

M v F & SM (Human Fertilisation and Embryology Act 2008) (2017)

[2017] EWHC 2176 (Fam)

28/08/2017

Barristers

Andrew Powell

Court

Birmingham Civil Justice Centre

Practice Areas

Private Children Law

Application to extend the wardship of a child borne via a surrogacy arrangement.

This case concerned A, a child, who was born via a surrogacy arrangement in the UK. M and F were the biological parents of A, and SM (the surrogate mother) and F were the legal parents of A.

Whilst SM was pregnant with A, the relationship between M and F ended, and F decided that he did not want to have any involvement with A, notwithstanding that he was the only legal and biological parent of A. When A was born, SM surrendered A's sole care to M and was in favour of M becoming A's legal parent.

As s.54(1) and (2) of the Human Fertilisation and Embryology Act 2008 does not permit single persons to apply for a parental order for children borne via surrogacy, M could not apply for a parental order in respect of A. Therefore, the surrogate mother and F remained the legal parents of A.

Keehan J referred to the recent decision of the President in *Re Z (A Child) (No.2)* [2016] EWHC 1191 (Fam), in which he made a declaration of incompatibility in respect of s.54(1) and (2).

His Lordship noted that the Government was actively considering the terms of a remedial order to address that incompatibility. However, in the interim, the court could not make a parental order in favour of M; the application that she planned to make would have to be stayed until such time as the law changed. Instead, the court held that it was in A's best interests for wardship to continue and for the court to grant care and control in respect of him to M.

Permission

 **Family Law Week**