



Neutral Citation Number: [2020] EWHC 2474 (Fam)

Case No: WV18P00841

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/04/2020

Before :
MR JUSTICE KEEHAN

Between :	
A	<u>Applicant</u>
- and -	
B	<u>1st Respondent</u>
-and-	
C	
(A Child through his Children’s Guardian)	<u>2nd Respondent</u>
-and-	
A Local Authority	<u>Intervenor</u>

Re C (A Child: Parental Order & Child Arrangements Order)

Mr T Wilson (instructed by **Wilson Browne Solicitors**) for the **Applicant**
Ms M El-Sobky (instructed by **direct access**) for the **1st Respondent**
Mr T Bowe (instructed by **Glaisyers Solicitors**) for the **2nd Respondent**
Dr C Proudman (instructed by **the local authority**) for the **Intervenor**

Hearing dates: 20th - 24th January 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE KEEHAN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must

ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Hon. Mr Justice Keehan:

Introduction

1. I am concerned with one young boy, C, who was born in 2018. His mother is B and his father is A. C was born as a result of a surrogacy arrangement. His father's genetic material and a donated egg were used to create embryos which were implanted into the surrogate mother D. Therefore, in law, prior to the making of a parental order, C's legal mother is D, the surrogate mother. There is no doubt, however, that B is C's social, psychological and emotional mother. Accordingly, in this context and for ease of reference I shall refer to B as 'the mother' and I shall use the term 'the parents' in like vein.
2. I am considering three applications:
 - i) the parents' application of 12th July 2018 for a parental order in respect of C;
 - ii) the mother's application of 15th March 2019 for a non-molestation and occupation order against the father; and
 - iii) the father's application of 22nd March 2019 for a child arrangements order.
3. The case had been listed as a composite fact finding and welfare hearing. At the conclusion of the five-day listing only the evidence relating to the fact-finding element of the hearing had been completed. Accordingly, it was agreed that:
 - i) counsel would file and serve written closing submissions on the fact-finding element of the case;
 - ii) the matter would be adjourned part heard for a further three day hearing at which the court would hear evidence and receive submissions on the welfare issues;
 - iii) prior to the above adjourned hearing the court would hand down a written judgment dealing with the fact-finding element of the case; and
 - iv) at the conclusion of the adjourned hearing the court would give judgment on the welfare issues.

Background

4. The mother is a British Asian who was born in the UK. The father was born in the Indian Subcontinent and came to this country in December 2008.
5. The parents met and were married in 2009.
6. They decided to start a family but, very sadly, the mother suffered seven consecutive miscarriages. The miscarriages invariably occurred around the beginning of the second trimester.

7. In early 2017, the parents decided to pursue a surrogacy arrangement in the hope of having a child. On 24th March 2017, the mother made contact with a surrogacy agency in X Country.
8. This contact culminated in the parents entering into an agreement with the surrogacy agency in X Country on 26th April 2017. The contract as signed by the parents has the words written in manuscript 'To Proceed' adjacent to the parents' signatures on each page of the contract. The mother and the father both claimed to have written these words on each page of the contract. Later in this judgment I shall decide whose evidence I prefer on this issue.
9. The parents having considered a number of women as potential surrogates and having met one, D, the parents signed a written surrogacy agreement with her on 30th June 2017 in X Country.
10. On 4th August 2017 the mother sent an email to the director of the X Country surrogacy agency, E. She requested the agency to store the father's unused genetic material until December 2017. The relevant part of the email said:

“can we store the [father's] sperm for 5 months for now, hopefully by then we can see what we have from this [course] of treatment now”

The mother forwarded a copy of this email to the father.

11. On 5th August 2017 the embryo, created using the father's genetic material and an egg from a donor, was implanted into the surrogate mother, D. The pregnancy was confirmed by an ultrasound scan performed on 7th September 2017.
12. In October/November 2017 the mother alleged she has discovered the father was having an affair with a colleague at his place of work. In her first witness statement the mother asserted that the father:

“was behaving in a weird and threatening manner all of the time and I started feeling intimidated around him.”
13. On 21st November 2017, the mother sent an email to E enquiring about using the remaining stored embryos for a second surrogacy. It is of note that the mother did not forward this email to the father.
14. E replied to the mother on the same day stating that she would send a power of attorney to be signed by the parents and continued:

“if we start straight away, you and [the father] send us apostilled power of attorney (we will give you an example) and our lawyer will sign papers instead of you.”
15. On 7th December 2017 the mother and father signed a power of attorney which authorised the surrogacy agency to sign documents on their behalf. The father asserted that he was told by the mother that the purpose of the power of attorney was to assist with the registration of the expected child's birth and in obtaining a passport for the child.

