



Neutral Citation Number: [2024] EWFC 85 (B)(Fam)

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/04/2024

Before:

MRS JUSTICE GWYNNETH KNOWLES

Between:

P
- and -
Q
And
F
And
X

Applicant

Respondents

James Turner KC, Naomi Wiseman and (pro bono) Joseph Landman for the Applicant, P,
instructed by TV Edwards Solicitors.

Amanda Weston KC and Karen Kabweru-Namulemu for the First Respondent, Q,
instructed by Obaseki Solicitors.

Louise MacLynn KC and Luke Eaton for the Second Respondent. F (pro bono), instructed by
Creighton and Partners (pro bono)

Christopher Osborne from Cafcass Legal for the child, X, via her children’s guardian

Hearing dates: 20-22 March 2024

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This judgment was handed down remotely at 10.30am on 19 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their

family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Gwynneth Knowles:Introduction

1. This case is a cautionary tale about the consequences for a child and for a same-sex couple of both deceit as to how that child came to be conceived and the unreliability of informal arrangements for artificial insemination. The fallout from this couple's separation has been devastating for each of them and for their named sperm donor. In due course, the child concerned will need an age-appropriate explanation of what happened when she was conceived and why it is that she now has a different birth-certificate. As Peter Jackson J put it in M v F & H (Legal Paternity) [2013] EWHC 1901 (Fam):

“[8] ...Happily, many children are born to individuals who have faced challenges in conceiving. Some births follow treatment at licensed clinics and others originate from informal arrangements. Either way, those involved must often be confronted by profound feelings and powerful forces. These include, relevantly to this case, a yearning for children, a need for friendship and a hunger for sex, forces that can overpower and defeat routine social conventions.

[9] Nor should it be forgotten that, however difficult or unsatisfactory the circumstances of conception may have been, a child – as here – has been born... participants in informal arrangements have to judge all risks for themselves. They may not be in a good position to do so. Those seeking to conceive may be in a vulnerable state and not all donors are motivated by altruism.

[10] This informal trade is not unlawful, but it is not regulated in any meaningful way...

[12] The present case amply demonstrates the risks involved for all participants in this process. It has taken a high toll on the wellbeing of each of the adults...”

I strongly endorse those observations, almost all of which are pertinent to the circumstances of these proceedings.

2. Before me is an application pursuant to section 55A of the Family Law Act 1986 (“the FLA 1986”) made by P, who is the biological mother of the child, X, with whom I am concerned. She asks the court to declare that a man called F is the legal parent of X and that her former wife, Q, is not a legal parent of X. Q was married to P at the time X was both conceived and born and she is named on X's birth certificate as a parent. She has parental responsibility for X by reason of those circumstances even though she is not a biological parent. There is no dispute that F is the biological father of X for he acted as the sperm donor for P and Q. F supports P's application, but it is vehemently opposed by Q. On behalf of X, her guardian recognises that X may benefit from certainty about her parentage and that the truth about what happened is almost always in a child's best interests, no matter how painful the adult emotions presently are.

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3. The issue at the heart of this application is whether X was conceived by artificial insemination (AI) or by natural insemination (NI). If it is the latter, the implications for Q are profound for it is asserted by P and F that Q has no right to be registered on X's birth certificate and does not have parental responsibility for her. For her part, Q asserts that X was conceived by AI but P and F maintain that they had NI during the conception window and thus that it is uncertain by what method X was conceived. Q, at no stage, consented to P and F having NI but only consented to AI. If uncertainty exists, P asserts that Q cannot have properly acquired legal status for X if the relevant provisions of the Human Fertilisation and Embryology Act 2008 ("the HFEA 2008") have not been strictly complied with.
4. P is X's biological mother and is registered as X's first legal parent on her birth certificate. The first respondent, Q, is currently registered as the second legal parent on X's birth certificate. The second respondent is F. DNA testing has confirmed F's paternity of X. X is the third respondent in the proceedings, represented by her children's guardian.
5. The papers have been served on the Attorney General pursuant both to my directions order dated 23 February 2024 and the requirements of section 59 of the FLA 1986. However, the Attorney General has indicated that she does not wish to intervene in these proceedings.
6. I have read the bundle of case papers provided, heard oral evidence from P, Q and F and considered carefully the written and oral submissions made on behalf of each of the parties. I have also been provided with a bundle of relevant law and case law and I have been referred to a great deal of that material in argument. I am very grateful to counsel for their assistance with this case.
7. In summary, I have decided to grant the declarations sought by P. What follows will explain my decision.

Background History

8. What follows is a summary pertinent to the issues in this application.
9. P and Q began their relationship in 2011 and by 2015/2016, they began to research how they might become parents. It was agreed between them that P would bear any child of their relationship and that they would not use the services of a licensed clinic. Both agreed in their oral evidence that P was the driving force behind the joint effort to conceive a child. They chose to conceive by using AI. P and Q married in August 2016 and undertook their first attempt at AI in October 2016, using sperm imported from a clinic in Denmark. This method was both unsuccessful and expensive, so the couple sought a known donor and found F through placing an advert on the internet. In November/December 2016, P and Q met F at a pub and formed a favourable impression of him. On 10 December 2016, all three signed a document entitled "*Sperm Donor Agreement*", obtained from the internet, by which F agreed not to demand or seek any parental rights in respect of any child born as a result of the AI process. This document has no legal force whatsoever.
10. There were two attempts at AI using F's sperm which were unsuccessful despite the couple using an app designed to predict when a woman was at her most fertile so that

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conception might take place following insemination. The failure to become pregnant left P feeling unhappy and desperate and placed her relationship with Q under great strain though P hid this from Q. Reaching out for comfort, P on her case contacted F and arranged to meet him at her parents' home whilst they were out of the country. She found him friendly and sympathetic and, whilst at her parents' home, P initiated sexual intercourse with him. P and F had sex - NI - and P said that they had spoken about how NI would increase the chances of her getting pregnant. In total, P says that she and F met three times at her parents' home and had NI on each occasion. Q was not told either about the meetings or about the sexual intercourse.

