

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

Neutral Citation Number: [2018] EWHC 3360 (Fam)

Case No: FD17P00553

IN THE HIGH COURT OF JUSTICE - FAMILY DIVISION

Courtroom No. 34
1st Mezzanine, Queen's Building
The Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 31 July 2018

Before:
THE HONOURABLE MR JUSTICE WILLIAMS

- - - - -

B E T W E E N:

NG

Applicant

- and -

(1) AV

(2) RB

(1) NV (A CHILD, BY HER GUARDIAN MS RODDY)

Respondents

Re G (Declaration of Parentage: Removal of Person Identified as Mother from Birth Certificate)
(No 1)

- - - - -

Transcript from a recording by Ubiquis
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370 legal@ubiquis.com

- - - - -

DR R. GEORGE (instructed by Goodman Ray Solicitors) appeared on behalf of the Applicant.

THE FIRST RESPONDENT did not appear and was not Represented.

THE SECOND RESPONDENT did not appear and was not Represented.

MS M, CAREW (Solicitor) appeared on behalf of the Child.

JUDGMENT (For Approval)

MR JUSTICE WILLIAMS:

1. I am concerned with a young girl born in October 2011, and whom I will call Naomi in this judgment. She is represented in these proceedings through her Children's Guardian, Ms Roddy and represented by Ms Melanie Carew of Cafcass Legal.
2. The applicant in the proceedings is NG, who is represented by Dr Rob George. NG says he is Naomi's father.
3. The first respondent is AV, who is registered as Naomi's mother on her birth certificate and with whom Naomi is believed to be. AV has played almost no part in these proceedings, having abducted Naomi from England on about 12 October 2017 shortly after the proceedings commenced and shortly after she was served with them. She appears to have taken Naomi to Bulgaria and it is believed that she left Bulgaria in February of this year and travelled to Greece. Her current whereabouts are not known.
4. The second respondent is RB who is said to be Naomi's gestational mother. She has also played no part in these proceedings and is neither present or represented. She resides in Bulgaria, but no residential address is available for her and she has been served by email.
5. The applicant has issued three main applications in relation to Naomi, they being wardship, an application for a child arrangement order and an application for a declaration of parentage under Section 55A of the Family Law Act 1986. It is that last application which I am dealing with today.
6. The background to the application is most unusual. In December 2016 the applicant left the family home which he had shared with AV, Naomi and AV's older child D, who is now an adult. NG says that between then and September 2017 he sought to negotiate spending time with Naomi but was unsuccessful. In late September 2017, NG discovered that Naomi had been removed from her school, and became concerned about a possible removal from the jurisdiction. Thus, on 5 October 2017 he issued wardship proceedings followed shortly afterwards on 10 October by an application for a declaration of parentage and the application for a child arrangements order. In his statement of 5 October, he set out the most unusual backdrop to the applications. He asserted that Naomi was born as a result of

an informal surrogacy arrangement that he entered into in Bulgaria as a single father with RB. That arrangement involved payment of a substantial sum to RB and was illegal I am told under Bulgarian law.

7. His case is that a donor egg was sourced by him, that the donor attended a hospital in Bulgaria to donate eggs, that he provided sperm, that fertilised eggs were then implanted in RB who came to England when she was about four months pregnant and she gave birth to Naomi in England.
8. The applicant's case was that, unknown to him, AV had registered herself as Naomi's mother, but she had not registered him as Naomi's father. He said that over the course of the summer of 2017 he became concerned about what AV might do. He applied in Bulgaria to be named as Naomi's father on her Bulgarian birth registration and that he became worried that AV might leave England and return to Bulgaria and hence he made the application to make Naomi a ward of court.
9. Therefore, on 5 October that application was issued and there was a first hearing without notice before MacDonald J. A Tipstaff order was made which resulted in attempts to serve AV by the police on the instruction of the Tipstaff. Because of the unusual background set out in the applicant's statement, even at that early stage Naomi was joined as a party to the proceedings with a Guardian from the Cafcass High Court Team being appointed, and the matter was listed for a further hearing on 10 October.
10. On 6 October, Essex Police attempted to serve the Tipstaff's order but were unsuccessful and on 7 October AV contacted the police to tell them her then address and on 9 October AV was served with the passport order which MacDonald J had made that required her to surrender her travel documents and the travel documents of Naomi. When the police served the passport order, AV surrendered her Bulgarian identity document and her passport, but she claimed that Naomi's passport was lost – thus that set the scene for what happened next.
11. On 10 October the matter came back before MacDonald J. AV did not attend that hearing and a further hearing was listed for 12 October with a direction for AV to attend in person and for the 2nd respondent, RB, to attend by video link or telephone. Provision was made for service on RB by email. It was on that day that the applications for the declaration were in fact issued.