16. In 2018 C was born in X Country.
17. Both parents arrived in X Country and C was placed in their care. All three remained living in X Country until 7th July when C travelled with his parents to the United Kingdom.
18. On or about 24th April 2018, E emailed the mother a copy of a second surrogacy agreement. In response the mother emailed E and requested her not to discuss the second surrogacy agreement with the father. The email continued:

“[the father] wanted me to inform you that he is happy to read and sign all necessary documents for new contract and for me to discuss everything with you fully... [the father] does not want to discuss in detail as he finds it difficult each time we face miscarriage.... [the father] said for you not to feel offended as he will not make any attempts to talk about this tomorrow.”

I note a copy of this email was not forwarded to the father by the mother.

19. On 24th April 2018 the agreement with the agency for a second surrogacy was purportedly signed by the father. The father denied ever signing an agreement for a second surrogacy. I note that the words ‘To Proceed’ do not appear on this second document and it is undated.
20. On 13th June 2018 the mother forwarded an email to the father attaching a DNA report in respect of C. Further on 26th June the mother forwarded to the father an email containing a summary of the surrogacy arrangements which led to the birth of C.
21. On 23rd July 2018 the parents’ made their application for a parental order.
22. On 23rd July 2018 A Local Authority (‘the local authority’) received a MARAC referral.
23. Also on 23rd July 2018 the mother left the family home with C. The following day she transferred £60,000.00 from the parents’ joint account to her own bank account. In light of the disappearance of the mother and C, and being unable to find C’s passport, the father contacted the police.
24. By 22nd August 2018 the local authority had completed an assessment and closed the referral. It was noted that:
 - i) the mother had returned home with C; and
 - ii) had told the social worker that she felt safe.

In her evidence the mother accepted she had made no reference to the social worker about the second surrogacy arrangement.

25. The Parental Order Reporting Officer, JG, made three visits to the family in September and October 2018. On no occasion did the mother mention or make any reference to a second surrogacy arrangement.
26. On 19th October 2018 the parents attended an initial relationship counselling session. Thereafter between 23rd November and 21st February 2019 the parents or, at least, the mother attended further counselling sessions. On not one occasion did the mother mention the second surrogacy arrangement.
27. On 23rd October 2018, 22nd January 2019 and 5th March 2019, the parents attended before HHJ Dowding at a directions hearing in respect of the application for a parental order in respect of C. The mother said nothing to the judge about a second surrogacy arrangement.
28. On 25th October 2018 a second surrogacy agreement was signed by the proposed surrogate mother, not D, and the agency's lawyer signed the agreement on behalf of the parents using the 7th December 2017 power of attorney.
29. The following day E sent an email to the mother notifying her that the contract had been signed and that a scanned copied of the same was attached. I note that this email was not forwarded to the father.
30. On 10th December 2018 the embryo was implanted into the second surrogate mother. A pregnancy was confirmed by blood test on 22nd December. E emailed the mother with this news on 26th December. I note, once more, that this email was not forwarded to the father.
31. On 9th January 2019 a scan revealed that the second surrogate mother was carrying twins.
32. The mother alleged that the father physically assaulted her on 3rd February 2019. The mother and her sister asserted that the mother spoke to her sister about the alleged assault on the following day, 4th February.
33. In her witness statement made in June 2019 the mother alleged, for the first time, that on 4th February the father had called her and threatened her to not tell anyone about this alleged assault. This threat is not referred to in the mother's police statement of 8th March nor in her statement of 15th March made in support of her applications for a non- molestation order and occupation order.
34. On 5th February 2019 a social worker visited the family. There was no mention made of the second surrogacy nor of the father's alleged assault two days before.
35. After a court hearing on 5th March the father asserted that for the very first time the mother told him about the second surrogacy and told him that if he did not take responsibility for the twins, then the marriage would be over. The same day the father telephoned the surrogacy agency in X Country to ask about the purported second surrogacy arrangement.