11. The third and final attempt at AI took place a day or two after P says that she and F last had sex. F was summoned to the couple's home and donated sperm which was placed inside P. There is some dispute as to how this occurred, but P found out that she was pregnant a couple of weeks later. F was not told about the pregnancy but, in January 2018, he was told that X had been born. X was in fact born in late 2017 and her birth was registered by both P and Q. X's birth certificate shows P to be her mother and Q to be a parent. By arrangement with P and Q, F saw X once before P and Q separated: this was a brief occasion and he did not pick her up or hold her.
12. In early 2021, P and Q separated and subsequently divorced. Following their separation, P began communicating reasonably regularly with F. At P's invitation, F saw X at her birthday parties in 2021, 2022 and 2023. It is accepted that X knows F is her biological father, but he has had little meaningful involvement in her life since birth.
13. Regrettably, the breakdown of their relationship also led to disputes between P and Q about X's care arrangements. In April 2021, Q made an application for a child arrangements order and the litigation about X has been ongoing since then. None of that litigation was focussed on X's conception until P and Q fell out about the involvement of F in X's life in late 2022. This led to P claiming that she had had sexual intercourse with F during the time she and Q had been using AI to get pregnant. P asserted her belief that X had been conceived as a result of sexual intercourse or NI rather than by AI. P issued her application for declarations on 19 September 2023.

Relevant Statutory Material and Case Law*The Human Fertilisation and Embryology Act 2008*

14. The registration of Q as one of X's parents was founded on sections 34 and 42 of the HFEA 2008, which provide as follows:

34 Application of sections 35 to 47

(1) Sections 35 to 47 apply, in the case of a child who is being or has been carried by a woman (referred to in those sections as "W") as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination, to determine who is to be treated as the other parent of the child.

(2) *Subsection (1) has effect subject to the provisions of sections 39, 40 and 46 limiting the purposes for which a person is treated as the child's other parent by virtue of those sections.*

42 Woman in civil partnership or marriage to a woman at time of treatment

(1) *If at the time of placing in her of the embryo or the sperm and eggs or of her artificial insemination, W was a party to a civil partnership with another woman or a marriage with another woman, then subject to section 45(2) to (4), the other party to the civil partnership or marriage is to be treated as a parent of the child unless it is shown that she did not consent to the placing in W of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).*

(2) *This section applies whether W was in the United Kingdom or elsewhere at the time mentioned in subsection (1).*

15. Section 42 and all of the other sections from 35 to 47 only apply where the relevant gateway condition in s.34 is satisfied, namely that there was artificial insemination of W or the “*placing in her of the embryo or the sperm and eggs*”. This is clear from the actual words of s.34(1) and 42(1). Unless the court can be satisfied on the balance of probabilities that this condition is met, s.42 does not apply and “*another woman*” cannot in law be a parent of a child who is conceived. In these circumstances, the court must fall back upon the common law in order to establish parentage.
16. In this context, paragraph 2 of Schedule 4 of the Marriage (Same Sex Couples) Act 2013 states as follows:
- (1) *Section 11 does not extend the common law presumption that a child born to a woman during her marriage is also the child of her husband.*
- (2) *Accordingly, where a child is born to a woman during her marriage to another woman, that presumption is of no relevance to the question of who the child's parents are.*
17. The explanatory notes to the Marriage (Same Sex Couples) Act 2013 make clear that the presumption of legitimacy does not apply to same-sex couples:
- “113. Paragraph 2 makes clear that the common law presumption, that a child born to a woman during her marriage is also the child of her husband (often referred to as “*the presumption of legitimacy*”), is not extended to marriages of same-sex couples by section 11. Therefore, where two women are married to each other and one of the parties to that marriage gives birth to a child, the other party will not be presumed to be the parent of that child by virtue of the common law presumption. There may be other ways in which the party to the marriage who does not give birth to the child is treated in law as the parent (for example, if that woman is treated as a parent as a result of the amendment made by paragraph 40 of Schedule 7 to this Act to section 42 of the Human Fertilisation and Embryology Act 2008), but in all such cases it is not the common law presumption that treats her as the parent of that child.

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- *A woman, who is married to a man, gives birth to a child. Her husband is presumed to be the father of that child by virtue of the common law presumption.*
- *A woman, who is married to another woman, has a child by way of artificial insemination. Her wife is not presumed to be the parent of that child by virtue of the common law presumption. Under section 42 of the Human Fertilisation and Embryology Act 2008 her wife is treated as the parent of that child, unless it is shown that she did not consent to the insemination.*
- *A woman, who is married to another woman, has a child by way of natural conception with a man. Her wife is not presumed to be the parent of that child by virtue of the common law presumption. The man is the father of that child.”*

18. During the passage of the Marriage (Same Sex Couples) Act 2013 through Parliament (in Bill form), an amendment was tabled on this issue. Baroness Stowell of Beeston (who led the Bill’s passage through the House of Lords) responded:

“This means that where two women are married to each other and one of the parties to that marriage gives birth to a child, the other party will not automatically be presumed to be the parent of that child. That provision does not change the current situation; instead, it clarifies what the legal position would be in terms of the common law presumption. The presumption is about fatherhood, and the bill does not change the law on fatherhood.”

19. Thus, the fact of a marriage between P and Q does not create a presumption that X is Q’s legal child.
20. Case law has consistently upheld the need for compliance with the requirements of the HFEA 2008. In AB v CD & Z Fertility Clinic [2013] EWHC 1418 (Fam), Cobb J identified (at para [48]) a number of principles which emerged from the case law as it then was. Those principles have not been undermined by any subsequent authoritative decision and are as follows:

i) The HFEA is to be construed *“and applied in a way that creates as much certainty as possible”* (Lord Hope of Craighead discussing the HFEA 1990 in Re R (IVF: Paternity of Child) [2005] UKHL 33, [2005] 2 FLR 843 [2005] at para [17]).

ii) Overall, the *“twin pillars”* supporting Parliamentary regulation of this difficult field are intended to be: (a) the requirement for informed consent, capable of being withdrawn at any point prior to the transfer of the embryos to the woman receiving treatment; and (b) the focus on child welfare required by section 13(5) (see Evans v Amicus Healthcare Ltd and Others (Secretary of State for Health Intervening); Hadley v Midland Fertility Services Ltd and Others (Secretary of State for Health Intervening) [2003] EWHC 2161 (Fam), [2004] 2 WLR 713, [2004] 1 FLR 67, [2003] 4 All ER903, FD; [2004] EWCA Civ 727, [2005] Fam 1, [2004] 3 WLR 681, [2004] 2 FLR 766).

iii) In circumstances where in my judgment life is being created, as where consequent legal relationships are created, there is a need for mutual, bilateral, understanding and agreement: per Thorpe and Sedley LJ in Evans v Amicus Healthcare Ltd and Others

(Secretary of State for Health Intervening); Hadley v Midland Fertility Services Ltd and Others (Secretary of State for Health Intervening) (above) at para. [69]:

“The need, as perceived by Parliament, is for bilateral consent, not simply to the taking and storage of genetic material, and that need cannot be met if one half of the consent is no longer effective. To dilute this requirement in the interests of proportionality, in order to meet Ms Evans’s otherwise intractable biological handicap, by making the withdrawal of the man’s consent relevant but inconclusive, would create new and even more intractable difficulties of arbitrariness and inconsistency. The sympathy and concern which anyone must feel for Ms Evans is not enough to render the legislative scheme of Sch 3 disproportionate.”

iv) When obtaining bilateral consent for treatment (as again in my judgment for the creation of legal relationships), proper information needs to be provided to both parties making the commitment. It is just as important that information is given to, and consent obtained from, the person who is not directly receiving the treatment - ie in the position of AB in a lesbian relationship - as the person being treated:

“If an unmarried man is to become the legal father of a child of which he is not the biological father, that is a momentous matter for both father and child, and one which must be brought home to the prospective father as clearly as possible”: Re R (IVF: Paternity of Child) at para [35].

v) It is essential that the courts pay proper respect to the scheme laid down by Parliament, and supported by the Human Fertilisation and Embryology Authority, for the regulation of assisted reproduction. As Hale LJ (as she then was) said in U. Mrs v Centre for Reproductive Medicine [2002] EWCA Civ 565 (unreported) 24 April 2002 at para [24]:

“The whole scheme of the 1990 Act lays great emphasis upon consent. The new scientific techniques which have developed since the birth of the first IVF baby in 1978 open up the possibility of creating human life in ways and circumstances quite different from anything experienced before then. These possibilities bring with them huge practical and ethical difficulties. These have to be balanced against the strength and depth of the feelings of people who desperately long for the children which only these techniques can give them, as well as the natural desire of clinicians and scientists to use their skills to fulfil those wishes. Parliament has devised a legislative scheme and a statutory authority for regulating assisted reproduction in a way which tries to strike a fair balance between the various interests and concerns. Centres, the HFEA and the courts have to respect that scheme, however great their sympathy for the plight of particular individuals caught up in it.”

vi) The very significant legal relationship of parenthood should not be based on a fiction (Re R (IVF: Paternity of Child) para [42]), and reliable safeguards need to be in place to ensure that this relationship is created in an appropriate way: Re R (IVF: Paternity of Child) para [26].

vii) Whereas “[t]he perspective of the clients is ... to be treated as part of the relevant evidence” (Re R (IVF: Paternity of Child) para [19] and para [43]), when the court is considering a question of fact which imports a subjective element (such as whether the parties were being “treated together” for the purposes of s.28(3) of the HFEA 1990),

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the “*perspective*” or intention of the clients cannot otherwise trump the strict letter of the legislation.

21. In Re R (IVF: Paternity of Child) [2005] UKHL 33, the House of Lords endorsed the judgment of Hale LJ in the Court of Appeal with regard to the effect of s.28(3) of the HFEA 1990 when she stated that (see [39]):

“... section 28(3) is an unusual provision, conferring the relationship of parent and child on people who are related neither by blood nor by marriage. Conferring such relationships is a serious matter, involving as it does not only the relationship between father and child but also between the whole of the father’s family and the child. The rule should only apply to those cases which clearly fall within the footprint of the statutory language.”

I note that the provisions of s.42 of the HFEA 2008 are analogous to those in section 28 of the HFEA 1990. Peter Jackson J (as he then was) stated unequivocally in para 27 of M v F &H (Legal Paternity) (see above) that the HFEA 2008 only governs situations that fell within its footprint.

22. I observe that, in AB v CD (see above), Cobb J rejected the argument that, notwithstanding non-compliance with the requirements of the HFEA, parents should not be deprived of legal status and to do that was discriminatory against same-sex couples. He said this (see paras 90-95):

“90. I have been asked by Mr Kingerley to determine that there are public policy reasons for granting AB parental status notwithstanding the non-compliance with the statutory regime set out in the HFEA 1990 and HFEA 2008 and supporting guidance.

91. He contends that (with reference to section 58 of the Family Law Act 1986) I should indeed decline to make a declaration under section 55A as “to do so would manifestly be contrary to public policy”.

92. His argument is that AB, and he suggests other parents, should not be deprived of parental status simply because the procedure undertaken did not correspond strictly with the requirements of the law. He contends that the conclusion to which I am driven by the application of statute does not sufficiently recognise the Art 8 rights of same-sex couples such as AB and CD, is discriminatory, and argues further that such a declaration does not “consider the societal and legal developments in respect of alternative and diverse family structures”.

93. I reject these arguments. As indicated by the House of Lords in Re R (IVF: Declaration of Paternity) (see para [48](i) above) the HFEA 2008 is to be construed “and applied in a way that creates as much certainty as possible”; if I were to accede to Mr Kingerley’s submissions I would be laying the ground for considerable uncertainty. I do not regard the provisions as discriminatory; on the contrary, the modification of the law under the HFEA 2008, and the corresponding amendments to the Children Act 1989 expanded the categories of person to whom “parentage” could apply.

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94. *I must respect the carefully crafted legislative scheme which provides statutory authority for regulating assisted reproduction. As Hale LJ said in U, Mrs v Centre for Reproductive Medicine at para [24] (for the fuller quote see para [48](v) above:*

“Centres, the HFEA and the courts have to respect that scheme, however great their sympathy for the plight of particular individuals caught up in it.”

95. *If there is any public policy argument engaged here, it points in favour of upholding the tightly regulated regime of assisted reproduction, not relaxing it.”*

23. The legal framework in the HFEA 2008 does not contain a provision making relevant an intention to create the status of parenthood on the part of those planning or engaged in artificial insemination. In Re L (A Child) (Human Fertilisation and Embryology: Declaration of Non-parentage) [2016] EWHC 2266 (Fam), two women in a same-sex relationship had donor insemination treatment through a licensed clinic, which resulted in one of the women conceiving a child. From the outset of their treatment, it was their intention that the woman not carrying the child would be the child’s legal parent. They believed that they had signed the required forms and done all that was necessary for them both to be legal parents. They registered the birth of the child showing them both as legal parents as they believe themselves to be. Subsequently, it transpired that the required forms had not been signed. Following their separation, the biological mother sought a declaration that her former partner was not the child’s legal parent. Sir James Munby P held that the biological mother was entitled to that declaration because the other woman had never given her consent so as to satisfy the requirements of the HFEA 2008. Their intention and the naming of both women on the birth certificate was not relevant; the requirements of the HFEA 2008 had not been satisfied and therefore the other woman was not, and never had been, the child’s legal parent.
24. The most recent exposition of the interpretation of s.42 is contained in the judgment of Peter Jackson LJ in In re S (Children) [2023] EWCA Civ 897 in paragraphs 35-45. I discuss this authority in detail in my analysis below.

