

RE D (NIGERIAN FERTILITY CLINIC: FACT-FINDING)
[2012] EWHC 4231 (Fam)

Family Division

Coleridge J

14 December 2012

Fact-finding hearing – Baby exchange scam in Nigeria – DNA test confirmed the parents were not the biological parents of the baby – Whether the parents had knowingly participated in the scam

The Nigerian husband and wife, living in the UK, were unable to have a child and sought help from a clinic in Port Harcourt in Nigeria. The doctor there encouraged the wife to go to Nigeria for fertility treatment for the sum of £12,000. The wife received what she thought was fertility treatment, causing her to believe she was pregnant despite pregnancy tests conducted by her GP back in the UK producing negative results. She returned to Nigeria several times and finally underwent 'a completely bogus delivery process'. A baby was presented to the wife as her own child. The wife returned to the UK, believing that it was her biological child but the GP raised concerns when the child was brought for an appointment and he knew that the wife had at no point in the previous 9 months been pregnant. The police and local authority became involved at which point the couple explained the process they had been through at the Nigerian clinic. DNA testing revealed that the couple were not the biological parents. The child had since remained in foster care under an interim care order. The local authority and the police had carried out their own investigations and believed the couple were telling the truth. The court was asked to make a determination of the extent to which the couple knew that the process they were engaged in was a bogus one.

Held – finding the couple had been the innocent victims of the fertility clinic scam –

(1) While remaining highly sceptical of the whole factual edifice presented by the couple, the judge considered them to be extremely impressive as witnesses. Their accounts were in all material respects, completely consistent, both to the police, to the local authority, in their statements and in oral evidence (see para [27]).

(2) The fact the couple visited the GP and travelled backwards and forwards to Nigeria suggested they were innocent of any wrongdoing. The combination of the repeated scans, the repeated trips to the doctor, the attempts to register for antenatal classes in this country and antenatal in Nigeria led inexorably to the conclusion that they were two innocent victims (see para [30]).

(3) The evidence was clear that they never intended to have the child in Nigeria. Their overwhelming wish was always to have the child in this country. That was only consistent with the genuine belief that they were taking part in a real fertility and birth process. The scam could not be perpetrated, self-evidently, anywhere except Nigeria where the supply of unwanted babies was located (see para [31]).

(4) It was unthinkable that the wife would have taken the child to her Nigerian doctor in London within days of returning if she had known that the child had only been produced as a result of a nefarious scam (see para [32]).

(5) There were text messages between the couple at around the time of the bogus labour and delivery that were consistent with the woman's belief that she was going into labour (see para [33]).

(6) The reaction of the husband and wife following the DNA test was one of genuine disbelief and huge upset. The events which took place in Nigeria were completely consistent with the clinic being in the know and the parents not being in the know; the sudden speeding up of the process when the clinic must have realised that if the baby was going to be produced, it had to happen within the next few days or the

mother was going to get back on the aeroplane and go back to London and there would then be no birth in England. It was also significant that the evidence was that her niece who accompanied the mother to the birth process was not allowed into the delivery room (see para [34]).

Cases referred to in judgment

A Local Authority v S and Others [2012] EWHC 3764 (Fam), [2014] 1 FLR forthcoming, FD

Ruth Cabeza for the claimant

Robin Powell for the respondent

Sarah Forster for the guardian

Cur adv vult

COLERIDGE J:

[1] This time last year I gave judgment in a care case which coincidentally also had defendants whose surname began with an O (see *A Local Authority v S and Others* [2012] EWHC 3764 (Fam), [2013] 2 FLR forthcoming). The judgment is in the papers at A21 and following. It was dated as I say, almost exactly a year ago, Thursday 15 December 2011. That case involved the examination of circumstances surrounding the arrival in this country from Nigeria of a little baby and the extent to which the defendants in the case were complicit in the removal of the child from Nigeria to this country; and also the extent to which they knew that the child they brought into this country was not their own.

[2] The case involved a close examination of the activities of a clinic in Port Harcourt, Nigeria, and the behaviour of a doctor there called Dr Chinyere. The clinic was called The Miracle of God Fertility Clinic and in hindsight a more apt description would be hard to find for that particular establishment. The agreed facts of that case were that the female, I called her the mother because it happened to be convenient (but by the time of the hearing no one for a moment was suggesting that the female respondent was indeed the mother of the child) had brought the child to this country. The question was the extent to which this mother had knowingly gone along with a most extraordinary process administered by this clinic, whereby 'spare' children were handed over to desperate, childless parents for very large sums of money.

[3] Along the way in that case, the mother was required to go through what was in fact a completely bogus delivery process, although so far as the unsuspecting observer was concerned it was presented as a genuine delivery. Having heard extensive evidence, I concluded that the two individuals in that case, the man and the woman, the husband and wife, were entirely innocent victims of this most unpleasant scam.

[4] Now this case is strikingly similar factually speaking to that earlier case. Many of the factual features are remarkably similar, if not identical to the features that I had to examine this time last year. In particular, exactly the same question arises in this case as it did in the earlier case. So the central question again is, were the husband and wife (the mother and father in a limited sense, but not in a true sense) complicit in removing from Nigeria a little baby, a few months old, and bringing him into this country and holding

him out as their own child? Or were they, as they maintain, entirely innocent victims of a scam perpetrated once more by this dreadful establishment in Port Harcourt?

