Approved Judgment

Neutral Citation Number: [2008] EWHC 3030 (Fam)

Case No: FD08P01466

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/12/2008

Before :

THE HON. MR. JUSTICE HEDLEY

- -

Between :

Re: X & Y **Applicant**
(Foreign Surrogacy)

Respondent

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- -

Miss Lucy Theis, Q.C. (instructed by **Lester Aldridge LLP**) for the **Applicants**
Mr Michael Sherwin, Solicitor (instructed by**, McMillan Williams Solicitors**) for the **children**

Hearing dates: 18th July, 2008, 19th August, 2008 and 5th November 2008

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Judgment

This judgment is being handed down in public on 9th December 2008 It consists of 13 pages and has been signed and dated by the judge. The judge hereby gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

The Hon. Mr. Justice Hedley :

1. Although the outcome of this case was in the end happy for all those involved, it provides a cautionary tale for any who contemplate parenthood by entering into a foreign surrogacy agreement. It is for this reason that I have adjourned judgment into open court but no matter must be reported that might reasonably lead to the identification of the children, the subject of these proceedings, or their family. On 5th November 2008 I made a Parental Order pursuant to Section 30 of the Human Fertilisation and Embryology Act 1990 (the 1990 Act) in favour of both applicants but reserved my reasons to be handed down in writing subsequently. This I now do.

2. The applicants are an established and successful professional couple. They have for many years explored different avenues to parenthood. They have at all times faithfully sought to comply with both the letter and spirit of the law. Thus it was that they came to explore an overseas surrogacy arrangement. It has resulted in enormous delay, stress and expense: the path to parenthood has been less a journey along a primrose path, more a trek through a thorn forest. The court shares their hope that their experiences may alert others to the difficulties inherent in this journey.

3. Surrogacy remains an ethically controversial area and different societies and different nations take radically different stances in their approach to it. Under some legal systems (e.g. Italy, Germany, Turkey) it is simply prohibited. In others, commercial surrogacy agreements are permitted (e.g. California, Ukraine, India) and perhaps sometimes even encouraged. The position in the United Kingdom lies between those extremes: whilst commercial surrogacy is unlawful, surrogacy itself is not but no surrogacy agreement is legally enforceable as such. Each sovereign state will have its own preferred approach and its own regulatory system. Those who enter into surrogacy agreements abroad will have to take account both of the law of that state and of the United Kingdom. As this case vividly demonstrates, not only may (and probably will) those laws be different but they may be incompatible to the point of mutual contradiction.

4. The salient facts of this case may be shortly and rather generally stated both to avoid risk of identification and because that is all that is necessary to identify and understand the issues in this case. After exploring many parenting options in this country and upon what appeared to be informed and

responsible advice, the applicants decided to explore surrogacy in the Ukraine. Their enquiries revealed apparently admirable medical facilities, skilled English language advice and a readiness to assist. They were introduced to possible surrogate mothers. In the end they entered into an agreement with a married Ukrainian woman who had had her own children and had been interested in being a surrogate for her own sister. In the end the sister had become pregnant naturally and this woman had then decided to offer herself as a surrogate mother for another. Terms were discussed, to the details of which I will have to return. Suffice it to say at this stage that the terms agreed covered her expenses, compensated her for loss of earnings and would permit her to put down a deposit for the purchase of a flat in the place where she and her husband worked. The Ukrainian woman was implanted with embryos conceived with donor eggs (the donor being anonymous) and fertilised by the male applicant's sperm. The relationship between the parties ripened into friendship. In due course she conceived and gave birth to twins. Then the real trouble started, none of it caused by either the surrogate mother or the applicants.

5. In order to understand the problem, it is necessary to say something about both English and Ukrainian law. Section 27 of the 1990 Act provides (so far as is material) as follows:

"(1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child…..

(3) Subsection (1) above applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs."

It is clear (and accepted on all sides) that the effect of the provision is that in English law the Ukrainian woman (although biologically unrelated to the twins) is for all purposes the sole legal mother of these children.

The position as to who is the legal father of these children is controversial between the applicants on the one hand and the children's guardian (appointed for the purposes of the Section 30 application) on the other. It is, however, agreed that the position is to be determined in accordance with Section 28 of the 1990 Act. The material provisions are these:

"(2) If –

a) At the time of the placing in her of the embryo or the sperm and eggs…., the woman was party to a marriage, and

b) ….. then, subject to subsection 5 below, the other party to the marriage shall be treated as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs…..

