Neutral Citation Number: [2023] EWFC 39

Case No: LV22P90793

IN THE FAMILY COURT
SITTING IN MANCHESTER

Manchester Civil And Family Justice Centre,
1 Bridge Street,
Manchester,
M60 9DJ

Date: 29/03/2023

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between:

AY and BY	**Applicants**
- and -	
ZX	**Respondent**

- -
- -

Ms Brónach Gordon and Mr Nathan Baylis (instructed by **Duncan Lewis Solicitors**) for the **Applicants**
The respondent appeared in person

Hearing date: 21 March 2023

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. The short point that arises in this matter is whether the court is prevented from making a parental order under s.54 of the Human Fertilisation and Embryology Act 2008 in circumstances where the insemination leading to the birth of a child via surrogacy has taken place pursuant to a private arrangement and otherwise than in a licenced clinic.

2. The application for parental orders that is the court is made by AY and BY (hereafter the applicants) in respect of two children, CY, born in October 2021, and DY, also born in October 2021. The respondent to the application is ZX (hereafter the respondent), the surrogate mother who gave birth the children.

3. Following the applicants and the respondent reaching an agreement that the respondent would act as a surrogate, they elected to attempt home insemination. The respondent became pregnant by this method and subsequently gave birth to DY and CY. Within this context that the Magistrates, to whom this matter was previously allocated, raised a concern that this case may fall outside the terms of the Human Fertilisation and Embryology Act 2008 in circumstances where the insemination took place pursuant to a private arrangement and otherwise than at a licenced clinic. Having been alerted by the Legal Adviser to this concern on the part of the Magistrates, I requested that the case be re-allocated to me and listed it for hearing.

4. The applicants are represented *pro bono* by Ms Brónach Gordon of counsel and Mr Nathan Baylis of counsel. The respondent appears in person. The court has before it a statement from the applicants and a statement from the respondent. Whilst those statements are unsigned in the bundle before the court, the applicants and the respondent confirmed their contents at this hearing. At this hearing the court also heard briefly from the Parental Order Reporter, Ms Michelle Hughes, and has had the benefit of reading her completed Parental Order reports in respect of both children dated 21 June 2022. In determining this matter, I have also derived considerable assistance from the detailed Skeleton Argument prepared for this hearing by Ms Gordon and Mr Baylis. Ms Gordon also made short oral submissions.

BACKGROUND

5. The background to this matter can be stated shortly. The applicants met on 13 July 2005 in Europe. BY moved to the United Kingdom in September 2005 and has resided in this jurisdiction since that date. He has a permanent right to remain in the United Kingdom under the EU Settlement Scheme. The applicants married in August 2015.

6. The applicants met the respondent approximately 7 years ago. The respondent lived nearby to AY's business and volunteered there on occasion. The applicants and the respondent became friends. The respondent gave birth to her own children in September 2020 and the applicants are actively involved in their lives. They take holidays together and the applicants are the Godparents to the respondent's children. The respondent is married but has been separated from her husband for more than 5 years. She has little current contact with him.

7. At around the time that the respondent gave birth to her children in 2020, the applicants were undertaking enquiries with a view to finding a surrogate in order to have children of their own. Subsequently, the respondent approached the applicants and confirmed that she would be willing to be a surrogate for the couple. With respect to the process of insemination, it was decided that AY would be the sperm donor. As I have noted, thereafter the applicants and the respondent elected to attempt home insemination. After several attempts, the respondent became pregnant.

8. The applicants supported the respondent emotionally throughout her pregnancy, as well as providing funds for basic expenses. The twins, CY and DY were born prematurely at 34 weeks on 18 October 2021. Unfortunately, CY was diagnosed with Group B Streptococcal Meningitis the day after she was discharged from hospital. CY still has a number of other medical issues that require regular attendance at medical appointments. The applicants are the sole carers of CY and DY.

9. The applicants made their applications for Parental Orders in respect of DY and CY on 15 May 2022. The applications were allocated to be heard by the Magistrates. When the matter came before the Legal Adviser on 8 August 2022, the Legal Adviser made a directions order that also contained the following recital:

> "It is recorded:
>
> (a) The court has now received the document from the applicants which they confirm their supporting statement.
>
> (b) Upon considering this document, it appears that the child was conceived in a private surrogacy arrangement that is outside the provisions of the Human Fertilisation and Embryology Act 1990 and the Human Fertilisation and Embryology Act 2008.
>
> (c) Accordingly, the applicants are encouraged to take independent legal advice as it doesn't appear that an order under the Human Fertilisation and Embryology Act 2008 can be made in the circumstances."

