

Neutral Citation Number: [2024] EWFC 377 (B) (Fam) Claim No: SE24P70168

**IN THE FAMILY COURT AT SHEFFIELD**

Sheffield Designated Family Court  
48 West Bar, Sheffield, S3 8PHJ  
Date: 09/09/2024

**Before :**

**HHJ Afzal CBE**

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**Between :**

**M (a Mother)**

**Claimant**

**- and -**

**F (a Father)**

**Defendant**

*(Parental Responsibility of a non-biological father)*

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M Whelan (instructed by Expatriate Law) for the Applicant

L Stanbury (instructed by Hall Brown) for the Defendant

Hearing date: 14, 15 16 August and 9 SEPTEMBER 2024  
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**Approved Judgment**

This judgment was handed down at a remote hearing 9 September 2024 and was clarified on 24 October 2024 by circulation to the parties or their representatives by e-mail.

1. This case is about C, who is now 7 years old. Her welfare is the Court's paramount consideration.
2. F is C's psychological father and will be referred to as "F" for convenience. He is a British national.

3. M is C's mother and will be referred to as "M" for convenience. M is from South Africa, she moved to this country when she was 16.
4. M's parents returned to South Africa in 2013
5. C's parents met at university. They believed F was C's biological father.
6. F was named on C's birth certificate and acquired parental responsibility ("PR") as a consequence.
7. In August 2023, M invited F to take a DNA test and he agreed. The results showed that he is not C's biological father. This came as a shock to the parties and was very upsetting for them.
8. Unbeknown to F, M applied for C's birth to be re-registered. It is M's case that she feared that F would report her to the Police, and she would be in serious trouble for failing to correct an important legal document such as a birth certificate. It is M's case that she provided F's details on the relevant form and believed the General Registry Office ("GRO") would contact F. It is also her case that they discussed, and had an argument, about this issue. It was F's case that he had no idea about this until he discovered this to be so during the proceedings. The Court preferred F's case on this issue and found there was no such discussion and there was no confidence that accurate information was given to the GRO.
9. In the wider context, M's application for permission to permanently remove C from the jurisdiction of England & Wales was refused. Permission was given to M to withdraw the application for a Declaration that F is not C's biological father.

### **PARENTAL RESPONSIBILITY**

10. The key legal and other issues in respect of this are agreed, namely:
  - (a) F acquired PR by virtue of being on C's birth certificate pursuant to Section 4(1)(a) of the Children Act ("CA") 1989.
  - (b) The "only" way in which a "person" can lose PR so acquired is by an Order pursuant to Section 4(2A) CA 1989. This remains the position even if a Declaration of Non-Parentage had been made as that is not an Order pursuant to Section 4(2A).
  - (c) F should have PR going forward and can acquire this by being named in a Child Arrangements Order (Live With) pursuant to section 12(2) CA 1989. If section 12(1) applies the Court "must" consider making a PR Order. However, it appears that section 12(1)(b) is not satisfied as it relates to a "father" (or woman who is a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008). Thus,

it is restricted to biological parents. It appears that section 12(1)(c) is not satisfied either as the father (or the woman) would not otherwise have PR, in this case F does “otherwise” have PR unless I take steps to remove this.

11. M invites me to remove F’s PR under Section 4(2A) and to grant it again under Section 12(2) CA 1989. It is M’s case that this ensures the record is set straight and F will hold PR on the correct basis.
12. F invites me to make no order and to confirm that he continues to hold PR on the basis it has not been removed. F has referred to differences between PR acquired by virtue of being on C’s birth certificate compared to acquiring the same by virtue of being named in a Child Arrangements Order.
13. I have been guided by two decisions from the Family Court in which both outcomes have been favoured by the respective judges.
14. In Re C & A (acquisition and discharge of parental responsibility by an unmarried father) [2023] EWHC 516, His Honour Judge Moradifar sitting as a Deputy Judge of the High Court, concluded that:

