

Surrogacy 3

When I awoke Saturday morning, I switched on the TV news. The first story was about a 54 year-old woman in Texas who had just given birth to her granddaughter. In light of my last two columns on surrogacy, this immediately caught my attention.

The woman's daughter had miscarried several times. The daughter and her husband desperately wanted a child. So, the mother agreed to act as her daughter's surrogate. She was impregnated with an embryo created from her daughter's egg and fertilized by her son-in-law's sperm. The mother, daughter, and son-in-law were all glowing after the delivery of the healthy grandchild.

The longing for children is strong in most of us. My background as a biology teacher leads me to believe that the drive for parenthood is genetic, fueled by the need to carry on the species. For those who cannot naturally produce a child, the possibility of surrogacy – a situation where a woman carries a baby for someone else - offers precious hope.

In my 30-years as a family lawyer on Guam, I have yet to confront a surrogacy situation. However, if my recent correspondence is any indication, Guam may soon face the growing reality of surrogacy head-on. Unfortunately, Guam law is silent on the matter. We do have statutes on how to record and certify births, and the manner for determining paternity. However, these laws won't adequately address the legal complexities brought about by a surrogate birth. As a result, following such a birth, a legal brawl could easily erupt.

For example, what if a Guam mother agrees to act as a surrogate for her daughter and son-in-law? All three fly to California and with the assistance of a fertility clinic the mother is impregnated with her daughter and son-in-law's embryo. They return to Guam and the grandmother gives birth at GMH. Who will Guam law record as the legal parents? Under current law, arguably the grandmother and her son-in-law! The daughter would probably have to petition to adopt the child.

What if, under similar circumstances, the daughter's egg is fertilized with sperm from a donor because the son-in-law is sterile? Upon the child's birth, who will be listed as the father on the birth certificate? Or, what if midway through the pregnancy the grandmother changes her mind and insists upon keeping the baby herself? Would, or should, the outcome of these situations be different if the surrogate was a non-relative who received payment to carry the baby? Unfortunately, our current laws don't provide us with answers to these questions.

Guam needs a comprehensive surrogacy law, now! Our legal system must catch up with the advances in medical birthing technology. We are already behind most of the States in passing surrogacy legislation. According to data compiled by

Creative Family Connections, the vast majority of states currently allow some form of surrogacy, although the details differ significantly from state to state. To see the differences among the states visit the following website: www.surrogacymap.com.

I will soon formally request that our Legislature pass a comprehensive surrogacy statute. I intend to attach a copy of California's current surrogacy law as a model. Arguably, California's approach to surrogacy is the most progressive within the U.S. The California law addresses most of the critical issues surrounding surrogacy.

For example, any surrogacy law for Guam should address the following questions:

1. Should Guam allow both voluntary surrogacy, where the woman receives no compensation other than reimbursement for all medical costs, and professional surrogacy, where a woman is paid for her services?
2. Should Guam permit surrogacy contracts? If so, what details should they include and how will they be enforced?
3. Should Guam authorize both gestational surrogacy, where the surrogate has no biological connection to the child, and traditional surrogacy, where the surrogate carries the baby and provides the egg? If so, will the legal consequences be the same for each type of surrogacy, or will they differ?
4. How will an intended parent who has no genetic connection to the infant be established as the legal parent? For example, should our courts allow either pre-birth or post-birth court orders that conclusively determine the legal parent/s? This would prevent the need for an intended parent to adopt the child after its birth.
5. Should Guam accept pre-birth and post birth orders from the courts of other states or countries in which the legal parents have been determined and identified?
6. Who should be allowed to use a surrogate? Only married couples? How about unmarried couples? Should a single person be permitted to contract with a surrogate?

These are questions that we as a community should and must decide. Surrogacy offers hope to those who couldn't otherwise have a child. But, without a legal framework, the joy of birth brought about by surrogacy can soon become a legal nightmare. Let's act now!