

HCMP 706/2025 &
HCMP 707/2025
[2026] HKCFI 770

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO 706 OF 2025

IN THE MATTER of HCK (),
a boy born on 2024
("Minor")

and

IN THE MATTER of s.12 of Parent
and Child Ordinance (Cap.429)

HSC ()	1 st Applicant
LBM ()	2 nd Applicant
And	
T	Respondent

AND

MISCELLANEOUS PROCEEDINGS NO 707 OF 2025

IN THE MATTER of HCC (),
a boy born on 2024
("Minor")

and

IN THE MATTER of s.12 of Parent
and Child Ordinance (Cap.429)

HSC ()

1st Applicant

LBM ()

2nd Applicant

And

D ()

Respondent

Before: Hon Au-Yeung J in Chambers (Not Open to the Public)

Dates of Hearing: 9 October and 12 December 2025

Closing Date for Submission: 22 December 2025

Date of Judgment: 2 February 2026

J U D G M E N T

A. *INTRODUCTION*

1. This case discloses the difficulties faced by commissioning parents who relied on the word of an agent in the PRC and entered into 2 surrogacy arrangements without due diligence on the laws of Hong Kong

A and PRC. Two boys were born using sperms of the husband applicant and
B donors' eggs. Despite himself being a permanent resident of Hong Kong,
C the husband applicant encountered difficulties in applying for identity
D papers for the children to move to Hong Kong, where the intended home
E is. Meanwhile, for 18 months since their birth, the children have not set
F foot in Hong Kong.

G 2. The 2 originating summonses (“**OSs**”) before me seek
H parental orders under the Parent and Child Ordinance, Cap 429 (“**PCO**”),
I concerning the children born out of surrogacy arrangements (“**the 2 Boys**”).

J 3. The 2 Boys were born on the same date in 2024, but by
K 2 different surrogates who are the Respondents (collectively “**the**
L **Surrogates**”). **D** gave birth to the elder boy (in HCMP 707/2025). **T** gave
M birth to the younger boy (in HCMP 706/2025), about 1 hour and 5 minutes
N later. The Applicants (“**Husband**” and “**Wife**”, respectively) are the
O commissioning parents.

P 4. The legal representatives for the Applicants have taken the
Q prudent step of issuing one OS for each Boy as this would avoid leaking
R the confidential information one Surrogate to another.

S 5. After 2 hearings for call over, the Surrogates have finally been
T served in person on 26 November 2025 in Hong Kong. Each of them has
U confirmed by an affirmation (“**T-aff**” and “**D-aff**”, respectively) her
V consent to the making of a respective parental order. Each has filed an
acknowledgement of service on 28 November stating that she had no

intention to defend the relevant OS. As the issues are the same, and the Surrogates do not attend, the two OSs are heard together.

B. BACKGROUND

6. The Applicants have been married for 33 years by now. The Husband, aged 61, is a businessman who owns and operates factories in Mainland China and runs a business in Hong Kong. The Wife, aged 59, is a housewife.

7. The Applicants have been infertile all along. They had attempted to conceive through IVF years ago but failed. In 2020, the Husband met an agent (“S”) in Shenzhen, Mainland China, upon introduction by a friend (“C”). S allegedly worked in 深圳 [REDACTED] 有限公司 (“**the Company**”) that assisted in birth of children. The Husband was assured by C that S was trustworthy. However, the Applicants were not able to go further because COVID hit.

8. In mid-July 2023, the Husband entered into 2 oral surrogacy agreements with S or the Company that were about a month apart. S arranged for the Surrogates to be impregnated with embryos created using the Husband’s sperms and donors’ eggs. There was no written agreement except that the Husband was given a fee schedule called a “proposal for third party assisted birth”, which set out the payment terms.

9. The 2 Boys were born on the same date ([REDACTED]) in the same hospital in Shenzhen (“**the Hospital**”). Each Surrogate’s name appeared as mother on the birth certificate of the respective boy to whom

she gave birth. The 2 Boys' biological link with the Husband is established via DNA tests.

10. The 2 Boys have, since birth, been raised in the Applicants' home in Shenzhen, under the care of the Wife and a nanny. The Husband shuttles between Hong Kong and Shenzhen. The idea is to bring the 2 Boys back to the Applicants' home in Hong Kong upon completion of the paperwork.

11. S had repeatedly assured the Husband that everything would go smoothly. However, the Applicants first realized that the matter was not as simple as they thought when they applied for Hong Kong identity cards for the 2 Boys.

12. The Husband does not have household registration (戶口) in Mainland China anymore, since becoming a permanent resident of Hong Kong in the [REDACTED]. The only route through which the 2 Boys might obtain household registration was through their respective birth mother. However, the Surrogates do not have household registration in Shenzhen and do not intend to bring up the 2 Boys in any event. They were not willing to assist in obtaining identity documents for the 2 Boys except at a price that the Husband was not willing to pay.

