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Status:  Positive or Neutral Judicial Treatment

Evans v Amicus Healthcare Ltd

Hadley v Midland Fertility Services Ltd

Family Division

01 October 2003

Case Analysis

Where Reported

[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](#)

Case Digest

Subject: Health

Keywords: Consent; In vitro fertilisation; Right to respect for private and family life; Withdrawal

Summary: The Human Fertilisation and Embryology Act 1990 Sch.3 para.4 gave each party to IVF treatment an unconditional right to withdraw or vary their consent to the use of embryos for IVF at any time up until the embryos were actually used in treatment; where parties had given consent together and had subsequently separated, that consent became ineffective.

Abstract: E and H sought declarations in relation to the use and storage of their frozen embryos and, if necessary, a declaration that certain provisions of the [Human Fertilisation and Embryology Act 1990](#) were incompatible with, inter alia, the right to private and family life pursuant to the Human Rights Act 1998 Sch.1 Part I Art.8. E additionally sought an injunction requiring her former partner, J, to restore his consent to the storage and use of the embryos. E and H had undergone IVF treatment with J and W, their respective male former partners. Following the breakdown of their relationships, E and H still wished to have the remaining embryos removed from storage and transferred into them. E contended that J had agreed that the embryos would always be available for her use and that she had relied upon that to her detriment. J denied that. E argued that equitable estoppel applied and J's consent should be restored. H submitted that the fact that she and W had previously had embryos unsuccessfully transferred into her meant that the remaining embryos in storage had been "used" for the purposes of Sch.3 para.4(2)(a) to the 1990 Act. J and W argued that they had an unqualified right to withdraw their consent and that the stored embryos had not been "used" until transferred into a woman. The Secretary of State and the Human Fertilisation and Embryology Authority were joined to the proceedings and argued that the terms of the 1990 Act precluded the court from granting the relief sought.

Held, refusing the declarations, that the consents given in both cases were for "treatment together" with the named partner and no other purpose and thus could not be effective for sole use by the claimants. In any event, Sch.3 para.4(1) to the 1990 Act gave each party the unconditional right to withdraw consent at any time up until use. "Use" in the context of the instant case meant the transfer of the embryos into the women. To suggest otherwise would render it

impossible for consent to ever be withdrawn once embryos had been created and stored. Schedule 3 to the 1990 Act did not infringe the right to respect for private and family life enshrined in Art.8. There were sound policy reasons behind Sch.3 which enabled each party to withdraw consent to treatment before use, providing the parties with equal rights to respect for their private lives. Therefore the interference by the state was lawful and proportionate. In respect of E's case, J did not give any definite assurances to E that she could use the embryos whatever happened. However, even if he had done so, promissory estoppel could not apply in E's case as there were clear provisions in the 1990 Act which gave any party the right to withdraw consent. Accordingly, J could not have promised to do what the law would not have allowed him to do.

Judge: Wall, J.

Counsel: For E and H: Robin Tolson Q.C. and Susan Freeborn. . For the clinics: Kristina Stern. . For J: Kambiz Moradifar and Vanessa McKinlay. . For W: Stefano Nuvoloni. . For the Secretary of State: Jason Coppel. . For the HFEA: Dinah Rose.

Solicitor: For E and H: Withy King (Trowbridge). . For the clinics: Bevan Ashford and Young & Lee (Birmingham). . For J: Davey Son & Jones (Gloucester). . For W: Baches (Wednesbury). . For the Secretary of State: Department Solicitor. . For the HFEA: Morgan Cole (Cardiff).

Appellate History & Status

Family Division

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](#)

Affirmed

Court of Appeal (Civil Division)

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](#)

Complaint dismissed

European Court of Human Rights

Evans v United Kingdom (6339/05)

[\[2006\] 2 F.L.R. 172; \[2006\] 1 F.C.R. 585; \(2006\) 43 E.H.R.R. 21; \[2006\] Fam. Law 357; \(2006\) 156 N.L.J. 456; Times, March 17, 2006](#)

Related Cases

Human Fertilisation & Embryology Authority v Amicus Healthcare Ltd

[\[2005\] EWHC 1092 \(QB\); Official Transcript; QBD](#)

Evans v United Kingdom (6339/05)

