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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 September 2016

Before:

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

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In the Matter of the Human Fertilisation and Embryology Act 2008
(Case L)

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- -

Ms Deirdre Fottrell QC and Mr Thomas Wilson (instructed by Goodman Ray) for the applicant (X)
Ms Sarah Morgan QC and Ms Lucy Sprinz (instructed by Philcox Gray) for the first respondent (Y)
Mr Hassan Khan (instructed by Bevan Brittan LLP) for Barts Health NHS Trust
Mr Charles Geekie QC and Ms Sharon Segal (instructed by Russell-Cooke LLP) for the children's guardian

Hearing date: 20 July 2016

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

This judgment was handed down in open court

Sir James Munby, President of the Family Division:

1. In *In re A and others (Legal Parenthood: Written Consents)* [2015] EWHC 2602 (Fam), [2016] 1 WLR 1325, in which I handed down judgment in September 2015, I had to consider a number of cases which raised issues very similar to those which confront me here. It will be recalled that these issues were first identified by Cobb J in his judgment in *AB v CD and the Z Fertility Clinic* [2013] EWHC 1418 (Fam), [2013] 2 FLR 1357, handed down in May 2013, and that the legally appropriate way forward was not well understood until, in February 2015, Theis J gave judgment in *X v Y (St Bartholomew's Hospital Centre for Reproductive Medicine Intervening)* [2015] EWFC 13, [2016] PTSR 1.

2. Since judgment in *In re A*, I have given judgments in a number of similar cases: see *Re the Human Fertilisation and Embryology Act 2008 (Case G)* [2016] EWHC 729 (Fam), *Re the Human Fertilisation and Embryology Act 2008 (Case I)* [2016] EWHC 791 (Fam), *Re the Human Fertilisation and Embryology Act 2008 (Case N)* [2016] EWHC 1329 (Fam), *Re the Human Fertilisation and Embryology Act 2008 (Case J)* [2016] EWHC 1330 (Fam), and *Re the Human Fertilisation and Embryology Act 2008 (Case M)* [2016] EWHC 1572 (Fam). Other judges have also dealt with similar cases: see the judgments of Pauffley J in *F v M and the Herts and Essex Fertility Centre* [2015] EWHC 3601 (Fam) and of Peter Jackson J in *D v D (Fertility Treatment: Paperwork)* [2016] EWHC 2112 (Fam).

Background

3. In my judgment in *In re A*, I set out (paras 6-8) the lamentable background to all this litigation. I referred to the significant number of cases in which the Human Fertilisation and Embryology Authority ("the HFEA") had identified "anomalies". I have now given final judgment in twelve cases (Cases A, B, C, D, E, F, G, H, I, J, M and N). This is Case L. Case K, which was before me in July 2016, has been adjourned part heard for further argument. I have since heard argument and reserved judgment in another case (Case O). Six further cases (Cases P, Q, R, S, T and U) are currently awaiting final hearing. There is at least one other (Case V) pending. There are probably others, for the HFEA has identified no fewer than 90 cases where there are "anomalies".

4. There is no need for me to rehearse again the statutory framework and the legal principles which I dealt with in my judgment in *In re A*. None of it was challenged before me, or before Pauffley and Peter Jackson JJ, in any of the other cases. None of it has been challenged before me in this case. I shall therefore take as read, and apply here, my analyses of the statutory scheme under the Human Fertilisation and Embryology Act 1990 (the 1990 Act) and the Human Fertilisation and Embryology Act 2008 (the 2008 Act) (*In re A*, paras 14-25), of the various consent forms which are in use (*In re A*, paras 26-31), of the previous authorities (*In re A*, paras 32-43) and of the three general issues of principle which I addressed (*In re A*, paras 44-63).

The facts

5. For the reasons which I explained in *In re A*, para 66, I propose to be extremely sparing in what I say of the facts and the evidence in this case.

