

Who do you think you are?

Richard Adams discusses birth registration and parentage following the recent decision in M v W



Richard Adams is a solicitor at Cumberland Ellis LLP and represented the petitioner in M v W

'A declaration of parentage can assist those who wish to establish the truth of their paternity or that of their child, but whose births were registered overseas and where the laws there cannot assist them.'

In recent years there has been an increasing awareness of the importance of one's heritage and background in shaping personal identity, as witnessed in the growing popularity of tracing family ancestry. There is also a greater need for accurate information, given our increasing knowledge of genetic inheritance. These developments have been reflected in ongoing changes to the law that stress the value of being aware of one's background and the truth of parentage.

M v W (Declaration of Parentage) [2007] highlights those changes. The applicant, an adult man, applied to the High Court for a declaration of parentage that would allow him to re-register his birth, so that his biological father could be recorded on the birth certificate. The father was originally registered as 'unknown' and the applicant's biological mother gave him up for adoption soon afterwards. The question before the court was whether the birth could be re-registered without adversely affecting the legal status of the adoption.

Hogg J found that the court could make such a declaration, and that there were no public policy reasons for not doing so, stressing that where the truth of paternity was established the court should make such a declaration. She recognised the importance of the truth of paternity being established and being recognised by the state, a recognition that was deeply important to the man's self-perception.

This case highlights the importance that establishing the truth of parentage has for personal identity, and also the great significance the birth certificate can have in establishing

that identity and having it recognised by the wider world. While for many, what is recorded at the date of their birth will be accurate, this is not always the case. The Office of National Statistics states that up to 6% of births are registered without a father, and there will be many others where the details are registered incorrectly, for whatever reason. This article looks at the current laws relating to the birth certificate and establishing the truth of paternity.

Re-registration of the birth certificate

Where no father or other person was originally registered on the birth certificate, the birth can subsequently be re-registered if both parents agree. By virtue of s10A of the Births and Deaths Registration Act (BDRA) 1953 this can be done at the joint request of the mother and father. If neither parents is present at the time of re-registration, it can be done upon the production by one parent of either:

- statutory declarations by both parents confirming the identity of the father of the child; or
- a parental responsibility agreement, together with a declaration that the agreement has not been discharged by a subsequent court order.

On re-registration of the birth, the father will automatically obtain parental responsibility for the child.

It is perhaps unlikely that where no father or other person was originally registered on the birth certificate, a later agreement will be reached to re-register the birth to include

the details of the father. In more contentious cases, BDRA 1953 allows re-registration of the birth by one parent on the production of either a certified copy of a parental responsibility order or an order under Schedule 1 to the Children Act 1989 requiring the father to make financial provision for the child. In both cases, the order must be produced with a declaration that the relevant order has not been discharged by a subsequent order. Again, the father will automatically obtain parental responsibility for the child, if he does not already have it.

In contentious cases, BDRA 1953 allows re-registration of the birth by one parent on the production of either a certified copy of a parental responsibility order or an order requiring the father to make financial provision.

Both of these provisions allow the parents of the child to re-register the birth only where no other person was registered on the birth certificate. Therefore there will be many for whom the above provisions are of no use, whether because another man was incorrectly

registered on the certificate or where it is the child who wants the certificate to be accurate. In such cases, it will be necessary to apply to the court for a declaration of parentage under s55A of the Family Law Act 1986. Further to s14A BDRA 1953, a birth can be re-registered where the Registrar General receives notification that such a declaration has been made.

Why apply for a declaration of parentage?

As in *M v W*, there will be those who wish to re-register their birth (or the birth of their child) to accurately reflect the details of the father, but

are unable to do so because, for instance, another person has already been incorrectly registered. They may wish to rectify the certificate to obtain state recognition of their identity, and it can also prove useful to help future generations with issues relating to medical

conditions or genetic makeup. Alternatively, the mother of a child whose father refuses to acknowledge paternity could apply.

A declaration can also assist those who wish to establish the truth of their paternity or that of their child, but whose births were registered overseas and where the laws there cannot assist them. A declaration will bind the world, so can also prove useful for establishing parentage for immigration and inheritance purposes, among other issues. The value of official confirmation of a person's parentage cannot be stressed enough.

Making the application

Applications can be made to a magistrates court, county court or the High Court. The application will need to be made by petition and, unless otherwise directed, will need to include the following information:

- The full name, sex, date and place of birth, and residential address of the petitioner and (if known) that of the person whose parentage is in issue, those whose parenthood is in issue and anyone who is acknowledged to be a parent of that person.
- Where either the petitioner or the respondents have been known by other names, each name by which they were known.
- The grounds on which the petitioner relies and all other material facts alleged by them to justify making the declaration.
- Whether there have been any other proceedings relating to the parentage or parenthood of the relevant people.
- The residence requirements of either the person whose parentage is in issue or whose parenthood is in issue, together with their nationality, citizenship or immigration status, and the effect a declaration would have on that status.

