CHILDRENS COURT OF QUEENSLAND

CITATION:	*RS & Anor v RF* [2021] QChC 42
PARTIES:	**RS & AS** (applicants) **v** **RF** (respondent)
FILE NO:	85 of 2021
DIVISION:	Civil
PROCEEDING:	Application for parentage order
ORIGINATING COURT:	Childrens Court of Queensland at Cairns
DELIVERED ON:	6 August 2021 *ex tempore*
DELIVERED AT:	Cairns
HEARING DATE:	6 August 2021
JUDGE:	Fantin DCJ
ORDER:	**Order as per draft as amended.**
CATCHWORDS:	APPLICATION FOR PARENTAGE ORDER – SURROGACY ARRANGEMENT – application for the transfer of parentage of a child born as a result of a surrogacy arrangement – where the parties entered into a surrogacy arrangement – where the parties consent to the making of the parentage order – whether the order would be for the wellbeing and best interests of the child.
LEGISLATION:	*Surrogacy Act* 2010 (Qld) s 14(2)(a), s 21, s 22, s 25, s 51, s 53
CASES:	*BA & Anor v KA & Anor* [2019] QChC 40
COUNSEL:	The applicants appeared on their own behalf The respondent appeared on their own behalf

[1] **FANTIN DCJ:** This is an application for a parentage order in respect of a child I will refer to as "L", under the *Surrogacy Act* 2010 (Qld) ("the Act"). It is intended to give effect to the surrogacy arrangement and to recognise the applicants as L's parents.

[2] I will refer to the applicants as "applicants" and to the respondent as "respondent", rather than by their names. I intend no disrespect to the parties by using those abbreviations. It is necessary because it guards the privacy of the parties in a manner consistent with sections 51 and 53 of the Act, which

prohibits the publication of the names of any persons involved in such a proceeding.

[3] I respectfully adopt the summary of the legislative framework of the Act set out in *BA & Anor v KA & Anor* [2019] QChC 40 at [3] by Cash QC DCJ:

> "Among the Act's guiding principles is the principle that the wellbeing and best interests of a child born as a result of a surrogacy arrangement are paramount considerations. As well, the autonomy of consenting adults in their private lives is to be respected [section 6]. A surrogacy arrangement is an arrangement under which a woman (and, if relevant, their spouse) agrees to become pregnant with the intention that any child of the pregnancy will be treated as a child of the other parties to the arrangement [section 7]. While commercial arrangements are prohibited, the birth mother may be reimbursed their surrogacy costs [sections 10 and 11]. A parentage order is an order for the transfer of parentage of a child born as a result of a surrogacy arrangement [section 12]."

[4] The Act sets out a detailed regime with a number of requirements for the assessment of such an application. There are preliminary matters the court must be satisfied of, pursuant to section 21 of the Act. In this case, although the parties were self-represented, both applicants and the respondent appeared on the hearing of the application and made careful oral submissions. I was also assisted by an outline of argument prepared on behalf of the applicants, presumably by a legal representative.

[5] Dealing firstly with the requirements of section 21 of the Act, the child was born on 1 April 2021. The application was filed on 15 June 2021. I am satisfied, therefore, that the application in relation to the child was made not less than 28 days and not more than six months after the child's birth, as required by section 21(1). I am further satisfied that here, where there are two intending parents or intended parents, the application is made by them jointly, as required by section 21(4).

[6] Following the birth of the child on 1 April 2021, she was relinquished to the applicants who are the intended parents, shortly after the birth. The birth was registered with her full name, which includes the applicants' surname. I am satisfied that the application was accompanied by the documents required to be filed, pursuant to section 25 of the Act.

[7] The overarching consideration the court must bear in mind when considering whether to exercise its discretion to make a parentage order under section 22 of the Act, is that the proposed order will be for the wellbeing and in the best interests of the child: see section 22(2)(a). There are then also a number of detailed separate requirements. I will return to that first requirement after I have dealt with the separate detailed requirements.

[8] I am satisfied, on the basis of the evidence before the court, that the child has lived with the joint applicants for at least 28 days before the date the application was made. Indeed, the child has lived with the applicants continuously since her discharge from hospital on about 2 April 2021. I am also satisfied that she

was living with the joint applicants at the time of the hearing and at the time of the making of the application. Therefore, section 22(2)(b) is satisfied.

[9] I am satisfied that the joint applicants were entitled to apply under section 21, and therefore, that section 22(2)(c) is satisfied.

[10] The evidence establishes that there is a medical need for the surrogacy arrangement. There is evidence from Dr Coffey, a fertility specialist, to the effect that the applicant, AS, is an eligible woman as defined in section 14(2)(a), because she is unable to conceive due to very high risk antiphospholipid syndrome and prior severe early onset acute fatty liver of pregnancy. The intended parent, AS, required a gestational surrogate, due to those medical conditions.

