Neutral Citation Number: [2012] EWHC 2631 (Fam)
Case No: UK11P00690 AND UK11P00691

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/09/2012

Before :

THE HONOURABLE MR JUSTICE BAKER

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	IN THE MATTER OF D AND L (MINORS) (SURROGACY) AND IN THE MATTER OF HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008	

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The Applicants appeared in person
Jeremy Ford of CAFCASS Legal appeared as advocate to the court

Hearing date: 19th July 2012

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JUDGMENT

The Judge hereby gives leave for this judgment to be reported on the strict understanding that in any report no person other than the advocates or the solicitors instructing them and any other person named in the judgment may be identified by name or location. In particular the anonymity of the children and the adult members of their family must be strictly preserved.

MR JUSTICE BAKER :

Introduction

1. On 19th July 2012, I made parental orders pursuant to s.54 of the Human

Fertilisation and Embryology Act 2008 in respect of twin boys, whom I shall refer to as D and L. The proceedings give rise to a number of issues under the Act which have hitherto received little if any judicial comment. For that reason, and notwithstanding the fact that the proceedings were uncontested, I am delivering a short judgement setting out my conclusions on those issues.

Background

2. The applications for parental orders were made by a male couple (hereafter referred to as 'the Applicants') who went through a ceremony or marriage in Belgium in June 2008 and are therefore to be treated in this jurisdiction as civil partners. The first Applicant is a British citizen who has spent most of his life in this country. The second applicant comes from Belgium. Following their marriage, the Applicants lived initially in Belgium, then in India, but since August 2011 have resided in this country where they intend to remain. For some time, the Applicants discussed the possibility of starting a family, initially via adoption, but subsequently through surrogacy. They considered surrogacy in Europe but, feeling that they would need to find a surrogate from within their friends or family, concluded that that was not an option in their case. They then considered surrogacy in India after spending several months working and travelling in that country and becoming aware of the growing number of international surrogacy cases through Indian clinics. The Applicants' evidence, which I accept, is that from the outset they were determined that they would only proceed with a surrogacy arrangement if they were sure that they could satisfy the requirements of any applicable laws to establish joint parentage and obtain citizenship for any future child or children. They conducted detailed research into the topic of surrogacy and sought advice from specialist solicitors, Natalie Gamble Associates. As a result of those researches, they learnt of the statutory provisions in the 2008 Act. In particular, they learnt that, in order to obtain a parental order, they would have to prove that the surrogate mother had given her consent to the order, and that such consent could only be given at least six weeks after the birth. The Applicants state that they therefore based all discussions with Indian clinics on the basis that this requirement would have to be fulfilled.

3. The Applicants approached a total of six clinics in India and eventually selected the Kiran Clinic in Hyderabad which had, they understood, assisted a number of other British couples through the process of surrogacy. They had a number of discussions with the director of the clinic who advised them as to the various options and local practices. In particular, they were advised by the clinic that its policy, in line with professional guidance in India, was that they would not be allowed to meet the surrogate mother.

4. On 30th August 2010, the Applicants selected an anonymous Indian egg donor

from a short list of five candidates. It was agreed that the first Applicant would be the genetic father of the children.

5. On 5th September 2010, the Applicants entered into a 'formal court surrogacy agreement' with the director of the clinic and a woman selected to be the surrogate mother, hereafter referred to as Miss B. This lengthy document included the following provisions:

a) under clause 3.1, 'as part of her obligations under this agreement whereby the surrogate has agreed to carry a child with genetic father's sperm and genetic mother's egg, she may be required to submit to an IVF protocol in order to have resulting embryos transferred into her uterus';

b) under clause 9.1, ' the surrogate shall voluntarily surrender sole and exclusive custody, parental responsibility, decision making, care and control of the child to the intended parents immediately upon the child's birth, acknowledging that it is in the best interests of all concerned to do so…';

c) under clause 10.1, '[the] intended parents agree to immediately accept custody and assume full legal responsibility for the child born to the surrogate pursuant to this agreement. They shall take custody and responsibility for the child as soon as possible after the child's birth and after the necessary releases and/or consents have been signed by the surrogate…';

d) under clause 11.1, '[the] intended parents shall pay costs and fees of any medical service provided and all of the surrogate's expenses including procedures, diet, screenings, prescriptions deemed necessary by the physical from the clinic…';

e) under clause 11.2, 'the parties herein have agreed onto an amount of $22,000 for the entire package of treatment and costs from IVF until the delivery of the child and including the surrogate's expenses mentioned in section 11.1'.