13. The only residency or citizenship that the 2 Boys can obtain appears to be that of Hong Kong. The application for their Hong Kong identity cards has to be done by filling out a form called 香港永久性居民在內地所生中國籍子女赴香港定居申請表, to be submitted to the Immigration Department of the Public Order Bureau of the People's

Republic of China. The Applicants are unable to submit that form because the Wife is not the birth mother.

14. In October 2024, the Applicants sought legal advice from Hong Kong and PRC lawyers. The OSs were filed on 8 May 2025.

15. By the time of deliberation of this Judgment, each of the Surrogates has signed the following documents:

(1) An undated document called 放棄撫養權聲明 (“**undated Declaration**”) signed at the Hospital shortly after the birth of the 2 Boys. It was prepared by S and was signed without the benefit of legal advice or input of the Husband. The Applicants do not rely on this document.

(2) 同意書 dated 8 April 2025 (“**Consent Form**”) – it stated that the relevant Surrogate was unmarried and had no male partner who was involved in the medical process. She was the mother of the relevant Boy. She understood that the Applicants were applying to the Hong Kong courts for a parental order. She agreed voluntarily and unconditionally to the making of the parental order with full understanding of what was involved. She had not received money or other benefit (apart from those under the medical procedures).

(3) 子女撫養協議書 dated 26 November 2025 (“**Custody Agreement**”) which was notarized - it stated that: (a) the Husband shall be the person with direct custody of the relevant Boy; (b) the Surrogate authorized and acknowledged

the Husband's full authority to handle all matters relating to the Boy, including but not limited to applications for the Boy's identification documents, household registration and transfer, educational arrangements, and medical treatment.

(4) T-aff or D-aff filed on 26 November 2025 to confirm what was in the Consent Form.

16. The Applicants explained to the Court that notarization of the Consent Forms (as required in *A & B v. E* [2023] HKCFI 3143 at §59, Au-Yeung J) was not feasible because the Surrogates refused to cooperate and requested more money when the Applicants reached out for assistance on the 2 Boys' applications of Hong Kong identity cards. I accept the Applicants' explanation and allow the Consent Forms to be adduced.

C. STATUTORY REQUIREMENTS FOR GRANTING PARENTAL ORDERS

17. The court may grant a parental order if the conditions stated in s.12 PCO are satisfied, i.e.:

“(1) The court may make an order providing for a child to be regarded in law as the child of the parties to a marriage (referred to in this section as “the husband” and “the wife”) if—

- (a) the child has been carried by a woman other than the wife as the result of the placing in her of an embryo or sperm and eggs or her artificial insemination;
- (b) the gametes of the husband or the wife, or both, were used to bring about the creation of the embryo; and
- (c) the conditions in sub-ss.(2) to (7) are satisfied.

A		A
B	(2) The husband and the wife must apply for the order <u>within 6 months of the birth of the child</u> or, in the case of a child	B
C	born before the commencement of this section, within 6 months of such commencement. (emphasis added)	C
D	(3) At the time of the application and of the making of the order—	D
E	(a) the child's home must be with the husband and the wife or either of them; and	E
F	(b) the husband or wife, or both of them, must—	F
G	(i) be domiciled in Hong Kong;	G
H	(ii) have been habitually resident in Hong Kong throughout the immediately preceding period of 1 year; or	H
I	(iii) have a substantial connection with Hong Kong.	I
J	(4) At the time of the making of the order both the husband and the wife must have attained the age of 18 years.	J
K	(5) The court must be satisfied that both the father of the child (including a person who is the father by virtue of s.10), where he is not the husband, and the woman who carried the child have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.	K
L	(6) sub-s.(5) does not require the agreement of a person who cannot be found or is incapable of giving agreement and the agreement of the woman who carried the child is ineffective for the purposes of that subsection if given by her less than 6 weeks after the child's birth.	L
M		M
N	(7) The court must be satisfied that <u>no money or other benefit (other than for expenses reasonably incurred)</u> has been given or received by the husband or the wife for or in consideration of—	N
O		O
P	(a) the making of the order;	P
Q	(b) any agreement required by sub-s.(5);	Q
R	(c) the handing over of the child to the husband and the wife; or	R
S	(d) the making of any arrangements with a view to the making of the order,	S
T	<u>unless authorized or subsequently approved by the court.</u> (emphasis added)	T
U		U
V		V

(8) Sub-s.(1)(a) applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(9) Where an order is made under sub-s.(1), the Registrar of the court shall notify the Registrar of Births and Deaths, in such manner as may be prescribed, of the making of that order.”

18. S.12(1) is satisfied. The Applicants have been married for 33 years at the time of the filing of the OSs.

19. S.12(1)(a) is satisfied. The 2 Boys in question were carried by the Surrogates other than the Wife, as a result of the placing in each of them an embryo through artificial insemination.

