

Parental rights of sperm donors

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Sperm donation refers to the use of sperm which has been donated by a third person or donor to assist the recipient(s) in their attempt to have a child. In Australia, there is a common misunderstanding that sperm donors will automatically not hold any parental rights to a child born using artificial conception procedures. While this may be the case in some circumstances, in others, like the case of Masson v Parsons, a sperm donor may be ruled the legal father of a child born through his donation.

It is not uncommon for people to seek assistance to start a family. Some turn to adoption, while others use means of artificial insemination. If looking to use artificial insemination, there are a number of avenues available, like sperm donation by accessing a sperm bank or calling on a friend or known individual to donate. However, many people fail to consider the ongoing legal consequences of conception by artificial insemination.

What does the Family Law Act 1975 say about sperm donors and parental rights?

Section 60H of the Family Law Act (the Act) stipulates the requirements for legal parentage where assisted conception has been accessed. It expressly states that a sperm donor to a ‘couple’ is not regarded as a ‘legal parent’.

There is a lack of clarity in Australian family law around the legal status of men who donate sperm to unpartnered women. This is the same in the opposite situation, where a woman donates her eggs and/or womb to an unpartnered man. Under the Act, there is no equivalent provision to that in s 60H (regarding sperm donations to couples) for single men or women who conceive using donations. This means that donors may (or may not) have a shot at being regarded as a legal parent of a child conceived via their sperm donation.

Masson v Parsons brings clarity to sperm donation and parental rights

Up until 2019, it was believed that a sperm donor did not have any parental rights. The decision of Masson v Parsons [2019] HCA 21 altered this position and, in our view, brought clarity to parentage in the context of sperm donation.

In this case, Mr Masson (the father) was a close friend of Ms Parsons (the mother) and chose to donate his sperm so that she could conceive a child. Mr Masson believed that he would be involved in the child's life and that he had been named on the child's birth certificate. Mr Masson also provided some financial support to assist with the well-being and education of the child.

Ms Parsons wanted to relocate to New Zealand with the child and her partner. Mr Masson filed proceedings to restrain the relocation of the child and was initially successful in his application.

The trial judge found that Ms Parsons and her partner were not living in a de facto relationship at the time of conception, meaning that s 60H of the Family Law Act could not apply. This meant that Ms Parsons' partner was not a legal parent of the child, and Mr Masson was.

Ms Parsons sought for the decision to be overturned on the basis that the child was conceived by fertilisation and, therefore, Mr Masson could not be regarded as a 'parent'. That appeal was successful. Mr Masson then took his application to the High Court of Australia, where he was successful in being determined a parent of the child.

Best interests of the child is the key consideration

In Masson v Parsons, the High Court held that Mr Masson was more than a sperm donor when looking at his involvement in the child's life. He had been assisting the family financially and had regular contact with the child.

The High Court did not outline what its position would be if a party was merely a donor and not actively involved in the ongoing care of the child. However, it has implicitly confirmed that a person who donates their sperm will not necessarily (or automatically) be deemed a 'parent'.

As we have discussed in previous blogs, the fundamental principle of family law is the best interests of the child. This is the paramount consideration for the Court when determining parentage and if the presumption of equal shared parental responsibility for a child should be applied.

Are you considering sperm donation?

If you are considering conceiving a child through artificial insemination, including being a sperm donor or a recipient of sperm donation, you should consider the following:

- The extent of the donor's involvement in the child's life, including:
  - If the donor will be named on the birth certificate;

The amount of time (if any) the donor will spend with the child;

What the child will call the donor;

Whether the donor would be involved in making important decisions concerning the child; and

The donor's financial support of the child.

Entering into a Donor Agreement to show agreed intentions and to specify whether parties agree that the donor is to be a 'parent' for the purposes of the Act.

While Donor Agreements are not binding on the Family Court, they can have a persuasive influence by showing the Court your agreed intentions from the start.

Get help from a family lawyer

Before you agree to donate or engage a donor, it is important to obtain legal advice from a family lawyer about any legal implications. We are sure that, for something as precious as bringing a new life into this world, you would want to support any of your options with sound legal advice.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.