The Family Law Act 1986

25. Applications for declarations of parentage are provided for by Part III of the FLA 1986. The relevant sections for present purposes provide as follows:

Section 55A Declarations of Parentage

- (1) *Subject to the following provisions of this section, any person may apply to the High Court or the family court for a declaration as to whether or not a person named in the application is or was the parent of another person so named.*
- (2) *A court shall have jurisdiction to entertain an application under subsection (1) above if, and only if, either of the persons named in it for the purposes of that subsection –*

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- (a) *is domiciled in England and Wales on the date of the application, or*
- (b) *--*
- (c) *--*
- (3) *Except in a case falling within subsection (4) below, the court shall refuse to hear an application under subsection (1) above unless it considers that the applicant has a sufficient personal interest in the determination of the application (but this is subject to section 27 of the Child Support Act 1991).*
- (4) *The accepted cases where the declaration sought is as to whether or not –*
- a) the applicant is the parent of a named person;*
- b) a named person as the parent of the applicant; or*
- c) a named person is the other parent of a named child of the applicant.*
- (5) *Where an application under subsection (1) above is made and one of the persons named in it for the purposes of that subsection is a child, the court may refuse to hear the application if it considers that the determination of the application would not be in the best interests of the child.*
- (6) *Where a court refuses to hear an application under subsection (1) above it may order that the applicant may not apply again for the same declaration without leave of the court.*
- (7) *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.*

58 General provisions as to the making and effect of declaration

- (1) *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.*
- (2) *...*
- (3) *A court, on the dismissal of an application for a declaration under this Part, shall not have power to make any declaration for which an application has not been made.*
- (4) – (6) *...*
26. Section 55A(5) arises for consideration before any substantive hearing of the application for a declaration of parentage and requires consideration of whether the hearing should actually take place, whereas section 58(1) requires consideration of whether the court should make the declaration that is sought once the criteria for

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making such a declaration have otherwise been satisfied. In relation to these provisions the Court of Appeal said in para 26 of Re S (A Child) (Declaration of Parentage) [2012] EWCA Civ 1160:

“On either side of the core fact-finding function of the court are ancillary decisions. Preceding it, there is the consideration under section 55A(5) of whether the determination of the application “would not be in the best interests of the child” and, if so, the determination of whether the court should refuse to hear the application. Following it, there is the consideration under section 58(1) of whether it would be “manifestly contrary to public policy” for the declaration to be made. Section 55A(5) is specific to declarations of parentage. Section 58(1), in contrast, is applicable to any declaration under Part III.”

As Black LJ observed in para 22 of the same judgment, *“the workings of section 55A and section 58 of the Act are not entirely easy to understand”*.

27. When considering best interests pursuant to s.55A(5), the court is not required to consider whether hearing the application is in the best interests of the named child but only to consider whether hearing the application would not be in the child’s best interests. Neither the paramountcy principle nor the welfare checklist in the Children Act 1989 are engaged in this exercise. In Re S (A Child) (Declaration of Parentage) (see para 28), Black LJ explained the general approach that should be adopted in this way:

“28. I think it is important to recognise that the thrust of sections 55A and 58 is that a declaration will be made unless there is a reason not to do so. Section 55A(5) does not simply invite the court to carry out an assessment of whether it is in the child’s best interests to have a determination of the application. It empowers the court to refuse to hear the application if it considers that determining it “would not be in the child’s best interests”. By the time section 58 is reached, the impetus towards the declaration has become even stronger. It will be made unless to do so would not only be contrary to public policy but manifestly contrary to public policy.”

28. In Re S, the Court of Appeal provided the following useful indication of the types of scenario which may justify the exercise of the power conferred by section 55A(5):

“31. Returning to the sphere of declarations of parentage, it may be helpful, in order to examine how section 55A and section 58 interrelate, to take the example of a teenage child who is aware of the application for a declaration of parentage by a man who claims to be his or her father and who threatens that he or she will commit suicide if the man’s application is permitted to proceed. A psychiatrist gives evidence that he considers the threats to be genuine and that, should the proceedings continue, the child is at serious risk of emotional harm at the very least. Section 55A(5) would enable the court to refuse to entertain the father’s claim for a declaration on the basis that the determination of the application would not be in the best interests of the child.

32. I have deliberately chosen an example in which the application of section 55A(5) is obvious but there may well be cases in which the facts were less

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radical but the court would still exercise its power under section 55A(5). I would have thought that the examples in Professor Cretney's book of the child conceived in a rape or the child who is settled with adopters would potentially give rise to a power under section 55A(5) to refuse to hear the application. I question whether it is likely that a case would avoid being derailed at the section 55A(5) stage, proceed to a determination of the fact of parentage, and then throw up welfare considerations which would make it manifestly contrary to public policy to grant a declaration."

29. In MS v RS (Paternity) [2020] 2 FLR 689, at para 45, MacDonald J stated that, "*In considering whether it can be said that to hear the application is not in the children's best interests (and further highlighting why facts justifying such a conclusion will generally, but not always be radical in nature) the right of the child to know, and the importance of the child knowing his or her paternity is a factor that must also be weighed in the balance, subject to the matters set out above*".
30. Turning to section 58(1), it is noteworthy that the court does not have a general discretion to not make the declaration of parentage on a best interests or welfare analysis of the impact on the child of making the declaration. The only power of the court under this section is to decide whether making the declaration is "*manifestly contrary to public policy*".
31. In H v An Adoption Agency (No.2) (Declaration of Parentage and Public Policy) [2021] 3 WLR 1175, Macdonald J said in para 24 that the task of the court under s 58(1) was not to determine what public policy should be but rather to measure the step contended for against the relevant principles of public policy recognised by law. Applying any particular ground of public policy will vary according to the facts of the individual case. In H v R and Another (No. 2) (Attorney General Intervening) [2021] Fam 376, MacDonald J identified in para 48 the key elements of a declaration of parentage derived from the authorities:
 - (1) *The question of parentage is a question that concerns more than just the individuals involved in a specific case. Issues of status, such as parentage, can be expected to be approached with some formality in circumstances where they concern not only the individual but also the public generally which has an interest in the status of an individual being spelled out accurately and in clear terms and recorded in properly maintained records (per Re S (A Child) (Declaration of Parentage) [2012] EWCA Civ 1160 at [24]).*
 - (2) *The terms of s.58(2) of the 1986 Act make clear the importance and the solemnity of declarations of parentage made under s.55A(1) of the Act (per In re F (Paternity Registration) [2013] 2 FLR 1036).*
 - (3) *An application pursuant to s.55A of the Family Law Act 1986 will be dismissed where it amounts to an abusive collateral attack on an earlier judgment (per Dunkley v Dunkley and Another [2018] 2 FLR 258 at paras 22 to 24).*
 - (4) *A declaration of parentage under s 55A(1) of the Family Law Act 1986, once made, is there for all time and its implementation cannot be deferred (per In re F (Paternity: Registration) [2013] 2 FLR 1036 at paras 20 to 23).*