[\[2007\] 1 F.L.R. 1990](#); [\[2007\] 2 F.C.R. 5](#); (2008) 46 E.H.R.R. 34; 22 B.H.R.C. 190; (2007) 95 B.M.L.R. 107; [\[2007\] Fam. Law 588](#); (2007) 157 N.L.J. 599; [Times, May 2, 2007](#); ECHR (Grand Chamber)

All Cases Cited

Advocate General for Scotland v MacDonald

[\[2003\] UKHL 34](#); [\[2004\] 1 All E.R. 339](#); 2003 S.C. (H.L.) 35; 2003 S.L.T. 1158; 2003 S.C.L.R. 814; [\[2003\] I.C.R. 937](#); [\[2003\] I.R.L.R. 512](#); [\[2003\] E.L.R. 655](#); (2003) 100(29) L.S.G. 36; (2003) 147 S.J.L.B. 782; 2003 G.W.D. 23-677; [Times, June 20, 2003](#); [Official Transcript](#); HL; 2003-06-19

R. (on the application of Hooper) v Secretary of State for Work and Pensions

[\[2003\] EWCA Civ 813](#); [\[2003\] 1 W.L.R. 2623](#); [\[2003\] 3 All E.R. 673](#); [\[2003\] 2 F.C.R. 504](#); [\[2003\] U.K.H.R.R. 1268](#); 14 B.H.R.C. 626; (2003) 100(29) L.S.G. 35; [Times, June 28, 2003](#); [Independent, June 25, 2003](#); [Official Transcript](#); CA (Civ Div); 2003-06-18

R. (on the application of Quintavalle) v Human Fertilisation and Embryology Authority

[\[2003\] EWCA Civ 667](#); [\[2004\] Q.B. 168](#); [\[2003\] 3 W.L.R. 878](#); [\[2003\] 3 All E.R. 257](#); [\[2003\] 2 F.L.R. 335](#); [\[2003\] 2 F.C.R. 193](#); [\[2003\] Lloyd's Rep. Med. 294](#); (2003) 73 B.M.L.R. 116; [\[2003\] A.C.D. 75](#); [\[2003\] Fam. Law 565](#); (2003) 100(27) L.S.G. 37; (2003) 153 N.L.J. 824; (2003) 147 S.J.L.B. 598; [Times, May 20, 2003](#); [Independent, May 20, 2003](#); [Official Transcript](#); CA (Civ Div); 2003-05-16

Actionstrength Ltd (t/a Vital Resources) v International Glass Engineering IN.GL.EN SpA

[\[2003\] UKHL 17](#); [\[2003\] 2 A.C. 541](#); [\[2003\] 2 W.L.R. 1060](#); [\[2003\] 2 All E.R. 615](#); [\[2003\] 2 All E.R. \(Comm\) 331](#); [\[2005\] 1 B.C.L.C. 606](#); [\[2003\] 1 C.L.C. 1003](#); [\[2003\] B.L.R. 207](#); 88 Con. L.R. 208; (2003) 153 N.L.J. 563; (2003) 147 S.J.L.B. 418; [Times, April 4, 2003](#); [Official Transcript](#); HL; 2003-04-03

R. (on the application of Quintavalle) v Secretary of State for Health

[\[2003\] UKHL 13](#); [\[2003\] 2 A.C. 687](#); [\[2003\] 2 W.L.R. 692](#); [\[2003\] 2 All E.R. 113](#); [\[2003\] 1 F.C.R. 577](#); (2003) 71 B.M.L.R. 209; (2003) 153 N.L.J. 439; [Times, March 14, 2003](#); [Independent, March 18, 2003](#); [Official Transcript](#); HL; 2003-03-13

L Teaching Hospitals NHS Trust v A

[\[2003\] EWHC 259 \(QB\)](#); [\[2003\] 1 F.L.R. 1091](#); [\[2003\] 1 F.C.R. 599](#); [\[2003\] Lloyd's Rep. Med. 151](#); (2003) 71 B.M.L.R. 168; [\[2003\] Fam. Law 396](#); (2003) 100(17) L.S.G. 28; (2003) 153 N.L.J. 351; [Times, February 28, 2003](#); [Independent, March 5, 2003](#); [Official Transcript](#); QBD; 2003-02-26

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R. (on the application of CD) v Secretary of State for the Home

