Modern families case law update

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“The family court system, particularly the Family Division, is, and always has been, in my view, in the vanguard of change in life and society. Where there are changes in medicine or in technology or cultural change, so often they resonate first within the family..”

Hayden J in The London Borough of Tower Hamlets v M [2015] EWCA 869 (Fam),

TRANS CASES

Re J (Transgender: Puberty Blocker and Hormone Replacement Therapy) [2024] EWHC 922 (Fam)

- **Sir Andrew McFarlane PFD – 1 May 2024**
- **Background -**
- Child aged 16 and a half at time of proceedings ('J'). Assigned female at birth, identified as male.
- Commenced cross-hormone treatment involving injections of testosterone in January 2023. At the agreement of the parties, including J, treatment deferred in the hope that issues around future treatment would be resolved at the conclusion of court proceedings.
- Treatment provided by an internet provider 'Gender GP' rather than under the NHS. All parties had concerns over the involvement of Gender GP but they remained the only potential prescriber of testosterone for J.
- F applied in April 2023, under s.8 ChA 1989 and the inherent jurisdiction, for the court's intervention by way of declaratory or other relief to ensure that J was not treated with puberty blockers and/or cross-sex hormones (testosterone) without the court's approval. F arguing that approval should only be given if it could be demonstrated to the court's satisfaction that such treatment is in J's best interests.
- **Issues –**
- Whether J had capacity to consent to the hormone treatment provided by an unregulated online clinic.
- Whether the court should exercise its power under ChA 1989/inherent jurisdiction to prevent further hormone treatment.

Re J (Transgender: Puberty Blocker and Hormone Replacement Therapy) [2024] EWHC 922 (Fam)

- **Held -**
- Court's involvement in terms of decision making limited to that which was necessary.
- Held to not be necessary at this juncture to make any determination in relation to J's capacity or give any wider declaration/guidance about the law in this area.
- Plans already in place for J to engage in assessment with Gender Plus (a new London based clinic) and all parties in agreement that J had capacity to consent to that assessment. J's testosterone levels remained elevated so no need for court to consider an interim top up dose.
- The law and the approach of the courts with respect to issues arising in cases of gender dysphoria still developing. In the absence of intervention by Parliament, the court should be careful to move forward on a case by case, decision by decision, basis so that the approach under the common law is developed incrementally as may be required, rather than by judicial diktat.
- *"…The court, particularly in a novel and sensitive area such as this, must be particularly cautious not to be drawn into academic discourse and or presume to lay down the law beyond that which is necessary to determine any current dispute. To do so would be to risk trespassing, impermissibly, on the role of Parliament."* [56]
- If the option of J resorting to further treatment from Gender GP was raised, then the court would need to consider vary carefully both his capacity to consent to that option and whether the circumstances were such that the court should exercise the inherent jurisdiction to prohibit him from doing so. There must be very significant concern about the prospect of a young person accessing cross-hormone treatment from any offshore, online, unregulated private clinic.

O v P & Anor [2024] EWHC 1077 (Fam)

- **Judd J – 8 May 2024**
- **<u>Background -</u>**
- Proceedings in relation to a child ('Q') aged 16 at time of proceedings. Assigned female at birth, identified as male. Parents divorced. F accepting of Q's gender identity but M not. Q therefore living with F full time.
- M obtained an interim PSO preventing F from arranging for Q to access treatment for gender dysphoria offshore.
- Number of events prior to first hearing: Q turned 16, first UK based private clinic for gender related treatment received Care Quality Commission registration, and the Cass Review was published.
- M agreed for Q to join the waiting list for NHS treatment and for Q to be referred to a private clinic for assessment only.
- M then sought to adjourn proceedings until the assessment was completed and sought a best interests declaration under the inherent jurisdiction (following the Cass Review) that any proposed prescribing of puberty blockers/gender affirming hormones to a person under the age of 18 by a private provider must be subject to the oversight of the court.
- **<u>Issues –</u>**
- Whether to grant M's applications for adjournment and for a declaration as requested.