20. S.12(1)(b) is satisfied. The Husband’s sperms were used to bring about creation of the embryo. His parentage is established by the DNA report of each Boy.

21. S.12(3)(a) is satisfied. The 2 Boys were living in Shenzhen with the Applicants at the time of the applications and will continue to do so until their move to Hong Kong.

22. S.12(3)(b) is satisfied. The Applicants are both domiciled in, and have a substantial connection with, Hong Kong because:

(1) They moved to Hong Kong in the [REDACTED] and have become Hong Kong permanent residents.

(2) They were married in Hong Kong in [REDACTED].

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(3) The Husband runs factories in Mainland China and a business in Hong Kong. He spends about 67% of his time in Shenzhen (20 days per month) and the rest in Hong Kong. The Wife splits her time between Hong Kong and Shenzhen.

(4) The Applicants have a permanent home in Hong Kong and have it furnished for the 2 Boys. They intend to permanently live in Hong Kong with the 2 Boys once the parental orders are granted.

23. S.12(4) is satisfied. The Husband and Wife are aged 61 and 59 respectively.

24. S.12(5)-(6) are satisfied in view of the Consent Form, Custody Agreement, T-aff and D-aff.

D. ISSUES

25. The issues are:

- (1) Whether money expended for the surrogacy was reasonable or ought to be approved by the Court under s.12(7); and
- (2) Whether the time limit of 6 months under s.12(2) should be extended.

26. Before analyzing these issues, it is necessary to look at the legality of the surrogacy arrangements and its impact on the status of the Applicants, the Surrogates and the 2 Boys.

E. LEGALITY OF THE SURROGACY ARRANGEMENTS

27. Opinions from 2 PRC legal experts¹, Ms Zhao and Ms Song (by 3 affirmations), have been obtained. They will be referred to as “**Zhao Opinion**”, **Song-1st**, **Song-2nd** and **Song-3rd**, respectively.

E1. Legality under the laws of Hong Kong and PRC

28. There is no doubt that the surrogacy arrangements were illegal under Hong Kong law, being in breach of s.17 of the Human Reproductive Technology Ordinance (Cap 561), which prohibits commercial surrogacy arrangements, whether made in or outside Hong Kong.

29. The surrogacy arrangements were also illegal under PRC laws because, according to Zhao Opinion:

(1) Article 1007 of the Civil Code of the PRC prohibits the acts of buying or selling of human cells, tissues, organs, remains in any form. As a result, surrogacy with transaction purpose is prohibited as offending public order and good morals. (§§16-19)

(2) In practice, penalties are imposed on violators who do not hold a practice licence for medical institutions that illegally carry out assisted reproductive technology and surrogacy, or agencies/individuals who promote surrogacy by advertisement, or provide overseas surrogacy or human

¹ The expert was changed to Ms Song because allegedly Ms Zhao suggested inappropriate measures, after giving her opinion, at a price which the Husband considered, were to meet her own interests rather than to help the Applicants.

assisted reproductive services. Agencies may also be accused of operating illegality businesses. (§23)

E2. Family status

30. Both Ms Zhao and Ms Song are of the opinion that the Husband is the father and each Surrogate is the legal mother of the respective Boy that she gave birth to. Due to the legal marriage with the Husband, her willingness to raise and the actual raising of the 2 Boys, the Wife is deemed to be the stepmother of the 2 Boys.

31. Although the 2 Boys were born out of wedlock, they have the same rights as those born within: Article 1071 of the Civil Code of the PRC. (Song-1st, §8)

E3. Can the Surrogates relinquish their rights as mothers?

32. The Surrogates have legal rights as birth mothers, which can be enforced through courts or by agreement. The Surrogates can relinquish their custodial rights (撫養權) but not guardianship rights (監護權).

33. With regard to custodial rights (撫養權),

(1) They can relinquish direct custodial rights and responsibilities (Song-1st, §13).

(2) Under Article 52 of Interpretation (I) of the Supreme People's Court ("SPC") on the Application of the Marriage and Family Part of the Civil Code of the PRC (《最高人民法院關於適

用〈中華人民共和國民法典〉婚姻家庭編的解釋

(一) 》), parents may agree that one of them will raise the

child and that party will bear all the child maintenance expenses. The direct custodial rights (直接撫養權) may be

given up by decisions of the court or by agreement. The

Custody Agreements were valid agreements by which the

Surrogates have given up their direct rights and the Husband

shall bear the custodial obligations (撫養義務). (Song-1st, §9)

(3) Under Article 1072 of the Civil Code of the PRC and Article

18 of the Interpretation (II) of the SPC on the Application of

the Marriage and Family Part of the PRC Civil Code (《最高

人民法院關於適用〈中華人民共和國民法典〉婚姻家庭

編的解釋(二) 》), one can take into account the facts that

the Boys have lived with the Applicants since their birth, that

the Applicants have been taking care of the Boys and have

fulfilled their obligations of education. Hence, the Wife,

being the legal spouse of the Husband, has formed legally

protected stepmother-stepchildren relationship. The

principles governing parent-child relationship are applicable.