6. The applicant, who I will refer to as X, is a woman who was at all material times until the events I describe below in a relationship with the first respondent, a woman who I will refer to as Y. Each wanted to bear a child, using the same sperm donor. Y gave birth to their first child, who I will refer to as C1. C1 had been conceived before the 2008 Act came into force, so X could not, as a matter of law, be C1's parent. Accordingly, Y alone was registered as C1's parent and Y's name alone appears on C1's birth certificate. Following IUI treatment provided by St Bartholomew's Hospital Centre for Reproductive Medicine, operated by Barts Health NHS Trust, which I shall refer to as Barts, a clinic which is and was regulated by the HFEA, X gave birth to their second child, who I will refer to as C2, a couple of years later. It will be appreciated that C1 and C2 are half-siblings. No issue arises in relation to C1; the issues (see below) arise in relation to C2. X seeks, together with other relief, a declaration pursuant to section 55A of the Family Law Act 1986 that Y is *not* the legal parent of C2. Y does not oppose X's application.

7. The clinic, the HFEA, the Secretary of State for Health and the Attorney General have all been notified of the proceedings. With the exception of the clinic, which was represented, although not joined, none has sought either to be joined or to attend the hearing. The clinic's position is set out in a witness statement by the individual who is the "person responsible" within the meaning of section 17(1) of the 1990 Act and in the position statement prepared by Ms Dorothea Gartland and adopted by Mr Hassan Khan who appeared before me on its behalf. Given the nature of one of the issues (see below) I decided that C2 needed to be joined and a guardian appointed. Where a child's parentage is challenged, the child must be joined as a party: see *Re L (Family Proceedings Court) (Appeal: Jurisdiction)* [2003] EWHC 1682 (Fam), [2005] 1 FLR 210. This important principle seems to have been overlooked in *AB v CD and the Z Fertility Clinic* [2013] EWHC 1418 (Fam), [2013] 2 FLR 1357, where a declaration of non-parentage was made although the child was neither joined as a party nor represented. Happily, it was possible for the same guardian to act in this case as had acted in all the other cases before me where there was a guardian.

8. The hearing took place on 20 July 2016. The guardian was represented by Mr Charles Geekie QC and Ms Sharon Segal. X was represented by Ms Deirdre Fottrell QC and Mr Thomas Wilson. Y was represented by Ms Sarah Morgan QC and Ms Lucy Sprinz. The clinic, as I have said, was represented by Mr Khan. I had written evidence from X and Y. Neither was required, and neither asked, to give oral evidence.

9. Just as in each of the cases I had to consider in *In re A* and in *Case G*, *Case I*, *Case J*, *Case M* and *Case N*, so in this case, having regard to the evidence before me I find as a fact that:

    i) The treatment which led to the birth of C2 was embarked upon and carried through jointly and with full knowledge by both the woman (that is, X) and her partner (Y).

    ii) From the outset of that treatment, it was the intention of both X and Y that Y would be a legal parent of C2. Each was aware that this was a matter which, legally, required the signing by each of them of consent forms. Each of them believed that they had signed the relevant forms as legally required and, more

generally, had done whatever was needed to ensure that they would both be parents.

iii) From the moment when the pregnancy was confirmed, both X and Y believed that Y was the other parent of the child. That remained their belief when C2 was born.

iv) X and Y, believing that they were entitled to, and acting in complete good faith, registered the birth of their child, as they believed C2 to be, showing both of them on the birth certificate as C2's parents,[1] as they believed themselves to be.

v) The first they knew that anything was or might be 'wrong' was when, some while later, they were contacted by the clinic.

10. I add that there can be no suggestion that any consent given was not fully informed consent. Nor is there any suggestion of any failure or omission by the clinic in relation to the provision of information or counselling.

Parentage

11. Adopting the terminology I have used in previous cases, the primary problem in the present case is very shortly stated. For reasons which cannot now be identified, although X signed, at the appropriate time, a Form WP in proper form, no Form PP signed by Y can be found in the Barts records relating to X's treatment. Nor is there any Form IC signed by Y.

12. Thus far the history is, in substance, much the same as in all the previous cases I have had to deal with. But at this stage in the narrative, two significant points of difference emerge.

13. The first relates to the fact that, by the time they were contacted by the clinic, X and Y's relationship was breaking down. They separated shortly afterwards. Y has subsequently married another woman and given birth to their child. That child has no biological relationship with C2 but is C1's half-sibling. Private law proceedings between X and Y were amicably settled, without any order of the court, when, following mediation, they agreed a parenting plan in respect of both C1 and C2. A pattern of shared care was agreed, which the guardian reports is, in general, working well. I do not propose to go into the details, except to note that the arrangements mean that C1 and C2 spend most of their time together being cared for by one or other of the adults. As the guardian puts it, effectively C1 and C2 have two homes. The sibling relationship is strong. The guardian reports C2 as being "confident and secure about … family relationships."

