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Title :	R (A Child) (IVF: Paternity of Child), Re
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Status:  Positive or Neutral Judicial Treatment

R (A Child) (IVF: Paternity of Child), Re

Also known as:

R (A Child) (Contact: Human Fertilisation and Embryology Act 1990) (No.2), Re

D (A Child) (IVF: Paternity of Child), Re

R (A Child) (Parental Responsibility: IVF Baby), Re

B v R

Court of Appeal (Civil Division)

19 February 2003

Case Analysis

Where Reported

[2003] EWCA Civ 182; [\[2003\] Fam. 129](#); [\[2003\] 2 W.L.R. 1485](#); [2003] 2 All E.R. 131; [2003] 1 F.L.R. 1183; [2003] 1 F.C.R. 481; (2003) 71 B.M.L.R. 157; [2003] Fam. Law 394; (2003) 100(13) L.S.G. 27; (2003) 153 N.L.J. 317; Times, February 20, 2003; Independent, February 25, 2003

Case Digest

Subject: Family law

Keywords: In vitro fertilisation; Paternity

Summary: For the purposes of the Human Fertilisation and Embryology Act 1990 s.28(3), legal paternity arose when the embryo or the sperm and eggs which resulted in the birth of the child were placed in the woman.

Abstract: A mother, M, appealed against an order declaring that her former partner, F, was the legal father of her child, R, born following in vitro fertilisation, IVF, treatment. M and F began a relationship in 1989. F became infertile and from 1994 the couple sought treatment for assisted conception. In 1998 IVF treatment began. Eggs from M were fertilised by donated sperm, but the first implantation of embryos was not successful. Other embryos were frozen for later use. The relationship ended towards the end of 1998 and in April 1999 M began a new relationship. In May she attended the clinic where she was implanted with some of the frozen embryos, which resulted in the birth of R. F was unaware of M's actions, and the clinic were not informed that M's relationship with F had ended. F applied for a declaration of paternity with respect to R, arguing that the successful implantation of the embryo had taken place in the context of the same course of treatment and he was therefore to be deemed the legal father by operation of the [Human Fertilisation and Embryology Act 1990 s.28\(3\)](#). The judge found for F. M appealed, contending that at the time the embryos were implanted the joint course of treatment had ended.

Held, allowing the appeal, that it was apparent from the words of s.28(3) that legal paternity came into being at the time of implantation of the embryos. The reality of the situation was that "treatment" was given to the woman, not to the man. Embryos could be kept for up to 10 years and therefore it was necessary to properly

identify when within a course of joint treatment paternity could occur. The "simple answer" was that it would only occur when an embryo was implanted "at a time when treatment services [were] being provided for the woman and the man together." In the instant case, M and F were not being treated together when the successful implantation occurred; therefore F did not become the legal father.

Judge: Sir Andrew Morritt V.C.; Hale, L.J.; Dyson, L.J.

Counsel: For the mother: Andrew McFarlane Q.C. and Leona Harrison. . For the respondent: Pamela Scriven Q.C. and James Gatenby. . For the Official Solicitor: Peter Jackson Q.C..

Solicitor: For the mother: Cobleys (Liverpool). . For the respondent: Stephen D Brine (Liverpool). . For the Official Solicitor: CAFCASS Legal Services.

Appellate History & Status

Family Division

R (A Child) (IVF: Paternity of Child), Re
[2002] 2 F.L.R. 843

Reversed

Court of Appeal (Civil Division)

R (A Child) (IVF: Paternity of Child), Re
[\[2003\] EWCA Civ 182](#); [\[2003\] Fam. 129](#); [\[2003\] 2 W.L.R. 1485](#); [\[2003\] 2 All E.R. 131](#); [\[2003\] 1 F.L.R. 1183](#); [\[2003\] 1 F.C.R. 481](#); [\(2003\) 71 B.M.L.R. 157](#); [\[2003\] Fam. Law 394](#); [\(2003\) 100\(13\) L.S.G. 27](#); [\(2003\) 153 N.L.J. 317](#); [Times, February 20, 2003](#); [Independent, February 25, 2003](#)

Affirmed

House of Lords

R (A Child) (IVF: Paternity of Child), Re
[\[2005\] UKHL 33](#); [\[2005\] 2 A.C. 621](#); [\[2005\] 2 W.L.R. 1158](#); [\[2005\] 4 All E.R. 433](#); [\[2005\] 2 F.L.R. 843](#); [\[2005\] 2 F.C.R. 223](#); [\[2005\] Fam. Law 701](#); [\(2005\) 102\(21\) L.S.G. 33](#); [\(2005\) 155 N.L.J. 797](#); [Times, May 13, 2005](#); [Independent, May 17, 2005](#); [Official Transcript](#)