(Song-1st, §10)

(4) Under Article 1084 of the Civil Code of the PRC, the Boys

remain the children of the Surrogates, and the Surrogates

“continue to have the rights and duties to raise, educate, and

protect their children”. Their status as birth mothers will not

be undermined by the giving up of the direct custodial rights.

(Song-1st, §13)

34. With regard to guardianship rights (監護權), Song-2nd stated that, under Article 8(1) of the Interpretation by the SPC of Several Issues Concerning the Application of Book One General Provisions of the Civil Code of the PRC (《最高人民法院關於適用〈中華人民共和國民法典〉總則編若干問題的解釋》): “Where a minor’s parent enters into an agreement with another person legally qualified for guardianship, under which the parent capable of acting as a guardian is released from the duty of guardianship, the people’s court shall not uphold the agreement.” Therefore, the Surrogates cannot give up their guardianship by agreement.

E4. Can the Wife’s status as a mother be recognized by law?

35. Having received Song-1st, this Court raised the query as to whether or not the Wife, as a stepmother, could have her status recognized in any way by a PRC court order.

36. The Wife thus attempted, through Ms Song, to apply to the Shenzhen LongHua People’s Court to have her declared the guardian of the 2 Boys. That Court refused to accept her case (拒絕立案) on the ground that it involved commercial surrogacy, which was illegal. No case number was even assigned, let alone a written ruling. However, there is nothing to cast doubt in my mind that that was the outcome of the Wife’s application.

37. The Wife made another attempt in another court in Shenzhen but was told that that court did not have jurisdiction over this matter and it declined to accept the Wife’s case.

38. This Court has also raised the query as to whether or not adoption in the PRC could be explored for the Wife to adopt the 2 Boys.

39. According to Song-3rd, under Article 1093 of the Civil Code of the PRC, a child can be adopted if he/she is:

- (1) an orphan bereaved of parents;
- (2) a minor whose natural parents cannot be traced; or
- (3) a minor whose natural parents are incapable of raising him due to unusual difficulties.

None of these conditions for adoption can be satisfied in the present cases.

40. Accordingly, there is no legal channel for the Wife to acquire status as a legal mother.

E5. Knowledge of the illegality

41. The Applicants say that they were ignorant of the law when entering into the surrogacy arrangements. In *Re CS & CTW* [2024] 5 HKLRD 70, §136(3) and (4), Au-Yeung J laid down the following principles:

“136. This case that breached the laws in 3 jurisdictions sounds out a serious warning to commissioning parents. If, in future, they want to run the argument that they were ignorant of the law when entering into the surrogacy arrangement, they should satisfy the Court as to the following:

- (1) Why did they not enter into a surrogacy arrangement in Hong Kong? What due diligence

have they done to ascertain the Hong Kong law on surrogacy and satisfy themselves that it was lawful to enter into a surrogacy arrangement?

- (2) Why did they enter into a surrogacy arrangement out of Hong Kong? What due diligence have they done to ascertain the law on surrogacy of the foreign jurisdiction(s) and satisfy themselves that it was lawful to enter into a surrogacy arrangement there? It is unlikely to be satisfactory for the commissioning parents to rely on a surrogacy agency to give such advice on the law. This is especially so when there are 2 jurisdictions involved as in the present case.

- (3) Who, in law, are the parents of the child born out of surrogacy? The law governing commercial surrogacy and that governing parentage are 2 different matters.

- (4) What steps have been taken to remove the parental rights of that/those parents? If no such steps have been taken, why not?"

42. An example of a case where the commissioning parents relied on an agent without due diligence on the law can be found in *Re A and another v X and another* [2025] 4 W.L.R. 73. Theis J stated his concerns about illegality of the surrogacy arrangement (at §44), but held in favor of the applicants (at §51) and authorized the payments (at §53):

“44. I agree with Mr Powell that this is regrettably another example where there has been a lack of due diligence by intended parents before they embark on a surrogacy arrangement. Albeit I accept much is with the benefit of hindsight it remains, in my judgment, an abdication of the most basic responsibility of intended parents in such circumstances not to have clarity about the essential information outlined in paras 2 and 4 above. In this case the consequences of the applicants’ behaviour resulted in them all being in a precarious legal position at the start of Z’s life. I agree with the guardian it remains an unfathomable feature of this case why the applicants should undertake a surrogacy arrangement with an agency based in Country Y, when they knew it was a

jurisdiction that did not support same-sex relationships.
It simply makes no sense.

...