The proceedings are heard as in matrimonial proceedings, and the

Who can apply?

Any parent of the person for whom a declaration of parentage is sought, the child themselves or any other person who can show a sufficient personal interest. Further to *Re R (IVF: Paternity of Child)* [2003] the definition of a parent includes a person who is to be treated as a parent by virtue of the Human Fertilisation and Embryology Act 1990.

Certain residence requirements must be met to show that either of the people named in the application are:

- domiciled in England and Wales at the date of the application;
- have been habitually resident in England and Wales for a period of one year ending with the date of application; or
- have died before the date of application but were either domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of one year ending with the date of death.

The respondents to the application will be the person whose parentage is in issue and anybody who is alleged to be the mother or father of that person. Where the parentage of a minor is in issue, it is likely that a litigation friend will need to be joined as a respondent. The Attorney General also has the right to be joined to the application, and a copy of the issued application must be served on him.

form of order made will be a declaration that a person named in the application is or was the parent of another person so named. The Family Proceedings Rules 1991 apply as they do to matrimonial proceedings. If the truth of the proposition sought to be declared is established, the court is obliged to make the declaration, unless to do so would be manifestly contrary to public policy.

Establishing paternity

Where the mother was married at the time of birth, there is a presumption that her husband is the father of the child. This extends to children who were conceived before the marriage, but who were born after the date of the marriage. In such cases the petitioner will need to show that it is more probable than not that the husband was not the father of the child. Obviously, no such presumption applies where the mother was not married. Nowadays paternity can be established relatively easily through scientific testing, including blood and DNA tests, and it is likely to be appropriate for such a test to take place in most cases, except where one of the parties is no longer alive.

Scientific testing

A direction for scientific testing can be made in any civil proceedings in which the issue of parentage falls to be considered, although it cannot be made as a standalone application. The direction can be made on an application for directions or by the court's own motion, but it can only bind a party in the proceedings. Unless the court grants leave, an application must be made on notice to all parties to the proceedings and any other person from whom the direction involves the taking of a bodily sample.

The Ministry of Justice provides a list of accredited bodies for court-directed paternity tests – see www.justice.gov.uk/about/paternitytesting.htm – but if the direction is made by consent, any laboratory can be used. The applicant's solicitor will be responsible for making the necessary arrangements and the applicant will bear the costs of the testing in the first instance.

It is also important to note that the court can only direct that a bodily sample be taken and cannot order it, unless the Mental Capacity Act 2005 applies, ie the court or someone with power of attorney can consent on the party's behalf. For children under 16, further to s21(3) of the Family Law Reform Act 1969, a sample may be taken where the person who has care and control of the child consents or, where they do not consent, the court considers it in the child's best interests for a sample to be taken.

Given the court's view in recent years that it is desirable for the truth of paternity to be established, it is

Once a declaration is made, it binds the world and not just the parties, so it will be a good record of the truth of paternity in many circumstances.

likely that a direction for scientific testing will be made, for both adults and children. A refusal by one of the parties to comply with a direction enables the court to draw such inferences as appear proper in the circumstances of a particular case, although further evidence will be needed to ensure that paternity can be established to the satisfaction of the court.

Declaration of parentage

Once a declaration is made, it binds the world and not just the parties, so it will be a good record of the truth of paternity in many circumstances. Following the declaration, the prescribed office of the court shall notify the Registrar General of the making of that declaration. The registrar can then re-register the birth certificate to record the details.

It is important to note that re-registration of the birth certificate where a declaration of parentage has been made under the BDRA 1953 does not grant the father parental responsibility. This should be a consideration when considering which application to make. If the mother of the child is likely to not enter into a parental responsibility agreement, then an application should be made for a parental responsibility order, rather than a declaration of parentage.

Joint birth registration

Practitioners should note that changes are due to the registration of births, as the government has increasingly taken the view that fathers are more likely to take an active and ongoing role in their children's lives if they are registered on the birth certificate. The Welfare Reform Bill, which is due to receive royal assent in early 2010, proposes the following changes:

- The mother will be required to give the details of the child's father to the registrar, unless the child has no father, the mother does not know the identity of the father or his whereabouts, the father lacks

capacity, or she has reason to fear for her safety in the event the father is contacted to register the birth.

- The registrar will only have the power to register the details if the father acknowledges himself to be the father.
- Scientific testing can be carried out to establish the truth of paternity before the birth is registered, but this can only be done with the consent of the parties.

It is hoped that these provisions will increase the number of births where both parents are registered, although it is apparent that a degree of agreement between them will be required. It is therefore likely that some births will still be registered without the details of the biological father or will be registered incorrectly, and given the increasing weight placed on the importance of knowing one's biological heritage, it is likely that the provisions for declarations of parentage will be continue to be of much use. ■

M v W (Declaration of Parentage)
[2007] 2 FLR 270
Re R (IVE: Paternity of Child)
[2003] 1 FLR 1183