

## HIGH COURT: A PARENT IS A PARENT (Masson v Parsons)

by Stephen Page

Six judges of the High Court, in a joint judgment, found that who was a parent under the *Family Law Act* was the ordinary, accepted English meaning of the word “parent” which is a question of fact and degree to be determined according to the ordinary, contemporary understanding of the word “parent” and the relevant facts and circumstances of the case at hand.

It did so in a case, *Masson v. Parsons* in which Mr Masson contributed sperm for an at home insemination of Ms Parsons.

The majority rejected the argument that Mr Masson was only a sperm donor:

*“To characterise the biological father of a child as a “sperm donor” suggests that the man in question has relevantly done no more than provide his semen to facilitate an artificial conception procedure on the basis of an express or implied understanding that he is thereafter to have nothing to do with any child born as a result of the procedure. Those are not the facts of this case. Here, as has been found – and the finding is not disputed – [Mr Masson] provided his semen to facilitate the artificial conception of his daughter on the express or implied understanding that he would be the child’s parent; that he would be registered on her birth certificate as her parent, as he is; and that he would, as her parent, support and care for her, as since her birth he has done. Accordingly, to characterise [Mr Masson] as a “sperm donor” is in effect to ignore all but one of the facts and circumstances which, in this case, have been held to be determinative.”*

The majority also left open that there could be more than two parents recognised under the *Family Law Act*.

Who is a parent for children conceived through artificial conception has typically relied on both the *Family Law Act* and State and Territory *Status of Children Acts*. The High Court made plain that where there is a conflict between the two, the *Family Law Act* prevails and that a State or Territory provision that provides otherwise is “beside the point” because the provisions of the *Family Law Act* leave “no room for the operation of country, state or territory provisions”.

The case turned on intention. There will be many men who have been known donors to single women who may now discover to their horror that they are parents and therefore liable to pay child support and provide an inheritance – and many women who are horrified that no longer do they have sole parental responsibility for the child but have to share with someone else.

Any single woman contemplating having known sperm donors should seriously contemplate obtaining legal advice first – and the same applies to the donors – and should consider having a sperm donor agreement and fertility counselling before proceeding with the insemination. Clinic recruited anonymous donors are not parents under that test. The implications of the case will

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also flow through to both domestic and international surrogacy arrangements.

