Neutral Citation Number: [2024] EWFC 304

Case No: LS23P01488

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/10/2024

Before :

MRS JUSTICE THEIS DBE

- -

Between :

	A and B	**Applicants**
	- and -	
	X	**1st Respondent**
	- and -	
	Z (through her Children's Guardian)	**2nd Respondent**

- -
- -

Ms Christie O'Connell (instructed by Hall Brown) for the **Applicants**
The 1st Respondent did not attend and was not represented
Mr Andrew Powell (instructed by Dawson Cornwell) for the **2nd Respondent**

Hearing date: 8th October 2024
Judgment: 24th October 2024

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Approved Judgment

This judgment was handed down remotely at 2pm on 24 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Theis DBE :

Introduction

1. This application for a parental order in relation to Z, age 1, provides an important cautionary reminder of the need for those embarking on surrogacy arrangements, particularly those that cross a number of different jurisdictions, to carefully consider, in advance, the arrangements, consequences and implications of that arrangement. This is not only for the adults involved but, more importantly, for any child born as a result of such an arrangement. The lack of care in some arrangements and the real risks it exposes the intended parents, surrogate and any child to is very concerning. It is hoped this judgment will provide a timely reminder of why such care is needed. Put simply, the applicants in this case ended up having little or no control as to where Z was born. Z was born in a jurisdiction where the applicants were informed surrogacy arrangements that involved same sex relationships, which A and B are in, are not permitted. Those basic facts alone demonstrate how difficult the position was.

2. The message needs to go out loud and clear that when intended parents embark on these surrogacy arrangements they need to ensure there is clarity about what is proposed, that the written agreement clearly provides for the essential arrangements and the relevant legal framework is understood at each stage, including

   (1) Whether any classes of person are excluded from being intended parents in a surrogacy arrangement in that jurisdiction, such as in this case same sex couples.

   (2) What jurisdiction the embryo transfer takes place in.

   (3) What the arrangements are for where the surrogate lives during the pregnancy and the applicable legal framework.

(4) What the arrangements are and the applicable legal framework for the child's birth and registering of the birth. For example, it is clear where the child is going to be born.

(5) What steps can or should be taken in the jurisdiction where the child is born to secure the intended parents legal relationship with the child in that jurisdiction.

3. There are a number of cases where, very surprisingly, such basic information is simply not known by the intended parents, or they have been willing to take considerable risks to fulfil their wish to be parents. Whilst that wish is acknowledged it should not be at the expense of placing the much wanted yet to be born child at risk of harm. The need to take expert legal advice ***before*** entering into these arrangements cannot be emphasised strongly enough.

4. Mr Powell and Ms O'Connell produced an agreed list of key issues any person considering embarking on a surrogacy arrangement (particularly one that involves the surrogate coming from and/or the child being born in a foreign jurisdiction) should consider **before** they enter in any surrogacy arrangement. This list is non exhaustive and can only act as a guide. I have made some amendments and list the key considerations as follows:

(1) What is the relevant legal framework in the country where the surrogacy arrangement is due to take place and where the child is to be born? Put simply, is such an arrangement permitted in that country?

(2) When the child is born will the intended parents be recognised as parents in that country, if so how? By operation of law or are the intended parents required to

take some positive step and, if so, what steps need to be taken and when (pre or post birth)?

(3) What is the surrogate's legal status regarding the child at birth?

(4) If the surrogate is married at the time of the embryo transfer and/or the child's birth what is the surrogate's spouse's legal status regarding the child at birth?

(5) If an agency is involved, what role do they play in matching the surrogate with the intended parents?

(6) What information, preparation or support has the surrogate had about any proposed surrogacy arrangement?

(7) Does the surrogate speak and/or read English? If not, what arrangements are in place to enable her to understand any agreement signed?

(8) Will the intended parents and the surrogate meet and/or have contact before deciding whether to proceed with a surrogacy arrangement?

(9) When will the agreement between the intended parents and surrogate be made, before or after the embryo transfer, and what are the reasons for it being at that time?