O v P & Anor [2024] EWHC 1077 (Fam)

- **Held –**
- Applications refused.
- The courts in *Bell v Tavistock and Portman NHS Foundation Trust* [2021] EWCA Civ 1363 and *AB v CD* [2021] EWHC 741 (Fam) had found that puberty blockers were not a special category of medical intervention requiring the sanction of the court. The findings of the Cass Review may turn out to be very significant but they did not justify a first instance judge departing from the above decisions.
- Under s.8 of the Family Law Reform Act 1969 and subsequent authorities, Q was entitled to consent to his own treatment whether or not his parents agreed.
- It was correct that the inherent jurisdiction may be invoked on occasion to override the decisions of a competent minor, but those cases almost always were in relation to a young person refusing life-saving/sustaining treatment recommended by clinicians. No reported cases where a judge had overridden a decision of a young person to consent to treatment being offered by a doctor in this country.
- There was no realistic basis on which Q's consent to treatment by a regulated provided in this country could be overridden and no legitimate purpose in adjourning the case.
- It was in Q's best interests to terminate the proceedings which were causing him to become more entrenched in his views about treatment and increasing his anger towards M.

DECLARATION OF PARENTAGE CASES

Re S (Children: Parentage and Jurisdiction) [2023] EWCA Civ 897

- **King, Moylan and Peter Jackson LJJ – 27 July 2023**
- **Background –**
- Appellant ('A') appealing against a decision that she was not the legal parent of children born to the respondent ('R'), her former civil partner.
- R gave birth to children following fertility treatment while in a relationship with A. A not named on any of children's birth certificates.
- Eldest child's surname was a combination of A and R's, and younger child had A's surname as a middle name followed by R's surname.
- On separation, R moved to a Gulf State with older children. A stayed in England with younger children. A applied for CAO, arguing her status as a same sex parent prevented her from making an application in the Gulf State.
- Held at first instance that A was not the legal parent of the younger children as she had not made a deliberate choice in relation to R's fertility treatment. Further held that the court had no jurisdiction in respect of the younger children and only had jurisdiction under s.2(1)(b) and s.3(1)(b) in respect of the oldest child.
- A appealed.

Re S (Children: Parentage and Jurisdiction) [2023] EWCA Civ 897

- **Issues –**
- Whether A was the legal parent of the children.
- Whether the English Court had jurisdiction under FLA 1986 to consider A's CAO application in respect of the children HR in Gulf State.
- **Held -**
- Appeal allowed.
- First instance decision was unsustainable. Test incorrectly narrowed.
- S.42 HFEA 2008 created a statutory presumption that a female civil partner of a gestational mother would be treated as a parent of a child born following assisted reproduction unless shown that she did not consent to the procedure.
- The wording of HFEA 2008 must be given effect to. Where consent is an issue before the court, the question is "*has it been shown on the balance of probabilities that the spouse or civil partner did not consent to the assisted reproduction that was undertaken?*"
- Further held that the court had jurisdiction to consider A's CAO application.

P v Q & Ors [2024] EWFC 85 (B)

Knowles J – 19 April 2024

Background –

Application by a biological mother ('P') for a declaration under s.55A FLA 1986 that the biological father ('F') of a child ('X') was a legal parent, and that her former wife ('Q') was not.

P registered as X's first legal parent on her birth certificate. Q registered as second legal parent with parental status founded on s.34 and s.42 HFEA 2008.

Dispute as to whether X was conceived via artificial or natural insemination while P and Q married.

P and Q chose to attempt to conceive via artificial insemination in 2016, eventually finding F to act as sperm donor through an online advert.

Two unsuccessful attempts made at artificial insemination using F's sperm. P and F then met on three occasions, without Q's knowledge, to engage in sexual intercourse, followed by a final attempt at artificial insemination a day or two after P and F's last meeting. P found out she was pregnant two weeks later.