12. On 11 October, attempts were made to effect personal service of the papers on AV at the address where the police had executed the passport order. Those attempts did not result in personal service being effected. The statement of service sets out in some detail the time he spent there waiting to see if he could effect personal service, but although he noted that lights were on in the property there was no answer to his attempts to speak to AV. As a result, the documents were left in the letterbox that evening.
13. On 12 October the matter came back again before MacDonald J. AV did not attend that hearing and nor did RB attend in any shape or form, and provision was again made for service on AV and RB by email. It subsequently transpired that, at 11.38am on 12 October whilst NG and his team possibly were still at court, AV and Naomi left the jurisdiction on a Eurostar train, and on 13 October the applicant's solicitors were notified by the Tipstaff that this had occurred. That resulted in a flurry of activity, with hearings before Knowles J seeking return and disclosure orders and with those orders being made and a further hearing being listed.
14. On 16 October at 1516 hours, a firm of solicitors, Faradays, contacted the applicant's solicitors to confirm they had been approached by AV and asking for the documents to be sent to them. There was then extensive communication between the applicant's solicitors and Faradays as to the position. The net result of that was that Faradays were not instructed by AV and so when the matter came back on 18 October before Knowles J she was not represented. On that occasion AV's son, D, and her, I think sister, who had been ordered to attend did not attend and a further hearing was listed for 20 October which was to take place before MacDonald J.
15. On 19 October, the order from the 18th was sent to AV by email and was sent to a Bulgarian lawyer, Mr Bikov, who had been in contact with the applicant directly to say he had been instructed by AV.
16. Therefore, on 20 October the matter came back before MacDonald J. At 10.59 on the 20th, an email was received by Goodman Ray which came from AV. It came from an address which has subsequently been used to effect service, but at 10.59 the email was received and that included with it three documents. First of all was a document which is now found at D14 of the bundle which was in the form of a Word document attachment addressed to 'Dear Mr MacDonald', clearly directed to MacDonald J. That document set out the case of AV and I shall return to that later. It also attached two other documents which were

translations of Bulgarian documents which related to NG's application in Bulgaria seeking to be acknowledged as the father of Naomi. One of those identified that AV opposed his application to be registered as the father and in the document addressed to MacDonald J she suggested, indeed said, that Naomi was the result of a relationship with an unknown man, although in the body of her document it appears to contemplate that the father of Naomi could either have been a work colleague or NG.

17. Later that day, at 15.08 a further email was received from AV. In that, she simply said, 'My name is AV' and it gave an address at which she said she was residing. As a result of the receipt of that information, MacDonald J made further orders and listed a further hearing on 2 November, and again provision was made in the order for service either in accordance with the EU service regulation or by email. I pause to observe at this point that despite numerous orders having been made for service to be effected in accordance with the EU service regulation and in accordance with FPR6 and the accompanying Practice Directions, it does not appear that at any stage a proper application has been made to the foreign process section to serve in accordance with the EU service regulation – but the orders have always provided for service by email in default of service through the foreign process section. The orders which were made by MacDonald J therefore were served by email again on AV to the addresses from which emails had been received from her on 20 October and service was also effected on the lawyer, Mr Bikov, who had made contact on AV's behalf.
18. On 2 November, a hearing took place before Newton J and part of his order provided for DNA testing to be undertaken. AV was ordered to file a statement and disclosure was provided for in relation to Naomi's medical records. Again, on that hearing neither AV attended, and nor did RB attend by remote means.
19. On 11 November, a document was received from Mr Bikov, purporting to be sent on behalf of AV. It is a most extraordinary document in its interpreted form. I do not intend to refer to the contents of it, but it would appear to be from a lawyer acting on behalf of AV and indicating an intention to resist on AV's behalf any applications made by the applicant. The order made by Newton J was again served by email. Attempts were made to serve it by first class post and by DHL, although those attempts, certainly by DHL, were unsuccessful because it was eventually returned to the solicitors.
20. On 9 January, RB was served by email and a delivery notification was received by Goodman Ray confirming successful delivery of that document.

