

DR G OWEN SCHAEFER



**IS FAMILIAL RELATIONSHIP REDUCED TO SUPERFICIAL TRAITS?**

# The value of genetic affinity

**B**lood is thicker than water, or so the saying goes, reflecting the value we put on biological relationships. But is it something the law should recognise?

Singapore's Supreme Court recently ruled on a case that asks this very question, and it gave a fascinating answer: Parents have a strong interest in "genetic affinity" with their children, one that can merit compensation if subverted.

Genetic affinity is an entirely new legal standard. It has no clear precedent in any jurisdiction. But the court made a compelling argument that it has a sound basis in the way we value family and heredity.

Recognising that value will be particularly important as we advance into the genomic era, which will increase our ability to not only analyse but also alter our fundamental biological code.

The case in question involves an unfortunate mix-up. A couple underwent in-vitro fertilisation (IVF) at the Thomson Medical Centre. The process was successful, and the mother gave birth to a healthy baby girl (her second child via IVF) in 2010.

But the happy parents soon noticed that their daughter had markedly different features, including hair and skin tone, compared with them and their first child.

A genetic test found that the child was related only to the mother, not the mother's husband. Thomson Medical confirmed a mistake had been made: An anonymous donor's sperm, rather than the husband's sperm, had accidentally been used to inseminate the mother's egg.

The couple sued Thomson Medical, seeking damages including the child's upkeep through to the age of 21. The case wound its way through the courts, eventually ending up before the Supreme Court, which issued a final ruling on March 2.

The court denied the couple's claim for upkeep costs because it would have a pernicious effect in that the child's birth would be seen as an overall mistake, or loss to the parents.

The parents are raising the child, and an award would send a perverse and harmful message to the child that she was not valued, that her very existence required monetary compensation.

This reasoning has led many courts to deny "wrongful birth" up-



keep claims. Such claims typically come up when someone parents a child after a botched voluntary sterilisation operation.

It was also the basis of *Andrews vs Keltz*, a New York State Supreme Court "wrongful fertilisation" case involving a similar sperm mix-up.

Singapore's Supreme Court was clearly dissatisfied with that outcome. It felt that the couple had suffered very serious harm, one not captured by current common law.

So the court created a completely new category of loss — genetic affinity. It held that parents have a strong interest in being genetically related to their children, and that Thomson Medical had violated this interest.

Ironically, the court did set the award for loss of genetic affinity at 30 per cent of upkeep costs to the couple in the end.

This was not because upkeep itself was a loss to be compensated; it was because there seemed no other principled way to settle the financial value of genetic affinity.

Awarding a portion of upkeep was at least less arbitrary than an absolute award. At the same time, it may raise

**On March 2, the Supreme Court set aside an award for loss of genetic affinity to a couple in a case involving a sperm mix-up during in-vitro fertilisation at Thomson Medical Centre. The court held that parents have a strong interest in being genetically related to their children, and that Thomson Medical had violated this interest.**

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the concern that the value of genetic affinity has greater monetary weight for rich parents who have higher upkeep costs than poor parents.

## NOT AN ABSOLUTE VALUE

More fundamentally, the case raises the question of whether there is really a value in genetic affinity. The court relied, in part, on an obscure 1999 law review article by New York University law academic Fred Norton.

In it, he argues that "parents have an interest in having children with whom they share symbolically identifying traits".

But Mr Norton's argument is problematic because it is skin deep. He focuses on traits such as appearance as grounding the interest in genetic affinity. This implies that the harm involved in the case was not about the misplaced sperm as such, but about certain superficial features of the misplaced sperm.

In the Singapore case, the couple were of Chinese and German heritage, while the genetic father was of Indian heritage. If the genetic father had — by chance — also been of Chi-

nese or German heritage (or both), would there have been a loss of genetic affinity?

Mr Norton's argument gives no reason for thinking so. Yet there is something very disturbing about this. Is the value of a familial relationship reducible to a set of superficial appearances or traits?

A more sound moral basis for the value of genetic affinity would go much deeper. It would hold that genetic affinity is not just about appearances; it is about consciously choosing to create a child by a mixing of this mother's egg with this father's sperm, producing a child with half the DNA of each parent.

Society and individuals place great value on such biological relationships.

Genetic affinity — rather than appearance — grounds a parent's obligation to pay child support, for instance. And men who suspect their spouses of cheating on them often care deeply about whether their children are really theirs.

The court supports this deeper value at various points in the Thomson Medical case, and it is quite compelling when it does so.

It is careful to note, though, that genetic affinity is not an absolute value. Adoptive parenting relationships should be lauded, not devalued. But adoption's value derives in part from its consensual nature.

When parents are denied genetic affinity with their child against their will, as in the present case, it is plausible that a great harm has indeed occurred.

It remains to be seen whether other jurisdictions will recognise the value of genetic affinity. But the judgment occurs at an interesting juncture in human history. We are gaining unprecedented ability to tinker with our genetic code, and this raises interesting ethical issues.

Do women with mitochondrial disorders have a right to engage in "three-parent IVF" to ensure genetic affinity with a healthy child, for instance?

If we use CRISPR-cas9 gene-editing technology to alter the genes of embryos, does it constitute a loss of genetic affinity with parents? And is it possible to use such editing to shift genetic affinity, by making a child's traits more in line with one parent rather than the other?

These questions will only become more pressing as science advances, and the concept of genetic affinity may provide a coherent lens through which to consider them. **THE CONVERSATION**