10. At a hearing on 13 October 2022, the applicants sought a further adjournment to enable them to take legal advice. The court acceded to that application and adjourned the matter to 13 December 2022. The recitals to that order made by the Magistrates on 13 October 2022 included the following:

> "(e) Upon review of the statement filed by the Applicants, it appears that the child was conceived through an informal, private arrangement. The court is concerned that this does not fall within the Human Fertilisation and Embryology Act legislation and therefore, a Parental Order cannot be made in the circumstances."

11. The court does not have before it an order dated 13 December 2022, but on 3 March 2023, and following discussions in my capacity as Family Division Liaison Judge for the Northern Circuit, the Legal Adviser reallocated the matter to me and listed it for hearing to determine the applications for parental orders.

12. Within the foregoing context, on behalf the applicants Ms Gordon and Mr Baylis submit that nothing in the Human Embryology and Fertilisation Act 2008 prevents the court making a parental order under s.54 of that Act where the insemination leading to the birth of a child via surrogacy has taken place pursuant to a private arrangement and otherwise than in a licenced clinic. All parties are agreed that, if it has jurisdiction to do so, the court should make Parental Orders in favour of the applicants in this case with respect to DY and CY.

13. That course of action is supported by the Parental Order Reporter in the two Parental Order Reports prepared in this matter. Ms Hughes interviewed the applicants and saw them with CY and DY on 30 May 2022. The reports also evidence the consent of the respondent to the making of those orders, which consent the respondent has reiterated before the court at this hearing. Within this context, Ms Hughes supports the making of Parental Orders in favour of the applicants as being in each child's best interests, having regard to the terms of s. 1(4) of the Adoption and Children Act 2002.

THE LAW

14. Part II of the Human Fertilisation and Embryology Act 2008 deals with the question of parenthood in cases involving assisted reproduction.

15. Sections 33 to 53 of the 2008 Act deal with the question of who is to be treated as a parent for the purposes of the Act in specified situations where assisted reproduction has been utilised, independent of the need to apply for a parental order under s.54 of the Act.

16. In this context, in some specified situations of assisted reproduction dealt with under Part II of the Act, the question of whether a person can be treated as a parent under the terms of the 2008 Act without more *will* involve consideration of whether treatment services have been provided in the United Kingdom by a person to whom a licence applies (see ss. 36, 37, 40, 43, 44 and 46 of the Human Fertilisation and Embryology Act 2008 and see *Re G; Re Z (Children: Sperm Donors: Leave to Apply for Children Act Orders)* [2013] 1 FLR 1334 at [66]).

17. Section 54 of the Human Fertilisation and Embryology Act 2008 deals with the question of who is entitled to apply for and be granted a parental order where there are two applicants for that order:

> "**54 Parental orders: two applicants**
>
> (1) On an application made by two people ("the applicants"), the court may make an order providing for a child to be treated in law as the child of the applicants if—
>
> (a) the child has been carried by a woman who is not one of the applicants, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination,
>
> (b) the gametes of at least one of the applicants were used to bring about the creation of the embryo, and
>
> (c) the conditions in subsections (2) to (8A) are satisfied.

(2) The applicants must be—

(a) husband and wife,

(b) civil partners of each other, or

(c) two persons who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other.

(3) Except in a case falling within subsection (11), the applicants must apply for the order during the period of 6 months beginning with the day on which the child is born.

(4) At the time of the application and the making of the order—

(a) the child's home must be with the applicants, and

(b) either or both of the applicants must be domiciled in the United Kingdom or in the Channel Islands or the Isle of Man.

(5) At the time of the making of the order both the applicants must have attained the age of 18.

(6) The court must be satisfied that both—

(a) the woman who carried the child, and

(b) any other person who is a parent of the child but is not one of the applicants (including any man who is the father by virtue of section 35 or 36 or any woman who is a parent by virtue of section 42 or 43),

have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

(7) Subsection (6) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than six weeks after the child's birth.