Following P and Q's relationship breakdown, P revealed to Q that she had had sexual intercourse with F and asserted her belief that X had been conceived as a result of natural insemination as opposed to the attempts at artificial insemination.

P asserting therefore that Q had not properly acquired parental status under s.34 and s.42 HFEA 2008 because she had not consented to natural insemination and there was uncertainty as to the conception.

P v Q & Ors [2024] EWFC 85 (B)

Issues –

Whether Q's legal parental status recorded at X's birth could stand despite the uncertain circumstances surrounding X's conception, or whether the declarations as sought by P should be made.

Held -

Declarations granted.

S.42 HFEA 2008 only applied where there had been artificial insemination of a woman or the "placing in her of an embryo or of sperm and eggs". "Another woman" therefore could not be a legal parent where that condition had not been met.

In those circumstances, the court had to fall back upon the common law in order to establish parentage. The fact that P and Q were married did not create a presumption that X was Q's legal child. Case law had consistently upheld the need for compliance with the requirements of HFEA 2008.

P v Q & Ors [2024] EWFC 85 (B)

The starting point at common law was that P and F were X's mother and father. That would remain the position unless displaced by the HFEA 2008 framework. The presumption of consent in s.42 could be rebutted by evidence that consent had not been given and/or that assisted reproduction may not have occurred. The burden of proof was on P to provide that evidence.

The court was unable to find on the balance of probabilities whether X was conceived via natural or artificial insemination. The presumption of Q's legal parenthood was therefore rebutted and the common law position applied. S.58 of the FLA 1986 required that where the criteria for a DoP were met, the court had to make the declaration unless to do so would be contrary to public policy, which it was not in the circumstances of the case.

Appealed to Court of Appeal in July 2024: the appeal dismissed

P v Q and F (Child: Legal Parentage) [2024] EWCA Civ 878

SURROGACY - CONSENT CASES

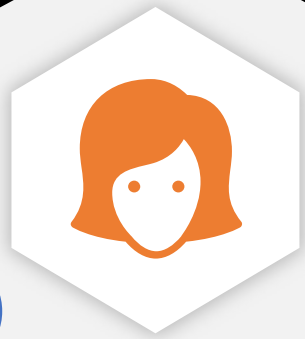
Surrogacy: the basics

"Parental orders create a permanent parent-child relationship throughout the children's lifetimes which reflect the reality of their particular situation about which they are both already aware. Thus parental orders are explicitly the most apposite orders to be made in keeping with the children's welfare throughout their lives, and which confer important status and rights over and above parental responsibility." (**Russell J,** *Re A and B (Children) (Surrogacy: Parental Orders: Time Limits)* [2015] EWHC 911 (Fam), [59])

"[…] a transformative order" (**Theis J**, *Re A and B (No 2 Parental Order)* [2015] EWHC 2080 (Fam) [44(5)])

Surrogacy: making a **parental order**

S54(1)(a)



Carried by a woman who is not one of the applicants

S54(1)(b)

Biologically related to at least one of the applicants

S54(2)

Applicants must be married, civil partnered or in an 'enduring family relationship'

S54(3)

Within 6 months of the child's birth

S54(4)(a)

The child's home must be with the applicants at the time of the application and when the order is made

Surrogacy: making a **parental order**

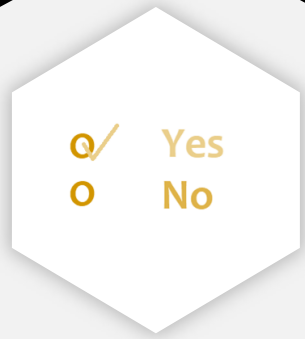
S54(4)(b)

One or both applicants domiciled in UK

Both applicants must be 18+

S54(5)

S54(6)



