In the Matter of Baby M

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Summary from CaseBriefs:

**Brief Fact Summary.** A man and woman entered into a surrogacy contract, but the woman did not want to give the baby up after she gave birth.

**Synopsis of Rule of Law.** Surrogacy contracts are invalid.

**Facts.** William Stern (Stern) and Mary Beth Whitehead (Whitehead) entered into a surrogacy contract. The contract stated that Whitehead would become pregnant through artificial insemination using Stern's sperm, carry the child to term, bear it, deliver it to the Sterns, and do whatever was necessary to terminate her maternal rights so Mrs. Stern could adopt the baby. Stern agreed to pay Whitehead $10,000.00 after the child's birth, on its delivery to him. Though she did not want to, Whitehead turned the baby over to the Sterns after its birth. The Sterns gave the baby back to her when she said she could not live without it, but they believed she would give the baby back to them. When it became apparent that she would not give the baby back, Stern filed a complaint seeking enforcement of the surrogacy contract.

**Held.** No. The law prohibits giving or accepting money in an adoption. Baby selling exploits all the parties involved. It does not regard the interest of the child or the natural mother. Parental rights can only be terminated when there has been a voluntary surrender of a child to an agency or when there has been a showing of parental abandonment or unfitness. A contractual agreement to abandon one's parental rights will not be enforced by the court. No surrender of custody of a child can be valid unless the surrender is made to a state agency and meets certain formalities. The contract's basic premise, that the natural parents can decide in advance of birth, which one is to have custody of the child, bears no relationship to the settled law that the child's best interest shall determine custody. There are, in a civilized society, some things that money cannot buy. It is against public policy of the state to buy and sell babies.

**Discussion.** Surrogacy contracts are void as against public policy. The court emphasized that the best interests of the child should settle custody disputes, not contracts.