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## Q (A Minor) (Parental Order), Re

Family Division

23 November 1995

### Case Analysis

#### Where Reported

[1996] 1 F.L.R. 369; [1996] 2 F.C.R. 345; [1996] Fam. Law 206

#### Case Digest

**Subject:** Family law

**Keywords:** Surrogacy

**Summary:** Surrogacy; unmarried woman bearing child for married couple; married couple applying for parental order; identity of legal father; whether court could approve payments to surrogate retrospectively

**Abstract:** A, an unmarried woman, agreed to have a child for H and W. An embryo was created with W's egg and donated sperm and implanted in A. A was paid a total of GBP 8,280 by H and W. After the child's birth, H and W applied for a parental order under the Human Fertilisation and Embryology Act 1990 s.30(5).

Held, making the order, that (1) before an order could be made under s.30(5) of the 1990 Act, the consent of both the mother, ie. the carrying mother A, and the father, was required. Had A been married, her husband would have been the child's legal father under s.28(2) unless he had not consented to the procedure. There was no person with whom A had received treatment services together to be treated as the child's father under s.28(3). The sperm donor could not be the father, as s.28(6) specifically excluded this. There was therefore no man who was the child's legal father and whose consent was required for the making of the parental order; (2) the sum paid by H and W to A was reasonable in the circumstances, and the court had power retrospectively to authorise its payment, and thus to allow the court to make the parental order, [Adoption Application \(Payment for Adoption\), Re \[1987\] Fam. 81](#) applied and (3) per curiam, it was uncertain as to who might be a man treated together with the carrying woman and who would therefore be treated as the child's father under s.28(3).

**Judge:** Johnson, J.

**Counsel:** For the husband and wife: Christine Doughty. . For the carrying woman: Philip Bowen..

#### Significant Cases Cited

**Adoption Application (Payment for Adoption), Re**

[\[1987\] Fam. 81](#); [\[1987\] 3 W.L.R. 31](#); [\[1987\] 2 All E.R. 826](#); [\(1987\) 151 J.P. 334](#); [\[1987\] 2 F.L.R. 291](#); [\[1987\] Fam. Law 382](#); [\(1987\) 151 L.G. Rev. 432](#); [\(1987\) 84 L.S.G. 1333](#); [\(1987\) 137 N.L.J. 267](#); [\(1987\) 131 S.J. 409](#); Fam Div; 1987-03-11

#### All Cases Cited

**Adoption Application (Payment for Adoption), Re**

[\[1987\] Fam. 81](#); [\[1987\] 3 W.L.R. 31](#); [\[1987\] 2 All E.R. 826](#); [\(1987\) 151 J.P. 334](#); [\[1987\] 2 F.L.R. 291](#); [\[1987\] Fam. Law 382](#); [\(1987\) 151 L.G. Rev. 432](#); [\(1987\) 84 L.S.G. 1333](#); [\(1987\) 137 N.L.J. 267](#); [\(1987\) 131 S.J. 409](#); Fam Div; 1987-03-11

**All Cases Citing****Mentioned by**

X (Children) (Parental Order: Foreign Surrogacy), Re

[\[2008\] EWHC 3030 \(Fam\)](#); [\[2009\] Fam. 71](#); [\[2009\] 2 W.L.R. 1274](#); [\[2009\] 1 F.L.R. 733](#); [\[2009\] 2 F.C.R. 312](#); [\(2011\) 118 B.M.L.R. 1](#); [\[2009\] Fam. Law 115](#); [Official Transcript](#); Fam Div; 2008-12-09

**Mentioned by**

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

**Mentioned by**

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](#); CA (Civ Div); 2003-02-19

**Mentioned by**

C (Surrogacy: Payments), Re

[\[2002\] EWHC 157 \(Fam\)](#); [\[2002\] 1 F.L.R. 909](#); [\[2002\] Fam. Law 351](#); [Official Transcript](#); Fam Div; 2002-02-22

**Mentioned by**

Briody v St Helens and Knowsley AHA (Claim for Damages and Costs)

[\[2001\] EWCA Civ 1010](#); [\[2002\] Q.B. 856](#); [\[2002\] 2 W.L.R. 394](#); [\[2001\] 2 F.L.R. 1094](#); [\[2001\] 2 F.C.R. 481](#); [\(2001\) 62 B.M.L.R. 1](#); [\[2001\] Fam. Law 796](#); [\(2001\) 98\(33\) L.S.G. 32](#); [Times, August 14, 2001](#); [Independent, July 3, 2001](#); [Official Transcript](#); CA (Civ Div); 2001-06-29

**Mentioned by**

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

**Mentioned by**

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](#)

#### **Mentioned by**

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](#)

#### **Significant Legislation Cited**

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

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.30](#)

Human Fertilisation and Embryology Act 1990 s.30(5)

#### **Legislation Cited**

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

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.30](#)

Human Fertilisation and Embryology Act 1990 s.30(5)

#### **Journal Articles**

##### **Fatherhood and the unmarried infertile man.**

Parental rights; Paternity; Surrogacy.

[N.L.J. 1997, 147\(6778\), 196-198](#)

##### **Surrogacy: parental order application.**

Parental rights; Paternity; Surrogacy.

[Ad. & Fos. 1996, 20\(2\), 57](#)

##### **Children - parentage.**

Parental rights; Paternity; Surrogacy.

[Fam. Law 1996, 26\(Apr\), 206-207](#)

##### **Parental order.**

Parental rights; Paternity; Surrogacy.

[Fam. M. 1996, 3, 4-5](#)

##### **Filius cuius? (Whose child?) Parental status in the last part of the twentieth century: Part 3.**

Parental rights; Paternity; Surrogacy.

[J.P. 1996, 160\(45\), 983](#)

##### **Parental orders (section 30) and parentage**

Parental rights; Paternity; Surrogacy.

[Med. L. Rev. 1996, 4\(2\), 207-211.](#)

##### **Parental order: in surrogate cases who is the legal father?**

Parental rights; Paternity; Surrogacy.

[P.C.L.B. 1996, 9\(4\), 41-42](#)

### **Surrogacy.**

Parental rights; Paternity; Surrogacy.

[F.L.T. 1995, 5\(5\), 1-3](#)

### **Books**

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

Chapter: Chapter 4 - Parenthood and Assisted Reproduction

Documents: [Parenthood Determined by the Human Fertilisation and Embryology Act 2008](#)

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

Chapter: Chapter 4 - Parenthood and Assisted Reproduction

Documents: [Surrogacy](#)

#### **Theobald on Wills 17th Ed.**

Chapter: Chapter 26 - Description of Beneficiaries: Children

Documents: [Section 7 - Children Born as a Result of Assisted Reproduction Techniques](#)

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