14. More importantly for present purposes, a key component of the parenting plan was that there should be equivalence between X and Y and C1 and C2 in relation to the children's legal status. Accordingly, X and Y agreed that neither would be the legal

[1] To be precise, C2's details, as the "Child" are set out in the birth certificate in spaces 1-3, Y's details as "Parent" are set out in spaces 4-6, and X's details as "Mother" are set out in spaces 7-10. X and Y are identified, with their details, as "Informant" in spaces 11-13. Their certificate of truth and signatures appear in space 14.

parent of, or have parental responsibility for, the other's biological child. As X put it in her witness statement, "It was very important for me that the children should have the same legal status." In her witness statement, having referred to the parenting plan, Y said "I am not seeking legal parenthood for [C2] and do not therefore oppose [X]'s application for Non Parentage." Hence, the fact that, as I have already mentioned, Y does not oppose X's application for a declaration that Y is *not* a parent of C2. (It will be appreciated that in the circumstances set out in paragraph 6 above there is no need for Y to seek any corresponding remedy in relation to C1.)

15. The second point of difference in this case is that, almost serendipitously, as it might be thought, there is in fact no basis upon which X and Y could escape from the clinic's blunders as summarised in paragraph 11 above, even if they wanted to. The Barts records as disclosed have been examined very carefully, in particular by the guardian and her counsel, and everyone is agreed that (i) there is no PP, (ii) the IC signed by X contains neither Y's name nor her signature, (iii) there is, in contrast to the circumstances in Case A, Case F and Case H, no entry in the *Treatment Checklist* showing signature of a Form PP, and (iv) there is nothing else in the Barts records which even arguably makes good the fundamental deficiency, the absence of a signed Form PP.

16. Neither X nor Y asserts any independent recollection of a Form PP having been signed. I am conscious that this might be thought a self-serving absence of recollection, given the terms of the parenting plan, but such an unworthy thought must, in my judgment, be dismissed. There is, I am satisfied, nothing in their evidence which begins to suggest that X and Y are being anything other than completely frank with the court; no-one has sought to challenge their evidence on this point; and, in particular, it has not been challenged by the guardian, whose careful, detailed and thoughtful report shows how scrupulously she has investigated this most unusual case. Her position, as articulated by Mr Geekie and Ms Segal in their skeleton argument, is that "despite the intention at the time, the guardian considers that the requirements of legal parentage pursuant to [the 2008 Act] cannot be satisfied, in respect of [Y], in this case." I agree.

17. In all the circumstances, and having regard to all the evidence I have heard, I am entitled to conclude, and I find as a fact, that Y never gave her consent in writing in such a way as to satisfy the requirements of the 2008 Act. In particular, there never was a Form PP.

18. In these circumstances, given the facts and my findings, the application of the principles set out in the earlier authorities is simple and the answer is clear: X is, in principle, entitled to the declaration she seeks, namely that Y is not C2's parent.

19. Given that what X seeks is what has colloquially been referred to as a declaration of non-parentage, the guardian has very carefully considered whether such a declaration is in C2's best interests. The relevant part of her report is insightful and justifies quotation at some length:

> "This is an unusual application – both in the wider context of all the other cases where errors have been identified and applicants have wanted a Declaration of Parentage – and in

appearing almost to be an act of distancing. I fully understand this is not the intention but wondered what [C2] might make of this in later life, for on the surface it appears to be a statement that a fundamental relationship does not exist, or at least not exist in the manner in which [C2] had believed. I also wondered about how it was possible to divest someone of a title they never had as, accidentally, [Y] has never had parenthood for [C2] although the birth certificate indicates otherwise.

Having now met both parents, and [C2], I can better understand the context. The Declaration sought is far more about the parental relationship and is not a comment on the parent-child relationship – both parents considering that [C2] will not be adversely affected. [C2] is unaware of any court proceedings, either current or in the past, and is described as having a secure relationship with both … parents and with [C1]. [C2] has been largely sheltered from the parental difficulties. [X] agreed that it could be perceived as quite a stark statement and accepted that a preferable course of action would be to simply amend the birth certificate such to record that she was the only named parent, and the only one with parental responsibility.