(8) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by either of the applicants for or in consideration of—

(a) the making of the order,

(b) any agreement required by subsection (6),

(c) the handing over of the child to the applicants, or

(d) the making of arrangements with a view to the making of the order,

unless authorised by the court.

(8A) An order relating to the child must not previously have been made under this section or section 54A, unless the order has been quashed or an appeal against the order has been allowed.

(9) For the purposes of an application under this section—

(a) in relation to England and Wales —

(i) *"the court"* means the High Court or the family court, and

(ii) proceedings on the application are to be "family proceedings" for the purposes of the Children Act 1989,

(b) in relation to Scotland, *"the court"* means the Court of Session or the sheriff court of the sheriffdom within which the child is, and

(c) in relation to Northern Ireland, *"the court"* means the High Court or any county court.

(10) Subsection (1)(a) 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 or her artificial insemination.

(11) An application which—

(a) relates to a child born before the coming into force of this section, and

(b) is made by two persons who, throughout the period applicable under subsection (2) of section 30 of the 1990 Act, were not eligible to apply for an order under that section in relation to the child as husband and wife,

may be made within the period of six months beginning with the day on which this section comes into force."

DISCUSSION

Jurisdiction

18. Within the context of the foregoing legal framework, I am satisfied that the court has jurisdiction to make a parental order under s.54 of the Human Fertilisation and Embryology Act 2008 in the circumstances of this case. I am further satisfied that it is in each child's best interests in this case to grant Parental Orders to the applicants.

19. As set out above, it is the case that where the question is whether a person should be treated as a parent for the purposes of the Human Fertilisation and Embryology Act 2008, there are some specified situations of assisted reproduction in which the question of whether treatment services have been provided in the United Kingdom by a person to whom a licence applies will be relevant to the question of a persons status under the 2008 Act. In this case however, the court is not concerned with the legal status of the applicants under Part II of the 2008 Act *per se*. Rather, the court is

concerned with the separate and quite different question of whether the applicants are entitled to apply for a parental order following the birth of the children via a surrogacy agreement. The answer to that question is governed by the terms of s.54 of the 2008 Act, which define the circumstances in which the court has jurisdiction to make such orders if they are in the best interests of the children.

20. Section 54(1)(a) of the Human Fertilisation and Embryology Act 2008 requires *inter alia* that, for the court to have jurisdiction to make a parental order on the application of two applicants, the child has been carried by a woman who is not one of the applicants, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination. There is nothing on the face of s.54(1)(a) that indicates there is a requirement that the artificial insemination required by s.54(1)(a) of the Act has to take place at a licenced clinic or that private surrogacy arrangements are excluded from the terms of s.54 of the Act.

21. The remaining requirements that must be met in order for the court to have jurisdiction to make a parental order in favour of two applicants are set out in ss. 54(2) to 54(8A) of the 2008 Act. Those requirements relate to the legal status of the two applicants (s.54(2)), the timescales for making the application (s.54(3)), the requirement for the child to have his or her home with the applicants (s.54(4)), the age of the applicants (s.54(5)), the consent of the surrogate (s.54(6)), the timing of consent (s.54(7)), the need to be satisfied that no consideration has been given (s.54(8)) and the requirement of no previous order (s.54(8A). Again, there is nothing on the face of these statutory requirements that indicates a requirement that artificial insemination required by s.54(1)(a) of the 2008 Act has to take place at a licenced clinic or that private surrogacy arrangements are excluded from the terms of s.54 of the Act.

22. In the foregoing circumstances, I am satisfied that there is nothing in s.54 of the Human and Fertilisation and Embryology Act 2008 that prevents a court making a Parental Order where the children who are the subject of the application have been conceived by way of surrogacy using home insemination pursuant to a private surrogacy arrangement. That this is the correct construction of s.54 of the 2008 Act is reinforced by a number of other matters.

