

Y & Anor v V & Ors

[2022] EWFC 120

15/11/2022

Barristers

Andrew Powell

Court

Royal Courts of Justice

Practice Areas

Private Children Law

This case concerned a same-sex couple (Y and Z) living in Thailand who entered into a surrogacy arrangement in Georgia, notwithstanding that same-sex surrogacy is not allowed in that jurisdiction. The surrogate (V) gave birth to twins (W and X) and the applicants were eventually able to obtain British passports for them, as Y was a British citizen. The applicants applied for parental orders to obtain legal parenthood for the twins.

The principal issue in the case was the extent to which the applicants could be seen to fulfil the criteria for the making of parental orders under s.54 of the Human Fertilisation and Embryology Act 2008 (HFEA 2008). In particular, the following criteria caused some complications in the circumstances of the case: (i) Y's domicile; (ii) V's consent; (iii) whether the consent of V's husband was required; (iv) whether the payments to V should be retroactively approved; and (v) whether there were public policy reasons why the order should not be made. Additionally, an issue was raised about the applicants' marital status given that s.54(2) refers to 'husband and wife' and the HFEA 2008 was not amended by the Marriage (Same Sex Couple) Act 2013 under Schedule 3, Part 1.

The court held that Y remained domiciled in the UK, as his time abroad was motivated by work and he intended to move back to the UK with Z and their children in July 2023. In respect of consent, V had given her written signed notarised consent; yet concern was raised because she was paid \$5,000 on the same date, suggesting that she was being paid for her consent and it was not being given freely. However, the court accepted the applicants' explanation that the funds were given to the surrogate after signing the children's birth certificate but before she signed the consent forms.

In respect of V's husband, V claimed that he had not consented to the surrogacy and refused to provide information about him. The applicants endeavoured to locate him but were unable to do so. As such, the court held that his consent could be dispensed with under s.54(7) as he could not be found. The court also agreed to retroactively approve the payments to the surrogate and did not see public policy as a bar to making the orders, notwithstanding the court's concern about the fact that the applicants entered into a surrogacy arrangement in a jurisdiction where same-sex surrogacy is illegal. Finally, the court agreed

to read down s.54(2) to ensure that it was compatible with the applicants' ECHR Article 8 and 14 rights, and granted the parental orders in respect of both children.

To read the full judgment, please click [here](#).

Permission

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