(10) What arrangements are proposed for contact between the intended parents and the surrogate during the pregnancy and/or after the birth? For example, is it only via the agency or can there be direct contact between the intended parents and the surrogate.

(11) Which jurisdiction will the embryo transfer take place and which jurisdiction will the surrogate live in during any pregnancy?

(12) Can the jurisdiction where the child is to be born be changed at any stage and, if so, by whom and in what circumstances?

(13) What nationality will the child have at birth?

(14) Following the birth of the child what steps need to be taken for the child to travel to the United Kingdom, what steps need to be taken to secure any necessary travel documentation for the child and how long does that take?

(15) Will the intended parents need to take any separate immigration advice to secure the child's travel to the United Kingdom and what is the child's status once the child has arrived in this jurisdiction.

(16) Finally, keeping a clear and chronological account of events and relevant documents is not only important for the purposes of a parental order application but also, importantly, retains key information regarding the child's background and identity.

5. This list emphasises the importance for intended parents to seek legal advice from a solicitor specialising in this area before embarking on any such arrangements, especially if it involves another jurisdiction.

6. The applicants have had the enormous benefit of pro bono representation by Ms Christie O'Connell and her solicitor, Emma Dewhurst. The court is extremely grateful for their careful preparation of this case, which has been carried out to a very high

standard. Ms O'Connell's written and oral advocacy has been of the highest standard. Z is represented by Mr Powell, an acknowledged expert in this area of the law.

Relevant background

7. A, 35 years, originates from Country C and B, 46 years, from Country D.

8. A's father came to England 25 years ago and runs a business here. In 2013 A joined his father here, A's mother has recently come here to stay for an extended period. As homosexuality is not permitted in Country C, A states he has no intention of returning to live in Country C as he wanted to enter into a relationship and have a family of his own, which would not be possible in Country C. A has indefinite leave to remain here.

9. B moved to England in 2016 from Country D and states he is settled here too. Homosexuality is not permitted in Country D. B states he has no intention of returning to live there. He has EU settled status to remain living here.

10. The applicants met and started living together in 2017. They became civil partners in 2018 and have purchased their own home.

11. The applicants wanted a family of their own. After considering adoption, they decided to proceed with a surrogacy arrangement and looked at surrogacy arrangements abroad. In their statement they stated *'We started to research different countries where it was possible to organise a surrogate, and checked in which countries it would be legal to take part in surrogacy as homosexuals…We eventually decided on a Cypriot agency on the basis that it was closer to England…'.*

12. In 2020 they contacted SurrogateBaby Agency (the agency) said by the applicants to be based in Cyprus. After further contact between them the agency produced a

contract for them to sign. According to the applicants they were informed that although the agency was based in Country Y all the procedures would take place in Cyprus, although that is not specified in the agreement. All the interactions with the agency were addressed to A and B as a couple. They initially dealt with G, who later left the agency, thereafter they dealt with H, the agency owner. They chose what was called a 'Premium Package' paying 64,000 EUR, that guarantees they would become parents. The applicants state at some point G explained that A should be on the contract as a single man rather than as a same sex couple, so they would not encounter any issues. The applicants were asked if there was anything further they wanted included in the contract, they state in their written evidence *'as we do not have much legal knowledge'* they agreed and signed in A's sole name in early 2021.

13. According to the agency contract A contracted with an organisation based in Country Y, although the applicants state from their discussions with the agency *'It was our understanding from the outset therefore that [Country Y] laws did not apply'* but later acknowledge *'Although we had some hesitancy about the [Country Y] location of the head office in the first instance, in light of the reassurances and enthusiasm of SurrogacyBaby, we decided to go ahead with the programme…'*. The applicants said when they raised the issue about whether the contract should be clearer that the process would be taking place in Cyprus the agency assured them that was not necessary. In the agreement payment of 64,000 EUR was broken down as follows: 29,000 EUR was paid within 5 days of the agreement being signed; 15,000 EUR was due within five days of confirmation of the surrogate's pregnancy by the agency; and 20.000 EUR was due within three days after the birth of the child. At the end of the agreement there was a list of what was included within the agency fees, which

included the surrogate's compensation as well as other expenses related to the surrogate. The agreement included an unlimited number of embryo transfer attempts.