Surrogate and her partner must consent freely, with a full understanding of what is involved, and unconditionally

No money or benefit other than ‘reasonable expenses’

S54(8)

PARENTAL ORDER

Re C (Surrogacy: Consent) [2023] EWCA Civ 16, [2023] 2 FLR 109

- **King, Thirlwall and Peter Jackson LJJ – 16 January 2023**
- **Background –**
- Parties entered a written surrogacy agreement in England. Child ('C') handed over to the respondent intended parents ('Rs') 7 hours after birth. Appellant ('A') surrogate described feeling a sense of loss following handing C over.
- Relationship between A and Rs had deteriorated during the pregnancy. Communication had become an issue. A described feeling an emotional attachment to C and feeling undervalued by Rs. Rs described feeling they were being kept at arms length by A.
- Rs applied for parental order two months after C's birth. A returned acknowledgement form to the court opposing the application, stating she did not consent to a parental order.
- A wished to retain PR "*to allow her to have legal rights to spend time with C*".
- Parties subsequently attended mediation to rebuild trust and relationship.

Re C (Surrogacy: Consent) [2023] EWCA Civ 16, [2023] 2 FLR 109

- A later filed a statement confirming her consent to the parental order being made. Consent reliant on conditions; that a CAO was made allowing her monthly contact with C and a PSO made preventing Rs from moving without her prior written consent.
- Remote hearing took place in August 2021. Parental order made by Circuit Judge. CAO also made providing 'lives with' to Rs and contact for A to spend time with C once every six months, at Christmas and on birthdays.
- A was LiP and gave her oral consent to the parental order stating she saw no other way to "*move forward without it*".
- Following the hearing, A wrote to Rs' solicitors stating she had felt pressured into consenting and had in fact only provided conditional consent. Not however expressing an intention to appeal at this stage.
- Contact arrangements broke down in 2022 and A applied to discharge/vary the CAO.
- A granted permission to appeal parental order out of time.

Re C (Surrogacy: Consent) [2023] EWCA Civ 16, [2023] 2 FLR 109

- **Issues –**
- Three issues for CoA:
- 1. Whether, on a straight reading of s.54(6), A gave free and unconditional consent to the making of the parental order.
- 2. Whether, if A did not give free and unconditional consent, the ECHR required the court to assume and exercise a power to dispense with consent, and thereby to preserve the parental order.
- 3. What order the court should make in respect of the underlying application for a parental order if the answer to each of the above was 'no'.
- **Held –**
- On first issue - held that requirement for free, informed and unconditional consent "*means exactly what it says*". Consent that covers all three elements is required. Whether the consent is given reluctantly or gladly would be immaterial.
- In this case, A's consent was not free or unconditional. It was given in reliance on a promise of a CAO for contact. Parental order should not have been made.

Re C (Surrogacy: Consent) [2023] EWCA Civ 16, [2023] 2 FLR 109

- On second issue - court rejected, unhesitatingly, the argument that s.54(6) could be read in a way to confer a dispensing power on the court in relation to consent. The right of a surrogate not to provide a consent is a pillar of the surrogacy legislation.
- C and Rs' Art 8 rights would not be violated by the parental order being set aside in light of A's lack of consent. ECHR did not require the parental order being left in place absent valid consent.
- On third issue - the choice was between dismissing the underlying parental order application or remitting it. A's position was that she would not consent to a parental order, the application was therefore dismissed.
- The court would have looked favourably on remitting the application if there was a possibility of a parental order resulting from it, the parties having taken stock, however there was no possibility in the circumstances.
- Appeal allowed. Underlying application for parental order dismissed.