23. The Explanatory Notes to s.54 of the 2008 Act (which can be used as an aid to construction per *Wilson v First County Trust (No.2)* [2004] 1 AC 816 at [64]) likewise do not mention a requirement that the artificial insemination required by s.54(1)(a) of the Act has to take place at a licenced clinic or that private surrogacy arrangements are excluded from the terms of s.54 of the Act, stating only as follows with respect to s.54:

> "In section 54 there are new provisions extending the categories of couples who can apply for a parental order where a child has been conceived using the gametes of at least one of the couple, and has been carried by a surrogate mother. Under the new provisions, civil partners are able to apply, as can unmarried opposite-sex couples or same-sex couples not in a civil partnership. The other provisions relating to parental orders remain the same as the existing provisions of the 1990 Act."

24. Whilst Ms Gordon and Mr Baylis referred the court to the decision of *M v F and H* [2013] EWHC 1901 (Fam) (in which the court was concerned with an application for

a declaration of parentage in which the primary dispute between the parties concerned the circumstances in which the subject child was conceived) and *In Re G; Re Z (Children: Sperm Donors: Leave to Apply for Children Act Orders)* [2013] 1 FLR 1334 (a case in which the court was concerned with two lesbian couples who had entered into an agreement with male friends enable the couples to have children conceived by way of at home insemination), neither of these cases concerned s.54 of the Human Fertilisation and Embryology Act 2008. *M v F and H* was concerned with s.35 of the Act and *In Re G; Re Z (Children: Sperm Donors: Leave to Apply for Children Act Orders)* was concerned with s. 10(9) of the Children Act 1989.

25. However, the operation of s.54 of the 2008 was considered by the Supreme Court in the case of *Whittington Hospital NHS Trust v XX* [2020] UKSC 14. When considering the operation of s.54 of the 2008 Act, the Supreme Court did not at any point suggest that there is a requirement for the artificial insemination required by s.54(1)(a) to take place in a licenced clinic when the Court reiterated the requirement under s.54(1)(a) of the 2008 Act for the child to have been carried by another woman as a result of the placing in her of eggs and sperm, or an embryo, or her artificial insemination:

> "[12] Applications can be made jointly by a married couple, by civil partners or by two people who are living as partners in an enduring family relationship (but are not within the prohibited degrees of relationship, such as siblings) (section 54(2)). Applications can also now be made by a single person (following the insertion of section 54A(1) by the Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (SI 2018/1413)), made after a declaration that their exclusion was incompatible with the right to respect for private and family life in article 8 of the European Convention on Human Rights (ECHR): *In re Z (Surrogate Father: Parental Order) (No 2)* [2016] EWHC 1191 (Fam); [2017] Fam 25. All applicants must be aged at least 18 when the order is made. The child must have been carried by another woman as a result of the placing in her of eggs and sperm, or an embryo, or her artificial insemination. The gametes of at least one of the applicants must have been used to create the embryo. This may have been done anywhere in the world, so the procedure is available after a foreign surrogacy and if the commissioning parents are the legal parents according to the law of the place where that took place. Without it, they would not be recognised as legal parents here."

26. Finally, Ms Gordon and Mr Baylis also drew the attention of the court to guidance on surrogacy produced by the government, the NHS and by the Human Fertilisation and Embryology Authority. That guidance provides further support for their submission that court is not prevented from making a parental order under s.54 of the Human Fertilisation and Embryology Act 2008 in circumstances where the insemination leading to the birth of a child via surrogacy has taken place otherwise than in a licenced clinic and as the result of a private arrangement.

27. Under the heading 'Straight Surrogacy', the government guidance for surrogates refers to self-insemination at home as a recognised first-step on the surrogacy pathway (which pathway includes a subsequent application for a parental order under s.54 of the 2008 Act) for those utilising surrogacy, including same sex couples wishing to create a family:

> "**Straight surrogacy**
>
> Straight (also known as full or traditional) surrogacy is when the surrogate provides her own eggs to achieve the pregnancy. The intended father, in either a heterosexual or male same-sex relationship, or an individual, provides a sperm sample for conception through either self-insemination at home (there may be additional health and legal risks to carrying at self-insemination at home compared to treatment in a clinic) or artificial insemination with the help of a fertility clinic. If either the surrogate or intended father has fertility issues, then embryos may also be created in vitro and transferred into the uterus of the surrogate."