21. On 12 January, the matter came before me and I made various directions including listing the declaration of parentage application for a hearing on 18 June. I again made directions for service on both the first and the second respondents to be undertaken in accordance with the EU service regulations. Yet again, no application to the foreign process section was made to effect service by that means. It appears from the statement of service filed that perhaps there was a misunderstanding or a failure to understand what was required because I also gave directions for an application to be filed under the taking of evidence regulation in an attempt to engage the first and second respondents in Bulgaria through that means. I have been provided with the application which was made to the foreign process section in relation to the taking of evidence regulation application but with no application to the foreign process section to effect service. The taking of evidence regulation application appears to have made little progress: the most recent information in writing was on 4 May of this year which simply notified the applicant's solicitors that the application itself had been transferred to another court and so no material has been obtained through the taking of evidence regulation request but nor has any certificate of service been obtained because no application actually was made.
22. Subsequent to that hearing, service has been effected of the order by email again. That appears to have taken place to the first respondent on 27 February and that was also served or sent to the Bulgarian lawyer by email. On 27 February likewise, an email was sent to RB. It is right to observe that on 12 January when the matter came before me I was told that RB had been in contact with NG directly, or not through lawyers anyway, and had said that she was not interested in playing any role in these proceedings. It turns out subsequently that RB may be under investigation in Bulgaria for breach of the laws relating to commercial surrogacy arrangements there.
23. On 1 March 2018 a lady, Ms S, contacted the applicant's solicitors, no doubt in response to the email sent on 27 February to say that AV was not contactable via that email, the email address that was being used was that which AV had used to lodge the documents back on 20 October but it would seem the email account is in Ms S's name and so it appears that it may have been used by AV alongside her own email address. Any attempts at service through that address now have resulted in effectively the documents not getting to AV because Ms S says that it is not to be used for serving documents on AV.

24. Over the course of the early part of this year it emerged from the results of enquiries undertaken by NG in Bulgaria that AV had moved on. The private investigator's report suggests or says that on 17 February 2018, AV and Naomi left Bulgaria and travelled I think by car to Greece. As a result of that information coming to light various applications were made over the course of March and April in order to see whether any information could be obtained as to where AV and Naomi might be, and on 27 April a hearing took place before me at which I made declarations of wrongful removal in order to support applications which might have been brought under the Hague Convention in Greece or any other country where they might be located.
25. The original hearing of the declaration of parentage application was due to take place on 18 June. That was ineffective because the judge who was due to hear it was not able to undertake the hearing and so it was adjourned further to be listed before me on 30 and 31 July. The order which relisted it was served on RB by email again, but only last Friday. It appears from all of the orders which have been made and the various documents which I have been provided with including the statement of service from Ms Johnson and the statement of service that it is clear that AV was served with the applications instituting these proceedings whilst she was still in the jurisdiction, and her letter of 20 October to MacDonald J in my view amounts to entering an appearance in that those proceedings – thus the provisions of Article 18 of Brussels IIa or Article 19 of the EU Service Regulation do not bite so as to prevent this court proceeding to final determination in respect of her. The subsequent evidence as to email service also satisfies me that the documents have been available to AV; whether she has chosen to access them or not I cannot determine, but they have certainly been provided to her in a way which would have enabled her to participate in these proceedings and to be aware of the hearing that was taking place originally due in June but then subsequently today and yesterday.
26. In respect of RB because no residential address is available for her the EU Service Regulation does not apply, but Article 18 of Brussels IIa does apply which provides that in respect of an individual who has not entered an appearance, the Court should stay the proceedings so long as it is not shown that the respondent has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence or that all necessary steps have been taken to this end.
27. The combination of evidence deriving from NG himself as to what RB has said about these proceedings together with the emails which have been sent to a known email address for RB

satisfying me, just, that she has on balance probably received the documents initiating the proceedings, is aware of them and has had the opportunity to participate in these proceedings. It is, I am satisfied, as a result of her choice that she has not participated in these proceedings, she having had no involvement with Naomi since late 2011, shortly after she gave birth to her. I have paused whilst thinking about service of RB because I am troubled by the fact that,

despite numerous orders having been made by various family division judges that service was to be effected in accordance with, if possible, the EU service regulation, ultimately no attempt was made to serve either the first respondent or the second respondent through that route. However, as I say, ultimately the combination of strands of evidence in relation to service on RB do satisfy me that the terms of Article 18 are not engaged and thus I can proceed to determine the application on the basis that BR has been able to receive the documents instituting the proceedings or an equivalent document.