14. The applicants chose an anonymous egg donor who travelled to a clinic in Northern Cyprus to undertake medical testing and egg collection. The applicants travelled to Northern Cyprus and A's gametes were used to create the embryos with the donor eggs.

15. In May 2022 A was introduced to X by the agency, she was divorced, had been a surrogate a number of times previously and lived in Country Y. They agreed X would be the surrogate and the signed contract between A and X for A to sign is dated 23 May 2022 stated to be in Nicosia, Cyprus with the embryo transfer to take place in an *'appropriate medical facility in the territory of the Turkish Republic of Northern Cyprus (TRNC) and carrying and childbirth will be carried out in a European Union (EU) country'*. The embryo transfer took place in May 2022, X travelled to the clinic in TRNC and the pregnancy was subsequently confirmed. X came from Country Y where the applicants knew same sex surrogacy arrangements were not permitted.

16. X returned to live in Country Y during her pregnancy. On 26 September 2022 there is a message exchange between A and H when A states that he has an appointment with his solicitor on 10 October 2022 regarding bringing X to the UK and other things like parental orders. On the 12 October 2022 A messages H asking H to find out how to obtain a Country C passport for the child, H responds *'I can't contact the embassy directly. You can call them and explain that you and your girlfriend are expecting a baby, the childbirth will take place in North Cyprus. Please do not mention surrogacy'*. There is an exchange of messages on 13 October 2022 when A says he will chase his solicitor for a list of documents to be prepared by X. The applicants

state they understood the child was going to be born in Northern Cyprus. In October 2022 the agency contacted the applicants to say due to the ongoing war, it was not possible for X to give birth in Country Y. The applicants state they were informed that delivery of the baby could take place in either Cyprus or Country W for an additional 14,000 EUR. According to the applicants the agency's advice was Country W as it would be easier to obtain a passport for the child from Country C there, due to there being a Country C Embassy presence in Country W. Following further discussion arrangements were put in place for the child to be born in Country W and X travelled there in December 2022.. The applicants state *'Our surrogacy agency had business partners in [Country W] and assured us that, despite LGBT surrogacy not being legal in [Country W], they could assist us with the process if [A] attended the birth alone'*.

17. A and B travelled to Country W for the birth in January 2023, but B had to return for work prior to Z's birth. Z was placed in A's care after the birth. A met X for the first time and X helped with some of the care of Z. According to A they communicated in English. A and X registered the birth in Country W and are both named as parents. About a week after the birth X learns for the first time that A and B are a couple. A says he did not know this until X informed him in May 2024. B returned to Country W after Z's birth.

18. In February 2023 X signed a power of attorney which allowed A to have sole responsibility for Z until she reached her majority and included giving permission for A to take Z to Country C without further permission as A's visa to visit Country W was time limited.

19. In May 2023 A travels to Country C with Z. Z remained in the care of A's family there until August 2023 when Z was able to secure a visa for Z to enter the United

Kingdom after A had been able to provide the necessary documents to the Home Office. Z arrived in this jurisdiction with A in August 2023 and has a settled status here.

20. As regards payments the applicants in their most recent statement state they paid the first two payments in accordance with the agreement with the agency. The third sum that was due was larger than that set out in the contract as the agency required an extra payment due to the birth being in Country W. The agency required the applicants to take 10,000 EUR is cash when they went to Country W, which they were told would be taken off the final instalment due under the agreement. In fact they stated they could only take 8,000 EUR, and then organised another 7,000 EUR, at the request of the agency, when they were in Country W, which was given to an employee of the agency. The applicants estimate the total they paid to the agency was 71,500 EUR.

21. The C51 parental order application was issued in November 2023, directions were made by Cobb J on the same day and in February 2024 I directed that Z should be joined as a party. The hearing in May 2024 was adjourned for further evidence to be filed and the application listed for final hearing on 8 October 2024. The court considered the detailed bundle, including the two statements from the applicants, the two reports from the Guardian and the detailed skeleton arguments filed by both Ms O'Connell and Mr Powell. Having heard detailed oral submissions judgment was reserved.

