

Biological Father Not Entitled to the Status of “Parent”

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In a recent decision of the Full Court of the Family Court of Australia, the question of “who is a parent” was considered.

The case involved two children born as a result of artificial conception procedures. Parenting proceedings were commenced by the children’s birth mother to seek permission to relocate, with her partner, from New South Wales to New Zealand.

The biological father of the eldest child opposed the relocation and sought parenting orders to spend time with both children. At first instance, the Trial Judge found that the biological father was a “parent” and made orders for the children to spend time with him. The birth mother and her partner appealed this decision.

In New South Wales, the Status of Children Act 1996 (NSW) applies a presumption of parentage for children born from the use of fertilisation procedures to the effect that “the mother” is the woman who gave birth to the child and “the father” or “other parent” is her spouse or de facto partner (if that person consented to the procedure).

The Full Court held that the Trial Judge had erred in not applying this presumption of parentage and determined that the biological father was not a “parent” to the eldest child.



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