28. Therefore, in the course of this hearing I have had the opportunity to consider a significant number of documents contained in the two lever arch files which have been submitted to me. In particular, I have read the applicant's four statements and I have considered the document addressed to MacDonald J that was sent by AV. I have also considered a variety or a selection of the documents from the clinic in Bulgaria and the medical records of AV both prior to and subsequent to Naomi's birth, along with the hospital records in relation to the pregnancy. I have had the very helpful position statements from the applicant and from the Guardian. I heard oral evidence from NG at some length yesterday in relation to the circumstances surrounding Naomi's conception and the arrangements and I have heard submissions from Dr George and from Ms Carew.
29. The father's case on the facts is that in 2010 he, then being in a relationship with AV, decided that he on his own wanted to have a child and that AV offered to help him acquire a child through surrogacy. He says that he made enquiries on the internet to get a Bulgarian donor egg, that AV identified her brother's girlfriend as a possible host mother for the baby and that he then made all the arrangements with the clinic to arrange for the donor to give her eggs for him to donate his sperm for the fertilisation process to be undertaken and for the implants to take place. The essential thrust of his case is that this was his baby and that AV had offered to assist with childcare effectively on a paid basis, that when RB came to England AV took her to the hospital to act just as her interpreter, and that when Naomi was born it was his understanding and AV's understanding that this was his child and that he

was going to bring her up helped by AV. He says that it came as a surprise to him in 2015 or thereabouts when AV told him that he was not registered as Naomi's father, that she was registered as Naomi's mother in England and Bulgaria and that she then would use this fact as a form of threat against him telling him that he had no rights over Naomi and that she could take her off and do what she wanted with her. He says that by the end of 2016, their on/off relationship had ended. He was involved, by that time, with another lady and he left the household on 26 December 2016, and I think his case effectively is that since then AV has really tried to eradicate him from Naomi's life. In particular, he says that in March 2017 an allegation was made to social services that he may have sexually abused Naomi, which resulted in a social services investigation which ultimately was closed with no action being taken. He says that over the early part of 2017 he was attempting to gain contact with Naomi and instructed lawyers, not his current lawyers, but made no progress. Ultimately he then made an application in Bulgaria to amend the birth certificate, but it was an application to register himself or to acknowledge Naomi as his child, and it may be that it was that application and the service of that application on the mother through the Bulgarian authorities which was the start or the commencement of AV's decision-making to depart from England because that, it appears, was lodged on 12 September 2017. Within three weeks of that, the applications had been issued for wardship in this court, following NG's discovery that Naomi had been removed from her school.

30. Dr George on behalf of the father invites me to accept on the basis of that account, supported by the documents from the Bulgarian clinic, the medical records in relation to AV and the medical records relating to Naomi's birth, that it is clear that the child born at the London hospital in October 2011 was indeed the child that was created in the Bulgarian clinic by the fertilisation of a donor egg by NG's sperm; and that the child who was born to a person identifying themselves as AV was in fact born to RB, who had been implanted with the fertilised egg in Bulgaria in January 2011 and thus that it is clear that Naomi is in fact the genetic child of NG. Dr George also invites me then to make a declaration which records that, the net effect of which will be to insert into the birth certificate NG as the father, and an order made under Section 4 of the Children Act will give him parental responsibility in respect of Naomi. Dr George also invites me to conclude that the evidence plainly establishes that it was RB who was the gestational mother of Naomi and thus should have been the person identified as her mother on the birth certificate, and that AV was fraudulently entered as the mother and should be removed, with a declaration being made to

the effect that RB is the mother with the consequent effect that AV would be removed from the birth certificate and would no longer hold parental responsibility for her.