36. On 6th March 2019 the mother reported the father to the police in respect of the alleged assault on 3rd February. Thereafter she changed the door locks at the family home to prevent the father gaining entry.
37. On 8th March 2019, whilst on her way to the police station to give a witness statement, the mother telephoned the relationship counsellor and revealed, for the first time, the second surrogacy.
38. After this date there was no contact between C and the father until June 2019 when, at a hearing before me, it was agreed contact would commence at a local contact centre supervised by the local authority. The father's contact was extended, albeit still supervised, by my order of 25th July 2019. His contact with C moved to unsupervised by my order of 7th October. The father then moved to have C for overnight contact by my order of 14th November 2019.
39. On 15th March 2019 the mother made a without notice application for a non-molestation order which was granted by a deputy district judge on 18th March.
40. On 8th April 2019 E sent an email to the mother in which she said:

“some time ago we received a call from [the father] who said that he will go to court because he never agreed for the second surrogacy program and did not sign any contact, of which we have the original.”

This email was not forwarded to the father.

41. On 11th April the mother responded and requested that E send:

“me only, a copy of the contract agreement we both signed...”
(emphasis as in original)

This was followed by a further email from the mother to E on 17th April when the mother requested:

“please continue only to communicate with me and let me know when [the father] or someone on his behalf contacts you”
(emphasis as in original)

These emails were not forwarded to the father.

42. On 6th June 2019 the mother sent an email to E asking her to confirm that the second surrogacy agreement was signed in her presence. E replied:

“We can not write the letter you are asking for since it's been like a year ago and I cannot remember the situation clearly.”

43. In 2019, twins were born as a result of the second surrogacy - a girl and a boy. They remain living in X Country. The mother divides her time between caring for C and travelling to X Country to care for the twins on, roughly, a two weekly cycle. At the present, when the mother is in X Country, C is cared for by maternal family members or by his father.

The Law

44. The burden of proof rests with the party who is inviting the court to make a finding of fact against another party or a third person.
45. The standard of proof is the simple balance of probabilities: *Re B* [2008 UKHL 35].
46. The rule of *R v Lucas* [1981] QB 720 was adopted in the family courts in *A County Council v K, D and L*. The principle is that if the court concludes that a witness has lied about one matter it does not follow that he has lied about everything. A witness may lie for many reasons, for example out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure.
47. In the criminal courts a lie can only be used to bolster evidence against a defendant if the fact-finder is satisfied that the lie is deliberate, relates to a material issue and there is no innocent explanation for the lie.
48. The court is respectfully referred to the case of *Re: H-C (Children)* [2016] EWCA Civ 136 and to paragraphs 98 to 100 of the decision of Lord Justice McFarlane, as he then was, where he said:

“98. The decision in *R v Lucas* has been the subject of a number of further decisions of the Court of Appeal Criminal Division over the years, however the core conditions set out by Lord Lane remain authoritative. The approach in *R v Lucas* is not confined, as it was on the facts of *Lucas* itself, to a statement made out of court and can apply to a "lie" made in the course of the court proceedings and the approach is not limited solely to evidence concerning accomplices.

99. In the Family Court in an appropriate case a judge will not infrequently directly refer to the authority of *R v Lucas* in giving a judicial self-direction as to the approach to be taken to an apparent lie. Where the "lie" has a prominent or central relevance to the case such a self-direction is plainly sensible and good practice.

100. One highly important aspect of the *Lucas* decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the "lie" is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane's judgment in *Lucas*, where the relevant conditions are satisfied the lie is "capable of amounting to a corroboration". In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of *R v Middleton* [2001] Crim.L.R. 251.

In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure

that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt”.

