



## Who is a parent? The case of Masson v Parsons

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**Date:** Thursday June 27, 2019

### The High Court considers 'who is a parent' in Masson v Parsons [2019] HCA 21

Last week the High Court of Australia handed down their highly anticipated decision in Masson v Parsons.

This case, stemming from earlier decisions in the Family Court of Australia, deals with the legal definition of 'parent' and considers the issues of 'who parents are' in circumstances of children conceived by reproductive technology.

#### Summary of the Masson v Parsons case:

A child was conceived (Child 1) by Mr Masson and Ms Parson through the use of reproductive technology. Both were not in relationships at the time and the parties agreed that in conceiving a child, Mr Masson would act in a 'father' role and that Ms Parson would be the mother.

Ms Parson later entered into a new relationship with another woman and subsequently utilised assisted reproductive technology to have a further child with an unknown sperm donor (Child 2). Ultimately the relationship between the Parsons (now married) and Mr Masson broke down when the Parsons wanted to move to New Zealand with the two children. Mr Masson initiated proceedings in the Family Court to obtain an injunction preventing them from moving and obtaining Orders declaring him to be a 'parent' of Child 1.

## Stage 1: Original Trial Judge

The original trial Judge ultimately found that Mr Masson was a parent under the Family Law Act. The trial Judge considered the issues of the parties' intentions, such as:

- Mr Masson was noted as the 'father' on Child 1's birth certificate (which provides a presumption regarding parentage in the Family Law Act).
- Mr Masson was involved in decision making, physical care of Child 1 and had financial responsibilities relating to Child 1.
- Neither party was in a de facto relationship at the time of Child 1's conception, hence Ms Parson's new wife could not to be declared a parent.

The trial Judge found that Mr Masson did fit the 'ordinary' meaning of the word 'parent' (noting "parent" is not defined in the Family Law Act) and as a result, made Orders relating to care of the child recognising Mr Masson as the father. The Parsons filed an appeal to the Full Court of the Family Court.

## Stage 2: Appeal to Full Court

The Full Court considered the legislative framework, including the application of legislation in New South Wales (where the parties were based) to consider again the issue of who was a 'parent' to ascertain whether there was an error in interpretation of the law by the trial Judge. The Full Court adopted a different approach to a specific section of the Judiciary Act, which the Court ultimately said gave way for the Family Law Act to consider aspects of state based legislative provisions relating to parentage in cases of assisted reproductive technology. Ultimately, the Full Court overturned the decision of the trial Judge, declaring Mr Masson was not Child 1's father. Mr Masson filed an appeal with the High Court of Australia.

## Stage 3: Appeal to the High Court

The High Court ultimately upheld the decision of the trial Judge. The Court determined that the definition of 'parent' should follow the ordinary interpretation of the word after following the legislative framework as it is outlined in Section 60H of the Family Law Act regarding children born as a result of artificial conception procedures.

The High Court considered the reasoning of the Full Court of the Family Court and ultimately declared that the section of the Judiciary Act which would have opened the door for application of the state based legislation (which would have precluded Mr Masson from being declared a parent) did not apply. This essentially overturned the findings of the Full Court.

The Court also rejected submissions made on behalf of the State of Victoria that the ordinary meaning of the word 'parent' should exclude 'sperm donor'. The Court stated that:

*"the ordinary, accepted English meaning of the word 'parent' 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."*

The High Court specifically pointed out that this was not a case of a man who only provided his semen to facilitate conception of Child 1. This was a father who had consciously entered into the arrangement for conception of Child 1 to become a father and had

engaged in Child 1's life since she was born.

## Conclusion

The majority of the Court concluded by stating that it was not necessary to determine whether a man who does nothing more than provide his semen for conception would fall within the contemporary definition of 'parent'. Whilst some may consider this could open the floodgates for sperm donors to apply to Courts seeking parenting Orders, arguably it is clear that this case turned on the facts of the intentions of Mr Masson and Ms Parson in conceiving Child 1 and the subsequent and significant relationship Mr Masson had with Child 1 after her birth.

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