31. The mother's case is set out at D14 and although she has not participated I take into account the contents of that email. It claims that she wished to become pregnant and have another child following her treatment for breast cancer. She says that for a period of years she was involved in a sexual relationship with a co-worker and with NG, and that as a result of her parallel relationship, as she describes it, she became pregnant. She says that at the beginning of 2011 she understood her biggest dream had become true. She says that she did not know for certain who the father was. Her boyfriend co-worker said that he wanted to start his own business in Spain, and so she offered to NG to live with her and to help her raise the newborn child without him knowing that he may not be the biological father. She says that on 26 December he left to go and live with another woman with whom she says he had been in a relationship for a year and a half. She says that everything that NG says in terms of the story about Naomi's conception is untrue. She describes it as "someone else's story, not mine". She says she cannot explain NG's actions or the story that he has put before this court. She said that she had gone to Bulgaria because her presence was demanded by the authorities which seems to be a reference to the application by the father to acknowledge Naomi as his daughter. She declares that she is the biological and legal mother of Naomi, that she is taking proper care of her and doing everything to ensure a normal childhood for her. She says she does not understand what NG's motives are for doing this and that it is not true she had forbidden him from seeing Naomi but that she is afraid he has sexually abused her daughter.
32. Cafcass's position has been nearly neutral in terms of outcome although Ms Carew and Ms Roddy sensibly recognise that the totality of the evidence which has been put before the court really points in one direction only, which is that Naomi is the biological daughter of NG and was conceived through IVF treatment with a donor egg, and that RB was the gestational mother having carried her for the nine months of the pregnancy and given birth to her in England.
33. In relation to the outcome, the Guardian's position is that in respect of paternity that the court can and should make a declaration of paternity identifying NG as Naomi's father. In respect of her mother, Ms Roddy adopts a more nuanced position, recognising what the evidence suggests but inviting me to consider the consequences in terms of Naomi's best

interests before taking the final decision as to a declaration with the consequences that that might have. The concern that Ms Roddy has is that, given the lack of clarity as to where Naomi currently is and the consequences for Naomi of AV being removed from the birth certificate and thus not holding parental responsibility, there might be a sudden and dramatic intervention by state authorities if and when she is located, which might result in the separation of Naomi from AV, her psychological mother, very suddenly in a situation which almost inevitably would be distressing and possibly would result in Naomi being placed in institutional care for a period of time. Thus Ms Roddy invites me to pause, perhaps taking up the suggestion which

I myself had floated to gauge the consequences of the making of a declaration in respect of the father both in terms of what impact it has on the ground in respect of the police for instance, but also whether there is any response from AV.

34. The law is set out in Section 55A of the Family Law Act:

Declarations of parentage

(1) Subject to the following provisions of this section, any person may apply to the High Court or the family court for a declaration as to whether or not a person named in the application is or was the parent of another person so named.

(2) A court shall have jurisdiction to entertain an application under subsection (1) above if, and only if, either of the persons named in it for the purposes of that subsection—

- (a) is domiciled in England and Wales on the date of the application, or
- (b) has been habitually resident in England and Wales throughout the period of one year ending with that date, or
- (c) died before that date and either—
 - (i) was at death domiciled in England and Wales, or
 - (ii) had been habitually resident in England and Wales throughout the period of one year ending with the date of death.

(3) Except in a case falling within subsection (4) below, the court shall refuse to hear an application under subsection (1) above unless it considers that the applicant has a sufficient personal interest in the determination of the application (but this is subject to section 27 of the Child Support Act 1991).

(4) The excepted cases are where the declaration sought is as to whether or not—

(a) the applicant is the parent of a named person;

(b) a named person is the parent of the applicant; or

(c) a named person is the other parent of a named child of the applicant.

(5) Where an application under subsection (1) above is made and one of the persons named in it for the purposes of that subsection is a child, the court may refuse to hear the application if it considers that the determination of the application would not be in the best interests of the child.

(6) Where a court refuses to hear an application under subsection (1) above it may order that the applicant may not apply again for the same declaration without leave of the court.

(7) Where a declaration is made by a court on an application under subsection (1) above, the prescribed officer of the court shall notify the Registrar General, in such a manner and within such period as may be prescribed, of the making of that declaration.

