

Family Law

Courts are regularly asked to resolve problems between the natural mother and father of a child where the parties have split up and particularly where the parents never married. Matters can become more complicated when one of the parents is in a relationship with a third party.

Recently the Supreme Court was asked to make a decision in a case where one partner of a lesbian couple, in a long standing relationship, conceived a child as a result of a sperm donation by a friend of the couples. What rights did the sperm donating father have in to the child, if any.

The Supreme Court gave its judgement on the 10th of December last on the basis on the welfare that the child should be the first and paramount consideration.

The circumstances of the case were as follows: Jane and Lisa (fictional names) were in a long standing relationship and one of them wished to conceive a child. They approached a friend of theirs to act as a sperm donor and drew up an agreement between the donor and themselves on the basis that going forward the donor's role would be like a favourite uncle rather than a father to the child. He was to have no responsibility or influence in the upbringing of the child nor was he to have any financial obligations towards it but would be entitled to visit.

It was never intended either that this child would have three parents or that it would have only a single parent, it was intended that the child would be brought up by two parents even though both of them female.

The first effort of the couple with their original choice of sperm donor was unsuccessful and the parties then approached a second male acquaintance of

theirs to act as donor. Again virtually the same agreement was signed between the parties and on this occasion the result was successful and in the summer of 2006 Jane produced a child.

What happened after that was probably, with hindsight, very predictable. The child's natural father/sperm donor (let's call him John) became more interested in the child than the couple were comfortable with. He started to act like a parent rather than an uncle. He made far too early a visit to the baby while in hospital and he organised a visit of his parents, his sister and a friend to see "his child". The couple refused to allow this visit to take place and became concerned as to the intrusive nature of John towards the child. In early October 2006 all three parties met in Farmleigh and the baby was present. John suggested that he would have further meetings with the baby on the first weekend of every month and started to use the word "access". This did not go down at all well with the parents. A further meeting took place about a month later in Clontarf Castle Hotel when John suggested that as the father he had rights to the child and demanded a paternity test. What brought matters to a head was that in early 2007 the couple told John that they intended to go to Australia, initially for a short period but ultimately changed their minds and decided to go to Australia for a year because one of the couple got a temporary job there.

John was not happy with that situation and applied to the High Court for an injunction to restrain the couple from travelling with the child to Australia. The High Court allowed the couple to go to Australia for a vacation for a 6 week period from the end of March to the beginning of May but also made an Order

prohibiting the child from being taken out of Ireland without the Courts permission until all matters were decided between the parties. The couple appealed this decision to the Supreme Court but the Supreme Court agreed with the High Court ruling as previously made.

John then applied to the High Court to be appointed a Guardian of the child and to be given regular access. The High Court refused to appoint John as a Guardian and refused him access and John then appealed that decision to the Supreme Court. The Supreme Court gave its decision in the case on the 10th of December this year.

The Supreme Court, in affect said that the High Court was correct in not appointing John as Guardian of the child but that access was another matter. It decided that John should have access to the child and that if the parties could not agree the terms of the access between themselves then the Court itself would fix the terms of the access. In refusing to appoint John as a Guardian of the child on this occasion the Court however accepted John's rights to make a fresh application to be appointed Guardian if circumstances changed. The Court felt that the agreement as signed between the parties appointing John as a favourite uncle was sensible in all the circumstances and in the best interest of the child.

In reaching its decision the Court took into account, among other things, that this was not a child conceived as a result of casual intercourse nor was this an anonymous sperm donor. The Court felt that considering the child's best interest a blood link is always a factor to be taken into account.

The Court also accepted that while it was one thing to enter into an agreement to be a sperm donor, it was altogether another thing to suddenly realise that a child of your own has been born.

The decision of the Court in this interesting case merely re-enforces the lengths that the Irish Courts will go to to provide for access between a father and his child if such access is in the best interests of the child which, almost inevitably, a Court will accept that it is.

It would be interesting to know if in the future, as the child grows up whether John would be successful in being appointed a Guardian. As it is, having been given access, he certainly has a say in where the couple are to live going forward, since, the couple will now have to get the permission of the Court to “move away” if their new destination is going to materially interfere with John’s right of access.

An even more interesting twist would be if the lesbian couple broke up, what rights would the non child bearing party of that couple have to the child (if any) and as a result of the break up would John now be entitled to greater rights? For anybody that is interested in following the case further the judgement title is McD v L and another and the citation is [2009] IESC 81 and is located on the Courts website at www.courts.ie/judgements.