The legal framework

22. In the absence of any order being made Z's legal mother is X and her legal father is A. B has no legal status in relation to Z although Z has been in the care of A and B for

most of her life.

23. If made, a parental order will confer a life-long legal parental relationship between A and B and Z in this jurisdiction, and extinguish any legal relationship Z currently has with X.

24. The application for a parental order is governed by section 54 HFEA 2008, the Human Fertilisation and Embryology (Parental Order) Regulations 2018, and Part 13 of the Family Procedure Rules 2010. When a parental order application is made, the court will direct CAFCASS to appoint a parental order reporter to investigate the circumstances of the case and submit a parental order report.

25. Under section 54 (section 54A has similar provisions in the case of a single applicant) the court may grant a parental order to a couple in respect of a child born through a surrogacy arrangement where such an order meets the child's welfare needs in accordance with section 1 Adoption and Children Act 2002 (ACA 2002), and the following criteria are satisfied:

(1)The child has been conceived artificially and is genetically related to one of the intended parents (ss 1)

(2) The intended parents are married, in a civil partnership or living as partners in an enduring relationship (ss. 2).

(3) The intended parents have applied within 6 months of the child's birth (ss. 3).

(4) The child is living with the intended parents and at least one of them is domiciled in the UK (ss.4).

(5) The intended parents are over 18 years old (ss.5).

(6) The surrogate (and her spouse, if applicable) has given her consent to the making of a parental order and that consent has been given freely, unconditionally and with full understanding and been given more than six weeks after the birth of the child (ss 6,7)

(7) The surrogate has been paid no more than reasonable expenses, unless authorised by the court (ss.8).

Submissions

26. Ms O'Connell and Mr Powell agree the following s54 criteria are met.

27. The evidence establishes Z was carried by X and there is a biological connection between A and Z, as confirmed by DNA analysis (s54(1)).

28. The applicants are civil partners (s54(2).

29. Z's home has been with the applicants at the time when the application was made (November 2023) and at the time of the hearing (October 2024) (s54(4)(a)).

30. Both of the applicants are over 18 years (s54(5)).

31. The criteria that require further consideration are the fact that the application was made more than six months after Z's birth; whether at the time the application was issued at least one of the applicants was domiciled in this jurisdiction; whether X has provided consent in accordance with s54 and, finally, whether there are any payments other than for expenses reasonably incurred that the court needs to consider whether to authorise under s54(8).

32. Ms O'Connell submits the application should be permitted to proceed even though it is made outside the six month time limit in accordance with *Re X (A Child) (Surrogacy: Time Limit)* [2014] EWHC 3135 (Fam). The application was submitted to the court in early September 2023 but was not issued by the court for two months. It was only just outside the six month period required by s54(3) and was caused in part by the applicants being focussed on wanting to ensure the necessary documentation was available to enable the visa to be granted for Z to travel to this jurisdiction. Once

the family were reunited in this jurisdiction the application was promptly made. No sensible result would be achieved if the applicants could not proceed with the application, there is an explanation for the delay and Z's welfare requires the application to proceed.

33. Turning to domicile, Ms O'Connell submits it is a question of fact, she relies on the list of salient points set out in *Z v C (Parental Order: Domicile)* [2011] EWHC 3181 (Fam) and submits A has made this jurisdiction his domicile of choice. She acknowledges the burden of proof is on A to establish that, on the balance of probabilities, he has established himself in this jurisdiction and formed an intention to permanently and indefinitely reside here. Ms O'Connell submits A has established this through being in the jurisdiction since 2013, his father lives here and his mother is visiting for a prolonged period. He works here, pays taxes here, has purchased a family home here, established his relationship with B here and intends to bring up and educate Z here with B. In his written evidence, he has stated he does not wish to return to live in Country C as homosexuality is not permitted there. A has passed his 'Life in the UK' test and is eligible to apply for British Citizenship but has decided not to do so as he would be required to give up his citizenship of Country C, which would make visiting the wider family in Country C more difficult. Both A and B remain clear in their evidence that they have no intention of returning to live in their respective domicile of origin as their identity as a same sex couple would not be supported and their family unit would not be recognised.