35. The only particular reference that I make to it now is to subsection (5) which says that, ‘Where an application under subsection (1) above is made and one of the persons named in it for the purposes of that subsection is a child, the Court may refuse to hear the application if it considers that the determination of the application would not be in the best interests of the child’. The jurisdictional criteria in respect of the making of the application are clearly met as both the applicant and Naomi were habitually resident in England throughout the period of one year ending with the date of application.

36. Also relevant is Section 14A of the Births and Deaths Registration Act 1953:

Re-registration after declaration of parentage

(1) Where, in the case of a person whose birth has been registered in England and Wales—

(a) the Registrar General receives, by virtue of section 55A(7) or 56(4) of the Family Law Act 1986, a notification of the making of a declaration of parentage in respect of that person; and

(b) it appears to him that the birth of that person should be re-registered, he shall authorise the re-registration of that person's birth, and the re-registration shall be effected in such manner and at such place as may be prescribed.

(2) This section shall apply with the prescribed modifications in relation to births at sea of which a return is sent to the Registrar General.

37. In relation to declarations of parentage, Peter Jackson J observed in *Spencer v Anderson (Paternity Testing: Jurisdiction)* [2016] EWHC 851 (Fam), [2016] Fam 391 that if a case is brought, the court must hear it and, if there is narrative evidence, that would doubtless enable a conclusion to be reached on the balance of probabilities. However, DNA testing would answer the question of parentage with near certainty and would in effect determine the outcome. That approach is mirrored by that of Holman J in *Elliott v Radcliffe* [2013] EWHC

806 (Fam), where he noted that the standard of proof on such an application is the balance of probability, but the court has to be satisfied as to the accuracy and reliability of that which it is declaring and that a declaration of parentage is a solemn act which is binding. That, as Dr George in his skeleton notes, is mirrored by what the President has said in *Re HFEA 2008*

(*Cases A, B, C, D, E, F, G and H: Declaration of Parentage*) [2015] EWHC 2602 (Fam), [2017] 1 FLR 366, where he acknowledged that the issue is a question of the most fundamental gravity and importance and one which is important emotionally, psychologically, socially and legally. It engages Naomi's rights under Article 8 of the European Convention and it also engages her rights under Articles 7 and 8 of the UN Convention on the Rights of the Child.

38. Therefore, in looking at the evidence, ultimately one is looking to see whether on the balance of probabilities it is established who are the mother and father of Naomi. DNA testing has not been undertaken in this case, although it has been provided for, because AV has not cooperated with that process – although Cafcass had been in a position to take samples even whilst AV and Naomi were in Bulgaria. So the evidence is not in that form, but it is contained in a variety of other contemporaneous documents, as well as the accounts of the parties which enable the court to gain a fairly clear picture and to reach conclusions on a very clear balance of probabilities.

39. Therefore, turning then to the history, AV was born in January 1971 in Bulgaria. NG was born in October 1972 in Bulgaria. In 1994, AV had her first child, D. In about 2000, NG moved to Greece and I think he met AV there for the first time. They had a short relationship then. In 2007 NG moved to England and met AV again. He says that he stayed with her for a short period of time before obtaining his own accommodation. In 2007, the medical records show that AV had breast cancer and that is confirmed by her own evidence at D14. She had chemotherapy and in 2008 the medical records show that she was taking Tamoxifen, a hormonal therapy drug used to treat breast cancer. In 2008, the medical records also confirmed that AV experienced the menopause early at the age of 37, and the inference from both the early menopause and the taking of Tamoxifen is that she would not be able to become pregnant. In 2009, she reported being cured of cancer and at the end of 2009 had breast reconstruction surgery. The medical records confirm what would appear to be an innocuous fact, which is her weight at that time which was 88.6 kg, and her Bulgarian identity card which is held by the Tipstaff confirms her height as being 1.68 metres.
40. In 2009 it is said that NG and AV resumed cohabitation. He says that this is the first time they truly cohabited and it was not for some months that they started a casual sexual relationship. As I say AV's evidence is that she was in a parallel relationship with NG and with a co-worker. The father's evidence about their relationship, as in relation to other aspects, was not terribly clear and nor was it terribly satisfactory. His case was that he decided that he wanted a child of his own volition – but at the same time he said that AV was saying that she wanted a child with him, and that he did not want to have a child with her. I find his account of how a decision came to be taken to bring a child into the world to be difficult to comprehend and indeed incoherent. It seems to me far more likely, having heard what he has to say about it and the circumstances of his relationship with AV who he says viewed him as her partner and wanted to have a child with him, that in fact the two of them decided together that they would have a child, but of course AV could not conceive a child naturally and so the only route to them having a child was to go down the surrogacy route. NG says that he researched the donor egg, that he identified the clinic, but that AV identified the host mother. AV's case is that this was a natural pregnancy. The evidence from the Bulgarian clinic makes very clear that they were engaged to undertake the process of obtaining donor eggs, of receiving NG's sperm, fertilising a number of eggs with that sperm, and then attempting to implant them in RB. The documents make very clear that it was NG and RB who were involved in that process. NG said that he paid the donor some 3,500 Bulgarian lira, that he paid the clinic some 5,000 Bulgarian lira, and that RB was paid