(4) *Where a person is treated as the father of the child by virtue of subsection (2)…..above, no other person is to be treated as the father of the child."*

It is common ground that the Ukrainian woman's husband acquiesced to the surrogacy and, if subsection (2) applies to him, he is in English law the sole father (although again biologically unrelated) of these children. It is further common ground that the male applicant is the biological father of these children and, had the Ukrainian woman been unmarried, that he would be entitled to be treated as the father of them. The guardian contends that subsections (2) and (4) apply, the applicants contend that they do not because the court should not apply the subsections extra-territorially. The provisions of Sections 27 and 28 are further underpinned by those of Section 29(1) and (2), the effect of which is to apply the statutory parenthood for all purposes, and, where parenthood is not given, to apply that also for all purposes.

6. Thus the guardian's submission is that the Ukrainian woman and her husband are the exclusive legal parents of these children and that therefore: (i) the consent of both is required under Section 30(5) of the 1990 Act; and (ii) the male applicant has no right to apply for any order under Part II Children Act 1989 unless he has first obtained the leave of the court pursuant to Section 10 thereof. The applicants contend that only the consent of the surrogate mother is required under Section 30(5) of the 1990 Act, and that the male applicant is a parent for the purposes of Part II of the 1989 Act. Because these difficulties were foreseen in this case, in fact the Ukrainian husband's consent was obtained and the applicants were given leave under Section 10 of the 1989 Act (and interim Section 8 Orders made) so as to regularise the position pending the final hearing of the Section 30 application.

7. I should mention here a further argument addressed to me on behalf of the applicants namely that they were entitled to apply for a residence order by virtue of Section 10(5)(a) of the 1989 Act as these children should be treated as 'children of the family' as defined in Section 105(1) of that Act, "…..(b) any other child…. who has been treated by both of them as a child of the family." Whilst I see the attraction of that argument, I have serious doubts as to whether children who are in law 'strangers' can simply become 'children of the family' because for a short time the parents have so acted. However, any definitive ruling must await the case where such a decision must be made and the point argued on both sides.

8. The court was provided with expert evidence of Ukrainian law. Consequent upon perusal of that evidence (and uncontroversially as between the parties), I find that the consequences of the application of Ukrainian law are that once the surrogate mother had given birth to the twins and delivered them to the applicants, she and her husband were free of all obligation to the children. They had neither the status nor the rights and duties of parents; indeed it seems that they could probably have been compelled under Ukrainian law to complete the surrogacy agreement once the children had been born. Moreover, the children had no rights of residence in or citizenship of the Ukraine and there was no obligation owed them by the state other than to accommodate them as an act of basic humanity in a state orphanage. The applicants became the parents for all purposes under Ukrainian law and were registered as such on the birth certificate. The children accordingly took their parents' nationality and were not therefore Ukrainian citizens.

9. The applicants had of course entered the Ukraine on a temporary visa and had no rights to remain (let alone work or reside) in the Ukraine beyond the period specified in the visa. The effect of all this was of course that these children were effectively legal orphans and, more seriously, stateless. Citizenship has sometimes been defined as "the right to have rights"; in the law of both the United Kingdom and the Ukraine they had indeed acquired certain rights. However, the children under English domestic law (if the guardian's analysis is correct) had no English parents or, at best, a putative father with no parental responsibility. Under Ukrainian law, however, the surrogate mother and her husband were not only relieved of but deprived of all rights, duties and status of parents, the applicants alone had them. Their legal position was the graver because under the law of the United Kingdom (and I had uncontroversial expert evidence in relation to this) not only did these children have no right of entry of their own to the United Kingdom, for the applicants could not confer nationality on them, but the applicants had no right to bring them in; or at best the male applicant may have obtained leave to do so as a putative father or relative.

10. None of this was foreshadowed in any of the extensive enquiries the applicants had made before leaving this country, whether on Home Office websites or the information given by the bodies who advised them in the United Kingdom or the information given to them in and through the Ukrainian hospital. The effect was that the children were marooned stateless and parentless whilst the applicants could neither remain in the Ukraine nor bring the children home.