51. Not without some hesitation, I accept the submission that the applicants acted in good faith. Their acceptance that they were naïve is perhaps an understatement, it is more likely that they took risks to pursue their own wish to have a child rather than confront the harsh reality of what they were doing and the consequences of those actions if anything did not go according to their plan with the agency. It is only necessary to give one example to illustrate the point, what would have been the legal position of the adults and Z if Z had required medium to long term medical treatment as a result of any complications during the birth in Country W? There is evidence that they had access to more legal advice about the arrangement than their written statements seek to suggest.

...

53. I am satisfied, on balance, that the court should authorize any element of the payments made by the applicants that do not relate to expenses reasonably incurred.”

43. The Husband explained that his friend, C, worked [REDACTED] at the Hospital. It was through C that the Husband came to know S. C reassured the Husband that S was trustworthy. The Husband arranged for the Surrogates to give birth at the Hospital so that C could keep an eye on the entire process from medical checkup of the Surrogates to the time of birth. C was the conduit in liaising with the treating doctors to ensure that everything was going on well. C communicated with the Husband, whilst the Husband also kept in close communication with S over the conditions of the Surrogates.

44. The Husband had personally met S both in 2020 and in 2023 to discuss the surrogacy arrangements. However, in the 3 years between

2020 and 2023, the Applicants had made no enquiries as to the legality of the surrogacy arrangements and accepted S' words at face value.

45. The Husband also explained that the Applicants wanted to be physically close to the Surrogates during the pregnancy and at the time of birth, so that they could cater to the Surrogates' and the children's needs more easily. They did not choose surrogacy in Hong Kong because quite early on in the search, they had already decided to do it through S.

46. The present cases are different from what faced Theis J in *Re A v X*. The Applicants' connection with the PRC was quite substantial. The Husband spent about 67% of his time in Shenzhen and the Wife 50%. In the light of C's position at the Hospital and involvement in the whole surrogacy process, one can understand why the Husband believed in C and S and made no further enquiries.

47. With regard to questions (1) and (2) in *Re CS & CTW*, I find the Applicants to be ignorant of the laws in PRC and Hong Kong, rather than deliberately flouting any law.

48. With regard to question (3) in *Re CS & CTW*, the parents of the 2 Boys are the Husband and the respective Surrogate.

49. With regard to question (4) in *Re CS & CTW*, the Surrogates can relinquish their custodial rights by agreement but not the guardianship rights; they remain mothers of the 2 Boys. The Wife is regarded as the stepmother; adoption or guardianship order is not a channel open to her.

*F. WHETHER PAYMENTS MADE OUGHT TO BE AUTHORIZED
OR APPROVED BY THE COURT*

F1. Legal Principles

50. Under s.12(7), the Court should not just look at the payments there were made to the surrogate mother but at the wider picture and circumstances in which payments were made, including payments to agencies. The Court has to ask these questions:

(1) Whether any money or any other benefit has been given or received by the husband or the wife in consideration of the 4 matters set out in s.12(7) (a) to (d);

(2) If the answer to Q(1) is YES, then

(a) whether the money/benefit, or any part thereof, was for expenses, and

(b) if so, whether such expenses or any part thereof was reasonably incurred.

What was reasonable is a question of fact and the amount could vary greatly from place to place. Reasonable expenses do not require approval of the Court.

(3) If the answer to Q(2)(a) is NO (ie they were not for expenses), or the expenses were not reasonably incurred, then the court should apply 3 tests in order to decide whether to authorize or approve the “non-reasonable expenses”:

(a) Was the sum paid disproportionate to reasonable expenses?

(b) Were the applicants acting in good faith and without moral taint in their dealings with the surrogate mother?

(c) Were the applicants parties to any attempt to defraud the authorities?

51. The Court would be sensitive to, on the one hand, the policy decision that commercial surrogacy agreements should not be regarded as lawful, and on the other hand, considerations of the child's welfare.

52. Where the welfare considerations demand that an order should be made, the Court will only consider not making an order in the clearest case of abuse of or affront to public policy, or the expenses were of such a level as to raise the concern of the Court.

53. The fact that the agency has made a profit where the surrogate has acted on an altruistic basis is a factor to take into account.

See *A & B v. E* [2023] HKCFI 3143 at §25, citing *FH & MH* [2019] HKCFI 1748 at §§110-122, Au-Yeung J; *Re STP (Expenses for Surrogacy and Parental Order)* [2021] 4 HKLRD 719, at §33, B Chu J; and *Re A and B (Parental Order: s.12 Parent and Child Ordinance (Cap.429))* [2019] 5 HKLRD 366, §34, Au-Yeung J;

F2. Money/benefit for expenses

54. The Husband had made payments, the breakdown in respect of each Boy being as follows:

Elder Son (HCMP 707/2025)