In an annexe to the agreement, it was further provided that the sum of $22,000 should be paid in the following instalments: $10,000 on advance; $5,000 after confirmation of pregnancy (at 15 weeks of pregnancy); $2,000 at six months of pregnancy and $5,000 at the time of delivery/c-section. The schedule also

provided that there would be an extra of charge of $5,000 in the case of twins.

6. Between 12th and 14th September 2010, the first Applicant attended the clinic and provided sperm samples for the fertilization of the donor eggs. On 25th October 2010, the embryo using the gametes of the first Applicant and the egg donor were transferred into Miss B. On 8th November 2010, the Applicants were informed that Miss B was pregnant and 23rd November that she was expecting twins.

7. During the early part of 2011, the Applicants, who were at this stage residing in India, made enquiries of the clinic to establish the exact procedures that would be followed upon the birth of the children. They became somewhat uneasy about the response of the clinic to their enquiries. On 8th June, shortly before the expected date of delivery, the Applicants received an email from the clinic outlining some of the administrative processes surrounding the birth, including details of registration and passport applications. The email stated inter alia:

> "There is a UK guideline which states the surrogate should be allowed about six weeks (since birth) to think over her decision of handing over the baby. But this again depends on the person assigned to you, it may be as short 3-4 weeks."

The Applicants were aware that this observation was not consistent with the provisions of the 2008 Act and immediately contacted their solicitors in England who on 13th June wrote to the director of the clinic pointing out that, in order to obtain a parental order under English law, the Applicants would have to prove that the surrogate mother had given her consent 'fully and unconditionally' and that such consent was only valid if given more than six weeks after the birth. They pointed out that, where the surrogate mother is based outside the UK, the court has the power under rules to accept evidence of consent by way of a notarised statement. The solicitors proposed that they could prepare a written statement for the surrogate mother to sign, which would need to be translated into her first language and signed by her before a notary more than six weeks after the birth. The solicitors asked the clinic to confirm that the surrogate would be able to understand the written document, to identify the appropriate language for translation, and to confirm whether the clinic would be prepared to assist with arranging for the notarised signature more than six weeks after the birth. The director of the clinic responded to the solicitors assuring them that 'we would be happy to be of help' to the Applicants.

8. On 14th June 2011, the surrogate Miss B gave birth to twin boys, D and L, at the

Children's Hospital in Hyderabad. Two days later, the Applicants arrived at Hyderabad and assumed responsibility for the babies. On 18th June, the twins were discharged from hospital into the care of the Applicants. The new family stayed together in a hotel in Hyderabad for a further ten days while paper work, including birth certificates, was finalised. The Applicants then took the boys to New Delhi to submit passport applications to the British High Commission. Whilst waiting for those passports, the Applicants and the twins stayed at the Applicant's rented accommodation in Jaipur.

9. After the birth of the twins, the Applicants received a document, purportedly signed by Miss B and a doctor, described as 'the caretaker/arranger', in the following terms:

> "I, Miss B, (surrogate mother...resident of Bhanunagar, Andhra Pradesh), received a sum of 350,000 rupees towards surrogate mother compensation, food, travel, living expenses for the term October 2010-June 2011 and the caretaker/arranger [name]'s service charges from [the clinic director]...and I hereby declare myself solemnly and conformingly that there was no right or concern with the baby boys D and L born on 14th June 2011, given birth by me as gestational surrogate mother for [the first Applicant]. There may be no future allegations also regarding relations with the babies by me or by any of my family members in any way. I further state that I have no objections to the provision of the exit visa to the baby boys D and L. I was discharged from the hospital in very good healthy condition."

10. On 26th July 2011, the Applicants emailed to the director of the clinic copies of the relevant form in English for the purposes of the surrogate's consent, together with a translation into Hindi. Thereafter, via email and telephone calls, the clinic promised that the forms would be returned. At one point, they were told that the return of the forms was contingent upon the provision of further information about passports and exit visas, which was duly supplied by the Applicants. On 17th August, UK passports were issued for both twins. On 24th August, the Indian authorities issued exit visas allowing the children to leave India. That day, the Applicants flew out of New Delhi with the boys and arrived back in the UK on 25th August.