In the end, having satisfied the immigration authorities by DNA tests (which had to be processed in this country, thus causing further delay) that the male applicant was the biological father of both children, the children were given discretionary leave to enter "outside the rules" to afford the applicants the opportunity to regularise their status under English law, hence the application for the parental order. It requires little imagination to appreciate, even for a professional couple as resourceful and competent as these applicants, the stress and anxiety involved let alone the expense of prolonged accommodation in the Ukraine (at comparable cost to England), the obtaining of expert legal advice, both English and Ukrainian, the cost of testing and immigration negotiations and so forth – all this in the context of first-time parenting. It was as well in this case that there was no pressing need for medical treatment. It may be worth adding that the grant of a parental order does not of itself confer citizenship although the evidence suggests that it is very unlikely to be denied if sought.

11. It is against that background that the court turns to the Section 30 application itself. As required by Section 30(1) both applicants are lawfully married to each other and the husband's sperm was used. They are therefore entitled to apply for a parental order if six further conditions are satisfied. I intend to deal with the uncontroversial aspects of Section 30 briefly but preface that with an observation about procedure in this case. The surrogate mother and her husband have throughout been thoroughly supportive of the arrangement and co-operative with it. For those reasons whilst they were served both with notice of the application and notice of the final hearing, they have (at their own request) not been fully served with the documents in these proceedings. That

may not, of course, always be the case and consideration may in other proceedings have to be given to the complexities of service and notice and the obtaining of the requisite consents.

12. Section 30(2) provides for a non-extendable time limit of six months from the date of birth for the issuing of the parental order application. This has been complied with in this case, but it is noteworthy that apparently there is no power to extend though no specific reason can be ascertained for that. That may especially cause problems where immigration issues have led to delay. The applicants are domiciled in England and Wales and the children have their home with them – Section 30(3). Both applicants are aged over 18 – Section 30(4). The mother's consent was given exactly six weeks after the birth but not being 'less than six weeks', the conditions of Section 30(6) are satisfied. The remaining two conditions are controversial and require much closer consideration.

13. Section 30(5) provides as follows:

> *"The Court must be satisfied that both the father of the child (including a person who is the father by virtue of Section 28 of this Act), where he is not the husband, and the woman who carried the child have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order."*

It should be noticed that, unlike the adoption legislation, the court has no power to dispense with a required consent however unreasonable the withholding of that consent may be or however much the welfare of the child is prejudiced by such refusal; even if they bear no legal responsibility for the child under their own domestic law, the persons whose consent is required truly have an absolute veto. Again no specific reason for that can be ascertained. That is of some importance to the applicant's argument on this point. The Ukrainian surrogate mother has given the requisite consent and that has been proved before me although there is no prescribed form of consent nor does it have to be witnessed by the parental order reporter who in this case is also the guardian. As it happens the same is true of her husband though I am urged to find that his consent is not required.

14. The applicants submit that Section 28(2) should not be applied extra-territorially and that accordingly Section 29(1) and (2) do not apply to this case. In other words it is submitted that the male applicant is the father (as would be so understood in Part II of the 1989 Act) and thus no male consent is required under section 30(5). It is accepted that Section 28(8) is effective to make the 1990 Act applicable to these applicants providing, as it does,:

> *"(8) This section applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of….. the embryo….."*

What is submitted, however, is that Section 28(8) does not extend to the surrogate mother's husband. First, it is said (correctly in my view) that the male applicant is indeed the father of the children under Ukrainian law. Then it is submitted that whilst a statute that is worded extra-territorially will apply abroad to British subjects, that does not necessarily apply to those of foreign

domicile. Reference is made to PUGH -v- PUGH [1951] p.482. The headnote reads as follows -

> *"The effect of the Age of Marriage Act 1929 is extra-territorial and the Act affects the capacity to contract marriages in all persons domiciled in this country wherever the marriage may be celebrated. Where, therefore, an Englishman domiciled in England married in Austria a girl of 15 years of Hungarian birth:- Held, that the marriage was void notwithstanding that it would have been valid by either Hungarian or Austrian law."*

It is important to see how Pearce J (as he then was) formulated his conclusion (p.494):

> *In view of these authorities it is clear that this marriage was not valid since by the law of the husband's domicile, it was a marriage into which he could not lawfully enter*"