The Evidence

49. A hand writing expert was instructed late in the day to opine on whether it was or was not the father’s signature which appeared on the purported second surrogacy arrangement. He was not able to give an opinion one way or the other.
50. K was the local authority social worker who undertook a parenting assessment of the parents. The principal aspects of her evidence may be summarised as follows:
 - i) the father appeared to be open and honest in the course of her assessment;
 - ii) he was a natural parent who needed no prompting and whose focus was the child;
 - iii) she did not hear any negative comments by the father about the mother - on the contrary, he wanted to promote C’s relationship with his mother;
 - iv) she had no concerns about the father’s supervised contact nor about any of the unsupervised sessions; and
 - v) the social worker had, in accordance with my orders, progressed the plan of contact to unsupervised contact and overnight contact to inform the s.37 report she was required to file and serve.
51. K was asked on behalf of the mother why she had been summarily dismissed by the local authority. K said that she did not know and has not been informed of the same by the local authority. She has since been employed by another local authority as a senior social worker. I am not minded to take K’s dismissal into account, not least as I have very little information about the surrounding circumstances. Suffice it to say that I found K to be a reliable, honest, truthful and professional witness. I have no reason to doubt the opinions she expressed nor the actions she took in her assessment of this case.
52. I then heard evidence, by video link, from E, the customer manager of the surrogacy agency in X Country.
53. E claimed to recollect attending at the parents’ apartment in X Country on 24th April 2018. Present were the mother, the father and C. She said that she had with her two copies of the second surrogacy agreement which the mother and father sequentially signed. She appeared to have a clear recollection of the events of this day and further asserted that they both, the mother and the father, understood what they were signing.
54. Mr Wilson, counsel for the father, asked E why, if she had such a clear recollection of events, did she send the email of June 2019 declining to confirm that the father had signed the second agreement in her presence? She responded that she had been advised by the agency’s lawyers to respond as she did in the email. She denied that she had been advised to lie. E explained that she had been advised that if she was not 100% sure, she should give the response sent in the email.

55. I note that the second agreement, unlike the first, is not dated. Further, I note that in a summary in respect of the second surrogacy agency, the date of the parents signing the second agreement is given 23rd April 2018.
56. I have referred to the email sent by the mother to E the day before this meeting, asking her not to discuss the second surrogacy. Given this unusual request, I was very surprised when E told me that she had no recollection of this email nor of the mother's request.
57. Early in her oral evidence E said that she had been in constant contact with the parents. This was false. She then corrected herself to say that she had been in constant contact only with the mother.
58. E was asked whether a copy of the second surrogacy agreement had been sent to the mother or to the father. She could not remember. I adjourned for a short period to allow the witness to check her email account. An email, attaching the signed second surrogacy agreement, being sent to either the mother or the father could not be found.
59. E said that it was the mother alone who requested an extension, beyond the initial 5-month period, for the storage of the father's genetic material not used in the first surrogacy. The clinic acceded to this request without, it would appear, seeking any clarification of the father's views nor seeking to obtain his consent.
60. At the start of her evidence the mother told me that the parents had agreed that they did not want C to be an only child and had discussed another child or children by subsequent surrogacy arrangements.
61. She said that the decision to pursue a second surrogacy in X Country was a mutual one. The father said that he would have difficulty travelling to X Country because of his commitments at work. Accordingly, they signed a power of attorney authorising the agency's lawyer to sign any necessary documents on their behalf. The father does not accept that this was the purpose of the power of attorney: he asserted that it was signed to enable the agency to register C's birth and to apply for a passport for him.
62. The mother, like E, asserted that she and the father signed the second surrogacy arrangement at their apartment in X Country in the presence of E.
63. In cross-examination the mother gave a number of wholly unsatisfactory answers. I set out the principal examples below.
64. The mother maintained in her evidence that the father had ready access to her email account. The father denied that this was the case. In relation to the second surrogacy the mother did not forward a single email to the father that she had sent to or had received from the surrogacy agency. The mother's explanation was that she did not need to do so because the father could access her email account and read the emails.
65. This explanation does not sit well with her actions in respect of the first surrogacy when she regularly forwarded emails to and from the surrogacy agency to the father, when on her case he could have accessed her email account to read them. I note that in the midst of the second surrogacy, the mother forwarded two emails she had received from the agency in respect of C's surrogacy and birth, namely on 13th June

and 26th June 2018. She did not, however, forward emails sent to or received from the surrogacy agency before or after these dates in relation to the second surrogacy. Why not? She said that she was busy looking after C!