Approved JudgmentThe Oral Evidence

32. I heard oral evidence from P, Q and F about the circumstances in which X came to be conceived. What follows is a short summary of their oral evidence pertinent to the issue of X's conception together with my impressions.
33. P told me that she had been pregnant before conceiving X. That pregnancy arose from NI with a male partner. She had not felt ready to have a child and so terminated that pregnancy. She told me that, in her relationship with Q, she was deeply committed to having a child and agreed with Q's description of her having been "*obsessive*" about this. Both of them had decided not to have AI via a clinic because of the cost but both agreed to AI rather than sexual intercourse as the means of achieving a pregnancy. P said she had researched what Q's status would be and knew that, because they were married, Q would be a parent if a child was conceived. She had taken the lead in finding a sperm donor. She liked F and was comfortable with him.
34. After the first two attempts of AI failed to make her pregnant, P described being very upset and depressed. She did not tell Q about her intense feelings but contacted F for support. They had met at the home of her parents who were abroad for several months. P did not tell Q about having sex with F and confirmed that she was unaware of the significance of NI for X's conception and legal parentage. During the third attempt at AI, P told me that Q had placed F's sperm inside her using a moon cup (this device normally being used when a woman had a period but here re-purposed to keep the sperm close to the cervix and increase the chances of conception). P told me that the moon cup felt uncomfortable so, when Q left the room, she had taken it out but had not told Q she had done so. As a result, P believed she had conceived from NI with F which had taken place the previous day but admitted she had not known she was pregnant until a fortnight after the third attempt at AI. P was unable to explain the discrepancy between her oral evidence which was that Q had inserted the sperm into her and her written statement which was that she had done this herself.
35. P denied wanting to cut Q out of X's life and denied raising the issue of X's conception when faced with an application by Q for enforcement of a contact order. She admitted that hiding the truth from Q had been a huge burden and said that she had battled with the shame of what she had done. Though she candidly said she had caused a disaster by her behaviour, I formed the impression that P had given scant thought to the effect on X and indeed Q if the court were to accede to her applications. Overall, my impression was that P was anxious to downplay the significance of the last attempt at AI because she thought this would boost her case that X had been conceived by NI with F.
36. F told me that he had previously donated sperm via AI but had been disappointed to have had no information about whether this had resulted in a pregnancy. He admitted that his memory for exact details such as dates was not good but was very clear that he had had sex with P at her parents' home on all three occasions he had been there with her. He said he had not planned to do this but confirmed he saw this as part of the process of conception.
37. F had heard about the legal proceedings concerning X from P who had told him about "*kidnapping, assault, bickering and custody*". He did not know the details which he said were not his concern and denied being recruited by P to help her in her battle

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with Q. However, he admitted that P had found a firm of solicitors to represent him. Prior to their separation, F told me that he had been happy for P and Q to decide the nature of his relationship with X but, after their separation, he thought the person who decided this should be the person X lived with. He described Q's communication with him about his contact with X as abusive though, objectively the text message sent by Q to F was anything but. I found F to be very evasive about his knowledge of the legal proceedings concerning X and keen to downplay Q's role in X's life.

38. Q confirmed that she had known about P's earlier pregnancy and about her obsession with having a baby. She knew that P's parents were abroad at the relevant time and that P was keeping an eye on their property by visiting it from time to time. She accepted that she could not rule out the possibility that P had had sex with F at that property during the conception window which had resulted in P's pregnancy with X. She was aware that P had been unfaithful to her in the past with other women and recognised this had occurred at times when P was emotionally in turmoil as she was when the first two attempts with AI had failed to make her pregnant. However, Q had not expected P to have sex with F and was clear that the couple had agreed P would have artificial insemination using F's sperm and not that P would have sexual intercourse with F to become pregnant. On the third occasion of artificial insemination, Q was very clear that she had put F's sperm inside P and that P had inserted the moon cup into herself to increase the chances of conception. They had stayed together after this had been done and Q had not left the room shortly after insemination as P alleged.
39. Q wanted to remain a part of X's life and for X to have a happy childhood. Q wanted the proceedings to end. I found Q's evidence to be candid and thoughtful. She recognised and accepted those aspects of the evidence which undermined her position in the proceedings. Overall, I found her evidence to be more reliable than that of P and of F.

Submissions of the Parties

40. What follows is a short summary of the parties' written and oral submissions focused on the legal issues. It is not intended to replicate all the submissions I heard but I have carefully considered those I have not detailed here.
41. On behalf of P, Mr Turner KC put the conundrum faced by the court starkly: if X had been conceived by AI as Q believed, X's birth certificate recording Q as a parent would have been correct by reason of the effect of s.42 of the HFEA 2008. However, if X's conception resulted from sexual intercourse between P and F or if it could not be shown that P had become pregnant as a result of the "*placing in her*" of F's sperm, X's birth certificate would not be correct in that F would be her parent both in fact and in law. Law and caselaw about the effect of the HFEA 2008 made clear that that Act's intention was to create certainty so, unless the court could be satisfied that its conditions had been complied with in full, Q could not be a legal parent of X. There was no presumption of parenthood simply from the fact Q was married to P at the time X was conceived and born. Mr Turner KC contended that the starting point was the common law presumption that F, as the undoubted biological father, was also the legal father and declarations reflecting that should be made, unless that presumption be displaced by proof on a balance of probabilities that the conception had resulted from AI, thus engaging sections 34 and 42 of the HFEA 2008. The burden of proving

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compliance with the HFEA 2008 rested with Q once an issue arose as to whether X was conceived via NI or AI. If the court could not be satisfied on a balance of probabilities how X had been conceived, it would be required to have recourse to common law and make a declaration of paternity in favour of F.