15. Whilst I can see how Miss Lucy Theis, Q.C. on behalf of the applicants seeks to employ this authority, I cannot for myself see how it bears on the issue before me which is not the status of the surrogate mother's husband under his law of domicile but the status conferred on him by the law of the domicile of the applicants which is, in my judgment, the law applicable to all aspects of this case given that it is brought under the 1990 Act. The applicants contend that if he is treated as the father two undesirable consequences follow. First, it will put a premium on making surrogacy agreements with unmarried women for were that the case here the male applicant would undoubtedly be treated as the father. In fact most surrogate mothers (so I have been informed in the evidence) tend to be married women at a more mature stage of their lives and there is encouragement to enter into these arrangements with such women. The unmarried surrogate mother may be more vulnerable, more prey to exploitation and be more likely to be motivated principally by material considerations. In my judgment that is a fair analysis of fact but whether it assists in statutory construction is more doubtful. Secondly it is said that a man, having no stake in the matter and no risk of responsibility might seek to abuse his position as, for example, by seeking further payment against his consent. Once again that may be so but it would be equally true of surrogate mothers after birth; that seems to me simply a risk inherent in foreign surrogacy agreements in jurisdictions whose domestic law imposes no responsibilities on surrogates after birth.

16. Mr Sherwin on behalf of the guardian contends that there is no reason not to give the statute its plain meaning. Parliament intended to make particular provision for the married husbands of surrogate mothers who consensually entered into surrogacy arrangements. Parliament did indeed in my judgment intend to do just that and there is no indication of any amendment of that provision in the current debates concerning the reform or replacement of the 1990 Act, quite the reverse. In my judgment Parliament cannot be taken to have had any different intention (given the provisions of Section 28(8) of the 1990 Act) in relation to husbands of foreign domicile. The intention of Parliament was to recognise the particular relevance of marriage in surrogacy arrangements. I can see no reason why that should be affected by questions

of domicile. The fact that the Ukrainian husband is relieved of responsibilities imposed on his English equivalent is not a valid reason given that the wife of each is in an identical position. This is a recognition of the particular position of the lawfully married husband and I see no reason why (given the statutory words) that should not be applied extra-territorially. It follows that in my view the Ukrainian husband's consent was required; as I have already indicated, I am satisfied that it has been lawfully given. It also follows that the male applicant required leave to apply for a Section 8 order under Section 10 of the 1989 Act; again, as already indicated, I gave the permission sought without prejudice to the argument.

17. And so I turn to Section 30(7). So far as is material, this provides:

> *"The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the husband or wife for or in consideration of –*
>
> *(a) the making of the order,*
>
> *(b) any agreement required by subsection (5) above,*
>
> *(c) the handing over of the child to the husband and the wife, or*
>
> *(d) The making of any arrangements with a view to the making of the order,*
>
> *Unless authorised by the court."*

The evidence of the applicants, which I accept, was that they agreed to pay €235 per month to the surrogate mother during pregnancy and a lump sum of €25,000 on the live birth of the twins; 80% of that sum was payable on the surrogate mother's provision of a notarised consent to facilitate the applicants being registered on the Ukrainian birth certificate, the balance on the signing of written consent to the parental order application at six weeks. These are the figures actually paid, the payments being lawful under domestic Ukrainian law. They represented at the time rather lower sterling equivalents than they did at the time they were actually paid

18. Clearly the surrogate mother would have incurred significant expense in terms of loss of earnings, medical care and so on. Nevertheless it was effectively conceded that the sums paid significantly exceeded 'expenses reasonably incurred' however that might be construed. Such concession was really inevitable on the basis of the applicants' own evidence that the surrogate mother intended to use some of the money to put down a deposit for the purchase of a flat in a property economy not dissimilar to that then prevailing in this country. It follows that this application cannot succeed unless the court authorises these payments which exceed expenses and so offend English domestic law.

19. The court's approach to this has never been tested in the Court of Appeal but I am satisfied that that adopted by Wall J (as he then was) in RE C (Application by Mr. and Mrs. X under Section 30 of the Human Fertilisation and Embryology Act 1990) [2002] 1FLR 909 is one that I should follow. Wall J

was himself following Latey J's reasoning in Re Adoption Application (Payment for Adoption) [1987] 3WLR 31 which was also followed by Johnson J in RE Q (Parental Order) [1996] 1FLR 369. Wall J identified two questions: (i) whether the payment was indeed for "expenses reasonably incurred", a pure question of fact; and (ii) if not, whether the court could or should authorise such payments. Like the judges before him, Wall J concluded that retrospective authorisation was legally possible and, like those same judges and for the same reasons, I share that view.