Related Cases

R (A Child) (Contact: Human Fertilisation and Embryology Act 1990) (No.1), Re
[\[2001\] 1 F.L.R. 247](#); [\[2001\] Fam. Law 10](#); Fam Div

All Cases Cited

D (A Child) (IVF Treatment), Re
[\[2001\] EWCA Civ 230](#); [\[2001\] 1 F.L.R. 972](#); [\[2001\] 1 F.C.R. 481](#); [\[2001\] Fam. Law 504](#); [Official Transcript](#); CA (Civ Div); 2001-02-13

X, Y and Z v United Kingdom (21830/93)

[\[1997\] 2 F.L.R. 892](#); [\[1997\] 3 F.C.R. 341](#); [\(1997\) 24 E.H.R.R. 143](#); [\(1998\) 39 B.M.L.R. 128](#); [\[1997\] Fam. Law 605](#); [\(1997\) 94\(17\) L.S.G. 25](#); [Times, April 23, 1997](#); [Independent, April 24, 1997](#); ECHR; 1997-04-22

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

[\[1998\] Fam. 29](#); [\[1997\] 3 W.L.R. 739](#); [\[1997\] 2 C.M.L.R. 431](#); [\[1997\] Eu. L.R. 350](#); [\[1997\] 2 F.L.R. 282](#); [\[1998\] 1 F.C.R. 526](#); [\(1997\) 38 B.M.L.R. 54](#); [\(1997\) 141 S.J.L.B. 57](#); [Times, March 4, 1997](#); [Independent, April 14, 1997](#); Fam Div; 1997-02-19

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

[\[1999\] 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](#); CA (Civ Div); 1997-02-06

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

[\[1996\] 3 W.L.R. 1176](#); [\[1996\] 3 C.M.L.R. 921](#); [\[1997\] 1 F.C.R. 170](#); [\(1996\) 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](#); QBD; 1996-10-17

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

Q (A Minor) (Parental Order), Re

[\[1996\] 1 F.L.R. 369](#); [\[1996\] 2 F.C.R. 345](#); [\[1996\] Fam. Law 206](#); Fam Div; 1995-11-23

Kroon v Netherlands (A/297-C)

[\[1995\] 2 F.C.R. 28](#); [\(1995\) 19 E.H.R.R. 263](#); ECHR; 1994-10-27

Key Cases Citing

Applied

Evans v Amicus Healthcare Ltd

[\[2004\] EWCA Civ 727](#); [\[2005\] Fam. 1](#); [\[2004\] 3 W.L.R. 681](#); [\[2004\] 3 All E.R. 1025](#); [\[2004\] 2 F.L.R. 766](#); [\[2004\] 2 F.C.R. 530](#); [\(2004\) 78 B.M.L.R. 181](#); [\[2004\] Fam. Law 647](#); [\(2004\) 148 S.J.L.B. 823](#); [Times, June 30, 2004](#); [Independent, June 29, 2004](#); [Official Transcript](#); CA (Civ Div); 2004-06-25

All Cases Citing

Mentioned by

E (**Assisted Reproduction**: Parent), Re

[\[2013\] EWHC 1418 \(Fam\)](#); [\[2013\] 2 F.L.R. 1357](#); [\[2013\] 3 F.C.R. 532](#); [\[2013\] Fam. Law 962](#); [\(2013\) 163\(7563\) N.L.J. 19](#); [Official Transcript](#); Fam Div; 2013-05-24

Applied

Evans v Amicus Healthcare Ltd

[\[2004\] EWCA Civ 727](#); [\[2005\] Fam. 1](#); [\[2004\] 3 W.L.R. 681](#); [\[2004\] 3 All E.R. 1025](#); [\[2004\] 2 F.L.R. 766](#); [\[2004\] 2 F.C.R. 530](#); [\(2004\) 78 B.M.L.R. 181](#); [\[2004\] Fam. Law 647](#); [\(2004\) 148 S.J.L.B. 823](#); [Times, June 30, 2004](#); [Independent, June 29, 2004](#); [Official Transcript](#); CA (Civ Div); 2004-06-25

Mentioned by

Evans v Amicus Healthcare Ltd

[\[2003\] EWHC 2161 \(Fam\); \[2004\] 2 W.L.R. 713; \[2003\] 4 All E.R. 903; \[2004\] 1 F.L.R. 67; \[2003\] 3 F.C.R. 577; \(2004\) 75 B.M.L.R. 115; \[2003\] Fam. Law 879; \(2003\) 100\(39\) L.S.G. 38; \(2003\) 153 N.L.J. 1519; \(2003\) 147 S.J.L.B. 1150; Times, October 2, 2003; Independent, October 14, 2003; Official Transcript; Fam Div; 2003-10-01](#)