11. At that stage, they had still to receive any signed consent from the surrogate mother. They made further requests to the director of the clinic, to no avail. On

13 September, the first Applicant emailed a long letter to the director, setting a deadline for the production of the signed consent, and warning that if the documents were not supplied, they would make formal complaints to the authorities in India and the British High Commission. On 16th September, the Applicants received a DHL package, purportedly from the director of the clinic, containing a single sheet of paper on which was printed an obscene gesture.

12. Thereafter the Applicants considered trying to track down the surrogate at an address that had been provided to them. They were concerned, however, about the impact of any invasion of her privacy. They therefore decided to proceed with the application to the Court without the necessary written consent.

13. On 12th December 2011, the Applicants submitted formal applications for parental orders under the 2008 Act to the Portsmouth County Court. On 16th December, Her Honour Judge Black gave preliminary directions, including a direction for a CAFCASS report. That report, dated 8th February 2012, recommended that a parental order be made in favour of the Applicants in respect of the twins, notwithstanding the fact that the surrogate mother had not given any valid consent after six weeks following the birth. On 26th March, however, Judge Black understandably took the view that the issue of consent needed further investigation and analysis. She therefore directed the Applicants to file evidence concerning the question of consent and a full skeleton argument in support. Those documents having been filed by the Applicants, who were by this stage acting in person, Judge Black subsequently directed that the matter be transferred to the High Court and listed before me.

14. Following the hearing before Her Honour Judge Black in March, the Applicants sought the assistance of an enquiry agent to try to locate the surrogate mother. His report is included in the papers before me and reads inter alia:

> "I am sorry to inform you that I could not locate Miss B. The address provided by the clinic where Miss B should be residing… is not the place where she lives. Property is currently empty but is former residence of [the caretaker/arranger]. His old clinic is on ground floor. Nobody there had any knowledge of Miss B or where she is living now. I have shown neighbours [identity] card of Miss B and they did not recognise her. I could not find out where she lives now and so could not get her to sign the forms."

15. At a hearing on 28th May, I invited CAFCASS legal to act as advocate of the court and to prepare a report on the following issues;

a) any further steps that should be taken to establish the paternity of the twins;

b) any further steps that should be taken to obtain the agreement of any person required by the 2008 Act;

c) if the women who carried the twins could not be found, the factors to be taken into consideration by the court in determining whether to make parental orders under the Act in respect of the twins in the absence of her agreement;

d) the factors to be taken into consideration by the court in determining whether to give retrospective authorisation to payments made by the Applicants in respect of the surrogacy and;

e) any further legal issues arising in respect of this application.

16. Subsequently a report on behalf of CAFCASS Legal was prepared and filed by Mr Jeremy Ford dealing with the issues requested in my directions. I am extremely grateful to Mr Ford for his most helpful advice in this matter.

The Law

17. Before turning to the detailed provisions of section 54 of the 2008 Act, I remind myself of the important change to the law affected by the Human Fertilisation and Embryology (Parental Orders) Regulations 2010. Regulation 2 provides:

> "The provisions of the 2002 Act [that is to say, the Adoption and Children Act 2002] set out in column 1 of Schedule 1 have effect in relation to parental orders made in England and Wales and applications for such orders as they have effect in relation to adoption orders and applications for such orders, subject to the modifications set out in column 2 of that Schedule."

The effect of this provision is, inter alia, that section 1 of the 2002 Act applies to the making of parental orders in the following terms:

> "(1) This section applies whenever a court is coming to a decision relating to the making of a parental order in relation to a child.
>
> (2) The paramount consideration of the court must be the child's

welfare, throughout his life.

(3) The court must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.

(4) The court must have regard to the following matters:

a) the child's ascertainable wishes and feelings regarding the decision (conceived in the light of the child's age and understanding),

b) the child's particular needs,

c) the likely effect on the child throughout his life, of having ceased to be a member of the original family and become the subject of a parental order,

d) the child's age, sex, background and any infant child's characteristics which the court considers relevant,

e) any harm (within the meaning of the Children Act 1989) which the child has suffered or is at risk of suffering,

f) the relationship which the child has with relatives, and with any other person in relation to whom the court considered the relationship to be relevant.