28. In their online guide detailing the 'ways to become a parent if you are LGBT+', the NHS guidance also notes that in respect of donor insemination, whilst insemination at a licenced clinic is recommended, home insemination is a possible method:

> "**Donor insemination**
>
> Sperm is put inside the person getting pregnant. This can be done at home, with sperm from a licensed fertility clinic, a sperm bank or someone you know.
>
> If you choose donor insemination, it's better to go to a licensed fertility clinic where the sperm is checked for infections and some inherited conditions. Fertility clinics can also offer support and legal advice.
>
> If the sperm is not from a licensed fertility clinic, the person donating the sperm can get tested for sexually transmitted infections at a sexual health clinic.
>
> In the UK, the HFEA makes sure licensed fertility clinics run safely and legally."

29. The guidance set out on the website for the Human Fertilisation and Embryology Authority recommends the use of a licenced clinic over the use of home insemination using donor sperm for safety reasons, but likewise does not suggest that the use of home insemination will prevent an application for a parental order under s.54 of the 2008 Act.

30. Within the foregoing context, and whilst it is plain that from a the point of view of safety that insemination at a licenced clinic is preferable to home insemination, I am satisfied that the court is not prevented from making of a Parental Order pursuant to s.54 of that 2008 Act by the fact that the subject children have been conceived by way of surrogacy using home insemination pursuant to a private surrogacy arrangement. The contrary view expressed by the Magistrates in my judgment conflates the question of a person's status under Part II the 2008 Act in the specific situations of assisted reproduction dealt with in ss. 33 to 53 with the separate and different question of a person's entitlement to a parental order under the 2008 Act following surrogacy, which entitlement is in my judgment governed solely by the criteria in s.54 of the Act. In this context, I now turn to the application of those criteria in this case.

Merits

31. DY and CY were carried by the respondent, who is not one of the applicants, as a result of her artificial insemination with the sperm of AY. In the circumstances, the terms of s.54(1)(a) and s.54(1)(b) of the 2008 Act are satisfied in this case. In my judgment, the terms of s.54(1)(c), which require ss.54(2) to s.54(8A) to be satisfied, are also met in this case as follows.

32. The applicants are married. The Cafcass officer Ms Hughes has seen the applicants' marriage certificate. Pursuant to the decision of Theis J in *Y & Anor v V & Ors* [2022] EWFC 120, it is clear that. 54(2) of the Human Fertilisation and Embryology Act 2008 applies to same-sex marriages. In the circumstances, I am satisfied that the requirements of s.54(2) of the 2008 Act are likewise satisfied in this case.

33. Section 54(3) of the 2008 Act requires that, subject to the exception set out in s.54(11), which does not apply in this case, the applicants must apply for the order during the period of 6 months beginning with the day on which the child is born. The applicants made their application in respect of CY and DY on 15 May 2022, 6 months and 27 days after DY and CY were born on 18 October 2021. The applicants application was therefore made out of time. It is however, now well established that the court may interpret s.54(3) of the 2008 Act purposively and, in an appropriate case, make a parental order notwithstanding the fact that the application was not made within the six-month time limit (see *Re X (A Child) (Surrogacy: Time Limit)* [2015] 1 FLR 349). In deciding whether to take this approach, the authorities suggest that the welfare interests of the children involved, and the courts inherent discretion in considering such an application.

34. In this case, I am satisfied that there is a legitimate explanation for the application being made 27 days late. Following her birth, CY required very significant medical intervention in the circumstances I have described. In such circumstances, CY's medical needs understandably took priority over confirming her legal status. In my judgment, taking into account the fact that the parental order will influence not just CY and DY's legal status but also their identity and that, in that context, the court is looking at a situation concerning legal status and identity which will stretch many decades into the future, having regard to CY and DY's best interests as my paramount consideration it would not be consistent with those best interests to allow a delay of less than one month to prevent the making of an order under s.54 of the Act.

35. Pursuant to s.54(4) of the 2008 Act, at the time of the applications the children must have their home with the applicants and the applicants must be domiciled in the United Kingdom. At the time the applications for parental orders were issued in respect of CY and DY, they had their home with the applicants for the purposes of s.54(4)(a) of the Act.