66. The mother was asked if she had asked E not to speak to the father about the second surrogacy. She said that she had not. Her email to E of April 2018 in which she made this request was put to the mother. She then claimed that the contents of this email had been dictated to her by the father. This was the first time she had made this allegation.
67. There was an issue about who had written the words 'To Proceed' on the first surrogacy. Initially, the mother said that she had written these words. The father asserted that it was him and in support he has exhibited a number of employment contracts he had signed in the past (one going back to 2016) to his statement of 17th December 2019. On each he had signed his name and written 'To Proceed' and on one 'Accepted and Proceed'. When these were put to the mother, her response was that the father must have added these words after the event and recently.
68. There was not a shred of evidence on which to found this serious allegation of dishonesty against the father. I gave the mother a warning against making baseless and false allegations against the father. It was to no avail.
69. On 31st October 2017 the mother claimed that she had discovered that the father was having an affair with a work colleague. She said that the father was remorseful when she challenged him about it and wanted to unite the family: hence the second surrogacy. I note that the first and only time the mother made this assertion was in her oral evidence.
70. The parents did embark upon a course of relationship counselling.
71. All payments for the first surrogacy were made from the parents' joint bank account. In marked contrast not a single payment was made from this account in respect of the second surrogacy. All of the payments for the latter were made from the mother's sole bank account. When asked why this was, she replied that in mid 2018 she had transferred £60,000.00 from the joint to her personal bank account.
72. When asked why she had done this, she claimed that the father had threatened to remove all of the funds from the joint account and to take C from her. She had never made this allegation before. She did not give this explanation to the police when they were called out to the family home on 23rd July 2018. Then she said that she had taken the money to live off and that the father had no issues with her having transferred the monies. The mother could not explain these two contradictory accounts.
73. During July and August 2018, the local authority undertook an assessment of the parents at the direction of the court. The mother made no mention whatsoever of the second surrogacy. When asked why not, she alleged for the very first time that the father had instructed her not to do so.
74. Similarly, she did not mention the second surrogacy to JG, the parental order reporting officer. She did not mention it at any point in the parents' counselling sessions. Once more, and again for the first time, the mother alleged that the father

had told her not to tell the reporting officer or their counsellor about the second surrogacy. The mother gave no reason for the father allegedly instructing her not to mention the surrogacy.

75. The mother had alleged the father had assaulted her on 3rd February 2019. The mother and her sister are agreed that the mother spoke to her sister about the alleged assault on 4th February. She attended at a hospital for treatment on her finger on 28th February 2019 but did not mention that she had been assaulted. The mother said that she feared she would lose C if she said her husband had assaulted her. She did not mention the assault to a social worker whom she saw on 5th February, apparently for the same reason. She did not mention the assault to the counsellor at a session on 21st February. She did not mention it at the court hearing on 5th March.
76. It was not until her statement of 13th June 2019 that the mother alleged for the first time that the reason she had not told people of the father's assault was because on 4th February he had threatened that he would not attend a planned meeting with the social worker if she did so. The mother said that she feared she would lose the care of C if the father did not attend this meeting. I note that this is the first time the mother made this allegation against the father. She did not refer to it in her police witness statement of 8th March. She gave a plainly ludicrous explanation for this omission by saying in her evidence that the police had not asked her about it. How could they if she had not mentioned the threat to them?
77. In contrast, in her police witness statement she mentioned that the father had told her on 4th February that he would not attend the meeting with the social worker. There is, however, no mention of the father threatening her.
78. In her witness statement of 15th March 2019, the mother said that the father had, immediately after the assault, threatened not to attend the meeting with the social worker if she called the police: not, as per her police statement, the following day. In this March statement there is no reference to her speaking to her sister on 4th February about the alleged assault.
79. In her statement of 18th December 2019, she alleged for the first time that she had told her mother in law about the father's assault on 3th February.
80. On 5th March 2019 the father asserted that the mother told him about the second surrogacy for the first time. He told me that he was shocked and felt cheated.
81. The mother alleged that on this date, as they drove home from court, the father said that he would destroy everything if she did not accompany him on a holiday to his country of origin. She further alleged that later that evening he threatened to destroy her life. This was why she said she contacted social services the following day and was advised to report the matter to the police, which she did.
82. She then arranged to change the locks at the family home to prevent the father from gaining entry and prevented him from having any contact with C.
83. In this judgment I am dealing solely with a fact finding exercise and at the adjourned hearing in April I will consider the welfare of and child arrangements for C. I will not, therefore, set out the history of the care of C or of the contact with his father post

March 2019, save that I make reference to a letter of complaint that the mother sent to Cafcass on 24th October 2019 after I, at an earlier hearing, had ordered that C should spend time with the father. This letter is written in the most intemperate terms. In it she made plainly false allegations against the father and the social worker K. I give but one example:

“following repeated exposure to domestic abuse and violence from my son’s father”

The mother had never previously asserted she had been the subject of repeated domestic abuse and violence. She had previously made only one allegation of violence against the father, namely the alleged assault on 3rd February 2019.