*“In summary, where a man has gained parental responsibility for a child by being registered as the father of the child, such a registration and the consequential award of parental responsibility by operation of the law is based on the rebuttable presumption that he is the biological father of the said child. If that presumption is rebutted, the foundation for the acquired parental responsibility is displaced. Subsequently parental responsibility will be lost by the order of the court that reflects the status of the individual adult and does not require a welfare analysis.”*

15. His Honour went further and accepted that a court order is still required to remove a person’s parental responsibility and that a declaration of non-parentage in itself did not remove parental responsibility. At paragraph 15 he said –

*“Therefore, this raises the argument that a declaration of ‘non-parentage’ and a subsequent re-registration is all that is required for N to cease to have parental responsibility for C. There is an inherent attraction and neatness to this argument. However, in my judgment, this cannot survive the provision of s.4(2A) of the Act. Its terms are clear by stating that a court order is required.*

*In my judgment it would also be good practice to be clear that parental responsibility has ceased by reference to a particular date especially given the public policy arguments that I have summarised above”*

16. In *A Local Authority & SB and Ors (2023) EWFC 58* Her Honour Judge Case considered whether a declaration of non-parentage automatically discharges PR. Her Honour concluded that this is a separate welfare based decision for the following 3 key reasons:

- a) One of the most important factors is that a declaration of non-paternity is a declaration of biological fact rather than a declaration as to legal status; (paragraph 34)
- b) The importance of the use of the word ‘only’ in section 4 (2A), and how this confirms that the court does not have discretion regarding how such an order is made – namely, it cannot be an automatic consequence of an order made under a separate Act; (paragraph 34)
- c) The whole of section 4 of the Children Act 1989 is subject to the principle that the child’s welfare is paramount. Even if a parent is removed from a birth certificate or a Declaration of Non-Parentage is made, this is simply a declaration of fact, and the legal status of whether retaining Parental Responsibility would be in the child’s best interests needs to be considered.

17. Thus, the key difference between the two cases is whether the decision to cease PR is an automatic consequence or one that requires a welfare analysis.

18. I find that a welfare analysis is required and I, like HHJ Case, premise this view on the ratio of Ryder LJ in the case of *Re D (A Child) [2014] [EWCA Civ 315]*. I respectfully agree with the analysis by HHJ Case, at paragraphs 53 to 58, namely that:

“53. Therefore, it seems to me that I need to look at the ratio underpinning Ryder LJ's analysis. His view is explicitly founded on the fact that an application relating to the cessation of parental responsibility is a question with respect to the upbringing of a child. Indeed, having regard to Ryder LJ's

reasoning, one might even say that an order terminating parental responsibility is the quintessential question with respect to the upbringing of a child. It is an overarching decision which alters the composition of the small group of adults in a child's life who are charged with all decision making for the child, save for any decision which is directly determined by the court. I reflect on the fact that the latter group of decisions are of course a miniscule proportion of the total number of welfare decisions on topics small and large which are daily made on behalf of children by adults.

54. An order discharging Mr K's parental responsibility under section 4 (2A) would have the effect of removing him from the group of decision-makers for N in exactly the same way as would an order discharging the parental responsibility of a biological father.

55. I conclude, therefore, that such an order must be an order with respect to the upbringing of a child.

56. The reference to the court "considering a question with respect to the upbringing of a child" refers of course to the opening words of section 1 of the Children Act 1989. If the decision as to whether or not to discharge the parental responsibility of Mr K is such a decision, then, as was expressly set out by Ryder LJ in paragraph 12 above, the consequence will be that the child's welfare will be the court's paramount consideration.

57. In that event, other requirements of section 1 of the Children Act 1989 will come into play, including the no delay principle, and the no order principle. As Ryder LJ said, there is no requirement upon the court to consider the welfare checklist, although the court may find it a useful analytical framework, not least because welfare has to be considered and reasoned. Crucially, Ryder LJ added that, "Given that the cessation of parental responsibility is an order of the court, **the court must also consider whether making such an order is better for the child than making no order at all, the no order principle in section 1(5)**" (my emphasis)

58. I find it impossible to reconcile these words, not least those highlighted words, with the conclusion reached by HHJ Moradifar that an order discharging parental responsibility should automatically follow from a declaration of non-parentage.”

