

Transsexualism and access to a child

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Some of the legal problems facing transsexuals have been explored by the present author (1). In a more recent case (2) the Court of Appeal considered an issue not raised in that paper *viz* the principles to be applied when a transsexual claims access to his or her child.

A male-to-female transsexual was awarded access to his daughter subject to two conditions: he was not to be accompanied by his male friend and he was to wear 'male orientated attire without jewellery or cosmetics'. On appeal, the Court of Appeal refused to disturb the first condition but deleted the second on the ground that it would be too difficult to enforce.

The case cannot, however, be regarded as the breakthrough in understanding of the transsexual's dilemma that it might, at first, seem. Because the child's welfare is now the sole criterion in all questions relating to access (3), Ormrod LJ quite properly maintained that the father's duty was to help the child understand the events which had occurred and which had left her confused. However, the learned Lord Justice then observed that, 'if [the father] does go down to visit the child dressed in a way which is bizarre or aggressively feminine, or anything of that kind, it will show that his appreciation of the child's welfare is defective'. If this were to happen, Ormrod LJ thought it would prove that the father was unable to show 'some real understanding of the problem *which he has created*' (italics added) and the whole question of access would have to be re-opened.

In the present writer's opinion, it would seem that the Court of Appeal overlooked an important point. Unlike a transvestite who is a person who chooses to dress like a member of the opposite sex, a transsexual is psychologically a member of the sex opposite from that to which he belongs on purely physiological criteria: by definition, the transsexual has no choice at the level of conscious will in this matter and if acute mental suffering is to be avoided, is impelled to attempt to align his physical appearance to that of the sex to which he believes himself rightly to belong. Accordingly,

though objectively he may appear to be responsible, it seems grossly unfair to suggest that the father (2) was somehow at fault for creating the problem facing his child.

If a child is to have a satisfactory relationship with a transsexual parent, it would seem essential that he or she should be aware of the parent's true sexuality. But a child may experience great emotional difficulties in coming to terms with this fact. If it is established that in all the circumstances of a particular case, a child is likely to suffer irreparable psychological harm in making the necessary adjustment, then, because it is clearly *against* the child's interests, this is one of the sad situations when it would be wrong to allow access.

It does not follow, however, that this will always be the case when a parent is a transsexual. Particularly if the child has had a stable relationship with the transsexual parent, some contact with the parent might well be considered desirable for the child's welfare. It is surely then in the child's best interests to learn the true nature of his parent's sexuality as soon as possible so that the parent-child relationship can develop on its new footing.

The approach advocated by Ormrod LJ (2) is unsatisfactory because it simply perpetuates the child's confusion. It is, however, understandable on the facts of that case because the child was very young and it was obviously debatable whether any access was in the child's interests. Where it is clearly in the child's interest to continue to have contact with his transsexual parent, it is hoped that Ormrod LJ's strictures will be ignored and that access can take place on the basis that the child learns of the parent's true sexuality.

References

- (1) Thomson J M. Transsexualism: a legal perspective. *Journal of medical ethics* 1980; 6: 92-97.
- (2) G v G 1981; Family Law 148.
- (3) S(BD) v S(DJ) 1977 Fam 102.