36. With respect to the question of domicile for the purposes of s.54(4)(b) of the Act, as observed by Theis J *in ELO v CLO (Recognition of a Nigerian Adoption Order)* [2017] EWHC 3574 (Fam), citing the decision of the House of Lords in *Mark v Mark* [2006] 1 AC 98, the object of determining a domicile is to connect the person with a particular system or rule of law determining personal or family status or property rights. In this context, Theis J distilled the following principle from the decision of

the Court of Appeal in *Barlow Clowes International Ltd (In Liquidation) & Ors v Henwood* [2008] EWCA Civ 577:

i) A person is, in general, domiciled in the country in which he is considered by English law to have his permanent home. A person may sometimes be domiciled in a country although he does not have his permanent home in it.

ii) No person can be without a domicile.

iii) No person can at the same time for the same purpose have more than one domicile.

iv) An existing domicile is presumed to continue until it is proved that a new domicile has been acquired.

v) Every person receives at birth a domicile of origin.

vi) Every independent person can acquire a domicile of choice by the combination of residence and an intention of permanent or indefinite residence, but not otherwise.

vii) Any circumstance that is evidence of a person's residence, or of his intention to reside permanently or indefinitely in a country, must be considered in determining whether he has acquired a domicile of choice. In order to acquire a domicile of choice the intention of residence must be fixed and for the indefinite future."

37. As I have noted, BY moved to the United Kingdom in September 2005 and has resided in this jurisdiction for a period of some 18 years. He has a permanent right to remain in the United Kingdom under the EU Settlement Scheme. The applicants have an established life in the United Kingdom and consider themselves as domiciled in the United Kingdom. In circumstances where a person is, in general, domiciled in the country in which he is considered by English law to have his permanent home, and may secure a domicile of choice by the combination of residence and an intention of permanent or indefinite residence, I am satisfied in these circumstances that BY has a domicile of choice in the United Kingdom and is domiciled therein for the purposes of s.54(4)(b) of the 2008 Act. AY has a domicile of origin in the United Kingdom. Both applicants were aged over 18 at the time they made their application for a parental order and accordingly satisfied the terms of s.54(5) of the 2008 Act.

38. With respect to the question of the respondent's consent under ss. 54(6) and 54(7) of the 2008 Act, the respondent has provided her consent in the form of a witness statement, the contents of which she has confirmed to the court, to the Parental Order Reporter, as set out in the report of Ms Hughes, and to the court at this hearing. In the circumstances, I am satisfied that the respondent has freely, and with full understanding of what is involved, agreed unconditionally to the making of the parental orders in respect of CY and DY in favour of the applicants.

39. By the terms of the Human Fertilisation and Embryology Act 2008 s.35, where a surrogate mother is married, her husband will acquire Parental Responsibility for the child when born unless he does not consent to the arrangement at the time of

insemination. As noted above, the unchallenged evidence before the court is that the respondent has been separated from her husband for a period of some five years and has had no recent contact with him. Within this context, there is no suggestion that the respondent's husband was aware of the arrangements at the time of the home insemination such that he could have given his consent to insemination. In such circumstances, I am satisfied that s.35 of the 2008 Act does not operate to confer upon him parentage of CY and DY (see *Surrogacy: Law Practice and Policy in England and Wales*, Family Law, 23 March 2018).

40. Pursuant to s.54(8) the court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by either of the applicants for or in consideration of the making of arrangements with a view to the making of parental orders, the making of the parental orders, the giving of consent or the handing over the children. The evidence before the court, which is not challenged, is that applicants provided the respondent with reasonable funds for basic expenses during her pregnancy, including travel to and from health appointments, pregnancy vitamins and maternity clothing. No previous orders have been made under s.54 of the 2008 Act. In the circumstances the terms of both s.54(8) and s.54(8A) are satisfied in this case.

CONCLUSION

41. For the reasons set out, I am satisfied in this case that this court has jurisdiction to make orders under s.54 of the Human Fertilisation and Embryology Act 2008 notwithstanding that the children who are the subject of the application have been conceived by way of surrogacy using home insemination pursuant to a private surrogacy arrangement. Further, the requirements of s.54 of the 2008 Act each being satisfied in this case in the circumstances I have set out, I am further satisfied that it is manifestly in CY and DY's best interests that these proceedings conclude and that the family are afforded certainty as to the their legal parentage. In the circumstances, I grant the applications for parental orders in respect of CY and DY.

42. That is my judgment.