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Much Has Changed in Surrogate Pregnancies



Robin Layton/Associated Press

Sarah Jessica Parker and Matthew Broderick, with son, James, and daughters Marion, left, and Tabitha, born through surrogacy.

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With the birth last month of twin girls for [Sarah Jessica Parker](#) and [Matthew Broderick](#), surrogate [pregnancy](#) once again assumed center stage. After years of infertility following the birth of their son in 2002, the couple chose to have another woman gestate the embryos they created.

Much has changed in surrogacy in the two decades since the high-profile Baby M case, in which the surrogate was the baby's biological mother and unsuccessfully sought custody after the birth.

The legal proceedings in that case markedly changed the conversation about the validity of surrogacy contracts. Some states have laws that

protect the commissioning parents in surrogate pregnancies. And in a vast majority of surrogate pregnancies today, the surrogate has no genetic link to the baby.

Still, surrogate pregnancy is illegal in some states, including New York, and it remains fraught with controversy despite the fact that thousands of American couples — most of them not celebrities or especially wealthy — are happily bringing up children they could not produce on their own.

Emotional Strain

Joan Fleischer Tamen and her husband, Frank, of Miami Beach are among them. They married when she was 38 and immediately began trying to start a family, “but nothing happened,” Mrs. Tamen said in an interview. They nearly exhausted their savings with fertility treatments and seven attempts at pregnancy through in vitro fertilization.

“After the seventh failure I was emotionally worn out,” Mrs. Tamen said. Through a friend, they found a surrogate named Cathy, who told them, “I really want to do this for you.”

Mrs. Tamen continued, “We offered her what we thought was a fair amount — \$12,000 — and said we’d hire an attorney to draw up a contract and we’d pay for her medical insurance.”

Three embryos left from the Tamens’ attempts at in vitro were implanted in Cathy’s womb. Ten days later they learned that one was viable. When Cathy was in her fourth month, Mrs. Tamen discovered to her amazement that she, too, was pregnant and that their due dates were identical.

The Tamens are now the delighted parents of 5-year-old boys, David and Jonathan, born 23 days apart and “being raised as [twins](#) cooked in different ovens,” as Mrs. Tamen says she explained to the boys. Cathy and her husband and son remain good friends with the Tamens; the families visit often and the Tamen boys consider Cathy an aunt.

Altruistic Motives

Surrogate pregnancies don't always blossom into lasting friendships, of course, and many people consider the process repugnant. It has been called a violation of natural law, a form of prostitution or baby selling, an exploitation of poor women, and a privilege of the rich and famous who may not want to disrupt their careers or their figures by giving birth to their own children.

Reputable agencies and lawyers who specialize in surrogacy guard against the exploitation of women who serve as surrogates and against spurious reasons for seeking a surrogate pregnancy. In virtually every case they process, the intended parents, like the Tamens, cannot produce their own children, yet want children biologically related to them or choose not to wait the years it can take to adopt.

People may choose to have a gestational carrier bear their children if the woman lacks a uterus or has a malformed uterus; must take medication incompatible with pregnancy; or has had repeated [miscarriages](#) or failures at in vitro pregnancies. Or, in the case of a male couple or single male, if there is no woman involved.

As for charges of exploitation and baby selling, Pamela MacPhee, who was a surrogate for her cousin and his wife, says most surrogates do it for altruistic reasons. In her new book about her experience with surrogacy, "Delivering Hope" (HeartSet Inc.), she says the payment most women receive — typically \$15,000 to \$20,000 — "is for the services, time and sacrifice of the surrogate, not for the child directly." And the amount paid is well below minimum wage when factored over nine months of pregnancy and the hormonal preparations that usually precede implantation of viable embryos.

Mrs. MacPhee, a married mother of three, volunteered to be a surrogate when [cancer](#) treatments left her cousin's wife infertile.

"I couldn't imagine my cousin and his wife not being able to have a family, and I wanted to help them," Mrs. MacPhee said in an interview. She received no payments beyond a life insurance policy and medical expenses, as well as some luxurious gifts from the grateful parents-to-be, like a weekend at a spa.

But the two families were anything but casual about the matter. A psychologist evaluated the women and their husbands to make sure everyone was emotionally healthy, realistic and in agreement with the arrangement. A lawyer drew up a contract that guaranteed the baby would belong to the intended parents. Mrs. MacPhee said that Hope, now an 8-year-old with her parents' genes, is thrilled about the special circumstances of her birth.

A Cautionary Tale

Arrangements for surrogate pregnancies don't always go smoothly or have happy endings, especially if they are undertaken without psychological screening and legal guidance. Care must be taken to protect both the surrogate and the intended parents and to ensure that the parents' names — and not the surrogate's — will appear on the child's birth certificate.

Melissa B. Brisman, a lawyer in Park Ridge, N.J., whose three children were birthed by surrogates, specializes in such arrangements, helping to secure about 300 surrogates a year for people who cannot conceive or carry a child. The intended parents may provide their own eggs and sperm or those of a donor. In addition to heterosexual couples, her clients include gay male couples, single men and single women.

Surrogate qualifications differ slightly by agency, but Ms. Brisman's criteria are typical: The carrier must be between the ages of 21 and 44, must be a nonsmoker, must live in the United States and must have given birth to at least one child. She said that laws prohibit acceptance of surrogates from Michigan, New Hampshire, New Jersey, New York, Washington and the District of Columbia.

Ohio, where the Parker-Broderick twins were born, is "a very popular state for gestational carriers," Ms. Brisman said in an interview. "In Ohio, you can get the commissioning couple on the birth certificate even if a donor egg was used.

“People don’t become gestational carriers as a way of making money,” she continued. “Rather, their motives are altruistic.” Furthermore, she has written, “most carriers enjoy being pregnant and are emotionally rewarded by the experience of helping an infertile couple realize their dreams of becoming parents.”

Mrs. MacPhee said that for her, surrogacy was a transformative and fulfilling experience that “has had a profound effect on how I view myself as a person and has resulted in a closer relationship with my children and my husband as well. It has helped me realize what is most meaningful in life.”