Asked the same question, [Y] agreed that taken out of context, it could be perceived as quite an act of distancing herself from [C2]. However, she considers that both children are very secure in their relationships, their identities and their place in the family. They know they are very much loved by both women "and they know whose tummies they came out of". [C2] would never have cause to question the relationship – her behaviour would never be interpreted as rejecting. She, too, would prefer a simple amendment of the birth certificate for she can see that [C2] may question why there are two parents on [the] birth certificate and only one parent on [C1]'s. Even if she did have parenthood for [C2], [Y] is clear that she would never seek to exercise PR at the expense of [C2]'s mother.

Both women consider that [C2] would be unaffected by any Declaration made the purpose of which would be to remove any legal ambiguity about parenthood and, more importantly, would amend the birth certificate to reflect this. If the court could find a means of simply amending the birth certificate, both would find that a more attractive remedy. Both were equally clear that no changes were envisaged to the current arrangements for the care of the children and I have no reason to doubt this.

Professional judgement and recommendations.

I am not seeking to convey that [C2]'s relationship with both his parents would be irreparably damaged if the court make the

> Declaration sought and much would depend on how the information was conveyed to him – what evolving and age-appropriate story was developed. [Y] and [X] are very focussed on the needs of both their children … They have found a means to share the care of their children which appears to be an arrangement that has worked well for sixteen months. This is unusual in that neither now seeks parental responsibility for the other's child, although I am aware that [X] wanted this and continues to do so. Notwithstanding her preference, she accepts that [Y] will not agree to share parental responsibility for [C1] and this is unlikely to change. The issue of parental responsibility does not appear to affect what happens day to day. I can identify no reason for the court to further scrutinise, or interfere with, an arrangement that works well."

20. Referring to some of the legal complexities (see below), the guardian continued:

> "The intention of the application appears to be that the children have equal status. Both parents consider this could be achieved by means of an amendment to the birth certificate. If this could be done without a formal Declaration of Non-Parentage, this would be preferable.
>
> The only other options for this situation would have been either that a Declaration of Parentage be sought, as in the other cases the Court has heard, to rectify the error made by the clinic (noting however there is no evidence of any consent forms signed by [Y]) or that nothing be done following the error. In the latter situation, this would mean that [Y] is not legally the parent for [C2], but her name would remain on the birth certificate, thus leading to possible ambiguity and confusion.
>
> … if there proves be no means of amending the birth certificate without a Declaration of Non-Parentage, then I would support the application sought.
>
> Recommendation
>
> From [C2]'s perspective I can see that there will be a need for clarity about who has parental responsibility … and would recommend that this be achieved by the most unobtrusive means – that is a change of birth certificate should this prove possible."

C2's birth certificate

21. As will be apparent, this case raises an important issue which did not arise in any of the cases in which I have previously given judgment. In each of those cases the declaration of parentage I made accorded exactly with the information recorded in the register of births and therefore with the child's birth certificate. Here, in contrast, the declaration does not accord with the information about C2 recorded in the register of

births and on C2's birth certificate. This requires me to consider the provisions of the Births and Deaths Registration Act 1953 as amended (the 1953 Act).

22. Counsel are, correctly, agreed that the relevant provisions are to be found in sections 14A and 29(3) of the 1953 Act. I start with section 29.

23. So far as material for present purposes, section 29 of the 1953 Act, which is entitled 'Correction of errors in registers', provides as follows:

> "(1) No alteration shall be made in any register of live–births, still–births or deaths except as authorised by this or any other Act.
>
> (2) Any clerical error which may from time to time be discovered in any such register may, in the prescribed manner and subject to the prescribed conditions, be corrected by any person authorised in that behalf by the Registrar General.
>
> (3) An error of fact or substance in any such register may be corrected by entry in the margin (without any alteration of the original entry) by the officer having the custody of the register, and upon production to him by that person of a statutory declaration setting forth the nature of the error and the true facts of the case made by two qualified informants of the birth or death with reference to which the error has been made, or in default of two qualified informants then … by two credible persons having knowledge of the truth of the case …"

No one has suggested, or in my judgment could sensibly suggest, that the present case involves a "clerical error" within the meaning of section 29(2). So the material provision is section 29(3).

