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Triplets' surrogate mom fights to keep baby boys

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By Lillian Thomas, Pittsburgh Post-Gazette

After Danielle Bimber gave birth Nov. 19 to the triplets she had carried as a surrogate mother, she was anticipating going home to her own three children in Corry, Erie County.

But when the biological father and his fiancée visited the three newborn boys for just an hour after the birth, then didn't show up for days, she became uneasy, she said.

"Every day I got more upset," Bimber said. "When the people at the hospital said the babies would be ready to go on a Tuesday, they said they weren't going to be there til Friday because it was Thanksgiving and they were busy.

"I said I don't understand why they are not there; I don't understand why they have not given them names. A, B and C is what they were called for the first week of their lives. The whole thing blew my mind."

She asked the staff at Hamot Medical Center in Erie, where the babies were born, if she could take them home and they allowed her to do so.

Hospital spokesman Charles Hagerty said that J.F., who is identified in court documents as the father, had not provided the hospital with a court order to take the infants, and without it Hamot had no choice but to allow Bimber to take the children.

Now the whole thing is in court, with frustration on all sides because Pennsylvania has no surrogacy law or precedent. Lawyers and judges are left to try to sort out which course to take in excruciating decisions of custody and the future of a family created by contract, medical science and three unrelated adults.

"Pennsylvania doesn't have anything -- no statutes, no regulations, no guidance," said Jim Richardson, the Erie attorney representing the biological father, who disputes Bimber's version of the facts of the case and is appealing Judge Shad Connelly's April 2 decision to award custody of the triplets to Bimber.

Bimber agreed to become a surrogate mother with the Marion, Ind.-based agency Surrogate Mother Inc. at the end of 2001.

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"It was something I wanted to do for a long time," she said. Bimber, 29, and her husband, Doug, have children 3, 6 and 8 years old.

The agency matched Bimber with the father, who lives out of state and his fiancée. Bimber signed a surrogate contract.

The agency also located an egg donor, whose eggs were fertilized with J.F.'s sperm and implanted into Bimber. All three embryos developed into infants who were born Nov. 19, slightly prematurely.

The idea of doubling the size of their family "was a little bit shocking at first" for her and her husband, Bimber said, "but we've been taking care of them since they were born."

They decided to go to court to try to get custody of the babies in Erie County Common Pleas Court.

Connelly reviewed Bimber's surrogacy contract and invalidated it, saying it failed to name a legal mother for the triplets. J.F.'s fiancée was not named in the contract, and the judge ruled that since she was not married to J.F., she could not be considered a legal mother to the babies.

"We had anticipated that if the surrogacy contract were followed, the fiancée would ultimately be deemed the mother," said Richardson. She would have had to adopt the children.

The woman who donated her eggs did not want to be involved in the children's lives after her donation, ruling her out as a possible mother, the judge said.

So he awarded custody to Bimber, instructing her to work out visitation and other rights with J.F.

"The decision the judge came down with has to do with legal standing -- who has the right to assert legal rights," said Richardson.

The appeal is over that issue of legal standing, he said. In the meantime, the parties are trying to work out visitation.

If the judge's decision is overturned on appeal, the custody issue will likely be moot, he said, since the father presumably would be granted custody if the court rules that Bimber did not have standing to seek custody in the first place.

Connelly said his decision sets a precedent in Pennsylvania, which is one of 19 states without a law governing surrogacy. Other states run the gamut, from prohibiting surrogacy contracts altogether to regulating how the process should work.

"It's a case of 'first impression' for the judge," said Thomas Pinkerton, a California attorney who specializes in surrogate cases. "If there is no appellate or state court decision, no legislation, the judge will usually take some statute somewhere, or the attorneys will bring cases from other states -- and they can get whatever state that has precedent that they want -- and what you get is a legal food fight."

Connelly made it clear he wanted to avoid that.

"It is the hope of this court that a custodial tug-of-war will not begin here. It is additionally the court's hope that the Legislature will address surrogacy matters in Pennsylvania to prevent cases like this one from appearing before the courts without statutory guidance," the judge said in his decision.

Bimber, at home with her doubled brood, said that the hardest part has been the uncertainty -- "not knowing what the future held." But her small community has been supportive and her children have welcomed their new siblings.

"Around the 3-year-old, I'm not allowed to say 'my babies.' They're her babies," she said.

(The Associated Press contributed to this report. Lillian Thomas can be reached at lthomas@post-gazette.com or 412-263-3566.)

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