Re P-M [2013]

[2013] EWHC 2328 (Fam)

06/06/2013

Barristers
Andrew Powell

Court
High Court (Family Division)

Practice Areas
Private Children Law

Summary
Final hearing in an application for a parental order under the Human Fertilisation and Embryology Act 2008.

Facts

Twin babies ("A" and "L") had been born in California pursuant to a surrogacy arrangement between the parties. The Court considered the criteria in s.54 of the 2008 Act, the last of which was the main issue in the case, namely that "no money or other benefit other than for expenses reasonably incurred had been given or received in consideration of the making of the order", s.54(8).

The Court considered that the criteria above included payments made by the Applicants to the commercial organisation that had organised the surrogacy, and was not limited to payments to the surrogate herself. The payments to the organisation that appeared to be profit for the clinic totalled about $21,500 and these had to be scrutinised, as the Court was charged with not sanctioning commercial surrogacy arrangements which may offend public policy.

However, where the welfare of the child demands that an order should be made, the Court would only in the clearest case of abuse of public policy consider not making an order. The surrogate herself had acted altruistically and the only payments to her had been for expenses. The commercial agency had been operating within the legal framework of the country where it was based.

Held

Considering all the evidence, the Court was entirely satisfied that the sum paid to the agency was not disproportionate, and that the applicants had acted in good faith. The Court authorised the payments made that were not referable to expenses. The welfare considerations clearly required the orders to be made and they were therefore granted.

Permission
Family Law Week