



JUDICIAL OFFICE

Case No: FD18F00035

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION AND THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/09/2019

Before:

The Rt. Hon. Sir Andrew McFarlane
President of the Family Division

Between:

THE QUEEN (on the application of TT)	<u>Claimant</u>
- and -	
THE REGISTRAR GENERAL FOR ENGLAND AND WALES	<u>Defendant</u>
- and -	
SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE [1]	
MINISTER FOR WOMEN AND EQUALITIES [2]	
SECRETARY OF STATE FOR THE HOME DEPARTMENT [3]	
YY (A Child) (By his Litigation Friend, CLAIRE BROOKS) [4]	
AIRE CENTRE	<u>Interested Parties</u>

Interveners

SUMMARY OF JUDGMENT HANDED DOWN ON 25TH SEPTEMBER 2019

The issue at the centre of this case can be simply stated: where a person, who was born female, but who has subsequently undergone gender transition and acquired full legal recognition as male, becomes pregnant and gives birth to a child, is that person to be registered as their child's 'mother' or 'father'?

Although the issue may be simply stated, it raises not only an important point of law in England and Wales, but it is, so far as can be determined, one that is only now beginning to be considered in other jurisdictions. The judgment issued today establishes a definition of the term ‘mother’ for the first time under the English Common Law. Consideration is then given to whether that definition is altered by any of the relevant Acts of Parliament, namely the Human Fertilisation and Embryology Acts 1990 and 2008 and the Gender Recognition Act 2004.

The proceedings came before the court by way of an application for judicial review of the decision by the Registrar General that, despite the fact that the Claimant was legally male at the time that he gave birth, he must be registered as his child’s ‘mother’. Both the Claimant and those acting in the interests of the child argued that, as a matter of English law, the Registrar’s decision was wrong and that the Claimant, being a male parent, must be his child’s ‘father’. The claim was resisted by the Registrar and the Government

In the judgment issued today, the President of the Family Division, the Rt Hon Sir Andrew McFarlane’s principal conclusion [paragraph 279] is as follows:

“... there is a material difference between a person’s gender and their status as a parent. Being a ‘mother’, whilst hitherto always associated with being female, is the status afforded to a person who undergoes the physical and biological process of carrying a pregnancy and giving birth. It is now medically and legally possible for an individual, whose gender is recognised in law as male, to become pregnant and give birth to their child. Whilst that person’s gender is ‘male’, their parental status, which derives from their biological role in giving birth, is that of ‘mother’.”

The President concluded that none of the relevant Acts of Parliament altered that outcome.

The Claimant’s secondary claim was that if, as The President has concluded, he is to be regarded as the mother under English law, that outcome breaches his and his child’s right to respect for their private and family life under Article 8 of the European Convention on Human Rights [‘ECHR’] to such an extent that the court should declare that the English law on this point is incompatible with the ECHR under section 4 of the Human Rights Act 1998. The effect of a Declaration of Incompatibility, if made, would be to require Parliament to consider the state of the law with a view to bringing it in line with the Human Rights Convention. As the judgment demonstrates, The President has dismissed this secondary claim and concluded that English law is not incompatible with the ECHR on this point.

The issue at the centre of these proceedings is ultimately a matter of public policy. At paragraph 125 of his judgment, Sir Andrew McFarlane invites the Government and Parliament to address this matter square-on:

“The issue which has most properly and bravely been raised by the Claimant in this Claim is, at its core, a matter of public policy rather than law. It is an important matter of public interest and a proper cause for public debate. Whilst this judgment will seek to determine the issue by reference to the existing legislation and the extant domestic and ECHR caselaw, as these sources do not themselves directly engage with the central question there would seem to be a pressing need for

Government and Parliament to address square-on the question of the status of a trans-male who has become pregnant and given birth to a child.”

Finally, the proceedings were conducted on the basis that the identity of the Claimant and his child were confidential, so that the Claimant was referred to only as TT and the child as YY. Subsequently, for reasons given in a judgment handed down on 11th July 2019 [see BAILLI website reference [2019] EWHC 1823 (Fam)], the court removed the cloak of confidentiality from the Claimant. Although this judgment reflects the proceedings and continues to refer to the Claimant as TT, the Claimant can now be publicly identified as Fred McConnell. The identity of the child, YY, remains confidential and is covered by a Reporting Restriction Order.

NOTE

This summary is provided to assist in understanding the court’s decision. It does not form part of the reasons for the decision. The full judgments of the court are the only authoritative documents. They are published at www.judiciary.uk/judgment

25th September 2019