20. The statute affords no guidance as to the basis, however, of any such approval. It is clearly a policy decision that commercial surrogacy agreements should not be regarded as lawful; equally there is clearly a recognition that sometimes there may be reasons to do so. It is difficult to see what reason Parliament might have in mind other than the welfare of the child under consideration. Given the permanent nature of the order under Section 30, it seems reasonable that the court should adopt the 'lifelong' perspective of welfare in the Adoption and Children Act 2002 rather than the 'minority' perspective of the Children Act 1989. On the other hand, given that there is a wholly valid public policy justification lying behind Section 30(7), welfare considerations cannot be paramount but, of course, are important. That approach accords with that adopted in the previous cases and also accords with the approach adopted towards the authorising of breaches of the adoption legislation. A particularly vivid example of this can be found in the judgment of Bracewell J in RE AW (Adoption Application) [1993] 1FLR 62. There the court was concerned in particular with serious (and indeed dishonest) breaches of Section 29 of the Adoption Act 1976 yet in the final striking of the balance between public policy considerations and the welfare of the child concerned the judge nevertheless made an interim adoption order.

21. In relation to the public policy issues, the cases in effect suggest (and I agree) that the court pose itself three questions:

    (i) was the sum paid disproportionate to reasonable expenses?

    (ii) were the applicants acting in good faith and without 'moral taint' in their dealings with the surrogate mother?

    (iii) were the applicants party to any attempt to defraud the authorities?

    On the facts of this case I have no doubt that the applicants were acting in good faith and that no advantage was taken (or sought to be taken) of the surrogate mother who was herself a woman of mature discretion. Moreover there was never any suggestion of any attempt to defraud the authorities; quite the opposite: I am satisfied that these applicants sought at all times to comply with the requirements of English and Ukrainian law as they believed them to be.

22. The first question is more difficult and its answer may vary considerably depending upon where the arrangement was made. The whole basis of assessment will be quite different in say urban California to rural India. In this case the evidence that I have (and am prepared to accept) is that living costs in the relevant part of the Ukraine (a big city) bear comparison with those in

this country, though it might be quite different in rural Ukraine. On the evidence that I have, I am prepared to conclude that the sums paid were not so disproportionate to 'expenses reasonably incurred' that the granting of an order would be an unacceptable affront to public policy. In my judgment, the ascertainment of what amounts to 'expenses reasonably incurred' is a question of fact in each case. I make that rather trite observation as I am aware that some organisations which support or facilitate surrogacy have standard guideline figures for such expenses. Such figures may have utility but in my opinion prospective commissioning couples should be cautious about relying on them without satisfying themselves that they are realistic in their case; an obvious example would be whether the surrogate mother was or was not going to sustain an ascertainable loss of earnings by reason of the surrogacy.

23. In this case I am satisfied that the welfare of these children require that they be regarded as lifelong members of the applicants' family. Given my findings on the public policy considerations, I am able without great difficulty to conclude that I should in this particular case authorise the payments so made under Section 30(7) of the 1990 Act.

24. I feel bound to observe that I find this process of authorisation most uncomfortable. What the court is required to do is to balance two competing and potentially irreconcilably conflicting concepts. Parliament is clearly entitled to legislate against commercial surrogacy and is clearly entitled to expect that the courts should implement that policy consideration in its decisions. Yet it is also recognised that as the full rigour of that policy consideration will bear on one wholly unequipped to comprehend it let alone deal with its consequences (i.e. the child concerned) that rigour must be mitigated by the application of a consideration of that child's welfare. That approach is both humane and intellectually coherent. The difficulty is that it is almost impossible to imagine a set of circumstances in which by the time the case comes to court, the welfare of any child (particularly a foreign child) would not be gravely compromised (at the very least) by a refusal to make an order. Bracewell J's decision in Re AW (supra) is but a vivid illustration of the problem. If public policy is truly to be upheld, it would need to be enforced at a much earlier stage than the final hearing of a Section 30 application. In relation to adoption this has been substantially addressed by rules surrounding the bringing of the child into the country and by the provisions of the Adoption with a Foreign Element Regulations 2005. The point of admission to this country is in some ways the final opportunity in reality to prevent the effective implementation of a commercial surrogacy agreement. It is, of course, not for the court to suggest how (or even whether) action should be taken, I merely feel constrained to point out the problem.

