

SUPREME COURT OF THE RUSSIAN FEDERATION

In the Name of Russian Federation

JUDGEMENT

13 January 2011 No. ГКПИ10-1601

The Supreme Court of the Russian Federation consisting of:

judge of the Supreme Court of the Russian Federation Zaizev V.U.,
secretary A.,

with participation of prosecutor Masalova L.F.,

considered in the open court hearing civil case on complaint of N.T.V. to appeal paragraph 6 of the Instructions on usage of methods of auxiliary reproductive technologies, approved by the Order of the Ministry of healthcare of the Russian Federation on 26 February 2001 No. 67,

established:

Order of the Ministry of healthcare of the Russian Federation dated 26 February 2003 No. 67, registered in the Ministry of justice of the Russian Federation on 24 April 2003, registration number 4452, approved the Instruction on usage of methods of auxiliary reproductive technologies (hereinafter – the Instruction), according to the preamble of which auxiliary reproductive technologies (ART) – are methods of treatment of infertility, when some or all the stages of conception and early embryo development take place outside of the body. ART includes: extracorporeal fertilization and embryo transfer into the uterus, sperm injection into the cytoplasm of the oocyte, sperm donation, oocyte donation, surrogacy, preimplantation diagnosis of genetic diseases, and artificial insemination with sperm of her husband (the donor). Conducting ART is only possible with the written informed consent of a patient.

Paragraph 6 of the Instruction provides that gamete donors provide their gametes (sperm, oocytes) to other people to overcome infertility and do not take on parental responsibilities in the relation to unborn child. The birth of 20 children from one donor in the region with 800,000 citizens is the basis for ending using this donor for recipients in this region.

N.T.V. submitted an application to the Supreme Court of the Russian Federation to declare the given paragraph of the Instruction invalid in part, which excludes the possibility of establishing paternity in respect of a person, who is a sperm donor. In the application it is mentioned that the Instruction in the disputed part contradicts Article 19 paragraph 2 of the Constitution of the Russian Federation, Articles 49, 80 of the Family code of the Russian Federation and violates her right and a right of her daughter, who was born as a result of ART procedures, to establish paternity in respect of the person, who was a sperm donor on a reimbursable basis, who realized consequences of his actions and who was guided by the desire to earn money on this procedure. Thus, paragraph 6 of Instruction puts her child in a disadvantaged position compared to children born through natural conception.

The applicant asked to consider the case without her presence, about the time and place of the court hearing she was duly notified.

The representatives of the Ministry of healthcare and social development of the Russian Federation G.U., S., N.T.A., K.E., G.E. and T., representative of the Ministry of justice of the Russian Federation K.M. did not accept the application of N.T.V. saying that paragraph 6 of the Instruction does not contradict normative legal acts, which have higher legal power, and it does not violate rights of the applicant and her daughter.

Having heard the explanations of the representatives of the interested persons and having examined the case files, heard the conclusions of the prosecutor of the General Prosecutor office of the Russian Federation Masalova L.F., who asked to refuse to satisfy the applicant's application, the court finds that the application of N.T.V. is not to be satisfied of the following reasons.

According to Article 35 of the Fundamentals of the legislation of the Russian Federation on protection of health of citizens dated 22 July 1993 No. 5487-1 (hereinafter – the Fundamentals of the legislation) every adult of childbearing age has a right to artificial insemination and embryo implantation. Artificial insemination of a woman and embryo implantation is carried out in institutions, which received medical activity license with a written consent of spouses (single woman). Information about carried out artificial insemination and embryo implantation as well as identity of a donor constitute medical secrecy. Woman has a right to information about the procedure of artificial insemination and embryo implantation, about medical and legal aspects, about the results of medico-genetic examination, about external data and nationality of donor, which is provided by doctor who is performing medical intervention.

From these provisions it is clear that artificial insemination of a single woman in institutions, which received medical activity license, is possible only if there is a written consent from her that she agrees to use methods of ART. The information about identity of donor according to the legislation constitutes medical secrecy, access to which without citizen's consent is allowed only in cases envisioned by Article 61 of the Fundamentals of the legislation.

The list of information about donor, which could be received by a woman, who requested the specialized medical help with use of ART, according to Article 35 of the Fundamentals of the legislation is limited to information about his medico-genetic examination, external data and nationality. At the same time donor also does not have a right to information about results of usage of his biological material and there is no need to have his written consent to use method of artificial insemination.

Woman referring to a medical institution for the purpose of artificial insemination enters into legal relations with this institution, which warns her that donor does not undertake any parental responsibilities in relation to unborn child. Donor also enters into legal relations with a medical institution, which after transfer of biological material acquires all rights and responsibilities on its usage for medical purposes.

Thus, woman who gave birth to a child as a result of artificial insemination and donor do not enter with each other into any relations, therefore provisions of Article 49 of the Family code of the Russian Federation about establishment of paternity by juridical means are not applicable for these cases and such donor cannot be recognized as a father of a child conceived using ART.

Accordingly, there are no contradictions of Article 6 of the Instruction with Article 80 of the mentioned Code, which regulates duties of parents on child maintenance, and also with Article 19 paragraph 2 of the Constitution of the Russian Federation, which guarantees equality of rights and freedoms of citizens.

According to Article 5 paragraph 1 of the Fundamentals of the legislation to the powers of federal authorities in the field of healthcare of citizens belong adoption and amendment of federal laws and other normative legal acts of the Russian Federation in the field of healthcare of citizens, supervision and monitoring of its maintenance and implementation. By the Regulation of the Ministry of healthcare of the Russian Federation, approved by the Decree of the Government of the Russian Federation on 29 April 2002 No. 284, which was valid when the Instruction was adopted, it was determined that the defined Ministry is a federal body of executive powers, which conducts state policy and exercises administration in the healthcare field (paragraph 1), and is empowered to issue in the prescribed manner within its powers normative legal acts (paragraph 7). Therefore, by approving the Instruction, the Ministry of healthcare of the Russian Federation did not go beyond its powers.

According to Article 253 paragraph 1 of the Civil process code of the Russian Federation (hereinafter – CPC RF) the court, by acknowledging that the disputed normative legal act does not contradict with federal law or with any other normative legal act of higher legal power, decides not to satisfy the application.

Pursuant to Article 194 – 199, 253 of CPC RF, the Supreme Court of the Russian Federation

held:

To refuse satisfaction of the application of N.T.V.

Judgment could be appealed to the Cassation committee of the Supreme Court of the Russian Federation within ten days from the day of its adoption in its final form.

Judge of the Supreme Court
Of the Russian Federation
V.U. Zaizev