19. In this case I have not made a Declaration of Non-Parentage but there has been a re-registration and F is no longer on the birth certificate. In any event by virtue of Section 4(2A) a separate Order is mandatory, with the word “shall” being used if a person who has acquired PR under Section 4 is to cease to have that responsibility.
20. In this case F had PR from the outset, he has exercised PR as C has lived with both parents on an almost equal basis and it is agreed that he should have PR going forward.
21. There is no application before the Court for F’s PR to cease. I find this is in contravention of Section 4(3) CA 1989 which provides: *The court may make an order under subsection (2A) on the application— (a)of any person who has parental responsibility for the child.*
22. In circumstances where I consider it fair and expedient, I proceed on the basis that M has made such an application. There is nothing by way of case management or in the conduct of the hearing that would have changed if the exercise of making a written or oral application had been complied with.
23. I can find no reason to cease F’s PR under Section 4(2A) merely to regrant PR under Section 12(2) CA 1989. M’s case at it’s highest is that it will amount to the record being straight as F should not have acquired PR by virtue of being on C’s birth certificate which occurred at a time when it was believed that F was C’s biological father which has proven not to be the case. This requires me to accept that ceasing PR should be an automatic consequence of re-registration and for the reasons I gave earlier I do not agree this is so. In any event, M’s wish to ensure the record is straight has been achieved by causing the birth to be re-registered. In any event this approach

had a superficial attraction at best and at worst would have conferred on F PR which I find is limited in material respects as follows:

- a) PR acquired pursuant to Section 12(2) CA 1989 runs whilst Child Arrangements Orders (Live With) are in force, this runs the risk of PR so acquired being lost if the Order has to be discharged in circumstances where I have expressed concern about M's approach in the future. This is an unacceptable risk and one I am unwilling to take. I find it would be contrary to C's welfare interests if F lost PR for her even if the living arrangements have to change. I find it would be unacceptable for there to be no-one exercising PR for C in this jurisdiction, in what could be, crucial time in her education and life.
- b) There is also the risk, albeit a very low one, that if the parents live with each other for six months the Child Arrangements Order could cease to have effect thereby removing F's PR. In circumstances where M remained C in South Africa for three months in the past, there is a low risk she may do so again with F having no choice but to be in South Africa and possibly being accommodated by M whilst he effects C's return or if M lives with F in this country on a temporary basis. I am unwilling to take such a risk on an important and central issue such as PR.
- c) Section 12(3)(b) and (c) sets out limitations on PR acquired under Section 12(2) which would create an inequality between F and M's PR which I find is contrary to C's interests. If F wishes to appoint a Guardian for C, he, like M, should have the right to do so and have the right to agree, or refuse to agree, to C being adopted by F if this arises in the future - something the parties are encouraged to consider.

24. I am not satisfied that making an Order pursuant to Section 4(2A) is better for C than not making an Order at all. Making no order leaves C with the advantage of her psychological father's PR being unaffected or changed by the discovery he is not her biological father. The reality on the ground has not changed for C and I find nor should the PR vested in F.

25. It is hoped that F may adopt C in the future. However, the parents do not wish to pursue this as it requires them to explain to C how she was conceived, and they wish to do this when they feel she is emotionally mature enough to understand. I respect this child focused position but fear that neither parent wishes to tackle this issue and

C may grow up not knowing that F is not her biological father. Research has shown that children are psychologically harmed when they discover that those who love them have not been honest with them and it can undermine their relationship. I accept it is a painful topic for F and more so for M but urge them to keep this under careful consideration. They must follow the advice from Mr D in respect of this and ensure they tell C together, have an agreed narrative and to ensure that C spends time with F immediately afterwards to reaffirm the position that nothing has changed, and he is still her father.

HHJ Afzal CBE

09.09.2024