84. The father became visibly emotional at the start of his evidence when he spoke in the warmest of terms about C. He told me that he considers the mother has a very important role to play in C’s life and that he believes C loves his mother. Nevertheless, he considered that it would be in C’s welfare best interests to live with him and to spend time with his mother.
85. He asserted that the power of attorney executed in December 2017 was solely for the purposes of obtaining the registration of C’s birth in X Country and to obtain a passport for him.
86. He was adamant that, since he graduated from university, he had always signed a formal contract with the words ‘To Proceed’ by his signature. These words appear on the first surrogacy agreement but not the second. He asserted that he never knowingly signed a second surrogacy agreement and could not explain how what purports to be his signature appears on the second agreement.
87. As mentioned earlier in the judgment the handwriting expert was unable to give an opinion of whether the father’s signature, as appeared on the second surrogacy agreement, was genuine or not.
88. In cross examination he adamantly denied he had has anything to do with the second surrogacy agreement.
89. In relation to his alleged assault upon the mother on 3rd February 2019, the father denied that he had assaulted the mother. He said that she had injured her hand in an accident at home when she had tried to open the trapdoor to the attic. It had come down suddenly onto her hand causing an injury to her. She had told the father and had relayed the details of the accident to him. The father gave a very detailed description of the accident and of his subsequent conversation with the mother. The father said that he had no idea why the mother had lied about this episode.
90. The father agreed with the mother to ask the surrogacy agency to store his genetic material for a period of five months in early August 2017 which would expire on 5th December 2017. He explained that the reason for this somewhat unusual period was to await the second trimester of the surrogate’s pregnancy – past the point at which the mother had sadly suffered a number of her miscarriages. He said that they did not want to take the chance of something similar occurring to the surrogate’s pregnancy.

He did not at any time agree to the storage of his genetic material beyond 5th December 2017.

91. He said that the mother threw him out of the matrimonial home on 5th March 2019.
92. The father denied ever having discussions with the mother about eventually having siblings for C. He said that after the mother having suffered seven miscarriages, in his view he was very happy to have C and that one child was more than enough. I note that the father was somewhat emotional when he spoke in these terms about C.
93. The father denied that he had ever had an affair with a colleague at work. He had, however, admitted to the parents' counsellor that he had had an affair during a session on 19th October 2018: the father in evidence said that he did not agree with the counsellor's record. The counsellor's notes read as follows:

“Husband shared for the majority of their relationship wife has been critical and negative towards him. He stated he had an extra [marital] affair with a [work] colleague and his wife found out that he was being unfaithful. Husband shared that his wife is disrespectful towards him and his family in particular towards his mother. Client shared he is very close to his mother and when his wife speaks badly of her it makes him frustrated and angry. Client shared he feels unsure their relationship will work due to wife's negative and disrespectful ways towards him and his family.”

Moreover, within the papers, the father's mobile phone records disclose a very high volume of calls and messages at various times of the day and night between the father and a work colleague.

94. He denied that he had ordered the mother not to mention or disclose the fact of the second surrogacy.
95. He denied breaking framed photographs during the course of an argument with the mother on 1st March 2019.
96. In relation to a meeting with E in X Country on 24th April 2018, the father maintained that the family had been staying in a hotel and not an apartment as claimed by E. He accepted that he had had social conversations with her from time to time in the course of the first surrogacy arrangement.
97. He denied signing any agreement in front of E.
98. On 5th March 2019 when the mother told him about the second surrogacy, he said she had opened her laptop and showed him a scan of the foetuses. She had said 'these are yours'. The father said that he felt cheated and shocked by this news and realised his marriage was over.
99. The same day the father telephoned the surrogacy agency to enquire if what the mother had told him was true. His telephone call was confirmed by E in an email sent to the mother on 8th April 2019.

100. When asked about the role of the twins in C's life, they being half siblings, the father became visibly emotional and said he was in a real dilemma. He feared C would be traumatised by news that he had half siblings. The father said he would need professional advice about how to proceed and move forward on this issue.
101. The father was in tears as he told me that the two most wonderful women in his life were his mother and the mother. For the sake of C, he said, 'I will need the mother'.
102. At the conclusion of his evidence the father apologised to me for becoming so emotional in his evidence.

