

*C.M. v. M.C.*

Here is your textbook case for interpretation and enforcement of Surrogacy Agreements. When innovative legal issues and a bizarre factual scenario result in an opinion by Justice Elwood Lui, you know it constitutes mandatory reading and becomes the new standard in its field.

Here was a 75 page Surrogacy Agreement where all parties were represented by independent counsel. The surrogate was 47 years old, had four children, previously had been a surrogate mother, and expressly did not want to have a parental relationship with any child born pursuant to the Agreement. After the embryo transfer took place, an ultrasound revealed that she was carrying triplets. Father filed a verified Petition to establish a parent-child relationship. The surrogate objected, contending that father was single, 50 years old, employed as a postal worker in Georgia, was responsible for caring for his elderly parents with whom he lived, and that he wanted to abort one of the fetuses [just another run-of-the mill case]. For reasons understandably not revealed in the opinion, the surrogate was represented by a well-respected major law firm and out of state *pro hac vice* counsel who raised and argued every conceivable legal theory (and then some) to overturn the validity and enforceability of the Surrogacy Agreement. Judge Amy Pellman in the trial court rejected all of the surrogate's arguments and held the Agreement valid and enforceable; so did the Court of Appeal.

Family Code section 7962 establishes a procedure for summary determination of parental rights when specific requirements for an enforceable surrogacy agreement are met. The trial court correctly ruled that the agreement substantially complied with the requirements of section 7962. The Surrogate's numerous Constitutional challenges failed, having been considered and rejected by the California Supreme Court in *Johnson v. Calvert* (1993) 5 Cal. 4<sup>th</sup> 84 and *In re Marriage of Buzzanca* (1998) 61 Cal.App. 4<sup>th</sup> 1410. The Surrogate mother did have standing to assert constitutional claims on behalf of the children, but these claims also were addressed and foreclosed by the Supreme Court's decision in *Johnson v. Calvert*.

The opinion makes forcefully clear that compliance with the provisions of section 7962 is dispositive, and that the intended father's subsequent conduct, whatever its merits, cannot erode the intent and content of the surrogacy agreement. Permitting a surrogate to change her mind, or requiring a court to examine conduct or intent subsequent to signing of the surrogacy contract, would "undermine the predictability of surrogacy agreements."

This opinion's setting the strong constitutional foundation of surrogacy agreements on the 24 year old opinion in *Johnson v. Calvert* warrants our going back to re-read the majority opinion of Justice Panelli, the concurring opinion of Justice Arabian, and the dissent by Justice Kennard. We now have section 7962 regulating "Assisted Reproduction Agreement for

Gestational Carriers.” And we now have Justice Lui’s opinion in this case to set the standard for its judicial interpretation.

MARSHALL S. ZOLLA