

# Judicial Communications Office

Friday 24 June 2011

## Court of Appeal dismisses claim for damages for children born as a result of IVF treatment

### Summary of Judgment

The Court of Appeal today dismissed claims by two children for damages for personal injuries and alleged negligence by a Health and Social Services Trust in respect of IVF treatment provided to their parents.

The children's parents, who are Caucasian, underwent IVF treatment in 2003. The parents were anxious that any children born would have the same skin colour as them. The Trust assured the parents that only sperm from "Caucasian" or "white" donors would be requested. At the time of the IVF treatment the Trust used mislabelled donor sperm to inseminate the mother's eggs as a result of which the children have a different skin colour from their parents. The children also have a different skin colour from each other.

The children in their claim alleged they have suffered injury as a result of abusive and derogatory comments made by others about the differences in their skin colour and that of their parents. Mr Justice Gillen dismissed their claim. He found that no damage had been caused to the children and they suffered from no disability, loss or damage. The children appealed his decision.

Lord Justice Girvan, delivering the judgment of the Court of Appeal, said the question of whether the Trust was liable in negligence involved a consideration of four requirements:

- Whether there existed a duty of care to the children;
- A breach of the duty of care must have occurred. This necessitates proof of a failure to measure up to a standard set by law;
- There must be a causal connection between the Trust's conduct and resultant damage; and
- The particular kind of damage must not be so unforeseeable as to be too remote in law.

Lord Justice Girvan said that the children's claim must fail for the simple reason that they cannot point to any damage or injury as a result of the error

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made by the Trust as they had not suffered a compensatable wrong, damage, injury or consequential loss as a result. He said they have a normal and healthy existence having been born successfully and without mishap. They cannot point to any physical or mental defect as a result of the process which led to their existence:

“Having a different skin colour from the majority of the surrounding population and their parents cannot sensibly be regarded as damage or disability just as the adoption of a child of a colour different to that of the adopting parents could not by any stretch of the imagination be described as subjecting the adopted children to some form of detriment, injury or damage.”

Lord Justice Girvan added that the fact that the children have been subjected to abusive comments because of their skin colouring arises as a result of boorish and unacceptable behaviour of others. He said that in the pluralistic, compassionate and tolerant society in which we aspire to live there should be no room for such behaviour which flows from the inability of some to accept and tolerate differences in others:

“The fact that such intolerant and offensive remarks are made does not mean that the recipient of the comments is damaged, injured or disabled by the factors which led the intolerant to make the comments.”

The Court of Appeal concluded that as the children suffered no disability or damage in law it was unnecessary to consider further the question of whether in the circumstances a theoretical duty of care arose between the Trust and the children. It dismissed the appeal.

## NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website ([www.courtsni.gov.uk](http://www.courtsni.gov.uk)).

ENDS

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