Analysis

103. I found the father to be a measured and sincere witness who gave evidence in clear and precise terms, albeit he became very emotional when speaking about C. I regret to observe that I found the mother to be a most unsatisfactory witness who lied to the court in key parts of her evidence. I shall now give my reasons for coming to those conclusions.
104. The principal issue for me to determine in this case is whether the father knew of and consented to the second surrogacy agreement. There are very significant differences between the first surrogacy agreement and the second.
105. On the first surrogacy agreement the father said he wrote the words 'To Proceed' by his signature as was his usual practice. The mother first sought to claim that she had written these words. I am not a handwriting expert, but the manuscript of these words bears a resemblance to the father's signature: they do not bear any resemblance to the mother's signature. Moreover, they appear adjacent to the father's signature and not the mother's signature.
106. The father's past practice and routine is evidenced by contracts which he had signed well before and after the signing of the first surrogacy agreement. When these contracts were put to the mother, she claimed the father had subsequently doctored these contracts by adding the words 'To Proceed' or 'Proceed and Accepted'. The mother reluctantly conceded that she had no evidential basis for making the allegations of forgery.
107. I am satisfied on the balance of probabilities that when the mother said she had written these words and/or when she claimed the father had forged the contracts he relied upon, she was lying.
108. In relation to the first surrogacy the mother regularly forwarded to the father emails from the surrogacy agency, including emails sent after the birth of C. Yet, in respect of the second surrogacy, she did not forward a single one. Her explanation that she did not do so because the father had access to her email account, which the father denied, is no explanation because she made the same accusation against the father in relation to the first surrogacy and yet still forwarded emails to him. I find that the mother was lying about why she did not forward any emails to the father in respect of the second surrogacy.

109. In respect of the first surrogacy all payments made to the agency were paid from the parties' joint bank account. In respect of the second surrogacy no payments were made to the agency from the joint account. I noted the mother withdrew £60,000.00 from the joint account and placed the monies in her sole bank account.
110. This withdrawal of money from the joint account is also of note because in her statement of June 2019 she asserted that she withdrew the funds because of the father's threat to dissipate the monies and to take C from her. In marked contrast, in her police statement of 8th March 2019 there is no mention of any threats being made by the father on this issue. The mother was given repeated opportunities to explain the discrepancy: she could not. I find the mother was lying in her statement and in her evidence to the court when she said the father made these two threats against her.
111. As I have set out earlier in this judgment, the mother serially failed to tell the parental order reporting officer, the social worker, the parents' counsellor or the court then hearing the parents' application for a parental order, about the second surrogacy (save that the mother telephoned the counsellor to tell her of the same when the mother was en route to the police station on 8th March 2019). When asked why she had not mentioned it, she alleged for the first time that the father had instructed her not to do so. She did not, apparently, ask him why she should not mention the second surrogacy.
112. This allegation was made very, very late in the day. I am satisfied that this is another false allegation against the father. Once again, I am satisfied and I find that the mother is lying.
113. Save for the meeting between the mother, the father and E on 24th April 2018 in X Country, there is no evidence and no assertion that the father had any other contact or communication with the surrogacy agency until his telephone call on 5th March 2019. Why did he make this contact on this day? It is because he asserted that this was the day the mother first told him about the second surrogacy.
114. I have considered this issue very carefully. One answer is that the father is lying about his lack of knowledge about the second surrogacy and he telephoned the agency as a tactical device to support his case that he had no prior knowledge of it. Given my overall positive assessment of the father and his overall veracity as a witness, I consider this explanation to be a remote possibility. I consider it by far much more likely, and I so find, that he telephoned on the day the mother first told him about the second surrogacy to find out what had happened and to alert the agency that he had not known about nor consented to the second surrogacy.
115. What about, however, the purported second surrogacy agreement of April 2018 which the mother and E said the father signed on 24th April 2018? I held grave reservations about this agreement. Having heard the evidence of the father, the mother and E, I am not satisfied that the father signed the second surrogacy agreement and I find he did not. My reasons for so finding are as follows:
 - i) I accept the father invariably signed contracts with the words 'To Proceed' or 'Proceed and Accepted' by his signature. These words do not appear anywhere on the second surrogacy agreement;