Re QR (Parental Order: Dispensing with Consent: Proportionality) [2023] EWHC 3196 (Fam), [2023] All ER (D) 166 (Nov)

- **Knowles J – 3 November 2023**
- **Background –**
- Application brought by intended parents ('As'), who were both Indian nationals resident in E&W, for a parental order under s.54 HFEA 2008 following a gestational surrogacy arrangement in India. Child aged 3 at time of proceedings.
- Surrogate was married. Her husband's name was unknown to As and the court. He therefore could not consent to the parental order being made. Surrogate had signed a written surrogacy agreement prior to the birth.
- As had tried to have children on their own. Sought medical help in 2013 when unable to become pregnant. Three unsuccessful rounds of IVF in India. Arrangements for a surrogacy using donor eggs then made using team of IVF specialists in Mumbai.
- As asked to meet surrogate but were advised this was not customary. Received photos/updates from doctor handling the surrogacy arrangements. As sought further information and were told that the surrogate was estranged from her husband. No precise details about where the surrogate lived were ever obtained.

Re QR (Parental Order: Dispensing with Consent: Proportionality) [2023] EWHC 3196 (Fam), [2023] All ER (D) 166 (Nov)

- **Issues –**
- Three key issues arising from the facts for HC to address:
- 1. Six-month time limit pursuant to s.54(3) had expired.
- 2. Requirement needed to be met that at least one of As could demonstrate abandonment of their domicile of origin in India, and acquisition of a domicile of choice in E&W.
- 3. Issue of consent from surrogate and her husband.
- **Held –**
- On first issue – although application made over two years after expiry date, held that no sensible result was to be achieved if As barred from applying for parental order. S.54(3) six-month time limit for bringing application disapplied.
- On second issue – court satisfied that first A (husband) had demonstrated he was firmly anchored in E&W and had abandoned his domicile of origin in India, acquiring a new domicile of choice in England.

Re QR (Parental Order: Dispensing with Consent: Proportionality) [2023] EWHC 3196 (Fam), [2023] All ER (D) 166 (Nov)

- On third issue – relevance of s.54(7) considered, Knowles J confirming that the agreement of a person who cannot be found is not required.
- Court considered the efforts made by the As in attempting to find the surrogate and the paramountcy of the child's welfare when making a parental order (as required by *Re D and L* [2012] EWHC 2631 Fam).
- Held that As had already taken steps to trace the surrogate, while maintaining sensitivity towards the cultural issues arising from attempts to locate her and not wanting to compromise her safety or wellbeing. Further steps could not be justified reasonably or proportionately.
- In relation to the surrogate's husband, the court had not known anything about him. As had been told by doctor that the surrogate was estranged from him, but the court could not be certain that the doctor had been given his details by the surrogate.
- Arguments that the consent of both the surrogate and her husband should be dispensed with because they were incapable of being found were accepted by the court.

SURROGACY – ADOPTION CASES

Re Z (Surrogacy: Step-parent Adoption) [2024] EWFC 20

- **Theis J – 30 January 2024**
- **Background –**
- Following CoA decision in *Re C (Surrogacy: Consent)* [2023] EWCA Civ 16, parties returned to court. Issue of consent arising again, this time in context of adoption.
- Application for a step-parent adoption order in favour of non-biological F. Also applying to vary/discharge existing CAO for contact with the surrogate ('G') who is also C's biological mother.
- Applications opposed by G but supported by the local authority and child's guardian.
- **Issues –**
- First case where court have had to consider whether a step-parent adoption order should be made, extinguishing the ties between child and surrogate, in circumstances where a parental order cannot be made.
- Whether G's consent to the making of the step-parent adoption order should be dispensed with under s.52(1)(b) Adoption and Children Act 2002.
- I.e. whether the child's welfare required consent to be dispensed with and the order made absent the biological mother's consent.