Department

[\[2003\] EWHC 155 \(Admin\)](#); [\[2003\] 1 F.L.R. 979](#); [\[2003\] Prison L.R. 220](#); [\[2003\] A.C.D. 69](#); [\[2003\] Fam. Law 315](#); [Times, January 27, 2003](#); [Official Transcript](#); QBD (Admin); 2003-01-16

R. (on the application of Anderson) v Secretary of State for the Home Department

[\[2002\] UKHL 46](#); [\[2003\] 1 A.C. 837](#); [\[2002\] 3 W.L.R. 1800](#); [\[2002\] 4 All E.R. 1089](#); [\[2003\] 1 Cr. App. R. 32](#); [\[2003\] H.R.L.R. 7](#); [\[2003\] U.K.H.R.R. 112](#); [13 B.H.R.C. 450](#); [\[2003\] Prison L.R. 36](#); [\(2003\) 100\(3\) L.S.G. 31](#); [\(2002\) 146 S.J.L.B. 272](#); [Times, November 26, 2002](#); [Independent, November 27, 2002](#); [Official Transcript](#); HL; 2002-11-25

R. v Lichniak (Daniella Helen)

[\[2002\] UKHL 47](#); [\[2003\] 1 A.C. 903](#); [\[2002\] 3 W.L.R. 1834](#); [\[2002\] 4 All E.R. 1122](#); [\[2003\] 1 Cr. App. R. 33](#); [\[2003\] H.R.L.R. 8](#); [\[2003\] U.K.H.R.R. 62](#); [13 B.H.R.C. 437](#); [\[2003\] Prison L.R. 55](#); [\(2003\) 100\(5\) L.S.G. 29](#); [\(2002\) 146 S.J.L.B. 272](#); [Times, November 26, 2002](#); [Official Transcript](#); HL; 2002-11-25

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[\[2003\] 1 F.L.R. 412](#); [\[2003\] Fam. Law 95](#); QBD; 2002-11-04

R. (on the application of Rose) v Secretary of State for Health

[\[2002\] EWHC 1593 \(Admin\)](#); [\[2002\] 2 F.L.R. 962](#); [\[2002\] 3 F.C.R. 731](#); [\[2002\] U.K.H.R.R. 1329](#); [\(2003\) 69 B.M.L.R. 83](#); [\[2003\] A.C.D. 6](#); [\[2003\] Fam. Law 19](#); [\(2002\) 99\(39\) L.S.G. 38](#); [Times, August 22, 2002](#); [Official Transcript](#); QBD (Admin); 2002-07-26

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[\[2002\] EWCA Civ 813](#); [Official Transcript](#); CA (Civ Div); 2002-05-13

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[\[2002\] 2 F.L.R. 45](#); [\[2002\] 2 F.C.R. 97](#); [\(2002\) 35 E.H.R.R. 1](#); [12 B.H.R.C. 149](#); [\(2002\) 66 B.M.L.R. 147](#); [\[2002\] Fam. Law 588](#); [\(2002\) 152 N.L.J. 707](#); ECHR; 2002-04-29

Centre for Reproductive Medicine v U

[\[2002\] EWCA Civ 565](#); [\[2002\] Lloyd's Rep. Med. 259](#); [Independent, May 1, 2002](#); [Official Transcript](#); CA (Civ Div); 2002-04-24

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[\[2002\] EWHC 610 \(Admin\)](#); [\[2002\] 2 F.L.R. 146](#); [\[2002\] 2 F.C.R. 193](#); [\(2002\) 66 B.M.L.R. 59](#); [\[2002\] Crim. L.R. 664](#); [\[2002\] A.C.D. 70](#); [\[2002\] Fam. Law 664](#); [\(2002\) 99\(22\) L.S.G. 33](#); [\(2002\) 152 N.L.J. 638](#); [\(2002\) 146 S.J.L.B. 117](#); [Times, May 2, 2002](#); [Daily Telegraph, May 16, 2002](#); [Official Transcript](#); QBD (Admin); 2002-04-18

R. (on the application of Amin (Imtiaz)) v Secretary of State for the Home Department

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S (Children) (Care Order: Implementation of Care Plan), Re