34. The requirement regarding X's consent is that she has *'freely, and with full understanding of what is involved, agreed unconditionally to the making of the order'* (s54(7)). Rule 13.11(1) Family Procedure Rules 2010 (FPR) sets out that the consent

should be given in Form A101A *'unless the court directs otherwise'.* Rule 13.11(40 FPR directs that *'Any form of agreement executed outside the United Kingdom must be witnessed* [by a person holding one of the offices set out at r13.11(4)(a-d)]'.

35. There is a signed A101A dated 9 February 2024. It is not notarised or translated. When the application for a parental order was issued A informed X of this and the C51 application was sent to her. The C52 acknowledgement of service was signed by X on 9 February 2024 confirming her consent to the order being made. It was not translated.

36. The applicants submit that their continuing contact with X confirms her consent, and she has offered to act as a surrogate for them if they wish to have a sibling for Z. The Guardian was able to speak to X on 30 April 2024 with the assistance of a Country Y interpreter. In her report the Guardian concludes X was clear of the implications of a parental order being made, agrees to it being made and has done so freely. The Guardian was able to speak to X again on 2 August 2024 when she again confirmed her consent.

37. Ms O'Connell submits when all the evidence is looked at regarding X's consent the relevant statutory criteria is met and, on the facts of this case, the court can direct that even though there is not a written notarised consent in the prescribed form, the combination of the A101A form that is signed by X when she had knowledge of the applicants relationship, written evidence from the applicants including the messages exchanged between the applicants and X, and the two conversations the Guardian had with X she has freely and with full understanding given her consent to the court making a parental order in favour of the applicants, and that such consent was given

more than six weeks after the birth of Z (see *Re DM and LK* [2016] EWHC 270 (Fam) [46]-[47]).

38. Turning to the final criteria under s54(8), Ms O'Connell submits the applicants initially signed up to pay a total fee of 64,000 EUR for their 'guaranteed package'. Within that total fee was a compensation element for X of 20,000 EUR. In fact, as explained by the applicants, the total sum they paid to the agency was 71,000 EUR. The exact sum paid to X remains unclear as some was paid directly to X in cash. X informed the Guardian that she had received between 17 – 19,000 EUR, which the applicants don't take issue with although the agency had overall control of the payments. Ms O'Connell accepts an element of these payments do not relate to expenses reasonably incurred and submits this was an arrangement entered into with an experienced surrogate and there is no suggestion the applicants acted other than in good faith. In those circumstances, she submits, the court can and should authorise any element of the payments unrelated to expenses.

39. Mr Powell in his written and oral submissions supports the submissions on the s54 criteria advanced on behalf of the applicants.

40. Both Ms O'Connell and Mr Powell address the issue of public policy in their written submissions, raised by the facts which include that the applicants entered into this surrogacy arrangement in a jurisdiction which they knew did not permit same sex surrogacy arrangements and were aware that fact was concealed by only one of them entering into the surrogacy agreement and the other steps they took.

41. They both submit the court should look at this issue within the framework outlined by Hedley J in *Re L (a minor)* [2010] EWHC 3146 (Fam) when he stated that a parental order should only be refused in the *'clearest case of the abuse of public policy'*. Ms

O'Connell submits the applicants acted in good faith and relied on the advice of the agency. She submits there was never an intention to deceive X, they intended to undertake the process in Cyprus where they understood same sex surrogacy is permitted. Ms O'Connell relies on the case of *Re W and X (Foreign Surrogacy)* [2022] EWFC 120 where the court had concerns about the applicants pursuing a surrogacy arrangement in a jurisdiction that did not permit same sex surrogacy arrangements but nevertheless allowed the application to proceed and made a parental order. She submits the applicants have been candid in the way they have accepted responsibility, the public policy threshold is not reached and the powerful welfare evidence supports the court making a parental order.