…

(6) The Court must always consider the whole range of powers available to it in the child's case (whether under section 54 of the Human Fertilisation and Embryology Act 2008, the Adoption and Children Act 2002 as applied by regulation 2 of and Schedule 1.2 The Human Fertilisation and Embryology (Parental Orders) Regulations 2010 or the Children Act 1989) and the Court must not make an order under that section or under the 2002 Act so applied unless it considers that making the order would be better for the child than not doing so.

(7) In this section, 'coming to a decision relating to the making of a parental order in relation to a child' the relation to a court includes

a) coming to a decision in any proceedings where the orders that might be made by the court include a parental order (or the revocation of such an order) and

b) coming to a decision about granting leave in respect of any action (other than the initiation of proceedings in any court) which may be taken by an individual under this Act but does not include coming to a decision about granting leaving in any other circumstances.

(8) For the purposes of this section,

a) references to relationships are not confined to legal relationships,

b) references to a relative, in relation to a child, include the child's mother and father."

19. Those principles, in particular the paramountcy principle set out in subsection (2) and the checklist set out in subsection (4,) guide the court in exercising its powers to make parental orders under section 54 of the 2008 Act, which reads as follows:

"(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 subsection (2) (8) 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 six months beginning with the day in 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 theUnited Kingdom or in the Channel Islands or in 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 who 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 the expenses reasonably incurred) have 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 for the view to the making of the order unless authorised by the 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.
…"

The issues in this case

20. Several of the provisions in section 54 are incontrovertibly satisfied in this case. The two Applicants have attained the age of 18 and, by virtue of their marriage in Belgium, are to be treated as civil partners in this country. The first applicant is domiciled in this country. Accepting, as I do, that the twins were born on the 14th June 2011, the applications for parental orders were made within six months of their births. At the time of the application, and at all points thereafter, the twins

have resided with the Applicants.

21. The remaining requirements under section 54 are more contentious in this case and fall to the considered in greater detail under the following questions.

1) Is the court satisfied, as required by section 54 (1) (a) and (b), that the twins were carried by a woman as a result of the placing in her of an embryo, and that the gametes of the first Applicant were used to bring about the creation of the embryo?
2) As the surrogate has not given consent to the making of parental orders six weeks after the birth of the twins, can the court dispense with her agreement on the grounds that she cannot be found?
3) Should the court authorise retrospectively the payments given by the Applicants in respect of this surrogacy?

The provisions of section 54 (1)

22. There is clear evidence that the twins were born as a result of the first Applicant's sperm being used to create an embryo that was subsequently implanted in Miss B. Accepting, as I do without hesitation, the evidence of the Applicants in its entirety, there is to my mind no doubt that the first Applicant's supplied sperm, that the Applicants were informed that the embryo had been implanted in Miss B, that they were further informed shortly afterwards that she was expecting twins, that they were kept informed as to the progress of her pregnancy, that they subsequently took responsibility for newborn twins on 16th June which they were informed had been born to Miss B two days earlier and that they were supplied with a document purportedly signed by Miss B confirming that she had given birth to the twins as surrogate mother for the first applicant. The most striking evidence, however, is contained in photographs of the twins which show that they bear a striking resemblance to the first Applicant.

23. In his admirably clear document, Mr Ford points out that the subsequent behaviour of the clinic concerning the address and consent of Miss B calls its credibility into question. In those circumstances, Mr Ford suggests that the court should consider directing DNA testing to establish that the first Applicant is indeed the father of the twins.

24. I have given careful consideration to this suggestion but reached a clear conclusion, without requiring DNA evidence, that I am satisfied on the evidence that the clinic's account of the circumstances of the twin's birth is true, that the children were carried by Miss B, that the first Applicant is their father, and that the provisions of section 54 (1) are satisfied.

