

Is Singapore ready for surrogacy?

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#ModernFamilies

A closer look at the case of Re UKM

Loving a child of your own and being loved by that child – District Judge Shobha G. Nair termed this a “basic human need” in the recent Family Court case of Re *UKM [2018] SGFC 20*.

For many, having their own child is one of the biggest milestones of their lives.

Those who are not able to conceive – either because they are infertile or unable to carry a foetus to birth – may look for other options. In-vitro fertilisation (IVF), intra-cytoplasmic sperm injection (ICSI) and surrogacy are all alternative methods.

This particular case relates to a request by a gay Singaporean doctor to adopt his own son born out of surrogacy,

This was rejected by the Family Court on the grounds of policy, ethical and legal issues, mostly pertaining to the fact that his son was conceived through surrogacy.

We take a closer look at the case of Re *UKM*, with a particular focus on the issue of surrogacy and why it is not condoned in Singapore.

Singapore’s view on surrogacy

Women with trouble conceiving can choose from several assisted reproductive methods permitted locally. These include artificial insemination such as IVF, ICSI, zygote intra-fallopian transfer (ZIFT) and the placing of an embryo or of sperm and eggs in a woman. Surrogacy is not on the list of approved methods.

Surrogacy is not explicitly prohibited in Singapore by any law, but it is not condoned or accepted. The Ministry of Health (MOH) issued a directive on March 31, 2006, prohibiting Assisted Reproduction (AR) centres in Singapore from carrying out surrogacy procedures or have their licences suspended or revoked.

People who still want this option end up travelling abroad to do so.

However, there are many risks in engaging a surrogate mother overseas. These include the fact that local courts may not enforce surrogacy agreements, or that adopting a child born through surrogacy would be nearly impossible, as highlighted recently in Re *UKM*.

A closer look at Re UKM

The case of Re *UKM* centres around an adoption request by a gay Singaporean doctor, who flew to the United States to make an agreement with a surrogate so that he and his long-time partner could have their own child.

After the child was born in 2013 as a US citizen, the applicant and his partner were recognised in the US as the legal parents, with the surrogate and her husband giving up their rights. They flew the child back to Singapore and the applicant applied for adoption to “legitimise his relationship” and to apply for Singapore citizenship for the boy.

In explaining the reasons for rejecting the adoption, Judge Nair brought up policy, ethical and legal arguments and analysed several relevant provisions in the Adoption of Children Act (ACA).

On the issue of paying a surrogate mother, the judge highlighted Section 11 of the Act, which states:

“It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the court to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any adopter or to any parent or guardian any such payment or reward.”

As stated in the judgment, the purpose of Section 11 is to prevent “the use of money to encourage the movement of life from one hand to another”. Paying for a surrogate to carry your baby, also known as commercial surrogacy, goes against the very purpose of Section 11.

In light of this, one can see why the idea of surrogacy, and its effect of treating a child as a ‘commodity’, is frowned upon by local courts.

Surrogacy in other countries – a spectrum of responses

An interesting point to note is that every country responds to surrogacy in a different manner. The case of *Re UKM* is just one of the many discussions that have been sparked worldwide on this hotly-debated topic.

Hong Kong adopts very strict rules on surrogacy. It is only for married couples and surrogacy agreements are unenforceable. Commercial surrogacy is also illegal, which means that other than expenses reasonably incurred, no money or other benefit can be given or received, or you will risk facing criminal sanctions. Criminal liability applies even if the surrogacy takes place in another country.

However, the position is vastly different in the US, which would explain why it is a popular destination for those seeking surrogacy services.

According to an article in *The Straits Times*, the British Surrogacy Centre of California handled 18 clients from Singapore and received more than 100 inquiries from interested Singaporeans in 2017.

Is Singapore ready for surrogacy?

It appears that this unwillingness to accept surrogacy extends to other countries.

This is because an arrangement for surrogacy creates a service that appears to be transactional in nature, with a woman “renting her womb” for money.

Whether Singapore will change its stance on surrogacy remains to be seen.

Issues on adoption, especially with regards to surrogacy, can often be complicated due to the large web of policy, ethical and legal considerations surrounding this.

Should you have any doubts or queries when adopting a child, contact a family lawyer.