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\$70,000 paternity ruling sets precedent

November 23 2002
By Ian Munro

A man who successfully sued his former wife for damages because she told him he was the father of her lover's children had set an Australian legal precedent, the man's lawyer said yesterday.

Judge John Hanlon awarded Liam Magill \$70,000 for general damages and economic loss, and ordered his former wife, Meredith Magill, to pay costs.

Mr Magill's solicitor, Vivien Mavropoulos, said the decision had extended the law of deceit to the circumstances of a man being falsely led to believe he was the biological parent of a child.

A tearful Mr Magill, 52, would not comment after the judgment, but his partner, Cheryl King, said they were ecstatic. "It's the mere fact we got a judgment in favour," Ms King said. "Money does not come into the equation - it's the fact we have been able to set a precedent.

"We wanted this woman to be held accountable for her actions. So far as setting a precedent, we have achieved what we set out to achieve."

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Mrs Magill's barrister, Bill Gillies, obtained a 28-day stay on the court order, leaving open the option of an appeal.

The court had heard that Mr Magill married his wife in 1988. DNA tests in 2000 showed that Mr Magill was the biological father of only the first of their three children born between April, 1989, and November, 1991.

After the couple separated late in 1992, Mr Magill made child support payments for all three children until 1999. At one time his take-home pay was reduced to about \$130 a week.

Judge Hanlon said evidence that Mrs Magill, 36, had misled her husband about paternity began with the children's birth certificates in which she nominated him as the father.

He said evidence suggested that Mrs Magill knew her husband was not the father of either child. "If she did not know for a positive fact that Mr Magill was not the father, she was at least being reckless as to the truth," Judge Hanlon said.

He said he accepted Mr Magill's testimony that the couples' sexual relationship had all but ceased by the time the third child was conceived, and it was likely that Mrs Magill was having sex more frequently with her lover than with her husband.

The court heard that Mr Magill suffered stress, anxiety and depression over the break-up of his marriage and the revelation that he was not the father of all of his children. He had been unable to work for several years.

Judge Hanlon said the damages award was not a punishment for Mrs Magill's infidelity, nor was it an adjustment or rebate for past child support.

Judge Hanlon said he was aware that Mrs Magill would have been trying to save her marriage from the enormous uproar had she revealed her suspicions about her younger children's paternity.

Mr Magill had sought \$100,000 in general damages and \$300,000 in further, exemplary damages. Judge Hanlon said that awarding exemplary damages would have disregarded the complexities of the situation that confronted Mrs Magill.

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