

Now it's Melissa's time

By Jennifer Weiss , New Jersey Monthly Magazine, March, 2007

On March 27, a college student named Melissa Stern will turn 21. In Tenafly, two parents, William and Elizabeth Stern, will celebrate. In Bayport, Long Island, two more parents, Mary Beth and Dean Gould, will mark the day in some way of their own. Twenty years ago, Melissa was known as Baby M. She was the subject of an infamous custody battle between the Sterns and Mary Beth Gould (then Mary Beth Whitehead, of Bricktown). Whitehead had responded to an ad in the Asbury Park Press seeking women willing to help infertile couples have children.

The Infertility Center of New York, which had placed the ad, matched her with William and Elizabeth Stern of Tenafly. Whitehead signed a surrogacy contract, agreeing to be inseminated with William Stern's sperm, carry the baby, and then give it up.

Instead, after delivering the baby, Whitehead named her Sara and refused to relinquish her. She and her then husband, Richard Whitehead, fled to Florida with the infant and their two other children. The Sterns had police return the infant, whom they had named Melissa. Mary Beth Whitehead sued for custody. Twenty years ago, on March 31, 1987, judge Harvey Sorkow of the state's Superior Court in Bergen County upheld the contract, terminated Whitehead's parental rights, and escorted Elizabeth Stern to his chambers, where she adopted Melissa.

Whitehead appealed, and on February 3, 1988, the New Jersey Supreme Court voided the contract and adoption and restored Whitehead's parental rights. The Sterns' Tenafly residence remained Melissa's home, but Whitehead won broad visitation rights and legal status as Melissa's mother.

The landmark case made society grapple with the consequences of surrogacy. The state Supreme Court set precedent in ruling that a fit mother cannot be forced to give away her baby; in essence, the court said that biology and gestation trump a contract. Gestational carriers, who have no genetic relationship with the children they bear for other couples, have since replaced paid surrogates in New Jersey. Melissa Brisman, a reproductive-rights lawyer, says her Park Ridge office arranges about 300 gestational surrogate contracts each year, and the number is on the rise. But in the shadow of Baby M, carriers in New Jersey may not be paid any more than medical and legal expenses; most of the women matched through Brisman's office do not live in New Jersey and give birth outside the state so they can collect a fee. "New Jersey is pretty unique," Brisman says. "I think it's because Baby M is still lingering, and no one has changed the law."

Twenty years ago, the question asked in the media, in law schools, and around family dinner tables was how far science should be allowed to go to help people have children. Should the

Sterns—a biochemist and a pediatrician—be allowed to leverage their relative affluence to have Mary Beth Whitehead, a high school dropout married to a sanitation worker, become pregnant and give away a baby that is genetically half hers? Should we turn away if the surrogate changes her mind? If we do, what types of transactions could we condone?

Harold Cassidy, the Shrewsbury civil trial lawyer who represented Whitehead, says the conclusion to the case was important because “it was going to be a reflection on us. Are we a culture who says, in a civilized society, there are things that money can’t buy?”

Gary Skoloff, the Sterns’ attorney, declined to comment for this article, as did William Stern and Dean Gould. Gould, reached at his home in Bayport, said he would pass along a reporter’s request for comment to his wife; Mary Beth Whitehead Gould did not respond to that request. Richard Whitehead is no longer alive.

Melissa Stern, a junior at George Washington University in Washington, D.C., responded by phone to two e-mails requesting comment. A religion major and sorority member, she recalled how strange it was to have the Baby M case come up in her bioethics class. She aspires to become a minister, and she says she is open to having children someday.

But she does not want to talk about how being Baby M has affected her life. She said that she decided to speak despite the wishes of her parents, who have guarded their privacy closely. When she says “my parents” and “my family,” she is talking about William and Elizabeth Stern. Legally, they are her parents now: A source with firsthand knowledge of the case confirmed that when she turned eighteen, Melissa Stern initiated the process of allowing Elizabeth Stern to adopt her, which involved terminating Whitehead Gould’s parental rights.

“I love my family very much and am very happy to be with them,” Melissa Stern says, referring to the Sterns. “I’m very happy I ended up with them. I love them, they’re my best friends in the whole world, and that’s all I have to say about it.”—J.W.