Re Z (Surrogacy: Step-parent Adoption) [2024] EWFC 20

- **Held –**
- Step-parent adoption order application refused.
- The intended F's application could be seen as relevant to the child's need to belong to a family that had legal standing. On the other hand, it could be considered a challenge to the child's biological mother, the feelings she had for the child and the role of motherhood/biological origin in the child's life.
- The evidence pointed to the parties agreeing that G would have a continuing role in the child's life after birth, although the detail was not agreed. G's evidence, that she would not have entered into the surrogacy arrangement without that assurance being in place, was accepted by the court.
- G had PR but had thus far not actively exercised it. She was in agreement that her PR should be severely restricted in the context that she did not dispute that the child should remain living with the intended parents.

Re Z (Surrogacy: Step-parent Adoption) [2024] EWFC 20

- Taking into account the history of difficulties with contact, Theis J concluded that the risk of the intended parents not complying with orders of the court, due to their inability to properly recognise and understand the welfare need for the child to have a meaningful continuing relationship with G and why, was likely to increase if the adoption order were made.
- The child's welfare needs did not require G's consent to the adoption order to be dispensed with.
- Instead, CAO made including provision for the child to live with the non-biological father, therefore conferring PR on him.
- Proceeding this way meant both fathers would share PR, day to day living arrangements were secured and G retained PR in a limited way.
- CAO lacked the permanence of an adoption order, but Theis J concluded that an adoption order would add another complex dynamic for the child and a CAO more accurately reflected the child's reality.

Re AB (a child) [2024] EWHC 586 (Fam), [2024] All ER (D) 132 (Mar)

- **Sir Andrew McFarlane PFD – 21 March 2024**
- **Background –**
- Child born following a gestational surrogacy agreement in USA. Intended parents applied for a parental order in England under s.54 HFEA 2008.
- Application justified on welfare grounds and ordinarily would be permitted. However, complexity arose that in 2022 the applicants had obtained an adoption order in the US, subsequently recognised in this jurisdiction.
- Parents made application for a parental order following advice that such order was necessary in relation to matters in connection with a family trust (which predated the reform of UK adoption law in 1976).
- **Issues -**
- Whether the existence of the US adoption order (recognised in this jurisdiction) precluded the court from granting a parental order.
- Precise issue had not come before the family court before. SoS for Education permitted to intervene.

Re AB (a child) [2024] EWHC 586 (Fam), [2024] All ER (D) 132 (Mar)

- **Held –**
- The US adoption order did not preclude a parental order being made in the present case.
- PFD analysed the two legal frameworks. A distinction was drawn between s.67(1) ACA 2002 concerned with the status of the child in relation to adoption and s.54(1) HFEA 2008 concerned with the factual criteria to be satisfied in order to establish jurisdiction for a parental order.
- No reason to depart from the approach of separating the legal status generated by an adoption from the underlying factual history, as applied in *H v R (No 1)* [2020] EWFC 74, *Re L and Re M* [2022] EWFC 38 *and X v Y (Secretary of State for the Home Department intervening)* [2020] EWHC 1829 (Fam), although these decisions dealt with the impact of the status of adoption on different statutory provisions to the present case.
- The fact that a child could be treated in law as the child of their adopted parents did not alter the biological facts surrounding their birth.

Re H (Surrogacy: Step-parent adoption) [2023] EWFC 214

- **Theis J – 28 November 2023**
- **<u>Background –</u>**
- Male civil partners ('E' and 'L') had a child ('H') through a gestational surrogacy arrangement with a friend who lived in Argentina. H conceived using L's gametes and a known donor egg. Surrogate and L therefore legal parents following H's birth.
- Application for a step-parent adoption order brought by E (i.e. non-biological F) under s.51(2) ACA 2002.
- Criteria for a parental order under s.54 HFEA 2008 met. However, step-parent adoption order sought in order to secure the legal parental relationship and in turn enable H to apply for Italian citizenship (E having dual British and Italian citizenship).
- Italian legal advice confirmed that an adoption order was more likely to be recognised in Italy than a parental order.
- Application supported by the surrogate, H's guardian and the adoption agency.

