



Neutral Citation Number: [2025] EWFC 25

Case No: RG24P00367

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 February 2025

Before:

MRS JUSTICE THEIS DBE

Between:

X

Applicant

- and -

(1) W

Respondents

(2) Z, by his Children's Guardian

Dr Bianca Jackson (instructed by **Brabners**) for the **Applicant**
The First Respondent did not appear and was not represented
Ms Mavis Amonoo-Acquah (instructed by **Griffiths Robinson**) for the **Second Respondent**

Hearing date: 30th January 2025
Judgment date: 14th February 2025

Approved Judgment

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. Nobody may be identified by name or location. The anonymity of

everyone other than the lawyers must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mrs Justice Theis DBE:

Introduction

1. The court is dealing with an application for a parental order in respect of Z, who is just over a year old. The applicant, X, is Z's biological father and the respondent is W, the gestational surrogate who carried Z. Z is also a party to these proceedings, represented by his Children's Guardian, Mr Viney.
2. The surrogacy arrangement was facilitated by a clinic based in Northern Cyprus, Dogus IVF Centre (the Clinic), and a surrogacy agency, Fullsuccess Medical Consulting Limited (the Agency) which is registered in Israel. W is a Kyrgyzstan national who travelled to the clinic in Northern Cyprus for the embryo transfer. The embryo was created with X's gametes and a donor egg. W returned back to live in Kyrgyzstan during the pregnancy.
3. According to X the intention had been for Z to be born in the Czech Republic, he informed the court that was because he was able to drive there. According to X the Clinic subsequently informed X that it was no longer possible for the birth to take place in the Czech Republic and informed him it would need to take place in Moldova. X considered he had little choice but to agree. He travelled to Moldova in time for the birth on a three month visa, and only managed to return to this country with Z just before his time limited visa ran out.
4. This summary of the circumstances of Z's conception and birth highlight the complexities in this surrogacy arrangement which crossed a number of different jurisdictions. From what the court has seen it appears there was scant, if any, consideration given by X of the complexities of the arrangement he was entering into and neither were the potential difficulties and risks properly highlighted by the Clinic or the Agency in their dealings with X. Both the Clinic and Agency are operated as commercial organisations.
5. In similar circumstances in *Re Z (Foreign Surrogacy)* [2024] EWFC 304 this court highlighted the matters intended parents should consider in advance of entering these arrangements. This case emphasises, once again, the need for those critical steps to be taken in **advance** of entering into a surrogacy arrangement, which can have lifelong consequences for all concerned, in particular the much wanted child born as a result of such an arrangement.
6. The court is extremely grateful for the detailed written submissions provided on behalf of X and Z. W did not attend the hearing but I am satisfied she was aware of the hearing. The court is particularly grateful to Dr Bianca Jackson and her instructing solicitors, Joe Ailion, Cara Nuttall and Kaie Coleman of Brabners, for acting pro bono in this case for X and the steps they have taken to ensure the court has all the necessary evidence to make final orders.