- ii) the father is a meticulous and, if he will forgive me for saying so, a somewhat pedantic individual. I do not accept that if he had signed the agreement on 24th April 2018, he would not have dated the contract – and the second agreement is not dated;
 - iii) the mother alleged in evidence that the contents of the email she sent to E, prior to the alleged signing of the agreement, requesting not to speak to the father about the second surrogacy, had been dictated to her by the father. This allegation and the reasons set out in the email (see paragraph 18 above) made no sense to me at all. The most likely explanation for this email being sent, and I so find, was to ensure the father was not told about the second surrogacy. I reject the allegation that the father dictated the contents of this email to the mother: once more, she is lying;
 - iv) I found E to be a most unsatisfactory and ultimately unreliable witness. When the mother requested her in June 2019 to confirm the father had signed the second agreement in her presence on 24th April 2018, she refused to do so. She claimed she had been advised not to give the confirmation if she was not sure about the issue. If this is true, I do not understand how another seven months later she purported to give a very clear account and recollection of the events of 24th April. I find she was lying;
 - v) E denied any recollection of receiving an email from the mother asking her not to speak to the father about the second surrogacy. There is no doubt the email was sent to her. I am not satisfied that E was being truthful when she said that she was unable to recollect this email; and
 - vi) the mother has serially lied in her evidence. I find no innocent explanation for these lies. She is, I find, a wholly unreliable witness who will tell lies with alacrity to achieve her objectives.
116. The mother seeks a finding that the father assaulted her on 3rd February 2019. She also seeks a finding that on 28th February 2019, during the course of an argument, the father smashed a number of framed photographs. The father denied assaulting the mother or smashing the photographs. He asserted that the mother sustained an injury to her finger in a domestic accident at the family home.
117. Although the mother asserted she had told her sister about the father's assault upon her on 4th February, I note no such account is given in her court statement of 15th March 2019 made in support of an application for a non-molestation order and occupation order. Moreover, there are a considerable number of discrepancies between the mother's account of the assault and the version reported to the police by the mother's sister. I am not persuaded that any such conversation in fact occurred.
118. Albeit the alleged assault took place on 3rd February 2019, the mother did not report the assault to the police until 6th March 2019. I readily and completely accept that victims of domestic abuse may, for all manner of reasons, not feel able or secure enough to report such matters to the authorities, including the police. They may feel disempowered as a result of domestic abuse, fear they will not be believed and/or fear the potential adverse consequences for them and any child if they were to speak out (by way of three examples only). So why did the mother delay reporting the matter to

the police until 6th March? What occurred between 3rd February and 6th March 2019? There were three particular incidents:

- i) On 4th February the father allegedly threatened the mother if she reported the matter;
- ii) On 28th February there was allegedly a domestic incident in which the father smashed some framed photographs; and
- iii) As I have found, on 5th March the mother, for the first time, told the father of the second surrogacy. The father was shocked and surprised. Plainly his adverse reaction was not one the mother wanted to hear. She alleged he also threatened her on the afternoon and evening of 5th March which led her to contact the police.

119. The temporal connection between the events of 5th March and 6th March, when the mother changed the locks in the family home and made the report of an assault to the police, is stark. In my judgment it is not a case of happenchance or mere coincidence that the report to the police was made the day after she had told the father of the second surrogacy. Further, she stopped all contact between the father and C for three months.

120. I do not believe the mother's account of the father threatening her on 5th March. I consider it most likely, and find, that the father's adverse reaction to the news of the second surrogacy so incensed and angered the mother that she sought to punish the father and/or exact revenge by:

- i) making a false allegation of assault against the father to the police; and
- ii) stopping all contact between C and his father, for no good or child focussed reason whatsoever.

121. There is one peripheral aspect of the evidence I should deal with. Despite telling the parents' counsellor that he had been having an affair, which he denied saying, the father was adamant he had not had an affair with a female colleague at work. The weight of the evidence, especially his mobile telephone records which disclose a very large number of calls and messages being sent to and received from his colleague, very strongly suggest there was some sort of liaison. Nevertheless, the father's lack of candour on this issue does not materially affect my overall assessment of him being a reliable and credible witness. There may be all manner of reasons for why he has adopted this stance, none of which, in my judgment, undermine his credibility.

122. In summary, I do not make any of the findings of fact sought by the mother against the father. I do however make findings that:

- i) the mother deliberately concealed the second surrogacy from the father until 5th March 2019 when it was far too late for him to do anything about it – the surrogate mother's pregnancy being so far advanced;
- ii) the father did not consent to the extension of the period of storage of his genetic material by the surrogacy agency in X Country; and

iii) the father did not consent to the second surrogacy arrangement.

Conclusion

123. I find the mother to have serially lied in her evidence and to have deliberately concealed the second surrogacy from the father.
124. I find the father to be a measured, reliable and credible witness. I do not find that he assaulted the mother or subjected her to domestic abuse as she alleged or at all.
125. In light of the findings I have made, I will consider the welfare issues and future care arrangements for C at the adjourned hearing.