No.	Item / Stage	Payee	Amount (RMB)
1	Deposit	the Company	20,000
2	Total for Medicine	S	2,772
3	Freezing fee for sperm	S	3,000
4	For egg donation, minus the deposit	Zhang	190,000
5	Deposit for Surrogate	Zhang	50,000
6	Pre-embryo implant	Zhang	100,000
7	15 days after embryo implant	Zhang	100,000
8	Confirmation of heartbeat after ultrasound	Zhang	100,000
9	Payments for the 3 rd , 5 th , 7 th & 9 th month of pregnancy	Zhang	200,000
10	Birth of Elder Son	Zhang	50,000
11	Administrative fees for arranging for the identification documents; compensation for C-section delivery	Zhang	50,000
12	Hospital fees for the Surrogate	Hospital	15,395.42
13	Hospital fees for the Elder Son	Hospital	1,887.16
Total:			883,055.08

Younger Son (HCMP 706/2025)

No.	Item / Stage		Amount (RMB)
1	Deposit for surrogate	Jin	50,000
2	Pre-embryo implant	Zhang	100,000
3	15 days after embryo implant	Jin	100,000
4	Confirmation of heartbeat after ultrasound	Jin	100,000
5	Payments for the 3 rd , 5 th , 7 th & 9 th month of pregnancy	Jin	200,000
6	Birth of Younger Son	Jin	50,000
7	Administrative fees for arranging for the identification documents; compensation for C-section delivery	Jin	50,000
8	Hospital fees for the Surrogate	Hospital	14,282.56
9	Hospital fees for the Younger Son	Hospital	1,904.88
Total:			666,187.44

F3. Were the expenses reasonably incurred?

55. The shaded items in the tables above appear to be reasonable and do not require approval.

56. In respect of the unshaded items, there was simply nothing to enable the Court to decide if they were benefits or expenses; reasonable or unreasonable; disproportionate to other monies paid or not. The recipients were not the Surrogates. The Husband's evidence was that he had paid as directed by S.

57. In *Re A & B* [2019] 5 HKLRD 366, a pair of twins were born under a surrogacy agreement to the same surrogate; the amount of expenses approved was a total of RMB 300,000, RMB 150,000 being the agency fee and RMB 150,000 being the surrogate's fee.

58. In *A & B v. E* [2023] HKCFI 3143, RMB 750,000 were paid, of which RMB 250,000 went to the surrogate.

59. Although comparison to other cases is not usually useful, it does enable the Court to look at the overall expenses in respect of surrogacy and come to a finding that the unshaded items were not unreasonable and ought to be approved.

F4. Were the Applicants acting in good faith and without moral taint in their dealings with the Surrogates?

60. The Surrogates had been in touch with the Husband since commencement of these proceedings. They had asked for further sums of

money to assist in getting identity papers for the 2 Boys but had not complained about the money already received for the surrogacy. They eventually cooperated in signing papers and affirmations to support the present applications. These were indications that they had received what they had bargained for in the first place.

61. The Husband made large instalments in stages, using opaque payment routes. However, there is nothing to make this Court doubt the good faith of the Husband in honouring the oral agreements with S or in his dealings with the Surrogates.

62. I find that, Applicants, who were ignorant of the laws of PRC and Hong Kong, had acted in good faith and without moral taint in their dealing with the Surrogates.

F5. Attempt to defraud the authorities

63. There is nothing to show that the Applicants were parties to any attempt to defraud the authorities.

64. Considering all the circumstances, I am of the view that it is appropriate to give approval to the sums in the amount of RMB 860,000 in respect of the Elder Son; and RMB650,000 in respect of the Younger Son.

G. WHETHER TIME LIMIT OF 6 MONTHS SHOULD BE EXTENDED

65. The Court should consider a basket of factors including the length of the delay, the explanation of the delay; the merits of the application for a grant of a parental order and the prejudice that may be caused if no parental order is granted.

66. The Applicants were out of time by 3½ months. In fact they had first sought legal advice when they were still within time. That they had no intention to delay was evidenced by the fact that they had tried to apply for HKID cards for the 2 Boys very shortly after their births.

67. The delay was caused by the Applicants' unawareness of the law on surrogacy. They only realized that there was a problem with the 2 Boys' status when they were unable to complete the application for their identity cards in the PRC. They then spent months locating the Surrogates (who were unresponsive) through S and preparing documents before issuing the OSs.

68. The Applicants have tried their best to remedy the situation by seeking the assistance of the Surrogates in applying for the identity cards for the 2 Boys and attempted to legalize the status of the Wife in the PRC Courts, but to no avail.

69. The Surrogates have abandoned the Boys to the Husband's care. The Husband has no household registration in Shenzhen. The Surrogates do not have Shenzhen household registration.

70. On the other hand, the social investigation report and international social investigation report confirm that the Boys are maintaining a strong and close relationship with their caregivers, ie the Applicants, aunts and uncle. The Hong Kong social worker is of the view that the Applicants are caring and performing their parental roles well. They have the ability to provide stable and satisfactory care to the Boys in view of their stable and satisfactory manpower, finance and living conditions in Hong Kong and Shenzhen. The Boys have developed close bonding to the Applicants.