Re H (Surrogacy: Step-parent adoption) [2023] EWFC 214

- **Issues –**
- Whether a step-parent adoption order should be made in the circumstances of the case.
- **Held –**
- Application granted.
- Although a parental order was the more conventional order following surrogacy, there is no requirement for a parental order to be applied for.
- There were identified welfare benefits that supported the step-parent adoption order being made. It would differentiate between H's fathers in a way that a parental order would not.
- The step-parent adoption order would have the effect of enabling both E and L to be legal parents with PR and the added welfare benefit to H of recognising her Italian heritage, her sense of identity and the family culture.
- Any suggestion that the order may not fully reflect H's background in the same way as a parental order was met by the powerful evidence supporting the grant of the order.

Re N (Adoption – Surrogacy) [2024] EWFC 41

- **Theis J – 29 February 2024**
- **<u>Background –</u>**
- 18-year-old ('N') born via a surrogacy arrangement in 2005.
- Application for an adoption order brought by N's biological father and his wife (the intended mother) ('As') in November 2023.
- The respondents ('Rs'), N's genetic mother and her husband (N's legal parents) refused to consent to the order being made on the basis that it would sever their legal connection with N.
- N made a party to proceedings and supported the order being made. Local authority also in support.
- Previous extensive litigation following N's birth involving what the court found to be "*deliberate, prolonged and premeditated deceit*" on behalf of Rs who had entered the surrogacy agreement without ever intending to hand N over to As.
- Order made in 2007 for N to live with As and contact arrangements for him to see Rs. N lived with As consistently from 2007 onwards.

Re N (Adoption – Surrogacy) [2024] EWFC 41

- Further order made in 2010 providing for indirect contact only between N and Rs.
- Contact ceased in 2021 when N turned 16 and the order lapsed. Through his own choice, N did not continue the contact but engaged in some infrequent WhatsApp communication with his biological mother's husband.
- Therefore, no indirect contact between N and Rs since N was aged 4. N considered As to be his parents in all senses.
- **Issues –**
- Whether, under s.47(1) and s.47(2) of the Adoption and Children Act 2002 the adoption order should be made despite Rs withholding their consent.
- **Held –**
- Competing Art 8 rights of the parties considered. Held that N's loss of legal relationship with the Rs and their wider family was a relatively low interference in their family life due to the history of the case, their limited involvement with N and the situation on the ground being unlikely to change.
- Conversely it would be a significant interference in N and the As family life if the adoption order was not made. The disconnect between Ns factual and legal position would remain. Application granted.

Re N (Adoption – Surrogacy) [2024] EWFC 41

- N provided a statement and oral evidence detailing the reasons why he wanted his relationship with the As legally recognised, including having to explain the disconnect in the factual and legal relationship each time he used his birth certificate and also not feeling like he was completely a part of the As' family.
- Annex A report concluded that granting the order would give N a sense of "*belonging and equality within his family*" and "*create a lifelong legal connection to the people who have acted as his parents throughout the majority of his life*" and also provide closure and finality as N enters adulthood.
- Theis J concluded that the evidence overwhelmingly established that N's welfare needs required that the adoption order be made.
- First reported decision where, in a surrogacy context, the consent of the birth parents to an adoption order has been dispensed with on welfare grounds.

Implications to modern families and family creation post Roe v Wade

Roe v Wade

- US Supreme Court case of Dobbs v Jackson in 2022 overturned Roe
- No longer a constitutional right to seek abortion
- Significant implications for international surrogacy and IVF

Roe v Wade

- Number of states have personhood laws in relation to embryos (e.g. Alabama Supreme Court – wrongful death suit earlier this year re embryos being considered as ‘children’)

- Reproductive healthcare restricted in a number of states which also has implications for the surrogate

Roe v Wade

- Adds to the due diligence that intended parents will need to take if having fertility treatment in the US
- Legal of embryos / genetic material could change
- Increases the need to take advice from specialists lawyers in each State.