Relevant background

7. X was born in England and has a close family here. Sadly, his sister died unexpectedly due to illness in 2021, at a time when she, her partner and their daughter were living with X and his mother. X had been involved in the day to day care of his niece and became more so after his sister's death, together with his sister's partner.
8. The loss of his sister and being so involved in his niece's care had a great impact on X who had wanted to have a child of his own. He had considered adoption but decided to pursue a surrogacy arrangement.
9. X reports that he placed a lot of trust in the Clinic and the Agency as his investigations into entering into an arrangement in this jurisdiction revealed that it was unlikely to happen here due to the delays in securing a surrogate. X had some limited savings and started to consider what was possible abroad.
10. X attended events where clinics attend and inform those who attend what they can offer, including the Clinic. X reports being impressed with the *'apparent professionalism of the staff'* of the Clinic and trusted their suggestion of using the Agency. Although X did consider other jurisdictions he considered Northern Cyprus was the most accessible. He said he considered taking legal advice about the viability of his plan but said such advice was too expensive.
11. X described his first contact with the Agency as an hour long phone call where he was informed; (i) they would source a surrogate from Kyrgyzstan, Uzbekistan or in the same region; (ii) the artificial conception and IVF treatment would take place at the Clinic; (iii) the surrogate would remain in Northern Cyprus until 37 weeks to benefit from private medical care and monitoring of the pregnancy; and (iv) the birth of the child would take place in Czech Republic. He said he enquired about surrogate welfare and was *'reassured by their response'*. He said aside from the immigration aspect of arranging a passport for the baby at no stage did the Agency given any indication of the legal complexities of the arrangement to X.
12. The agreement with the Agency signed by X made no reference to birth of the baby other than in England, X's home jurisdiction, or the Czech Republic and, in any event, he said he had understood that he could determine where the child was born. X signed the agreement with the Agency in November 2022.
13. In December 2022 X was informed a surrogate had been identified and he was given her name, date of birth, country of residence, height, weight, blood type, confirmation she was single and that she had a six year old child. He was not offered any direct method of contact with the surrogate but was told she would immediately be starting medication for IVF treatment.
14. In the surrogacy agreement signed in December 2022, X accepts that Moldova was referred to for the first time, where it stated that the surrogate would undergo delivery in a maternity hospital in Moldova which is to be determined by X. X states *'in the*

context of the earlier documents signed, I thought it was clear that it was still my choice. I never noticed reference to Moldova in this document'. The Agency presented it to him as a standard contract. X states he did not see this document again until he sent documents to the Passport Office after Z's birth. X said when he spoke to the Agency they reiterated he would choose where the birth would happen.

15. The embryo transfer took place at the Clinic in February 2023, with embryos created from X's gametes and donor eggs. In March 2023 X was informed by the Agency co-ordinator that the surrogate had become unhappy in Northern Cyprus, was missing her child, struggling with the language barrier and there was a need for her to return home *'to resolve some visa and birth registration issues'*. X reports he was told that she would return home until 26 weeks gestation and then fly to the country of birth. X said he agreed to this.
16. During March 2023 X reports he was asked by the Agency coordinator where he wanted the birth to take place. When he said the Czech Republic he was informed there were visa difficulties with that and X *'needed to be able to offer an EU citizen living in the Schengen zone to make "an invitation guarantee" to invite [W] to Europe and be responsible for their visit for no more than 90 days, on a tourist visa'*. X said he was unable to do that. When Moldova was suggested X was concerned about the political situation there and asked for arrangements for the birth to take place in Northern Cyprus and had understood the birth would take place there.
17. In July 2023 X states he was told by the Agency as a *'fait accompli'* that the surrogate was being prepared to travel to Moldova and that an invoice for the birth there would follow. X said he protested as he had made arrangements to travel for the birth in Northern Cyprus. He was told by the Agency that to process the birth taking place in Northern Cyprus was *'difficult and lengthy'* and the cost would be double. X reports that in his discussions with the Agency he was informed if he proceeded with Northern Cyprus the Agency would not facilitate any support for him there, including any birth registration process. X said he felt he had no choice but to agree to the birth taking place in Moldova.
18. The surrogate flew to Moldova in July 2023. X was informed in September 2023 her waters had broken; X flew to Moldova. Once X was in Moldova he states (for the first time) he was informed by the Agency co-ordinator there that he must look and behave like the surrogate's partner and that the doctors did not know about the surrogacy arrangement. When X challenged this he said he was informed for the first time that surrogacy was not permissible in Moldova. He reports this as being about two weeks before Z's birth.
19. X describes the difficulties he had in securing suitable accommodation, of difficulties in maintaining regular contact with the Agency co-ordinator in Moldova, and meeting the surrogate for the first time in a supermarket car park with the co-ordinator's wife to help translate. He describes the surrogate as looking well, but saying she was ready to go home and was missing her child.
20. The next time X saw the surrogate was at the hospital. In his discussions with the surrogate after the birth they were able to exchange details about their respective

families. Z was discharged into the care of X and X understood the surrogate returned home a few days after the birth.