some 15,000 Bulgarian lira. He says that when he attended the clinic to give his sperm, AV attended with him and they bumped into the egg donor whilst at the hospital. In December 2010, an unsuccessful implantation attempt took place. When it became clear that that did not succeed, a second implantation took place which was successful. The records show that RB said that her last menstrual period was on 21 January 2011 and on 6 February the embryo transfer took place which was successful.

41. The evidence of NG was that in about May of 2011, RB came to England and joined them in the house he shared with AV and with her son D. It was a three-bedroom house. RB had one bedroom, D had his own bedroom (he was I think 15 or thereabouts), and NG and AV shared a bedroom, although he says he used to stay on the couch sometimes. I was not entirely clear what his case was in respect of what D's understanding of the situation was, although I think he said that D understood that RB was carrying a child for him and I think he subsequently said that after Naomi arrived that, I infer from what he said anyway, that D treated her as a sister. He said that D knew the circumstances of her conception, but that he respected her.

- In any event it seems that RB lived with AV, NG and D from May through till October 2011.
42. The medical records show that on 22 May 2011, a person who was identified as AV was booked into a London hospital as a late booker, because she was by then 17 weeks and 2 days pregnant. That, if one backtracks the calculation, takes us back to the last menstrual period on 21 January 2011 and so it is consistent with that individual being the person who received the embryo transfer in early February. More significantly the height and weight of the individual recorded are: height 1.61 metres, 7 cm less than AV is recorded as being on her Bulgarian Identity Card; and weight 60 kg, some 28 kg less than AV'S weight recorded in 2009. (Her weight is also recorded as 92 kg in 2016.) Of course, it is possible that she could have lost a significant amount of weight, but it is not possible that she could have lost 7 cm in height. The other evidence in the booking form confirms no significant previous medical history, which plainly is not the case in respect of AV given her breast cancer treatment and breast reconstruction surgery.

43. It seems therefore clear that the individual who was booked in to the London hospital was indeed RB, who booked in using AV'S name in order to access medical treatment without any difficulties being caused by her being a new arrival from Bulgaria. Clearly AV was fully involved in that process. V attended with RB at each of the appointments and spoke on her behalf. The subsequent records include ultrasound attendances in June and July, and

were not attended by NG. He said he saw the pictures but he did not attend those appointments and when it came to the birth process he was at the hospital but was not present for parts of the lengthy labour that RB sustained, although I think he said that he was present in the operating theatre when eventually a caesarean section was carried out and Naomi came into the world.

44. NG said he was off work then for two months and it was two weeks after Naomi was born that her birth was registered, with AV being registered as the mother. NG's case was that he was not aware of any requirements as to registration either in England or in Bulgaria. It seems incredible, considering what he says he went through in terms of making the arrangements to locate a donor and to organise the birth, that he was not sufficiently interested in the registration of Naomi either in Bulgaria or in England. As I say, it seems fanciful and I do not accept his evidence in relation to that. He said that thereafter he returned to work and he was involved in caring for Naomi, but he accepted that the primary carer of Naomi had been AV because he was working hard to pay off the loan he had taken to pay for RB and the donor and the clinic, and it seems fairly clear that AV took on the role of mother to Naomi and subsequently has become her psychological mother.
45. The totality of the evidence, including that which postdates Naomi's birth and the evidence in relation to the roles that AV and NG took on during the pregnancy persuade me on balance that in fact this was not a surrogacy undertaken by NG alone with the intention that he should bring a child into the world which would be his child and which AV would undertake some child-caring responsibilities for. Rather, this was a joint decision undertaken by two individuals in a relationship at the time to bring a child into being as a product of their relationship and where AV and NG both were actively involved in the process of identifying the donor, the clinic, the host and the other arrangements. It is simply not credible that AV was simply identified as an interpreter and child carer in this arrangement. The role she undertook when RB arrived in the country and her presence in Bulgaria at the clinic and in identifying RB as the host mother all point to her being fully involved in the arrangements alongside NG to have a baby which would be their daughter.
46. It seems, although we have not explored it very much, that both NG and AV acted as mother and father to Naomi thereafter; their precise roles and their capability as parents will no doubt be looked at in more detail later.