24. So far as material, regulation 58 of the Registration of Births and Deaths Regulations 1987, SI 1987/2088, as amended by regulation 20 of The Registration of Births and Deaths (Amendment) Regulations 2006, SI 2006/2827, provides that:

> "(1) Where it appears or is represented to a superintendent registrar or a registrar that there is an error of fact or substance in a completed entry in a register of live-births, still-births or deaths in his custody … he shall –
>
> (a) send a report to the Registrar General giving such information as the Registrar General may require and enclosing a copy of the entry; and
>
> (b) comply with any instructions which the Registrar General may give for the purpose of verifying the facts of the case and ascertaining whether there are available two persons qualified to make a statutory declaration required by section 29(3) of the Act.

> (2) On being informed by the Registrar General that the error may be corrected on production of such a statutory declaration, the superintendent registrar or the registrar concerned shall on production to him of the statutory declaration correct the error in the following manner –
>
> …
>
> (b) he shall write in the margin of the entry a note in the following form (or such other form as the Registrar General may authorise in any particular case) –
>
> > "In No ... ...in ... ...for ... ...read ... ... Corrected on ... ...by me ... ... Superintendent Registrar [or Registrar] on production of a statutory declaration made by ... ...and ... ...",
>
> and he shall enter the particulars of the correction and of the declarants and complete and sign the note in the places provided."

So, in the present case, the effect of section 29(3), were it to be possible to invoke that provision, would be that any birth certificate for C2 issued in future would indicate on its face that although Y had originally been registered as C2's "Parent" she was no longer referred to as such.

25. So far as material, section 14A(1) of the 1953 Act provides as follows:

> "Where, in the case of a person whose birth has been registered in England and Wales –
>
> > (a) the Registrar General receives, by virtue of section 55A(7) … of the Family Law Act 1986, a notification of the making of a declaration of parentage in respect of that person; and
> >
> > (b) it appears to him that the birth of that person should be re–registered,
>
> he shall authorise the re–registration of that person's birth, and the re–registration shall be effected in such manner and at such place as may be prescribed."

26. Section 55A(7) of the 1986 Act provides as follows:

> "Where a declaration is made by a court on an application under subsection (1) above, the prescribed officer of the court shall notify the Registrar General, in such a manner and within such period as may be prescribed, of the making of that declaration."

Section 55A(1) describes such a declaration as "a declaration as to whether *or not* a person … is or was the parent of another person" (emphasis added), so section 55A(7) applies in the case of what I have colloquially referred to as a declaration of non-parentage.

27. Rule 8.22(2) of the Family Procedure Rules 2010 provides as follows:

> "A court officer must send a copy of a declaration of parentage and the application to the Registrar General within 21 days beginning with the date on which the declaration was made."

Although the judge has power to extend that period, it is clear that this should be done only in exceptional circumstances and even then only for a matter of weeks at most: *Re F (Paternity: Registration)* [2011] EWCA Civ 1765, [2013] 2 FLR 1036. It must also be borne in mind in this connection (see *In re A*, para 107) that, as provided by section 58(1) of the 1986 Act,

> "Where on an application to a court for a declaration under this Part the truth of the proposition to be declared is proved to the satisfaction of the court, the court shall make that declaration unless to do so would manifestly be contrary to public policy."

28. Regulation 26A of the Registration of Births and Deaths Regulations 1987, SI 1987/2088, inserted by regulation 2 of The Registration of Births and Deaths (Amendment) Regulations 1988, SI 1988/638,[2] provides as follows:

> "Where under section 14A of the Act the Registrar General authorises the relevant registrar to re-register a birth, the relevant registrar shall –
>
> (a) copy the particulars recorded in the spaces of the authority into spaces 1 to 10 of form 1;
>
> (b) enter across such of spaces 11 to 14 as are needed for the purpose: –