21. X remained in Moldova until late December 2023 when Z was two and a half months old. X describes the stress of seeking to obtain the emergency travel documents in time before his visa expired. He only managed to do so with days to spare.
22. In his written evidence X describes how he has kept in contact with the surrogate, messaging her periodically and sending her photos of Z. She sent a message for Z's birthday and in her message to X there is nothing that indicates any change in her agreement to their arrangement and there is an expectation that their communication will continue, recognising the important role she played in relation to Z's own particular background.

Section 54A Human Fertilisation and Embryology Act 2008

23. There are seven criteria in s54A that need to be satisfied in this case, before the court can consider whether making a parental order will meet the lifelong welfare needs of Z in accordance with the requirements under s 1 Adoption and Children Act 2002.
24. Five of the criteria are readily established on the evidence:
 - (i) There is evidence from the Clinic that the embryo was created with X's gametes and donor eggs before being transferred to the surrogate and the subsequent pregnancy and birth (s54A (1))
 - (ii) The application for a parental order was made on 5 April 2024 and issued by the court on 30 April 2024 (s54A (2)). It transpired due to concerns expressed by the surrogate about the legality of a surrogacy arrangement in Kyrgyzstan X stated he did not send the application to the surrogate. As a consequence no acknowledgment of service was filed. Dr Jackson invited the court, on the particular facts of this case, to dispense with the requirement to serve the application, exercising its powers under Part 6 Family Procedure Rules 2010 (FPR). In making that submission she recognised the importance of such an application being served, particularly due to the lifelong consequences for the legal relationships of the parties if a parental order is made. I agree that in the circumstances of this case, where there has been and continues to be direct contact between the surrogate and X, together with Mr Viney's conversation with her in January 2025 that the surrogate is fully aware of the order being sought, gave her consent to such an order being made and that service of the application could only lead to delay and uncertainty for the surrogate due to the legal framework in her home jurisdiction.
 - (iii) At the time the application was made and at the time the court was considering making a parental order Z had his home with X (s54A (3)(a)).
 - (iv) X's domicile of origin is the United Kingdom (s54A (3)(b)).
 - (v) X is over 18 years of age (s54A (3)).
25. The two criteria that require more consideration are whether the surrogate has given her consent (s54A (5) and (6)) and what payments were made and whether the court is required to authorise any payments made other than for expenses reasonably incurred (s54A (7)).

26. Turning to the question of consent the relevant provisions in s54A (5) and (6) require the court to be satisfied that the consent has been given freely, unconditionally and with full knowledge of what is involved in giving such consent. To be effective that consent needs to be given more than six weeks after the birth of the child. In addition, if the consent is in writing, subject to any direction of the court, it will need to comply with the requirements of r 13.11 (4) FPR for it to be witnessed by a notary, or similar.
27. In this case the evidence of consent is provided by a signed translated document entitled 'agreement to the making of a parental order' dated 23 August 2024 which is in the form of the prescribed A101A consent form provided for in the FPR. It is signed by the surrogate and the notary, but does not have a notary stamp. A further document has been provided, which is not the consent relied upon, but is entitled 'Statement of Consent'. This document is witnessed by the same notary and on that document there is a notary stamp.
28. Mr Viney was able to speak to the surrogate on 11 December 2024 with the assistance of a Russian interpreter via a WhatsApp video call. Mr Viney was able to establish her identity through her identity card and her date of birth was cross referenced with the copy of her passport that Mr Viney already had a copy of. Mr Viney reports that in his discussion with the surrogate he was satisfied she consented to the making of a parental order, that she had freely signed the consent on 23 August 2024 and remembered doing so before a notary and was fully aware of the implications of the making of the order. Mr Viney also confirmed that the surrogate was aware of the date of this hearing.
29. In his statement X detailed the message exchanges he had with the surrogate, the Agency and others about trying to arrange for the consent document to be notarised. The difficulties arose from the legal framework in Kyrgyzstan which did not recognise the effect of the consent, which in turn caused difficulties for the notary to notarise the consent.
30. Although the consent relied upon has not been fully notarised I accept that the combination of the documents that have been signed, the conversation Mr Viney had with the surrogate and the continuing level of communication between the surrogate and X that in the circumstances of this case the surrogate has given her consent to the making of a parental order in a way that meets the requirements of s54A (5) and (6).
31. Turning to the issue of payments. The evidence about the payments can be summarised as follows: X paid the Agency:
- (i) 15,152 euros in November 2022 on the date the agreement with the Agency was signed
 - (ii) 5,589 euros in December 2022 when the surrogate was identified, the commencement of the IVF treatment and the agreement being signed with the surrogate
 - (iii) 10,402 euros in March 2023 at 12 weeks gestation
- Total paid 31,143 euros
32. In addition, X paid 6,000 euros for the birth to take place in Moldova to a person identified to X by the Agency.

