

## **Genetic parents win landmark surrogacy case**

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The genetic parents of twins born to a surrogate have won their High Court case to have the biological mother recognised as the legal mother.

The genetic mother of the twins, who were born to her sister using her embryos, challenged the refusal of the Chief Registrar to record her name on the birth certificates.

The High Court gave a number of groundbreaking declarations this morning.

Mr Justice Abbott granted a declaration that the genetic mother in the case is the mother of the twins.

He further ruled that the genetic mother and the children are entitled to have this fact recorded on the children's birth certificates.

The judge said there was nothing in the Irish legislative context that positively affirmed "Mater Certa Semper Est" or motherhood is always certain.

He rejected submissions by the State that the pro-life amendment to the Constitution confirmed the birth mother as the legal mother.

The judge said the word "mother" in that article of the Constitution, which related to the existence of the unborn, applied when the foetus was in the womb and not otherwise.

He said while the science of epigenetics and genetics was likely to develop in the future, it was most unlikely epigenetics would ever trump the deterministic quality of chromosomal DNA.

While the input of a gestational mother to an embryo and foetus was to be respected and treated with care, the predominant determinism of the genetic material in the cells of the foetus permits a fair comparison with the law and the standards for the determination of paternity.

It would be invidious, irrational and unfair to do otherwise, he said.

To achieve fairness and constitutional and natural justice for both the paternal and maternal genetic parents the inquiry in relation to maternity ought to be made on a genetic basis and on being proven the genetic mother should be registered as the mother, he said.

At a hearing in January, the court was told there was no provision to record anyone other than the woman who gave birth to a child as the mother.

Lawyers for the woman and her husband said the couple and their children were being deprived of their right to be part of a constitutional family while the State failed to recognise their biological mother.

Senior Counsel Gerard Durkan told the court the children were entitled to the protection and security of a legal family, regardless of how they were conceived and born.

The State, in defending the case, was seeking to have the biological truth ignored, he said.

The maxim applied by the Chief Registrar of "Mater Certa Semper Est" was of little use now in the context of scientific advancement and the regime in place under the Status of Children Act, which uses DNA to confirm parentage.

Under the act, any child may go to court to seek a declaration of parentage and the test used was a DNA test.

If the biological mother of the children was to undergo a DNA test, she would be confirmed as the mother.

The surrogate mother if subjected to the same test would be excluded as the mother, yet she was the legal mother according to the register of births.

## **Parents 'delighted' by ruling**

The solicitor for the parents has said her clients are delighted with the outcome.

Marion Campbell said her clients have been vindicated by the judgment.

"It has been a very long, hard and emotional time for them and they would like to express their thanks for the support shown to them by their family, friends and legal representatives," Ms Campbell said.

"It is to be hoped now that much-needed legislation in relation to this whole difficult area of surrogacy and that children born by surrogacy arrangements will have their rights enshrined in such legislation."

Elsewhere, the Irish Stem Foundation said today's ruling is another example of the Government's continuing dysfunction with regard to generating legislation on many areas of contemporary medicine and research.

The foundation said that such a lack of law has profound effects for Irish citizens.

It said that the continuing void of legislation puts Irish parents and patients at unnecessary risk and expense.

The Department of Justice said it will give the ruling and its implications very careful consideration once the judgment becomes available.

It said Minister Alan Shatter is preparing a new bill that will address certain aspects of the law on surrogacy.

He hopes to publish the Family Relationships and Children Bill later this year.

Special Rapporteur on Child Protection Geoffrey Shannon said the failure to legislate in the area of surrogacy has left children in a legal limbo and means the courtroom is the battleground for this new area of family law.

He called on the Government to legislate as a matter of priority.

Mr Shannon said the 2005 Commission on Assisted Human Reproduction brought forward comprehensive recommendations in this area.