71. To refuse a parental order would prejudice the boys in that they would have no “mother”, even though the intention of the Applicants and the Surrogates were to have the Wife as the mother in the fullest (except biological) sense and the Wife did discharge the role of a real social and psychological mother ever since the Boys were born: *NF v R* [2023] 6 HKC 646, §72. The 2 Boys’ identity is in a precarious state. If anything unfortunate were to happen to the Husband, the Wife (not being the legal mother), could do little to give an identity to the Boys. The lifelong best interests of the 2 Boys in having a legal mother call for parental orders to be issued.

72. I am of course aware that relinquishment of parental rights is not recognized in Hong Kong: *S v J* [2017] 5 HKLRD 129, §27, Au-Yeung J. It is not recognized in PRC either. The parental orders in respect of the 2 Boys may not have the full transforming, irreversible, effect on the Surrogates and the Boys, because there had not been valid removal of the Surrogates’ rights and responsibilities as a mother under PRC law.

However, it is best that can be done for the Boys in the circumstances of these cases.

73. The Court does have power to extend time, having regard to the welfare principle: *FH v WB*, §§88, 89 & 109.

74. In view of the analyses in this Section, I grant extension of time to apply and grant the parental orders sought.

H. ORDERS

75. I order as follows:

- (1) Time be extended until 8 May 2025 for the Applicants to apply under PCO s.12(1) for a parental order in relation to each of the 2 Boys;
- (2) The payments of HK\$860,000 made in respect of the surrogacy arrangement of the Elder Son, [REDACTED] be approved pursuant to PCO s.12(7);
- (3) A parental order under PCO s.12(1) of the PCO be granted to the Applicants providing for the Elder Son, [REDACTED], to be regarded in law as the child of the Applicants;
- (4) The payments of HK\$650,000 made in respect of the surrogacy arrangement of the Younger Son, [REDACTED] be approved pursuant to PCO s.12(7);

(5) A parental order under PCO s.12(1) of the PCO be granted to the Applicants providing for the Younger Son, [REDACTED], to be regarded in law as the child of the Applicants;

(6) The Registrar of the High Court shall notify the Registrar of Births and Deaths of the orders made in respect of each Boy.

76. Separate orders shall be drafted up for each Boy in Chinese. This will facilitate their use in Mainland China.

I. A NOTE ON SERVICE

77. This case has taken longer than necessary and 2 hearings have been spent on the questions of service and directions for further expert reports. I thus wish to mention some principles on service.

78. Regardless of the difficulty of service, the apparent merits of a case, or the likelihood of the proceedings being uncontested, it is important to have documents properly served in cases like these. Valid service is no small matter, having regard to the potential need to enforce the parental order in para 10 of Schedule 3 to the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance, Cap 639, and to have it produced to the authorities in order to obtain identity cards for the 2 Boys or to apply for their single way permits to Hong Kong.

79. In the present case, the Applicants initially requested, in the OSs, for a substituted service order. Quite apart from its being undesirable

to apply for substituted service as a formal relief in the OSs, the Applicants' solicitors had not even attempted formal service, despite the fact that the contact addresses of the Surrogates were ascertainable from the birth certificates of the 2 Boys. The hearing on 10 June 2025 had to be adjourned for service.

80. Next, the OSs were sent to the Surrogates by way of ordinary post; and were re-sent by way of courier to S' address on 18 September 2025. The intention was to enlist the assistance of S to serve the Surrogates and that S was to explain the contents of the papers to the Surrogates.

81. This Court did not accept that to be a valid mode of service and the hearing on 9 October 2025 had to be adjourned because:

- (1) It did not comply with Mainland law. Service in the Mainland, regardless of whether or not leave is required, is governed by the code in Order 11, rule 5A. Accordingly, service by ordinary post without going through the judicial authorities in the Mainland was invalid.
- (2) The fact that, as Ms Choy submits, it would take a long time for service through the PRC judicial authorities was not a reason not to comply with Mainland law on service.
- (3) It was wrong in principle to entrust service on S. There was no evidence to show that S knew English. S had misled the Husband into thinking that the surrogacy process would go smooth but gave no advice on the legal implications. The

Court simply would not trust her to serve the papers on the Surrogates and explain the papers to them.

- (4) *FH v WB* [2019] 5 HKC 99, § 196 held that the Court may be flexible with service or other substituted service “in appropriate cases”, but the present case is simply not an appropriate one, where the Applicants could ascertain the Surrogates’ address from the birth certificates. An applicant should not avoid the trouble of formal service.

82. Although service was no longer an issue in these cases, I agree with Ms Choy that it is not necessary to seek leave to serve a surrogate out of jurisdiction. My reasons are as follows.