33. X confirms he made no direct payments to the surrogate; he understood the payments were to be made to her by the Agency. The agreement between X and the surrogate is entitled a 'Non-Commercial Contract' and specifies that the money paid to the surrogate was to compensate her for *'her help and monthly support costs...the total compensation for the surrogate mother for help in pregnancy carrying related to her temporary non-working capacity during pregnancy is the equivalent of 10,000 euros'*. In addition, the agreement entitled the surrogate to a payment of 350 euros per month from signature of the contract until birth, estimated to add an additional 3,500 euros.
34. X understands that sum was paid to the surrogate and in his dealings with her she has not indicated any difficulties regarding payments due to her. X produced some limited information about the cost of living in Kyrgyzstan.
35. In her discussions with Mr Viney the surrogate stated that she had received no money or payments from either the agency or the clinic and then said the agency had paid any expenses that she had incurred *'but has received no specific payments for giving birth to [Z]'*.
36. X sought to get further clarification from the Agency. The Agency confirmed that the surrogate had financial payments in two parts, a payment of 10,000 euros and 5,000 euros, with two documents in Russian signed by the surrogate to confirm she had received these payments. X's solicitor wrote to the Agency to seek confirmation regarding the payments and they eventually provided a short statement confirming details regarding the payments.
37. Both Dr Jackson, on behalf of X, and Ms Amonoo-Acquah, on behalf of the Children's Guardian, submit that the court can, on the balance of probability, be satisfied that the surrogate received the payments set out by the Agency. She has not raised this as an issue in her communications with X. It appears that there may have been some confusion in her conversation with Mr Viney, perhaps due to interpretation, which meant that her answers should be seen in the context of the way the payments are referred to in the agreement as being for her *'help and monthly support costs'*.
38. The court only has very limited information regarding the purpose of the payments made to the surrogate and whether they related only to expenses reasonably incurred.
39. I also need to consider whether any public policy issues are raised in this case as a result of the circumstances and the actions of X. I have already made reference to the international complexities of this case due to the number of jurisdictions involved in this arrangement. X has made clear in his written evidence that he relied upon what he understood to be the professionalism and expertise of the Clinic and the Agency and did not seek legal advice as he was unable to afford to. In my judgment X was extremely naïve in entering into this surrogacy arrangement without being absolutely clear what the arrangements were regarding where the child was going to be born, and what his rights were in relation to that. He was also naïve about gaining any proper understanding of the relevant legal frameworks in the jurisdictions that were relevant to this arrangement. However, from what I have seen, both the Clinic and the Agency acted in a way that was far from transparent in setting out for X what the implications of the various options were. I recognise I have not had any representations from the Clinic or the Agency but have seen a considerable amount of material, including the

agreements that were entered into and the many message exchanges with X and oral communications detailed in his statement.