Dispensing with consent

25. It is a very important element of the surrogacy law in this country that a parental

order should normally only be made with the consent of the woman who carried and gave birth to the child. The reasons for this provision are obvious. A surrogate mother is not merely a cipher. She plays the most important role in bringing the child into the world. She is a 'natural parent' of the child. As Baroness Hale of Richmond observed in *Re G (Children)* [2006] UKHL 43, at paragraphs 33-35,

> " there are least three ways in which a person may be or become a natural parent of a child, each of which may be a very significant in this child's welfare, depending upon the circumstances of the particular case. The first is genetic parenthood: the provision of the gametes which produce the child …. The second is gestational parenthood: the conceiving and bearing of the child….The third is social and psychological parenthood: the relationship which develops through the child demanding and the parent providing for the child's needs…. "

So far as gestational parenthood is concerned, Baroness Hale observed (at paragraph 34) that the fact that in English law the woman who bears the child is legally the child's mother

> 'recognises a deeper truth: that the process of carrying a child and giving him (which may well be followed by breastfeeding for some months) brings with it, in the vast majority of cases, a very special relationship between mother and child, a relationship which is different from any other.'

25. The act of carrying and giving birth to a baby establishes a relationship with the child which is one of the most important relationships in life. It is therefore not surprising that some surrogate mothers find it impossible to part with their babies and give consent to the parental order. That is why the law requires that a period of six weeks must elapse before a valid consent to a parental order can be given.

26. As set out above, the statue provides an exception to this requirement where the person who carried the child cannot be found or is incapable of giving agreement. The Applicants seek to invoke this exception here. So far as this court is aware, this provision in the Act has not been considered previously by any court. The question therefore arises as to how the provision should be interpreted and applied.

27. Mr Ford submits, and I accept, that there are three matters which should be taken into account.

28. First, when it is said that the woman who gave birth to the child cannot be found, the court must carefully scrutinise the evidence as to the efforts which have been taken to find her. It is only when all reasonable steps have been taken to locate her without success that a court is likely to dispense with the need for valid consent. Half-hearted or token attempts to find the surrogate will not be enough. Furthermore, it will normally be prudent for the Applicants to lay the ground for satisfying these requirements at an early stage. Even where, as in this case, the

Applicants do not meet the surrogate, they should establish clear lines of communication with her, preferably not simply through one person or agency, and should ensure that the surrogate is made aware during the pregnancy that she will be required to give consent six weeks after the birth.

29. Secondly, although a consent given before the expiry of six weeks after birth is not valid for the purposes of section 54, the court is entitled to take into account evidence that the woman did give consent at earlier times to giving up the baby. The weight attached to such earlier consent is, however, likely to be limited. The courts must be careful not to use such evidence to undermine the legal requirement that a consent is only valid if given after six weeks.

30. Thirdly, in the light of the changes affected by the 2010 regulations, the child's welfare is now the paramount consideration when the court is 'coming to a decision' in relation to the making of a parental order. Mr Ford submits, and I accept, that this includes decisions about whether to make an order without the consent of the woman who gave birth in circumstances in which she cannot be found or is incapable of giving consent. It would, however, be wrong to utilise this provision as a means of avoiding the need to take all reasonable steps to attain the woman's consent.

31. Applying these principles to this case, I accept that these Applicants have taken all reasonable steps to obtain the woman's consent.

32. Through no fault of their own, they have been given a false address. If it is correct that she is living in the state of Andhra Pradesh, then she is one of many millions of women living in that state and there is in my judgment no realistic hope of finding her. I accept that it is not the Applicants' fault that they found themselves in this position. I am satisfied that they reasonable believed that the clinic and its staff would behave responsibly. It seems that they and the twins have been badly let down.

33. I note that Miss B appears to have given her consent to the making of the parental orders at an earlier stage, although in the circumstances I treat all documents and information provided by the clinic with caution. The fact that Miss B appears to have given informal consent earlier is a factor to be taken into account but for the reasons set out above, it carries little weight in my decision. I do, however, take into account the fact that as a matter of law the children's welfare is my paramount consideration, and I further take into account that any further delay in reaching a decision is likely to be prejudicial to their welfare. I also take into account as required by the welfare checklist to be applied by virtue of the 2010 regulations, that there is realistically no likelihood that the twins would have any relationship with the surrogate, gestational mother, or any member of her family.

34. In the circumstances of this case, therefore, I conclude that the agreement of the

surrogate mother Miss B is not required on the grounds that she cannot be found.

35. In future cases, however, Applicants and their advisors should learn the lessons of this case, and take steps to ensure that clear lines of communication with the surrogate are established before the birth to facilitate the giving of consent after the expiry of the six week period.