42. Pursuant to s.55A(5) of the FLA 1986, there were no good reasons for the court to refuse to hear the application for a declaration of parentage. Further, once the court had determined the facts, there was no public policy considerations which made a declaration of parentage in favour of F manifestly contrary to public policy. Clarity as to legal parentage was part of a person's right to private and family life and had lifelong significance for the individual and their wider family. F was X's biological father and it was difficult to see how a declaration of paternity in relation to him could positively be against X's best interests, let alone manifestly contrary to public policy.
43. On behalf of Q, Ms Weston KC submitted that the burden of establishing that X was born via NI lay on P. Q's current status as X's legal parent was the starting position. Any other approach would undermine the certainty of the HFEA 2008 by encouraging any applicant seeking to exclude a wife or former partner from parenthood to raise questions regarding the conception of the child and place the burden of proving AI on the non-biological parent in circumstances where proving which method of conception resulted in a birth was almost impossible to ascertain. Ms Weston KC submitted that there was no reason in law to depart from the principle that the burden of proof lay on those who assert. She relied on paragraphs 36-44 of In re S (Children) [2023] EWCA Civ 897 to maintain Q's status as a parent. Thus, for example, section 42 of the HFEA created a status of parenthood which did not fall away as soon as evidence of any absence of consent or doubt about the method of conception, however weak, was led.
44. Ms Weston KC submitted that the court should not permit the application to be heard because (a) the evidence was weak; (b) there was no clear positive benefit for X's sense of her identity; and (c) P sought to oust Q from X's life by ending any parental responsibility she might have for X. If the court permitted the application to be heard, Ms Weston KC questioned the reliability of P and F's evidence which was unsupported by any WhatsApp messages from the relevant conception window. Both were keen to say whatever was necessary to achieve their objective of ousting Q from X's life. Ms Weston KC submitted that there was no reason in law to depart from the principle that the burden of proof lay on those who assert. It was manifestly contrary to public policy to make the declarations sought because any disaffected parent could throw a child's life into chaos by making unfounded allegations. If the purpose of the HFEA 2008 was to create certainty for a non-biological parent, this would be thrown into disarray if the court acceded to P's application.
45. On behalf of F, Miss MacLynn KC acknowledged that the court would have considerable sympathy for Q but firmly aligned F behind P's application. The common law was the starting point unless compliance with the HFEA 2008 had been proved by Q. Here, the fundamental truth of biological parenthood had been established so the burden lay on Q to displace the common law principle that F was also the legal parent of X. X's birth certificate was no more than prima facie evidence of parentage and could not be determinative. Once a dispute arose as to the method of X's conception, the court had to determine this as a matter of fact. If the court could not make a positive finding about the circumstances of X's conception, Miss

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MacLynn asserted that the court had to fall back upon the common law to establish X's parentage – F would be both her biological and legal father.

46. Conversely, if the court placed an evidential burden on P and F to show that X was conceived by NI or by either NI or donor insemination, the effect of this would be to introduce a presumption of legitimacy or parentage for same-sex couples despite this being expressly disappplied by paragraph 2 of Schedule 4 to the Marriage (Same Sex Couples) Act 2013.
47. On behalf of X, Mr Osborne shared some of the concerns articulated by Miss Weston KC, namely that it would be easier for poorly evidenced assertions to displace what he contended to be the statutory presumption set out in s.42 of the HFEA. He submitted that the manner in which P and F gave their evidence was concerning but did not flesh out that submission with any detail. Mr Osborne submitted that a declaration in favour of F would have a huge impact on how X saw herself as a child parented by P and Q, the only parents she had really known. He submitted with reference to Re L (A Child) (Human Fertilisation and Embryology: Declaration of Non-parentage) [2016] EWHC 2266 (Fam) that X's welfare was engaged in the court's determination either by its impact on her or because the options for Q to exercise parental responsibility - as one of X's psychological parents if nothing else - would be very limited indeed given the absence of available options for her to acquire parental responsibility under the Children Act 1989.

Analysis

48. The circumstances of this case are unusual. This is not a case where, as in almost all of the other cases involving same-sex couples, the threat to Q's status as a legal parent arises from the mistake of a clinic as to whether or not the relevant consents to AI were obtained. The challenge here arises from doubt about the method of conception itself and an associated lack of consent from Q which – if established on the facts - takes this case firmly outside Part II of the HFEA 2008 entitled “***Parenthood in cases involving assisted reproduction***”. The provisions contained in Part II concern themselves with assisted reproduction and not with natural reproduction by means of sexual intercourse.
49. At the outset, it is important to understand how this case differs from the previously decided authorities concerned with the interpretation of s.42 of the HFEA 2008. As I indicated earlier in this judgment, the most recent exposition of the interpretation of s.42 is contained in the judgment of Peter Jackson LJ in Re S (Children) [2023] EWCA Civ 897 in paragraphs 35-45. Having reviewed the legislation and the most recent authorities as to the interpretation of s.42 of the HFEA, Peter Jackson LJ concluded relevantly as follows:

“44 ... Where no issue is brought before a court, the spouse or civil partner of the gestational mother will be the parent of a child born after assisted reproduction in consequence of the statutory presumption of parenthood. Where an issue is raised, the court must give effect to the statutory wording by asking itself the question: “Has it been shown on the balance of probabilities that the spouse or civil partner did not consent to the assisted reproduction that was undertaken?””

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45. *This question is the only one that must be answered in order to determine whether an individual is to be treated as the child's legal parent...*"

It is crucial to note that this formulation is predicated on a child being born **after assisted reproduction** (my emphasis). I do not understand Peter Jackson LJ to be suggesting that there were no other possible challenges to parenthood pursuant to s.42 but only that the challenge was limited to the issue of consent where (a) the gestational mother and the other woman were either married or in a civil partnership; and (b) assisted reproduction had taken place resulting in the birth of a child. Assisted reproduction for the purposes of s.42 encompasses "*the placing in*" the gestational mother "*of the embryo or the sperm and eggs or of her artificial insemination*". If there is doubt as to whether assisted reproduction took place, it would be extraordinary if parenthood pursuant to s.42 was not susceptible to challenge on that ground.

