

Lesbian mums in dispute over maintenance and what makes a parent

An important case was heard recently in the High Court involving a lesbian couple who had conceived a child together through donor insemination at a UK clinic, and who ended up in court after their relationship broke down. Their dispute involved a ten year old child, and the issue was whether the non-birth mother (who the court had already given decision making status as a parent) should be ordered to support her child financially.

The story itself of course isn't that unusual – parents separate and divorce all the time and many end up in court arguing over contact or finances. But what makes this case interesting is that the family was created through fertility treatment and the partner being pursued for maintenance was not the biological mother. The court therefore had to ask whether the lesbian non-birth mother was legally a 'parent', and specifically whether her full involvement in her child's life was enough to make her financially responsible even though she was not the biological mother.

From a moral perspective the answer seems pretty straightforward. The mother in this case had been fully involved in her child's care and upbringing, had regular contact with her child, and had herself successfully (and not long before) applied to court for joint residence and parental responsibility. The law recognised her as a parent for the purposes of decision making, and since the child was conceived with anonymous donor sperm, there was no legal father. If the non-birth mother was not financially responsible, the child would have only one parent (the birth mother) and considerably less financial security. As the birth mother's lawyers argued in court, it would be 'grotesque' for the court to decide that the non-birth mother should not have to maintain a child she had helped bring into the world and who she was still actively parenting.

But ultimately the law is not always fair. Although the family courts often have a great deal of discretion to act in the best interests of a child in matters of contact and parental decision making, the rules on financial responsibility are much more black and white and they say explicitly that only a legal 'parent' can be ordered to pay.

The High Court therefore ultimately decided that it had no power to make the non-birth mother financially responsible, because she was not a biological parent and was not otherwise a parent by law (she had not, for example, adopted the child). The courts' powers could be invoked to protect her contact and relationship with her child, but not to hold her financially responsible.

One of the peculiarities of the case is that, had she been a man, the non-birth mother would have had full legal and financial responsibility. This is because, since 1991, the law has made special provision for fathers who conceive with donor sperm, ensuring that they have the same rights and responsibilities as any other father (assuming they are married or go through fertility treatment together with their partner). The law is designed to ensure that fathers gain full



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status and recognition as parents, and also that they cannot evade their financial responsibilities, if they bring a child into the world via sperm donation.

The same is now true for lesbian partners, but only in respect of children conceived after April 2009. There was a great deal of fuss in 2008 when Parliament was debating new legal rights for lesbian parents, which enable a lesbian non-birth mother to be named on the birth certificate together with her partner (and which also makes her legally and financially responsible in just the same way as a father would be). It was said at the time (in certain quarters) that the changes just represented political correctness and that they made birth certificates a statement of fiction rather than a record of fact.

What this case shows is how important those legal changes are, not just for lesbian parents, but for their children. Birth certificates are not merely a record of biology, but are important documents which record legal parenthood status and responsibility. The changes to the law giving lesbian couples joint parenthood from conception benefit children, because they give them two parents who can be held legally accountable where they previously would only have had one.

The changes were not, however, retrospective, and the children of lesbian couples conceived before April 2009 (like the child in this case) may well continue to have a parent without legal status and responsibility, unless the family takes positive action to secure their legal position (which can be done through adoption).

This case highlights just how important our fertility laws are for children conceived through fertility treatment. It is a shame for this family that it took so long for the law to recognise that not all parents through sperm donation are heterosexual, and that recent improvements only apply prospectively. But looking forwards, we should celebrate our modern fertility laws and their recognition of diverse modern family forms. We may be leading the world in allowing two mothers to be named on a birth certificate together but, as this case shows, this ultimately ensures that children are better protected.

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