Retrospective authorisation of payments

36. As set out above, section 54 (8) provides a condition of making a parental order that no money or other benefit (other than for expenses reasonable incurred) has been given or received by either of the applicant for or in consideration of the making of the order, any agreement required by the Act, the handing over of the child to the Applicants or the making of arrangements with the view to the making of the order, unless authorised by the court. The Applicants accept they have paid twenty seven thousand US dollars (which is approximately seventeen thousand pounds at current exchange rates) to the clinic for the surrogacy programme, on the basis that the clinic would then pay 'reasonable expenses' to Miss B in the sum of three hundred and fifty thousand rupees, approximately four thousand pounds at current exchange rates. The Applicants accept that the sums paid exceed a level that could be described as 'reasonable expenses'. They therefore invite the court to give retrospective authorisation for the payments made.

37. Unlike the question of consent, the issue of payments for surrogacy, and the basis upon which retrospective authorisation may be given, has been considered by the courts at first instance on several occasions in recent years, notably by Hedley J, who has played a lead role in the development of the law surrounding surrogacy, in four cases- *Re X and Y (Foreign Surrogacy)* [2008] EWHC 3030 (Fam), *Re S (Parental Order)* [2009] EWHC 2977 (Fam), *Re L (Commercial Surrogacy)* [2010] EWHC 3146 (Fam) and *Re IJ (Foreign Surrogacy Agreement Parental Order)* [2011] EWHC 921 (Fam) – and, the most recently, the President Sir Nicholas Wall in *Re X and Y (Parental Order: Retrospective Authorisation of Payments)* [2011] EWHC 3147 (Fam). From these authorities the following principles emerge.

> (1) The question whether a payment exceeds the level of 'reasonable expenses' is a matter of fact in each case. There is no conventionally-recognised quantum of expenses or capital sum: *Re L*, supra.
> (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: *Re S*, supra.
> (3) On the other hand, as a result of the changes brought about by the 2010 Regulations, 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 children's welfare as the paramount consideration: *Re L*,

supra, and *Re X and Y* (2011), supra, per the President.
(4) It is almost impossible 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: per Hedley J in *Re X and Y* (2008), approved by the President in *Re X and Y* (2011) at paragraph 40. It follows that : '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* at paragraph 10.
(5) Where the Applicants for a parental order are acting in good faith, 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 to give retrospective authorisation, having regard to the paramountcy of the children's welfare.

38. In this case, the twin's welfare unquestionably will be enhanced by the making of parental orders. I am satisfied that these Applicants acted in good faith and have been entirely candid in all of their dealings with the Court and the other authorities. As I have set out above, the total sum paid equivalent to about £17,000. Although I remind myself that each case should be scrutinised on its own facts, I note that the total paid was somewhat less than that paid by the Applicants in the President's case *Re X and Y* (2011), which also involved a surrogacy arranged by an Indian clinic. In that case the President ruled that the sum paid was not so disproportionate that the granting of a parental order would be an affront to public policy.

39. I am therefore prepared to give retrospective authorisation for the payments made by the Applicants in respect of the surrogacy arranged in this case.

40. Accordingly, all the provisions of section 54 are satisfied and I therefore make a parental order for both twins in the following terms:

Upon the court being satisfied that
(1) the Applicants having been through a ceremony of marriage in Belgium are to be treated as civil partners in this jurisdiction
(2) the application for parental orders was made within six months of the birth of the twins.
(3) at the time of the application the twin's home was with the Applicants
(4) at the time of the application both Applicants had attained the age of Eighteen
(5) that the first Applicant is the father of the twins

And upon the court being further satisfied that the woman who carried the twins cannot be found and therefore dispensing with her agreement to the making of parental orders

And upon the court retrospectively authorising the payment of the sum of twenty seven thousand dollars paid by the Applicants for the arrangement of the birth of the twins and being satisfied that no other money or benefit has been given or received by the Applicants under section 54 of the Act

And upon the court directing the registrar enter the details of the parental order made hereinbelow in the parental order register

And upon the court further directing that the original birth certificates of the children shall be released to the Applicants.

It is ordered that:

(1) there be parental orders pursuant to section 54 provided that the children D and L shall be treated as the children of the Applicants

(2) there be no order as to costs.