42. Mr Powell submits that in the previous authorities that have considered this issue in the context of both adoption and parental orders (such as *Re AW (Adoption Application)* [1992] 1 FLR 62; *Re C (Parental Order)* [2014] 1FLR 654; *A & Anor v A Local Authority & Anor* [2014] EWHC 4816 (Fam) and *A, B and C (UK surrogacy expenses)* [2016] EWFC 33) the key concern is whether the steps taken by the applicants amount to a form of exploitation or an attempt to evade public authorities. He submits there was no exploitation in this case and the attempt to evade scrutiny of the authorities in Country W has to be weighed against the detrimental impact on Z's welfare if a parental order was not made. Such a course could adversely impact her lifelong security and stability in remaining in the care of the applicants, due to the uncertainty that may result from her uncertain legal status if an order was not made.

43. Both Ms O'Connell and Mr Powell submit having stood back and considered the wide canvas of evidence and remaining focussed on the lifelong welfare needs of this young children the court should make a parental order.

Discussion and decision

44. I agree with Mr Powell that this is regrettably another example where there has been a lack of due diligence by intended parents before they embark on a surrogacy arrangement. Albeit I accept much is with the benefit of hindsight it remains, in my judgment, an abdication of the most basic responsibility of intended parents in such circumstances not to have clarity about the essential information outlined in paragraph 2 and 4 above. In this case the consequences of the applicants behaviour resulted in them all being in a precarious legal position at the start of Z's life. I agree with the Guardian it remains an unfathomable feature of this case why the applicants should undertake a surrogacy arrangement with an agency based in Country Y, when they knew it was a jurisdiction that did not support same sex relationships. It simply makes no sense.

45. In their second witness statement the applicants accept that their understanding on *'the intricacies of the UK law on surrogacy were limited at the time of the pregnancy and birth. In hindsight, we realise it would have been best to obtain UK legal advice from the outset, but we thought this was not necessary given there wasn't even a pregnancy at that time'.* Bearing in mind the importance of what they were embarking on, the consequences for them and any child that may be born following such an arrangement that position may be regarded as, at the very least,extremely naïve. They continue in their statement that A had earlier obtained some general information about surrogacy and undertook some online research they had *'initially thought that we would send off the C51 application and we would receive a new birth certificate for [Z] which had out names on it. We did not know we would have to go through the court process and, more specifically, we did not have any knowledge about the legal idea of consent'*. They continue *'We realise now that we have*

behaved naively in this process, and to an extent have been blinded by our want for a baby. We hope the court can see that at all times throughout the process we acted in good faith'. Whilst this account has not been the subject of any challenge, it is of note that in the copies of the messages passing between A and H included in the bundle there are a number of references by A in 2022 and 2023 to him seeking the advice of a solicitor which calls into some doubt the assertions of naivety by the applicants.

46. As regards the s54 criteria I accept the evidence that Z was carried by X, A and B were in a civil partnership, Z had her home with the applicants at the relevant time and the applicants are both over the age of 18 years.

47. On the facts of this case the application should be permitted to proceed even though it is made after the expiry of six months. It was a negligible delay and the reasons for it are accepted. To not permit this application to proceed would be detrimental to Z's welfare.

48. On the facts, I am satisfied A has relinquished his domicile of origin and has made this jurisdiction his domicile of choice. I recognise that although eligible for British Citizenship A has not taken this forward, I accept his reasons for not doing so at this stage, as to do so would require him to relinquish his citizenship of Country C which would, in turn, limit the ease with which he can visit there with Z to visit his wider family who live there. It is clear A has no intention of returning to live there. On the evidence he has firmly put his family roots down here in establishing his relationship with B here, making their home together here, entering into a civil partnership and jointly deciding to have a child which they intend to bring up here. A works here, pays taxes here and has purchased and established his family home here with B and Z, which would not be recognised in Country C. Other than the wider family who he

visits in country C he retains no other ties there. He has established a clear intention, with supporting rationale, that he intends to permanently and indefinitely reside in this jurisdiction.

