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Surrogates no longer legal parents

Couples won't have to adopt from birth mom

PREGA GOVENDER

THE North Gauteng High Court in Pretoria has handed down a landmark judgment that recognises couples, who have children through surrogacy, as the legal parents.

On Tuesday, Judge Pierre Rabie ruled in favour of a Pretoria couple who wanted this assurance before they started the medical process with a close family friend who is willing to carry their baby.

For years, men and women who used surrogate mothers to bear their children had to adopt the child before they could legally be regarded as the parents.

The adoption could take from a few months to two years to finalise. But Judge Rabie ruled that the genetic parents are the legal parents, not the surrogate mother — thus eliminating the need for such parents to launch adoption proceedings once the baby is born.

The Pretoria couple, who brought this week's application, spoke of their months of anguish and uncertainty after opting for surrogacy.

The woman, 34, and her husband, 39, were adamant that they had not approached the court because they were worried that the surrogate mother they had chosen would not keep her side of the deal.

The woman said: "At no stage did we feel there was a risk involved with the surrogate. I don't think it was about making sure we were protected so that the baby is handed over to us.

"We knew that the birth mother was regarded as the legal parent and we started questioning this legislation. Why, if ge-

netically it's our child, should we have to go through the process of adopting the child again after birth?"

"We brought the application, on our attorney's advice, to challenge current legislation and to try to change the way surrogacy is being regulated in South Africa."

Their attorney, Adele van der Walt, said the high court ruling was a victory for childless couples across the country who were increasingly turning to surrogate mothers to carry their children.

Statistics on the number of couples in South Africa who have used surrogate mothers are not known.

One prominent egg donor and surrogacy agency said this week that it had 19 surrogate mothers on its books, of whom 10 had successfully undergone fertility treatment.

Jenny Currie, founder of the baby2mom egg donation and surrogacy programme, said it had seven surrogate mothers who had, or would be under-

going, fertility treatment.

A section of the Children's Act 38 of 2005, dealing with surrogacy, has not yet been enforced but it specifically states that a surrogate mother should not use surrogacy as "a source of income".

Currie said the cost of a child born through surrogacy was "roughly about R200 000". The fees include the cost of in vitro fertilisation and the medical screening of the surrogate as well as fees for the social worker assisting with the process and the attorney drawing up a surrogate motherhood contract.

She said some surrogates expected a car in return, while others wanted nothing at all.

The Pretoria couple, who have been married for over two years, always thought they would have a family of their own.

"Both of us are from families where there are brothers and sisters and we have always spoken about having a family of our own. For medical reasons, I am on medication that prevents me from falling pregnant so we started exploring other options," said the woman.

They were lucky to find the right surrogate — a close family friend with a family of her own — within just weeks of making their decision.

"There's no doubt in her mind about what she is doing. She is doing it completely as an act of love. It just shows you that there are kind people out there and that we shouldn't lose faith in humankind. We will assist her with her loss of income and in paying towards any medically related process, including hospitalisation," the woman said.

govenderp@sundaytimes.co.za

'Why, if genetically it's our child, should we have to go through process of adopting it?'



TELL US: What do you think of this week's landmark judgment on surrogacy by Judge Pierre Rabie? Write to tellus@sundaytimes.co.za