; Families; Parents; Same sex partners.

[Fam. Law 2011, 41\(Mar\), 289-294](#)

Books

The Law Relating to Parent & Child in Scotland (SULI) 3rd Ed. Norrie

Chapter: Chapter 8 - Court Orders Relating to Parental Responsibilities and Parental Rights

Documents: [Procedure in Section 11 Applications](#)

The Law Relating to Parent & Child in Scotland (SULI) 3rd Ed. Norrie

Chapter: Chapter 9 - The Section 11(7) Principles

Documents: [The Welfare Principle](#)