50. Even if I am wrong about that formulation and the only question for the court to consider when parenthood pursuant to s.42 of the HFEA is challenged is whether consent to assisted reproduction was given by the non-gestational parent, it is likely to be shown that this condition is not satisfied in circumstances where, contrary to the belief of one of the persons in a marriage or civil partnership, assisted reproduction did not take place. Thus, in this case, Q consented to assisted reproduction using F's sperm by the placing of that inside P using a means other than a penis. She did not consent to natural intercourse between P and F as this was not assisted reproduction.
51. It is important to recognise that some births follow treatment at licensed clinics and others originate from informal arrangements, as Peter Jackson J (as he then was) acknowledged in para 8 of M v F & H (Legal Paternity) (see above). Informal arrangements which amount to assisted reproduction involve the placing of sperm inside a gestational mother by means other than sexual intercourse (as conventionally understood between a man and a woman). If a child is conceived and born as a result of such an informal arrangement, s.42 – without challenge – operates to clothe the non-gestational parent with legal status as a parent to that child. Of course, it would be unrealistic not to recognise that informal and consensual arrangements might also involve sexual intercourse between a sperm donor and the gestational mother but this would not be assisted reproduction. In those circumstances, where two women are married or in a civil partnership and a child was conceived and born as a result of sexual intercourse, the legal parenthood of the non-gestational parent conferred by s.42 of the HFEA would remain intact if there was no challenge by either the sperm donor and/or the gestational mother. It is, however, a status more apparent than real and built on shaky foundations. Unsurprisingly, it is capable of being displaced if the sperm donor and the gestational mother come forward at a later date to attest to natural intercourse or a lack of consent at the time the child was conceived. This is why informal and consensual arrangements resulting in the birth of a child are often not straightforward in their legal effect and, when relationships between the adults break down, can render a non-gestational parent vulnerable to status challenges just like the one mounted in this case.

Section 55A(5): The Declaration Gateway

52. Applying the analysis of the law set out above, I am satisfied that I should not refuse to hear P's application on the basis that its determination would not be in X's best

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interests. My reasons are as follows.

53. First, I reject Miss Weston KC’s argument that determination would provide no clear and positive benefit for X’s sense of her identity. Case law is replete with statements attesting to the lifelong significance of accurate knowledge about a person’s parentage, perhaps nowhere more pithily expressed than by Sir James Munby P in paragraph 3 of In re A and others (Legal Parenthood: Written Consents) [2015] EWHC 2602 (Fam):

“...It 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?”

I am told that X “knows” F is her biological father but that fact does not find expression on the face of her birth certificate which was created on the basis of inaccurate information provided by both P and Q. Neither appreciated the ramifications for legal parenthood if assisted reproduction had not taken place in accordance with the HFEA 2008. Determination of the facts will provide clarity as to X’s legal parentage which will be to her benefit throughout childhood and adulthood. I draw a distinction between that clarity about legal parentage and X’s lived reality as a child brought up by her biological mother and by Q who is also her parent, psychologically and emotionally speaking. That reality will not change for X even though the words on her birth certificate might. This lived reality is often forgotten in the focus on legal parentage which is but one aspect of a child’s identity. I thus find that determination will be of benefit to X’s identity legally speaking yet it will be unlikely to change her lived experience to date or in the future given that P states unequivocally that she wishes Q to remain involved in X’s life.

54. It follows that I also reject the submission that the evidence relied on by P and F is so weak that the court should not entertain it. On my assessment, there is sufficient evidence to call into doubt both the method of conception and whether Q consented to natural intercourse such that the court should embark on its factual enquiry.
55. Finally, this case simply does not fall into the categories identified in paragraphs 31 and 32 of Re S (A Child) (Declaration of Parentage) (see above) or indeed any other comparably serious category.

Determination of the Facts

56. There is a significant amount of common ground between the parties about the facts. It is common ground that P was desperate to conceive and have a child and that both she and Q intended to be parents to that child. Both agreed that P should become pregnant using assisted reproduction – here, artificial insemination – rather than that she should have natural intercourse with a sperm donor. It was this means of conception to which Q consented. P had researched and discovered that, because they were married, Q would be deemed to be a parent of that child by operation of s.42 of the HFEA. Both P and Q agreed that P had become depressed after the first two attempts at AI had failed. Q also knew about P’s earlier pregnancy resulting from sexual intercourse with a man and that, when in a state of emotional turmoil, P had

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been unfaithful to her. Both confirmed that P's parents were abroad at the relevant time and that P would visit and look after their property during this time.

57. I acknowledge that neither P nor F provided the WhatsApp messages which would show evidence of calls and meetings following the second failed attempt at AI. I was told this was because both had new phones. It is also obvious that I have no medical evidence which might assist me in deciding whether X was born from AI or from sexual intercourse between P and F.
58. I found aspects of both P and F's oral evidence undermined their reliability. Q was more reliable because she candidly admitted facts which went against her own interests. The differences between the respective accounts of P and Q as to what happened during the third attempt at AI were telling and made me prefer Q's evidence as to what had occurred. P could not really account for discrepancies between her written and oral evidence on this matter and, taken as a whole, her evidence about this event was tainted by her eagerness to downplay the significance of the last attempt at AI. I concluded this was so because P thought it would boost her case that X had been conceived by NI rather than AI. Additionally, the conditions in which P might be unfaithful to Q and be so in an attempt to conceive were established on the evidence. P had sought relief from emotional turmoil in the past by seeking sexual relief from others and she knew she had conceived a child from sexual intercourse with a previous male partner. Further, there was a convenient and private location in which P and F could be sexually intimate.
59. Miss Weston KC came close to suggesting that the account of sexual intimacy between P and F had been fabricated by both of them to excise Q from X's life. Though P revealed this information at a point in the Children Act 1989 litigation where Q was pressing for enforcement of her contact with X and had told F he should back away from his own contact with X on her birthday, I am satisfied that there has been no conspiracy between them to place a false account before the court. P explained why it was she had not raised this issue before the end of 2022: put simply, she did not appreciate its significance and had every reason not to tell Q because of the huge distress this revelation would cause. P raised it at the end of 2022 with her lawyers and was then referred to specialist lawyers who advised her as to the making of an application.
60. Even if P were motivated to take every legal step which might undermine Q's role as a parent, it is difficult to see what F's motivation might be to go along with something untruthful. He has played almost no role in X's life and seen her on less than 5 occasions. Though he was evasive about his knowledge of the legal proceedings and almost dismissive of Q's role in X's life, F had not previously involved himself in X's life and was consistent in saying he did not want to be drawn into the battle between P and Q. Despite poor recall of minor detail, F was very clear that he had had sexual intercourse with P each time they had met in her parents' home. His account tallies with and reinforces P's own account which is entirely in keeping with the undisputed evidence about her emotional state and beliefs at the relevant time.
61. Pulling the strands together, I am satisfied on the balance of probabilities that P and F had sexual intercourse on several occasions prior to the third attempt at AI for which he acted as a sperm donor. The occasions on which they had sexual intercourse were within the conception window identified by the menstrual tracker used by P and Q to

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determine when insemination might best achieve conception. P found out she was pregnant two weeks after the last occasion of AI but I am unable to find, on the balance of probabilities, whether X was conceived by AI or by NI. Q did not consent to natural intercourse between P and F but only to artificial insemination using F's sperm.

