HIGH COURT OF AUSTRALIA

19 June 2019

MASSON v PARSONS & ORS
[2019] HCA 21

Today the High Court unanimously allowed an appeal from a judgment of the Full Court of the Family Court of Australia concerning parenting orders made under Pt VII of the *Family Law Act 1975* (Cth) ("the Act").

In 2006, the appellant provided semen to the first respondent for her to conceive a child by way of artificial insemination. At the time of conception, he believed that he was fathering the child and would thus support and care for her. His name was entered on the child's birth certificate as her father. Although the child lived with the first respondent and later also her de facto partner ("the second respondent"), the appellant continued to have an ongoing role in the child's financial support, health, education and general welfare. He was described by the primary judge as enjoying an extremely close and secure attachment relationship with the child. By 2015, the first and second respondents had resolved to move overseas and take the child with them. The appellant responded by instituting proceedings in the Family Court of Australia for orders under the Act, among other things, conferring shared parental responsibility between himself and the first and second respondents.

Section 60H of the Act provides rules in respect of the parentage of children born of artificial conception procedures. The primary judge accepted that the appellant did not qualify as parent under s 60H but held that, because that provision expanded rather than restricted the categories of people who could be parents, and because the appellant was a parent within the ordinary meaning of the word, the appellant was a parent of the child for the purposes of the Act.

On appeal, the Full Court of the Family Court agreed that s 60H was not exhaustive, but held that, because the matter was within federal jurisdiction, s 79(1) of the *Judiciary Act 1903* (Cth) picked up and applied s 14 of the *Status of Children Act 1996* (NSW), under which the appellant was irrebuttably presumed not to be the child's parent. By grant of special leave, the appellant appealed to the High Court.

A majority of the High Court held that s 79(1) of the *Judiciary Act* did not pick up and apply ss 14(2) and 14(4) of the *Status of Children Act* because the presumption in ss 14(2) and 14(4) operated as a rule of law, determinative of parental status, independently of anything done by a court or other tribunal, in contrast to provisions regulating the exercise of jurisdiction. The majority also held that, even if ss 14(2) and 14(4) were provisions regulating the exercise of State jurisdiction, they could not be picked up by s 79(1) of the *Judiciary Act*, because the Act had "otherwise provided" within the meaning of s 79(1)**.** Further, because the tests for contrariety under s 79(1) of the *Judiciary Act* and s 109 of the *Constitution* were identical, ss 14(2) and 14(4) did not form a part of the single composite body of law operating throughout the Commonwealth and as such apply of their own force in federal jurisdiction as a valid law of New South Wales. Finally, the majority held that no reason had been shown to doubt the primary judge's conclusion that the appellant was a parent of the child.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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