83. Under Order 11, rule 1(2), Rules of the High Court,

“Service of a writ out of the jurisdiction is permissible without the leave of the Court provided that each claim made by the writ is—

- (b) a claim which by virtue of any written law the Court of First Instance has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.”

84. O.11 r.9 states that O.11 r.1 shall apply to the service out of jurisdiction of an originating summons.

85. In *Securities and Futures Commission v. Isidor Subotic* (2023) 26 HKCFAR 488, §§29,40 (“**the SFC Case**”), Ribeiro PJ (with whom the rest of the Court unanimously agreed) held that:

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- “(1) Order 11 r.1(2) of the RHC applied to cases where the written law in question clearly contemplated proceedings being brought against persons who were not within the jurisdiction of the Court or where the wrongful act, etc, giving rise to the claim did not take place within the jurisdiction; (underline added)
- (2) It was not enough that the written law was of general application and might be invoked against persons who might happen to be within as well as outside of the jurisdiction;
- (3) If these conditions are satisfied, a statutory basis for assuming jurisdiction is established and there is no need to apply to the court for leave or argue about whether the claim fits within one or other of the gateways under Order 11 r.1(1).”

86. The SFC Case was in relation to false trading under s.274(1) and (3) of the Securities and Futures Ordinance (Cap. 571) (“**SFO**”), which provides that:

- “(1) False trading takes place when, in Hong Kong or elsewhere, a person does anything or causes anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—
- (a) of active trading in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services; or
- (b) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.
- [...]
- (3) False trading takes place when, in Hong Kong or elsewhere, a person takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial

(whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.” (underline added)

87. Ribeiro PJ held (at §23) that s.213 SFO gives the Court powers to grant relief against a person who does anything or causes anything to be done that constitutes false trading “in Hong Kong or elsewhere” (in contravention of s.274) and affects the Hong Kong market. In arriving at this ruling, he also considered the following:

“(1) By providing that relief may be claimed against someone who, when ‘in Hong Kong or elsewhere’, engages in conduct constituting false trading, by their combined effect, ss.213 and 274 expressly contemplate proceedings being brought against persons who are not within the jurisdiction of the court: see §34.

(2) The SFO’s intent is plainly to cater for the territorial dimensions of wrongful acts damaging to market participants. Thus, s.274(1) and s.274(3) cater for false trading when a person “in Hong Kong or elsewhere” does the relevant wrongful acts having an impact on the local market. Conversely, s.274(2) and s.274(4) prohibit such acts done in Hong Kong impacting a relevant overseas market: see §36.”

88. Applying the logic in the SFC case by analogy, O.11 r.1(2) can be invoked in the present case because:

(1) PCO s.12(8) states that:

“sub-s.(1)(a) applies whether the woman was in Hong Kong or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.” (underline added)

(2) The phrase “in Hong Kong or elsewhere” may also be found in ss. 9 and 10 for the purpose of construing the meaning of

mother and father where birth or pregnancy results from medical treatment.

(3) The provision expressly contemplates the possibility that the surrogate mother has carried the child in a jurisdiction other than Hong Kong, similar to the SFC Case.

(4) The words “in Hong Kong or elsewhere” are not found in other PCO provisions, eg Part IV which deals with declarations of status generally. This suggests that while the legislature did not envisage the need to provide for a scheme whereby a person can apply to the Hong Kong courts against a foreign respondent for general declarations under s.6, it did envisage the need to do so for s.12 applications, presumably because it envisaged the possibility of surrogates being resident outside Hong Kong.

89. The terms of s.12 PCO are consistent with the intention of the Legislature that s.12 should have an extraterritorial effect: *Legislative Council Brief for Parent and Child Bill LRC/TOP/28 S.F. ‘C’*:

“Even if surrogacies in Hong Kong are restricted to circumstances where both ‘commissioning parents’ are gamete donors, a clause 12 order should still be available to ‘commissioning parents’ only one of whom is a gamete donor to ensure that, for instance, Hong Kong based couples entering into a lawful surrogacy overseas can avail themselves of the order” (underline added)

90. Accordingly, whilst a surrogate residing out of Hong Kong needs to be a party to an application for a parental order, no leave is

required to serve her (or the man regarded as father under s.10 of PCO) out of jurisdiction.

91. However, even though leave to serve out of jurisdiction is not required, service in Mainland China still has to be effected in accordance with O.11 r.5A: *L v L (Child Removal – PRC)* [2017] HKFLR 588 at §§92-98 (CA). Effectively, this means a request for service lodged through the Registrar of the relevant court with the requisite documents and then served through judicial authorities of Mainland China.

92. I thank Ms Choy for her assistance.

(Queeny Au-Yeung)
Judge of the Court of First Instance
High Court

Ms Alison Choy, instructed by Yung, Yu, Yuen & Co., for the 1st and 2nd Applicants in both HCMP 706/2025 and HCMP 707/2025

The Respondents in both HCMP 706/2025 and HCMP 707/2025 were absent