Making the Declarations

62. Taking into account the law set out earlier and my factual findings, I have decided that I should make the declarations sought by P.
63. There is no issue in this case that X was conceived from P's egg and F's sperm and that P carried and gave birth to her. The starting point at common law is that P is X's mother and F is her father. This remains the position unless it is displaced by the statutory framework set out in the HFEA 2008. As Peter Jackson J (as he then was) made clear in paragraph 27 of M v F and H (Legal Paternity) (see above), the HFEA only governs situations that fall within its footprint and, where this is not the case, the common law continues to apply.
64. There was much debate in oral submissions about the burden of proof though I found much of what was said did not illuminate that particular issue. S. 42 of the HFEA 2008 creates a rebuttable presumption that consent exists in cases of marriage and civil partnership and, on any analysis, that assisted reproduction is the method of conception. The presumption can be rebutted by evidence which shows that consent has not been given and/or, on my analysis, that assisted reproduction may not have occurred. In this case, the burden of proof lay on P to produce that evidence. This is straightforward, entirely conventional, and in accordance with the Court of Appeal's decision in In re S (Children) (see above). In this case, I have found, on the balance of probabilities, that Q did not consent to anything other than assisted reproduction but the method of X's conception was unclear because P and F had natural intercourse during the relevant conception window. In those circumstances, the presumption of Q's legal parenthood is rebutted and the common law position applies.
65. Analysed in this way, the discriminatory effect feared by Miss Weston KC – namely that it would be too easy to displace parenthood pursuant to s.42 of the HFEA by the making of allegations however poorly founded – is more apparent than real. The evidential burden on P and, to a lesser extent, on F in this case does not equate, as Miss MacLynn KC suggested, to an impermissible presumption of legitimacy or parentage for same-sex couples such as P and Q. It is properly the requirement to establish a case on the balance of probabilities that the criteria in s.42 did not apply to the circumstances of X's birth where, prior to late 2022, the parties acted in the belief that they did.
66. I make those observations because, having reviewed the authorities relied on by Sir James Munby P in paragraph 25 and his consequential analysis in para 26 of In re G (Human Fertilisation and Embryology Act 2008), Peter Jackson LJ in In re S (Children) differentiated s.42 – and its counterpart section 35 – from the means by which the presumption of legitimacy is rebutted in other circumstances. In paragraph 36, he stated as follows:

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“36. The situation under the HFEA 2008 is different. The wording of section 42 is that “the other party to the civil partnership or marriage is to be treated as a parent of the child unless it is shown that she did not consent to the placing in W (etc)”. This provision creates a status of parenthood, with a presumption that is similar in nature to the common law presumption of legitimacy but it does not create a presumption of consent. The rebuttal does not take the form of showing that the spouse or civil partner is not the biological parent, as is the case under section 26, but of showing that she has not consented to the procedure undertaken. The presumption and the means of rebutting it are therefore not symmetrical, as they are in the case of common law legitimacy, and it would therefore be wrong to construe section 42 as if the presumption of parentage falls away as soon as any evidence of absence of consent, however weak, is led. Further, the section does not refer, as section 26 does, to the possibility of the presumption being rebutted by “evidence which shows that it is more probable than not (etc)”, a description that is particularly apt for scientific test results. The true position therefore is that the presumption of parentage under section 42 will prevail unless and until it is proved the spouse or civil partner did not consent to the procedure undertaken. In practice, as Lord Reid said, the court is likely to be able to determine the issue (here, consent) on the evidence, but it will only be where absence of consent is proved on the balance of probabilities that the statutory presumption of parentage will lose its important effect.”

67. As stated in paragraph 49 above, Peter Jackson LJ explained the court’s duty when confronted with a challenge to parentage pursuant to s.42 of the HFEA and I set out my application of that duty in the circumstances of this case.
68. Further, I reject any suggestion that parents such as Q should not be deprived of legal status by reason of non-compliance with s.42 because to do so would be discriminatory and run counter to Art. 8 rights. In so doing, I adopt in full the reasoning set out by Cobb J in paras 90-95 of AB v CD.
69. I do not propose to analyse in any substantive detail the significance or otherwise of X’s birth certificate. It does not of itself prove that Q is X’s parent or that F is not. In Re L (A Child) (Human Fertilisation and Embryology: Declaration of Non-Parentage) (see above) Sir James Munby P considered the effect on a birth certificate of a declaration of parentage which did not accord with the information as to parentage recorded on that certificate. On his analysis, it is plain from the legislative scheme that a birth certificate can be corrected in certain circumstances, including where there has been an error as to legal parentage and the court has made the appropriate declaration rectifying that error.
70. Thus, applying s.58(1), I am satisfied that making the declarations sought by P pursuant to s.55(A) is not manifestly contrary to public policy. In so doing, I have thought carefully about X’s welfare as Mr Osborne invited me to do but I regard considerations of welfare at this stage of the court’s evaluation as inconsistent with the court’s task. Welfare is not part of the court’s consideration given the clear wording of s.58(1). In my view, congruence between X’s biological parenthood and her legal parenthood accords with the principles enunciated by MacDonald J in H v R and Another (Attorney General intervening) (see above). If I am wrong about the

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place of welfare in this exercise, congruence seems to me to also be in accordance with X's welfare.

71. I thus make the declarations sought by P, namely that F is the legal parent of X and that Q is not X's legal parent.

Conclusion

72. Q has no biological connection with X and must come to terms with her lack of legal recognition as a parent by reason of my decision. This judgment is not the place for a detailed analysis of the law relating to parental responsibility applicable to the circumstances of this case and whether – if appropriate from X's welfare perspective - the court is in a position to confer that status on Q. Those are matters for another day and another hearing. Further, I note that F will need time to consider whether he wishes to play a greater role in X's life and whether he seeks the making of any court orders to underpin any change in his position. This matter will be listed for further directions in a few weeks' time prior to a welfare hearing later this summer.
73. That is my decision.