25. It follows that the applicants have brought themselves within Section 30(1) of the 1990 Act and have satisfied the requisite conditions in Section 30 (2) – (7). Accordingly the court 'may' grant them a parental order. The statute is silent as to criteria to be applied in exercising the discretion conferred by Section 30(1). The effect of Section 8(a) is that the whole gamut of orders under Part II of the 1989 Act are available here. However, given the effect of a parental order is to confer status for life, it is difficult to see how applying any principle other than welfare with a 'lifelong' perspective would be apt in

deciding the final discretionary stage of a Section 30 application. I am wholly satisfied on that approach that the welfare of these children will best be served by the making of the parental order sought by these applicants. It was for these reasons that indeed I made the order. I must not leave this case without a fulsome acknowledgment of my debt of gratitude to Miss Theis, Mr Sherwin and those who have assisted them especially Miss Gamble and Miss Gheraert of the Applicants' Solicitors for the guidance through these difficult waters and for the work they have done in highlighting the issues that have been thrown up by the applicants' voyage of discovery (no doubt entirely unsought by them) in this case.

26. As babies become less available for adoption and given the withdrawal of donor confidentiality (wholly justifiable, of course, from the child's perspective), more and more couples are likely to be tempted to follow the applicant's path to commercial surrogacy in those places where it is lawful, of which there may be many. This case may provide grounds for cautious reflection before that course is adopted. There are the obvious difficulties of inconvenience, delay, hardship and expense but there is more.

27. It will be readily apparent that many pitfalls confront the couple who consider commissioning a foreign surrogacy. First, the quality of the information currently available is variable and may, in what it omits, actually be misleading. Secondly, potentially difficult conflict of law issues arise which may (as in this case) have wholly unintended and unforeseen consequences as for example in payments made. Thirdly, serious immigration problems may arise having regard to the effect of Sections 27-29 of the 1990 Act, at least as understood by me. Children born to foreign surrogate mothers, especially to married women, may have no rights of entry nor may the law confer complementary rights on the commissioning couple. Fourthly, Section 30 is available only to a married couple, others may encounter even more significant difficulties in securing parental status to children born to a surrogate mother, and that is of importance since the Human Fertilisation and Embryology Act 2008 will by Section 54 open up parental orders to unmarried and same sex couples. Lastly, even if all other pitfalls are avoided, rights may depend both upon the unswerving commitment of the surrogate mother (and her husband if she has one) to supporting the surrogacy through to completion by Section 30 order and upon their honesty in not taking advantage of their absolute veto.

28. These cases are required to begin in the Family Proceedings Court. Domestic surrogacy applications frequently pose no problems and can be dealt with there (especially where as at Inner London there is current experience and expertise) or in the County Court. However, overseas surrogacy agreements potentially raise much more difficult issues and will often merit transfer to a County Court perhaps even to the relevant international adoption centre. Where there is a commercial element to the surrogacy, it will usually require careful consideration as to why it should not be transferred to the High Court. Certainly any case which involves a significant conflict of private international law or which may require

authorisation to be given under Section 30(7) of the Act should in my view be so transferred.

29. In the Parliamentary debates surrounding Human Fertilisation and Embryology this year, the government indicated that it was minded to review the law and regulation of surrogacy. It is no part of the court's function to express views on that save perhaps to observe that some of the issues thrown up in this case may highlight the wisdom of holding such a review. In any event part of the purpose of adjourning this case into open court was to illustrate the sort of difficulties that currently can and do appear. This relates to the obvious difficulties of nationality, control of the commercial element, the rules of consent and the question of legal parentage. Less obviously, but importantly, is the fact that the present law (at least as understood by this court) might encourage the less scrupulous to take advantage of the more vulnerable, unmarried surrogate mothers and to be less than frank in the arrangements that surround foreign surrogacy arrangements. Whether surrogacy should be examined in isolation from other contentious issues surrounding the inception or creation of life (let alone the fraught questions of end of life) is not for this court to say beyond the observation that these issues merit the widest public debate even if the ultimate conclusion be that they continue to be finally resolved on a case by case basis by judicial decision.