



Surrogacy behind the headlines

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Ever since the New York Times published its front-page article on [surrogacy](#) cases gone awry (1) there has been much discussion of the need for comprehensive surrogacy regulation. I agree that regulation is important, but we are not discussing the most fundamental issue at hand: the human experiences that make or break surrogacy relationships. What common factors can be identified behind the small number of surrogacy cases that wind up in court? Since there have been so few cases of surrogates refusing to relinquish throughout the history of contemporary surrogacy, the common factors in those cases can be easily highlighted.

Is it a story of prenatal bonding and a natural, instinctive maternal love that women cannot control during pregnancy because of their female physiology? We all know the story of Baby M, and this infamous court case has had such a strong impact on popular perceptions of surrogacy that we are often quick to believe that the Baby M case is not the minority but the rule. We instinctively assume that all surrogates who take their commissioning couples to court began to have misgivings about the arrangement after feeling those first fetal movements. But what of the other thousands of surrogates who did not bond with the babies they carried and did not take their couples to court? And was maternal-fetal bonding really what led the surrogates in these court cases to have misgivings?

If we look at the Amy and Scott Kehoe case (2) as an example, it is essential not to overlook that the surrogate, Lachelle Baker, had already been a surrogate several times before and relinquished the babies to the intended parents. In the footage from the initial custody hearing in which Ms Baker was to relinquish her custody

to the Kehoes, one can distinguish visible shock on her face when she first heard the intended father testify to his wife's history of mental illness and drug use. I am not defending Ms Baker, and I have nothing but sympathy for the Kehoes, but it all began with a breach of trust.

Trust is the most basic ingredient in surrogacy arrangements. Intended parents entering into these agreements trust their surrogate to take care of their baby in utero, feed it, get proper prenatal care, be truthful about their own conduct during the pregnancy, and to be up front before the agreement is finalised about any past events that might influence their decision to work with one another (such as past drug abuse or criminal charges). Surrogates also trust the intended parents to be up front with them about who they are. After all, the surrogate is making them into a family, and she wants to know who and what this family is about. The surrogate may be being paid for her efforts but, to her, she is giving this couple a tremendous gift that surpasses any monetary exchange. Nurturing that trust begins before the agreement is finalised and needs to continue throughout. When a surrogate interprets an action by the intended parents as a breach of trust, it is then misgivings often start. Going to court to retain the babies is at the extreme end of this spectrum of insult and revenge, but it all begins with the same building blocks.

I don't know what went on behind the scenes of the Kehoe case or any other case featured in the headlines lately. Most of my experience with surrogacy is positive. During my years of anthropological fieldwork among surrogates and intended parents, I have learned that surrogates need to feel what they are doing for their intended parents is appreciated. If the surrogate feels they have disrespected her and do not see the value of what she is giving them beyond the contractual exchange then it casts the whole surrogacy experience as a rental agreement, not a gift exchange. And it is when these views clash - when the surrogate sees herself making a family and giving a gift while the intended parents treat her as a paid worker or worse - that surrogacies go awry.

Taking this notion further, it is easy to understand why other headline-making cases have occurred between siblings. True, in the NJ case the surrogate had never given birth before - a serious 'no-no' in the surrogacy world. Still, it is unsurprising that the case is between her and her brother. If surrogacy among strangers is predicated upon trust and broken by perceived betrayal, then it is more so among siblings who are doing it out of love and familial commitment. As anyone who has siblings knows, we may love our siblings with intensity and want to go to great lengths to make their dreams come true but, when we are betrayed by them, it is just as intense.

So in surrogacies where everything goes well and all parties are happy with the outcome, there is an underlying understanding and feeling of trust. Whether it is a trust based upon upholding contractual obligations or, as I have seen in some of the surrogacy agreements I have studied, a trust based on the deep bonds of mutual commitment, there is still the same idea of each side reciprocally meeting their different expectations. And, when surrogacies go awry, it usually begins with the surrogate's deeply hurt feelings after she believes that the intended parents have treated her badly. It is a story of insult and revenge: the surrogate does not think that these people deserve the gift she has bestowed upon them because they have treated her with disrespect.

How can intended parents entering surrogacy arrangements make sure that their own case does not end up in court? Attorney Melissa Brisman, who oversees hundreds of surrogacy arrangements each year, says that, to have a successful surrogacy arrangement, intended parents need to 'have all the proper legal documents in place and use a well known, well run fertility clinic. But taking the time and care to select a gestational carrier that meets their needs emotionally and personally can be an enormous factor in the outcome of their relationship'. In summary, surrogacy is a two-way street that involves a careful balance of emotions and expectations from both sides. My advice? If intended parents want to ensure a successful surrogacy journey they need to understand their surrogate's expectations in advance, to be upfront with her about who they are, and give her the credit and respect she deserves.

Dr Elly Teman is author of *Birth of a Mother: The Surrogate Body and the Pregnant Self*, and she has contributed a chapter to *Surrogate Motherhood: International Perspectives*.