[11] There is also evidence from Ms Solomon, the counsellor, who gave counselling to both the applicants and the respondent about the surrogacy arrangement before the surrogacy arrangement was made. There is evidence that the applicants had started trying for a healthy pregnancy in 2018, and that they ultimately underwent IVF that resulted in five frozen embryos. The first transfer of an embryo resulted in a spontaneous miscarriage at eight weeks gestation. The second transfer of an embryo resulted in AS going into acute liver failure, resulting in a termination at 20 weeks gestation.

[12] As a result of that, AS underwent a hysterotomy caesarean and spent five days in intensive care. At that point, three frozen embryos were stored under the care of Dr Coffey.

[13] It is one of those which has become the subject of the surrogacy arrangement with the respondent and, ultimately, resulted in the birth of a healthy baby girl. I am satisfied, pursuant to section 22(2)(e), that the surrogacy arrangement was made after the birth mother and the applicants obtained independent legal advice about the surrogacy arrangements and its implications. There is affidavit evidence from each of their solicitors to that effect.

[14] I am satisfied on the basis of the evidence that the surrogacy arrangement was made after each of the birth mother and the applicants obtained counselling from an appropriately qualified counsellor about the surrogacy arrangement and its social and psychological implications. There is evidence of that in the affidavit of Ms Solomon, the counsellor.

[15] I am further satisfied that the surrogacy arrangement executed on 6 February 2020 was made with the consent of the birth mother and the joint applicants, and that it was made before the child was conceived.

[16] Before that date, each of the parties had obtained independent legal advice and received counselling from an appropriately qualified counsellor and each of them consented into the surrogacy agreement. The respondent was not pregnant at the time of entering into the surrogacy agreement. The date on which the relevant embryo was actually created appears to have been between 2018 and 2019 but it was subsequently frozen. The date on which the embryo was transferred to the respondent was 22 July 2020.

[17] Therefore, the transfer occurred several months after the surrogacy arrangement had been entered into. Section 22(2)(e)(iv) of the Act refers to the court being satisfied the surrogacy arrangement was made before the child was "conceived". The term "conceived" does not appear to be defined in the Act. On the evidence before me, there was no pregnancy until the embryo transfer occurred on 22 July 2020. In the absence of any legal submissions on this question and unassisted by reference to authority, I accept for the purposes of this application that the date on which the child was conceived was the date the embryo was transferred to the birth mother. In this case, that was 22 July 2020. Therefore I am comfortably satisfied that conception occurred after the surrogacy arrangement was made.

[18] I am further satisfied that the surrogacy arrangement was in writing and signed by the relevant parties. There is evidence that it was not a commercial surrogacy arrangement. This was contained in the affidavits of the applicants and the respondent.

[19] In summary, that means I am satisfied of the matters in section 22(2)(e) of the Act.

[20] Turning to the other preconditions, I am satisfied that the birth mother and the applicants were each at least 25 years old at the time the surrogacy arrangement was made. Here, the birth mother was aged 37 at the time of entering into the agreement. The intended mother was 29 and the intended father was 34.

[21] The parties consent to the making of the parentage order.

[22] Pursuant to section 22(2)(i) there is a surrogacy guidance report in evidence which supports the making of the proposed order. That is in the affidavit of Ms Dickinson, psychologist, who provided counselling to all the parties about three weeks after the birth. She is satisfied that the making of the proposed parentage order would be for the wellbeing and in the best interests of the child. She recommends that the orders for parentage be made.

[23] I return to the overall question whether the proposed order would be for the wellbeing and in the best interests of the child. I am well satisfied on the basis of the material that that is the case.

[24] The applicants are now aged 30 and 35. They have been in a relationship since 2008. They married in 2014. The male applicant works as a town planning consultant and the female as a pharmacist. They live in a small regional town. They appear to have a stable, loving, and supportive relationship. They each have extended family support from parents who live not far away. The respondent works in a professional position in a child safety role. She has a 15 year old daughter. The father of that child died in 2008.

[25] The applicants and the respondent met and became friends. The respondent was motivated to become their surrogate as she had considered becoming a surrogate for a long time and offered to assist them.

[26] There is no evidence to suggest any concerns with respect to any physical or mental health conditions that any of the parties may suffer from. The respondent

appears to be recovering well from the birth and is positive about the surrogacy experience.

[27] The relationship between the parties remains a positive one. The applicants have undertaken all care of the child since she left hospital. The female applicant is currently caring for the child full-time at home and has taken parental leave in order to do so. When she returns to work the parents intend to share care responsibilities.

[28] In this case, the respondent has no direct biological relationship to the child, and it is intended she retain no parental responsibility for the child. Those arrangements have been clear from the outset. The parties hope to remain in touch and to remain friends.

[29] In all of the circumstances, I am satisfied that making the proposed order will be for the wellbeing, and is in the best interests, of the child.

[30] I make an order in terms of the draft handed up, as amended.