

# **The Supreme Court of New Jersey**

## **In The Matter Of Baby M**

537 A.2d 1227 (1988)

Argued September 14, 1987

Decided February 3, 1988.

### **CASE SYNOPSIS**

Defendant surrogate mother challenged the order of the Superior Court (New Jersey) that enforced the terms of a surrogate parent contract on behalf of plaintiff father. Defendant claimed that the surrogacy contract was invalid; that the trial court improperly terminated her parental rights and awarded sole custody to plaintiff father, and improperly allowed the adoption of the child by plaintiff's wife, all pursuant to the terms of the contract.

### **CASE FACTS**

- William Stern and Mary Beth Whitehead entered into a surrogacy contract.
- The contract provided that Whitehead would become pregnant through artificial insemination using Stern's sperm, carry the child to term, bear it, deliver it to the Sterns, and then do whatever was needed to terminate her maternal rights so that Mrs. Stern could adopt the baby.
- Stern agreed to pay Whitehead \$10,000.00 after the child's birth, when delivered.
- Whitehead turned the baby over to the Sterns after its birth although she did not want to.
- The Sterns gave the baby back to her when she said she could not live without it, however, they believed she would later return the baby to them.

- When it was apparent that she was not going to give the baby back, Stern filed a complaint seeking enforcement of the surrogacy contract.

## **ISSUE**

Are surrogacy contracts valid?

## **DISCUSSION**

- On direct certification from the trial court, the court reversed the order that terminated defendant surrogate mother's parental rights, restored her as the mother of the child, and invalidated the surrogacy contract entered into between plaintiff father and defendant.
- The court ruled that the contract was invalid as a matter of law, because it violated statute and was against public policy.
- The court found that private placement adoption was disfavored, that the payment of money made the contract illegal and possibly criminal under N.J. Stat. Ann. § 9:3-54, and that it was vested with an element of coercion.
- The court ruled that the agreement was totally unenforceable.
- The court determined that the statute required a surrender of the child to a public agency and then a termination proceeding, which could only proceed after counseling.
- The court held that the termination of defendant's parental rights called for by the surrogacy contract and ordered by the trial court, failed to comply with statutory requirements.
- The court ruled that no one can contractually abandon one's parental rights.
- The court held that because the termination was invalid, the adoption was invalid.

## **CONCLUSION**

The court invalidated the surrogacy contract because it conflicted with the law and public policy of the state. The court granted custody to plaintiff father, voided both the termination of the surrogate mother's parental rights and the adoption of the child by plaintiff's wife, and restored defendant surrogate mother as the mother of the child. The court remanded the case on the issue of visitation only.