47. I draw a line under the evidence at this stage because, on the basis of all that evidence, it is, it seems to me, clear in terms of the picture which emerges and the conclusions which inevitably flow from it in terms of the facts. My conclusions are that, as I have said, the applicant and the first respondent agreed to have a child by an informal surrogacy, that both were involved. They were intending to have a child who would be treated by them as their child and they would be the mother and the father. The evidence establishes that it was NG who donated the sperm which, combined with a donor egg, became an embryo which was planted in RB, who gave birth to Naomi in London in October 2011 under the name of AV. Therefore, NG is Naomi's father and RB is her mother in the sense of having given birth to her, but AV has been in the role of her psychological mother since Naomi's birth.
48. The consequence of that is that the registration of AV as Naomi's mother was incorrect. RB ought to have been registered as the mother on the birth registration. NG is entitled to be identified as Naomi's father and in respect of NG I will make a declaration that he is Naomi's father. That will have the consequence of the birth certificate being amended and he will acquire parental responsibility pursuant to Section 4 of the Children Act.
49. In respect of the declarations in respect of Naomi's maternity, I am concerned about proceeding immediately to making a declaration and the consequences of that. The power under Section 55A (5) to decline to hear an application or to determine an application involves a consideration of the child's welfare.
50. At this point in time Naomi's whereabouts are unknown, although she is almost certainly with AV, the person who she has known as her mother since her birth. The making of the declaration in respect of NG will have consequences, no doubt, in terms of, in particular, the police involvement – he now being identified as the father with parental responsibility. It may alter the approach of the police to the investigation of Naomi's removal from this country, but also potentially the Bulgarian police may respond in relation to her removal from Bulgaria. It is possible that as a consequence of police action, AV and Naomi may be located and possibly detained but I also – and it may be thought rather a forlorn hope – wonder whether the consequence of this judgment, if it can be got through to AV, may result in her making contact again. As I say, I suspect it is a forlorn hope and that matters have now progressed too far, but it seems to me likely that AV's extreme response, which puts her in contempt of Court, is probably a product of her fear that when the truth emerged as to Naomi's true origins she might be stripped of her daughter and that it was that fear –

perhaps unfounded, but in a sense understandable given my findings as to Naomi's origins – that she fled. It may be that an awareness that this court does identify her as the psychological mother and has not yet taken the step of removing her from the birth certificate might open a window to seeking to re-engage her.

51. The questions of Naomi's future – who she should live with; who she should spend time with; what country she might live in – are yet to be determined. We have not yet explored the evidence in relation to Naomi's relationship with those individuals who she identified as her mother and father and that is all work to be done, but it seems fairly clear that she has always considered AV to be her mother and NG to be her father, and that the person Naomi identifies as her mother has been her primary carer. Thus the question of Naomi's future, in terms of who she lives with and where, is very much one which will have to await further enquiry and assessment, but it is absolutely not the case that the automatic consequence of the factual findings which I have made will lead to the stripping of AV away from Naomi. It may be that the court would conclude that Naomi should still live with AV, either in England or Bulgaria. It might be that the court will conclude that Naomi should live both with AV and with NG. It might conclude that she should live with G and spend time with AV. I do not know what the outcome will be, but it is not an automatic consequence of today's findings that AV will be excluded from Naomi's life, and so for those welfare reasons I decline to

proceed immediately to determining the declaration of parentage application insofar as it relates to Naomi's mother and I will list a further hearing in September. That is my judgment.

End of Judgment