40. The court has the benefit of legal advice from Irina Cernai, a licensed attorney in Moldova. According to her advice, surrogacy is unregulated in Moldova and may be considered illegal as a medical practice, as healthcare institutions are only authorised to perform procedures explicitly allowed by law, and surrogacy is not provided for under the same statute that governs assisted reproduction in Moldova. Ms Cernai also points out that whilst performing surrogacy as medical practice may trigger administrative/criminal liability for the healthcare institutions or professionals, if the elements of the relevant part of the criminal code are present a surrogacy arrangement and the actions accompanying it may trigger criminal liability for those involved.
41. What took place in this surrogacy arrangement, with the seemingly reckless disregard of the cross jurisdiction implications of the arrangement, overseen by two essentially commercial organisations, causes the court enormous concern. In terms of X's actions, I regard them as naïve. With the benefit of hindsight X acknowledges that assessment. However, having considered the evidence as a whole I do not consider he acted other than in good faith.
42. In considering whether the court can and should authorise any element of these payments that do not relate to expenses reasonably incurred the court needs to consider the matters set out in *Re WT* [2014] EWHC 1303 (Fam) at [35], namely:

(1) the question whether a sum paid is disproportionate to "reasonable expenses" is a question of fact in each case. What the court will be considering is whether the sum is so low that it may unfairly exploit the surrogate mother, or so high that it may place undue pressure on her with the risk, in either scenario, that it may overbear her free will;

(2) the principles underpinning section 54(8), which must be respected by the court, is that it is contrary to public policy to sanction excessive payments that effectively amount to buying children from overseas.

(3) however, as a result of the changes brought about by the Human Fertilisation and Embryology (Parental Orders) Regulations 2010, the decision whether to authorise payments retrospectively is a decision relating to a parental order and in making that decision, the court must regard the child's welfare as the paramount consideration.

*(4) as a consequence it is difficult to imagine a set of circumstances in which, by the time an application for a parental order comes to court, the welfare of any child, particularly a foreign child, would not be gravely compromised by a refusal to make the order. As a result: "it will only be in the clearest case of the abuse of public policy that the court will be able to withhold an order if otherwise welfare considerations support its making", per Hedley J in *Re L (Commercial Surrogacy)* [2010] EWHC 3146 (Fam), [2011] 2WLR 1006, at paragraph 10.*

(5) where the applicants for a parental order are acting in good faith and without 'moral taint' in their dealings with the surrogate mother, with no attempt

to defraud the authorities, and the payments are not so disproportionate that the granting of parental orders would be an affront to public policy, it will ordinarily be appropriate for the court to exercise its discretion to give retrospective authorisation, having regard to the paramountcy of the child's lifelong welfare.

43. Despite the real reservations I have set out above regarding this surrogacy arrangement, I have reached the conclusion, having considered the principles set out in *WT*, that any payments made that were other than expenses reasonably incurred should be authorised by the court.

Welfare

44. Turning to the issue of Z's welfare. The Court has the benefit of the report from Mr Viney who has been able to undertake his own enquiries on behalf of the court and visited Z at the family home. In his reports in September 2024 and January 2025 he concludes the court should make a parental order.
45. As Mr Viney sets out in his report *'I have observed [Z] with [X] and with [X's] mother. [Z] presented as settled and content. [X] was attentive and loving toward [Z] and talked about his development and routines. [Z] is loved and cared for by [X] who is committed and attentive to his needs'*. His reports highlight the close relationship between Z, X and X's mother; the clear plan X has is to make sure Z is aware of his own background; and notes the wide family support there is for Z. Mr Viney refers to Z *'thriving'* in X's care and is meeting all his developmental milestones in a *'safe and secure home environment'*.
46. The welfare evidence the court has makes it clear that Z's lifelong welfare needs are met by the court making a parental order which will secure his lifelong legal parental relationship with X.