[2] The hunt for this provision illustrates the deplorable deficiencies in the United Kingdom's official on-line source of legislation – Legislation.gov.uk. In relation to the Registration of Births and Deaths Regulations 1987, SI 1987/2088, the website informs its users that "This is the original version (as it was originally made). This item of legislation is currently only available in its original format.". So it does not contain regulation 26A. The intrepid seeker after legal certainty who follows the "More Resources" link is taken to another page which describes itself as a "List of all changes (made to the revised version after 2002" and, as might be expected, for the relevant change was made in 1988, does not contain any reference to regulation 26A. The assiduous searcher who takes the precaution of clicking on the ? icon beside the words "List of all changes (made to the revised version after 2002" is taken to this message: "List of all changes: Link(s) to the Changes to Legislation facility which provides access to lists detailing changes made by all legislation enacted from 2002-present to the revised legislation held on legislation.gov.uk, along with details about those changes which have and have not been applied by the legislation.gov.uk editorial team to this legislation item. Details of changes are only available back to 2002. Changes made before 2002 are already incorporated into the text of the revised legislation on legislation.gov.uk." But that, as we have seen, is not the case in relation to regulation 26A. Surely something must be done to overcome these deficiencies.

> (i) if the re-registration follows a declaration under section 56(1)(a) of the Family Law Act 1986 the words "Pursuant to section 14A of the Births and Deaths Registration Act 1953 on the authority of the Registrar General"; or
>
> (ii) if the re-registration follows a declaration under section 56(1)(b) of the Family Law Act 1986 the words "on the authority of the Registrar General";
>
> (c) draw a line through any unused space; and
>
> (d) enter in space 15 the date on which the entry is made and sign the entry in space 16, adding his official description."

29. For the sake of completeness, I should add that it may in certain circumstances be possible to challenge the original registration by means of an application for judicial review. I say nothing more about that here. It may yet arise for consideration by me in Case K. No one suggests that judicial review, even if available in other circumstances, is available as a remedy here.

Discussion

30. One theoretical possibility would be for me to do nothing. I reject such an approach as being contrary to principle, inconsistent with the true facts, not what X and Y seek, and incompatible with C2's welfare.

31. The right to know one's parentage has long been recognised, both in our domestic law and in the Strasbourg jurisprudence in relation to Article 8 of the Convention: see, for example, *Re L (Family Proceedings Court) (Appeal: Jurisdiction)* [2003] EWHC 1682 (Fam), [2005] 1 FLR 210, para 23, and *Re X (A Child)* [2016] EWHC 1342 (Fam), paras 18-20. This is not just a matter of status. Transcending even status, it goes to the very identity of the child as a human being, who he is and who his parents are; it is central to his being, whether as an individual or as a member of his family: see *Re X (A Child) (Surrogacy: Time limit)* [2014] EWHC 3135 (Fam), [2015] Fam 186, [2015] 1 FLR 349, para 54. I repeat what I said in *In re A*, para 3:

> "The question of who, in law, is or are the parent(s) of a child born as a result of treatment carried out under this legislation … is, as a moment's reflection will make obvious, a question of the most fundamental gravity and importance. What, after all, to any child, to any parent, never mind to future generations and indeed to society at large, can be more important, emotionally, psychologically, socially and legally, than the answer to the question: Who is my parent? Is this my child?"

32. In relation to parentage, as in other matters, a child's interests are best served by the ascertainment of the truth, *whatever that truth may be*. So a child needs to know, where parentage is in issue, whether P is *or is not* a parent. As Ms Fottrell and Mr Wilson pointed out, this is the way in which the Article 8 right was formulated in the leading case of *Mikulic v Croatia* (2002) 11 BHRC 689, [2002] 1 FCR 720, paras 44

("right to have … paternity established or refuted") and 60 ("establish whether or not HP is her biological father"). If the conferring of the legal status of a parent is a serious matter, then divesting a person of that status is at least as serious. As Cobb J said in *AB v CD and the Z Fertility Clinic* [2013] EWHC 1418 (Fam), [2013] 2 FLR 1357, paras 3-4:

> "3 The conferring of the legal status of 'parent' on a person who is not genetically related to a child is therefore a serious matter … The creation of such a relationship affects not only the mutual connection of parent and child, but also the associations between the child and the whole of that parent's family.
>
> 4 Divesting a person of the legal status of 'parent' is plainly no less serious."

33. So, in principle, factual reality and X's wishes all point in the same direction. And nothing in the guardian's careful and sensitive analysis of C2's welfare points in the other direction. In principle, as I have said, X is entitled to the declaration she seeks, namely that Y is not C2's parent. As Ms Fottrell and Mr Wilson put it, "the legal and factual reality should coincide." If I make no order, C2 is, they say, left in a legal limbo. Ms Morgan and Ms Sprinz submit that this accords with a child welfare analysis, on the basis that it provides C2 and C1 with equivalent legal status in relation to X and Y. Mr Geekie and Ms Segal submit on behalf of the guardian that there must be certainty about C2's parentage. I agree. As the guardian points out in a passage in her report which I have already set out, if in fact, and in law, Y is not C2's parent, but her name remains on the birth certificate, this will produce possible ambiguity and confusion.

