



E (A Child : Contact) [2015] EWHC 180 (Fam) (29 January 2015)

Re E concerned a young boy, E, who at the time of judgment was four years old. E's Mother is a homosexual female and his Father is a heterosexual male. They met via the website www.Coparentmatch.com where both were looking for someone with whom to parent a child. In his judgment, Hayden J refers to the "quite remarkable journey" that the Parents embarked on together in order to conceive E. This sadly involved one miscarriage and attempts to conceive over two years. E was eventually conceived by artificial insemination at the Mother's home. The Father is therefore both the legal and biological Father of E.

In the early stages of E's life contact between the Father and E broke down along with the friendship of the Parents. After spending considerable time attempting to negotiate matters out of court, in 2013 the Father filed an application for contact, parental responsibility and a declaration of parentage in the Barnsley County Court, as it then was. It quickly became apparent that the Parents had very different views as to what had been agreed between them as to what role the Father would take in E's life. Despite this, the Mother agreed to supervised interim contact in a contact centre on a fortnightly basis. Any contact beyond this however was a matter of contention between the parties. A fact-finding hearing was listed in order to determine the preconception intentions of the parties and a Guardian was appointed for E. The matter was transferred to the High Court.

During a composite fact-finding/final hearing at which both Parents and the Guardian gave evidence, the parties were able, with assistance from the Guardian and the Judge, to agree the arrangements for E to have contact with his Father. This was to be eight weekends a year on both the Saturday and Sunday for five hours on each day. Although consideration was given to the instruction of an expert psychiatrist to assess E, ultimately, independent expert evidence was not deemed to be necessary by Hayden J.

The issue of Parental Responsibility was not agreed and Hayden J therefore gave judgment on this issue. On behalf of the Mother, submissions were put forward that that to grant a Parental Responsibility Order would elevate rather than diminish the potential for conflict between the parties. Secondly, that however nebulous the court considers the plans were for E's future there has never been any real evidence to suggest that a Parental Responsibility Order was truly contemplated by either parent - it was not 'part of the deal'. Thirdly, that if the Judge were to conclude that the father would not, in effect, use his Parental Responsibility Order at all, it is wholly unnecessary and therefore, conversely, should not be granted. Hayden J reminded himself of the leading authority in "non-traditional family cases" *Re. A v B and C (role of father)* Court of Appeal (2012) 2 FLR where, in respect of agreements Thorpe LJ said: "*I am cautious in reaction to Mr Howard's repeated submissions that great weight should be attached to adult autonomy and the plans that adults make for future relationships between the child and the relevant adults. Human emotions are powerful and inconstant. What the adults look forward to before undertaking the hazards of conception, birth and the first experience of parenting may prove to be illusion or fantasy*".

When deciding the issue of Parental Responsibility Hayden J commented that *"One theme that runs through the law in this area is that each case has ultimately to be looked at on its own individual facts. Neither this court nor the Court of Appeal, has felt able to offer guidance as to how to approach welfare issues such as 'parental responsibility' and 'contact' in families where children are conceived by adult arrangement outside sexual intercourse. I am clear that it would be entirely wrong to approach this case as if E had been born in the context of a loving heterosexual relationship, and determine any of the issues from that premise."*

He did however say that the relationship between the Parents was respectful, intimate and enduring. He rejected the submission put forward on behalf of the Mother that the Father would use Parental Responsibility to undermine her. He found that the Father sought Parental Responsibility so that his status as Father can properly be reflected in law.

In granting the Parental Responsibility Order, Hayden J, quoted Butler-Sloss LJ in *Re H (Parental Responsibility)* (1998) 1 FLR 855: *"Parental responsibility is a question of status and is different in concept from the orders which may be made under section 8 in Part II of the Children Act. The grant of the application declares the status of the applicant as the father of that child. It has important implications for a father whose child might for example be the subject of an adoption application or a Hague Convention application. In each of those examples, a father with parental responsibility would have the right to be heard on the application. He would have the right to be consulted on schooling, serious medical problems, and other important occurrences in a child's life"*.

Hayden J also reiterated Black LJ's comments in *Re. A v B and C (role of father)* Court of Appeal (2012) 2 FLR where she stated that the term "donor" ought not to be used in respect of a Father who had along with a woman conceived a child by means of artificial insemination. Hayden J stated *"At no point in this hearing or in the judgment has the word 'donor' been used to describe the father, though it did appear in some of the papers. I would express the hope that the word becomes extinct, in this context, in the lexicon of the family law reports. I cannot easily contemplate any factual circumstance where its use is anything other than belittling and disrespectful to all concerned, most importantly the child."*

Helen Davey, March 2015