



First NSW case places lesbian parent on birth certificate under equal parenting laws

Judge Walmsley delivered his decision in the District Court today in the first case since laws passed in 2008 gave children with two mothers equal legal status.

The facts of the case were not disputed in court: two women in a committed de facto relationship decided to have a baby. Wanting their child to know his or her genetic heritage they decided against having an unknown donor. The women have been jointly raising the child for the past 10 years. The sperm donor was named on the birth certificate - meaning that a court order was required to remove his name before the second female parent could be listed

Under NSW laws in place since 1984 sperm and egg donors are not legal parents, whether or not they are known to the recipient or the child. Parentage laws extend legal status to the husband or de facto partner of the mother, and since 2008 this includes a female de facto partner.

Janet Loughman, Principal Solicitor of Women's Legal Services NSW said "Since reforms in 2008 many lesbian-led families having babies have been able to record both women as parents - but it is less well known that the birth register can be changed for children born before 2008."

"Contrary to popular wisdom birth certificates do not make you a parent, they are just proof, like a drivers licence. They record legal parentage, not genetic parentage. It is the legal parents who need that proof as they go about the daily business of raising the child", said Ms Loughman. "Before today our client was legally authorised to consent to medical treatment, sign permission notes and make other parental decisions, but she could not provide a birth certificate as proof."

"Over the years many lesbian led families have listed known donors on the birth register, some mistakenly believing that they had to, while many others wanted a symbolic acknowledgement of the child's biological heritage. They didn't imagine that this would be a barrier to listing the second female parent in the future", said Ms Loughman. "Since 2008 those birth records can be changed with a simple form if the people listed agree. This case is an important step in transforming rights into reality for many families. Their daily lives will be made easier through a record of parent child relationships that reflects their lived experience and family structure", added Ms Loughman.

Not being listed on the birth certificate is not a barrier to known sperm donors having a relationship with a child. Australian family courts recognise a child's relationship with any person who has a close connection with them and a concern for their welfare if that is shown to be in the child's best interests and they have frequently made orders for sperm donors who are not legal parents to have time with children.

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