34. Given the peremptory terms of section 29(1) of the 1953 Act, the question thus reduces itself to this: is the proper way forward that permitted by section 14A of the 1953 Act or that referred to in section 29(3)? Ms Fottrell and Mr Wilson submit, as do Ms Morgan and Ms Sprinz, and Mr Geekie and Ms Segal, that the only appropriate remedy is a declaration, which, given the provisions of section 55A(7) of the 1986 Act, necessarily carries with it the consequences spelt out in section 14A. I agree. Turning the point the other way round, Mr Geekie and Ms Segal submit, correctly in my judgment, that, not least because of section 29(1), re-registration pursuant to section 14A (which they submit is the only way forward) cannot be achieved by any other means short of a formal declaration under section 55A.

35. There are, in my judgment, two principal reasons why recourse to section 29(3), even if possible, would be wholly inappropriate in a case such as this. The first is that the decision-maker for the purposes of an application under section 29(3) is the Registrar General, not the court.

36. The second, which is central to my decision, is that, as appears from the provisions to which I have referred in paragraph 24 above, proceeding in accordance with section 29(3) would leave the original text of the register, and thus of any future birth certificate, intact, though qualified by the inclusion of a narrative marginal note. Importantly, it would therefore leave Y's name and details in spaces 4-6. That is not

desirable from C2's point of view, whether now or in future, exposing C2, as it would, to the curiosity and comment of those to whom the birth certificate might in future have to be produced: cf the comments of King LJ in an analogous situation arising under section 13(1)(b) of the 1953 Act in *Re C Children)* [2016] EWCA Civ 374, para 34 (the case where a mother wished to register her child's names as "Cyanide" and "Preacher").

37. As Ms Morgan and Ms Sprinz sagely observe, one has to look away from the court room and to the effect in 'real life' of a birth certificate corrected under section 29(3), and to cast one's mind forward to the kinds of occasion when it will be necessary to produce C2's birth certificate. It might also, Ms Fottrell and Mr Wilson suggest, confuse a reader rather than clarify C2's legal status. Mr Geekie and Ms Segal put the point very pithily, when they refer to the guardian's wish to achieve "clarity … by the most unobtrusive means."

38. I should add that Ms Fottrell has helpfully directed my attention to a large body of authority on various provisions of the 1953 Act. I list them for future reference: *Her Majesty's Attorney General v Harte* (1987) 151 JP 819, *Rees v United Kingdom* (1987) 9 EHRR 56, *Dawson v Wearmouth* [1997] 2 FLR 629, *Sheffield and Horsham v United Kingdom* (1999) 27 EHRR 163, *R (Ryder) v The Registrar of Births, Marriages and Deaths* [2002] EWHC 1191 (Admin), *AAA v ASH, Register General for England and Wales and the Secretary of State for Justice (intervenors)* [2009] EWHC 636 (Fam), [2010] 1 FLR 1, *Fraser v HM Coroner for North West Wales* [2010] EWHC 1165 (Admin), *Markham v HM Coroner for Greater London (Western District)* [2013] EWHC 253 (Admin), and *R(JK) v Registrar General for England and Wales (Secretary of State for the Home Department and others, interested parties)* [2015] EWHC 990 (Admin), [2015] 2 FCR 131. I do not propose to go through all this, helpful though it was in illuminating the landscape and in identifying the surprising poverty of learning on what is meant by the phrase "error of fact or substance" in section 29(3). I merely indicate, though without deciding the point, that it is far from obvious that what has happened here was capable of amounting to an "error of fact or substance" within the meaning of section 29(3).

Outcome

39. I shall accordingly make a declaration in the terms sought by X.

Costs

40. In the position statement and then orally in court Ms Gartland and Mr Khan repeated the clinic's "sincere apology" for the difficulties it had caused and reiterated its wish to assist the family to obtain the best outcome for C2. Very properly, the clinic has agreed to pay the costs.