49. The issue of consent is a pillar of the HFEA 2008. The statutory framework is clear as to what is required, namely consent that it is given freely, unconditionally and with full understanding. It is correct that the evidence suggests that at the time the surrogacy arrangement was entered into X may not have been clear that A and B were in a relationship however I accept the evidence that soon after the time Z was born she became aware of that. Through her continued contact with the applicants, her written consent and her discussion on two occasions with the Guardian it is clear she understands that the consent she is providing is to this court making a parental order in favour of both the applicants and she understands this will extinguish her legal relationship with Z in this jurisdiction. The combination of the written evidence and the contact the Guardian has had with X confirms, in my judgment, that the court can be satisfied in this case that the consent requirement is established.

50. Turning to the question of payments the payments received by X and the agency were not limited to expenses reasonably incurred. On the basis of the applicants' evidence there is real concern about the way the agency approached this arrangement, with the uncertainty as to where the child was going to be born in the context of the applicants' relationship and the legal framework in the jurisdictions concerned. On the face of the arrangements the applicants, the surrogate and the unborn child were exposed to some risk if the true nature of the relationship was discovered.

51. Not without some hesitation, I accept the submission that the applicants acted in good faith. Their acceptance that they were naïve is perhaps an understatement, it is more

likely that they took risks to pursue their own wish to have a child rather than confront the harsh reality of what they were doing and the consequences of those actions if anything did not go according to their plan with the agency. It is only necessary to give one example to illustrate the point, what would have been the legal position of the adults and Z if Z had required medium to long term medical treatment as a result of any complications during the birth in Country W? There is evidence that they had access to more legal advice about the arrangement than their written statements seek to suggest.

52. The evidence from and about X enables the court to be satisfied on what it has seen that this was an arms-length surrogacy arrangement, in the sense that X entered into it freely and with full understanding, save for the issue about the nature of the applicants relationship and the final arrangements for the birth. X has co-operated with all enquiries made of her and has not sought at any stage to withdraw her consent.

53. I am satisfied, on balance, that the court should authorise any element of the payments made by the applicants that do not relates to expenses reasonably incurred.

54. I have carefully considered the questions of public policy. I am mindful of the need to have in mind the lifelong welfare needs of the child and to consider public policy issues in the context of whether such issues reach the threshold set out by Hedley J in *Re L (ibid)* as being the *'clearest case'*. The behaviour of the applicants is to be deprecated, they turned a blind eye to what should have been obvious to them and took risks, seeking to lay the responsibility at the agency's door. If what the applicants say is correct the behaviour by the agency is equally to be deprecated but in the end it was always open to the applicants not to sign the various agreements. The black letter terms of the agreement with the agency left the applicants exposed in many ways as to

uncertainty as to where the child was born and not being candid on the face of the agreement regarding the nature of their relationship. I agree with the Guardian that bearing in mind the circumstances in their respective jurisdictions of birth regarding same sex relationships it is inexplicable why they would enter into a surrogacy arrangement in a jurisdiction that holds the same views. It is likely A and X presented themselves to the authorities in Country W in a way that did not give the full picture, that appears to have been permitted or encouraged by the agency, and A is unlikely to have given a full account as to the circumstances of Z's birth to Country C.

55. I accept that the applicants now accept what they did was wrong. Whilst the surrogate was not given the full information regarding the applicants relationship at the time she embarked on this surrogacy arrangement there is no suggestion of exploitation of the surrogate or her free will being overborne by the steps that were taken.

56. The welfare considerations are powerful in this case. Z's welfare requires her to have an order that will provide lifelong stability and security for her. She is settled and secure in the applicants' care, they are her de facto parents in every sense of the word. A child arrangements order would provide the applicants with parental responsibility but would not secure their legal parental relationship with Z in the lifelong way a parental order would. A parental order would better reflect Z's lived reality. I am satisfied the applicants will ensure Z is made aware of her own particular background and the way they have maintained an ongoing relationship with X will ensure her role will remains a part of Z's life.

57. For those reasons, in the circumstances of this case, the s54 criteria having been met, Z's welfare requires a parental order is made.