[\[2002\] UKHL 10](#); [\[2002\] 2 A.C. 291](#); [\[2002\] 2 W.L.R. 720](#); [\[2002\] 2 All E.R. 192](#); [\[2002\] 1 F.L.R. 815](#); [\[2002\] 1 F.C.R. 577](#); [\[2002\] H.R.L.R. 26](#); [\[2002\] U.K.H.R.R. 652](#); [\[2002\] B.L.G.R. 251](#); [\[2002\] Fam. Law 413](#); (2002) 99(17) L.S.G. 34; (2002) 146 S.J.L.B. 85; Times, March 15, 2002; Independent, March 20, 2002; Official Transcript; HL; 2002-03-14

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[\[2002\] EWCA Civ 271](#); [\[2003\] 1 W.L.R. 617](#); [\[2002\] 4 All E.R. 1136](#); [\[2003\] 1 F.C.R. 713](#); [\[2002\] H.L.R. 39](#); [\[2002\] N.P.C. 34](#); Official Transcript; CA (Civ Div); 2002-03-06

Jennings v Rice

[\[2002\] EWCA Civ 159](#); [\[2003\] 1 F.C.R. 501](#); [\[2003\] 1 P. & C.R. 8](#); [\[2002\] W.T.L.R. 367](#); [\[2002\] N.P.C. 28](#); [\[2002\] 2 P. & C.R. DG2](#); Official Transcript; CA (Civ Div); 2002-02-22

R. (on the application of Assisted Reproduction and Gynaecology Centre) v Human Fertilisation and Embryology Authority

[\[2002\] EWCA Civ 20](#); [\[2003\] 1 F.C.R. 266](#); [\[2002\] Lloyd's Rep. Med. 148](#); [\[2002\] Fam. Law 347](#); (2002) 99(12) L.S.G. 33; Times, March 21, 2002; Independent, February 6, 2002; Official Transcript; CA (Civ Div); 2002-01-31

R. (on the application of P) v Secretary of State for the Home Department

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[\[2001\] UKHL 25](#); [\[2002\] 1 A.C. 45](#); [\[2001\] 2 W.L.R. 1546](#); [\[2001\] 3 All E.R. 1](#); [\[2001\] 2 Cr. App. R. 21](#); (2001) 165 J.P. 609; [\[2001\] H.R.L.R. 48](#); [\[2001\] U.K.H.R.R. 825](#); 11 B.H.R.C. 225; [\[2001\] Crim. L.R. 908](#); (2001) 165 J.P.N. 750; Times, May 24, 2001; Independent, May 22, 2001; Daily Telegraph, May 29, 2001; Official Transcript; HL; 2001-05-17

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R. (on the application of Holding & Barnes Plc) v Secretary of State for the Environment, Transport and the Regions

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Beach v Secretary of State for the Environment, Transport and the Regions

[\[2001\] EWHC Admin 381](#); [\[2002\] J.P.L. 185](#); [Official Transcript](#); QBD (Admin); 2001-05-04

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R. (on the application of Mellor) v Secretary of State for the Home Department

[\[2001\] EWCA Civ 472](#); [\[2002\] Q.B. 13](#); [\[2001\] 3 W.L.R. 533](#); [\[2001\] 2 F.L.R. 1158](#); [\[2001\] 2 F.C.R. 153](#); [\[2001\] H.R.L.R. 38](#); (2001) 59 B.M.L.R. 1; [\[2001\] Prison L.R. 219](#); [\[2001\] Fam. Law 736](#); (2001) 98(22) L.S.G. 35; (2001) 145 S.J.L.B. 117; [Times, May 1, 2001](#); [Independent, April 6, 2001](#); [Official Transcript](#); CA (Civ Div); 2001-04-04

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[\[2001\] 1 W.L.R. 789](#); [Times, March 21, 2001](#); [Independent, March 27, 2001](#); HL; 2001-03-07

Greenfield v Irwin (A Firm)

[\[2001\] EWCA Civ 113](#); [\[2001\] 1 W.L.R. 1279](#); [\[2001\] 1 F.L.R. 899](#); [\[2001\] P.I.Q.R. Q7](#); [\[2001\] Lloyd's Rep. Med. 143](#); (2001) 59 B.M.L.R. 43; [Times, February 6, 2001](#); [Official Transcript](#); CA (Civ Div); 2001-01-24

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Attorney General's Reference (No.3 of 1994), Re

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