Significant Legislation Cited

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.28\(3\)](#)

Legislation Cited

[Births and Deaths Registration Act 1953 \(c.20\) s.10A](#)

[Births and Deaths Registration Act 1953 \(c.20\) s.14A](#)

[Child Support, Pensions and Social Security Act 2000 \(c.19\) s.55A\(1\)](#)

[Child Support, Pensions and Social Security Act 2000 \(c.19\) s.83](#)

[Children Act 1989 \(c.41\) s.10\(4\)](#)

[Children Act 1989 \(c.41\) s.4\(1\)\(a\)](#)

[Family Law Act 1986 \(c.55\) s.55A](#)

[Family Law Act 1986 \(c.55\) s.56A\(6\)](#)

[Family Law Reform Act 1987 \(c.42\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.12\(c\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.13\(5\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.13\(5\)\(6\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.13\(6\)](#)

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[Human Fertilisation and Embryology Act 1990 \(c.37\) s.25](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.27](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.28](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.28\(2\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.28\(3\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.28\(6\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.28\(6\)\(a\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.29](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.56A\(6\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.58\(2\)](#)

Journal Articles

The Human Fertilisation and Embryology Act 1990: still fit for purpose in the 21st century?

Assisted reproduction; Embryology; In vitro fertilisation.

[B.S.L.R. 2005/06, 8\(6\), 223-238](#)

The new rights and responsibilities of paternity.

Assisted reproduction; Fathers; Parental responsibility; Paternity; Surrogacy; Unmarried fathers.

[Fam. L.J. 2005, 47\(Jun\), 21-24](#)

Who's the daddy?

Adoption; **Assisted reproduction**; DNA tests; Donors; Identification; In vitro fertilisation; Parental contact; Parents.

[Fam. L.J. 2004, 41\(Nov\), 21-24](#)

The right to know one's father.

In vitro fertilisation; Paternity; Separation.

[Fam. Law 2004, 34\(Apr\), 270-272](#)

Human genetics and the law: paternity challenge for child born as a result of IVF.

In vitro fertilisation; Paternity; Separation.

[Med. L. Mon. 2004, May, 2](#)

Human Fertilisation and Embryology Act 1990: paternity under section 28(3); whether treatment services provided for mother and man together.

In vitro fertilisation; Parental contact; Paternity; Separation; Unmarried fathers.

[Ad. & Fos. 2003, 27\(3\), 72-73](#)

Re R (Paternity of IVF Baby) - unmarried paternity under the Human Fertilisation and Embryology Act 1990.

In vitro fertilisation; Paternity; Separation; Unmarried fathers.

[C.F.L.Q. 2003, 15\(3\), 327-340](#)

Whose sperm is it anyway?

Children; In vitro fertilisation; Mistake; Paternity; Right to respect for private and family life; Separation.

[C.L.J. 2003, 62\(3\), 566-570](#)

Consenting adults?

Assisted reproduction; Consent; In vitro fertilisation; Infertility; Right to life; Right to respect for private and family life.

[Fam. L.J. 2003/04, 32\(Dec/Jan\), 2-4](#)

Delicate bonds and blunt instruments

Children's welfare; In vitro fertilisation; Mistake; Paternity.

[Fam. Law 2003, 33\(Aug\), 599-604](#)

Parentage.

In vitro fertilisation; Parental contact; Parental responsibility; Paternity; Separation.

[Fam. Law 2003, 33\(Jun\), 394-396](#)

Status of biological father where couple were not "treated together".

In vitro fertilisation; Paternity; Separation.

[Med. L. Mon. 2003, 10\(4\), 4-5](#)

Assisted conception: parentage and treatment "together"

In vitro fertilisation; Paternity; Separation.

[Med. L. Rev. 2003, 11\(1\), 128-131](#)

Assisted conception: parentage and consent to treatment

Consent; In vitro fertilisation; Paternity; Right to respect for private and family life.

[Med. L. Rev. 2003, 11\(1\), 131-135](#)

Paternity: IVF baby.

In vitro fertilisation; Paternity; Separation.

[Med. Lit. 2003, 3\(Mar\), 5](#)

Doc brief (May)

Capacity; Cell nuclear replacement; Coroners; Embryology; In vitro fertilisation; Inquests; Medical treatment; Paternity; Patients; Statutory interpretation; Suicide; Verdicts.

[N.L.J. 2003, 153\(7080\), 751-752](#)

Books

**Jackson & Powell on Professional Liability 7th Ed.
Incorporating Second Cumulative Supplement**

Chapter: Chapter 7 - Human Rights and Professionals

Documents: [Sub-section \(iv\) - Article 8](#)

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