[5] Fortunately for the court the evidence for this case has been much better prepared than was it for the previous case. That is because on this occasion the respondents were able to secure some legal advice in the early stages. Accordingly, the relevant and important background facts are set out with great clarity by Mrs O in her statement dated 20 August of this year. As can be seen from that statement, the child concerned is a little boy, D. His date of birth is thought to be around 2 December 2011 and I say around that date, because it is not entirely certain whether he was born a day or two before that date.

[6] The facts and circumstances leading to the involvement of Mr and Mrs O with the clinic in Port Harcourt are, as I say, clearly set out in her statement, beginning in particular at C27 and going on for a total of 10 pages, with something like 80 pages of exhibits to substantiate what is said there. In the statement, Mrs O sets out how she and her husband had been trying to have a child since their marriage which had taken place in 2003. In other words, for 8 years they had been trying to have a baby. They had invested enormous amounts of time, energy and money in the pursuit of that elusive target.

[7] Mrs O goes on to recount in her statement how she heard from a friend in Nigeria, who was aware of the fact that she had had miscarriages in the past, that there was a clinic in Port Harcourt which had a very high success rate with women who had a history of miscarriages. She contacted them and she spoke to them on the telephone at the beginning of January 2011. She spoke in particular to this so-called doctor, Dr Precious Chinyere, who told her that the best thing she could do was to come out to Port Harcourt for an examination and then she would be in a position to make a decision as to whether or not the treatment she could offer was likely to be successful.

[8] As a result of that, she made the first of a series of trips to Port Harcourt to see Dr Chinyere. She saw Dr Chinyere first on 15 February 2011. When she went to the clinic, she found it full of obviously pregnant women and she supplied the doctor with copies of her English medical notes and she was subjected to an examination. The doctor was easily able to confirm that she could help Mrs O and that she was confident that she would become pregnant. The amount that was required to secure the services of this lady was no less than £12,000 sterling. In addition to that fee, the Os would have to make trips backwards and forwards to Nigeria at not inconsiderable expense as well.

[9] She was immediately treated by Dr Chinyere with her expertise and within a matter of days, she was able to report that she had been made pregnant by her husband within, as I say, a week. She had remained in the clinic for a considerable period of time before this took place, and was subjected to a series of injections and drugs. All these were carried out she was told in order to induce her to ovulate and make her in a prepared state for insemination by her husband. She sets out what happened in her statement over the course of the next paragraph.

[10] She then returned to this country and went to see her GP. She says she returned on 25 April and she took steps to reduce her working hours to 2 days

and she was very anxious that she did not lose her child again. She took steps as I say to see her English GP to announce with great excitement that she was pregnant.

[11] On the occasion that she saw her GP in August, a pregnancy test was carried out and also a scan and it was confirmed that she was not pregnant at all. The doctor advised her to contact Dr Chinyere in Nigeria. It is impossible to appreciate the confusion that must have been in the mind of this poor lady, who had put her confidence in this doctor out in Nigeria and was now being told by her English GP that it all had come to naught.

[12] Nothing daunted, Mrs O got back on the aeroplane and went back to Nigeria to talk to Dr Chinyere to find out what the explanation was for the fact that her pregnancy was not showing up on the English scanning equipment. But she was told by the doctor that the baby was growing well and that it was as a result of the particular treatments that she had been given, that the English pregnancy test had been negative. I pause there to mention that what she had been told in Port Harcourt was that the infertility problems that she had could be treated by the use of a silicone lining in her womb. Silicone would be injected into her, in a way which would form a protective lining to the womb which would remove or reduce the risk of miscarriage.

[13] In cross-examination, interestingly, she was asked whether or not she had bothered to check out this process on the internet. She said that she had. It is common ground apparently (although I have not been presented with the actual evidence, nor have I gone on the internet myself) that silicone and silicone artificial uteruses are indeed a remote scientific possibility; albeit that such treatment is in fact very much at the experimental stage and albeit that it certainly does not sound like the injection of silicone in the way that Dr Chinyere had represented it to the poor, unfortunate Mrs O. However, it did have some small basis in fact and was not complete whimsy. Once again returning to the chronology, Ms O again returned to the UK, went back again and sought a further scan; she saw her usual GP and by and by, the result came back again negative, showing that her uterus was still empty.

[14] Mrs O says, quoting from her statement. 'By now I had accepted what Dr Chinyere was saying about the reasons for which my pregnancy did not seem to be detectable in the UK'. She went back finally to Port Harcourt on 27 November 2011. The purpose was apparently to ask Dr Chinyere with whom she had been in contact to 'dissolve the silicone around my uterus'. The reason for this was because as she was continually getting negative results from the English scanning equipment, Dr Chinyere had said, 'Well it was now possible to remove the silicone implant and that that would put everybody's mind at rest'. So Mrs O planned to visit Nigeria, have the silicone implant removed and return to the UK for the purposes of the birth which was expected at the end of November or early December.

[15] At the end of November and early December, the extraordinary process described by Mrs O in her statement took place, and she went through a completely bogus delivery process and (almost as a carbon copy of the previous case) a baby was in due course produced to her. On this occasion the baby was attached only to an umbilical cord and not a placenta, but as if by magic, as if from the back of her hand he was presented to Mrs O as her own

child. She sets out in detail the steps that she had to go through, some of them extremely painful and unpleasant, to give the impression to her that she was taking part in a genuine labour.

[16] Apparently D was born at about 12.50 am on 2 December 2011. From that moment, Mr and Mrs O believed that they had a child of their own. Because the child had been born at the end of the year, it was then not, of course, possible to travel straight back to the United Kingdom. There were difficulties over passports and immigration documents and they were not able to come back to this country until 3 April 2012.

[17] The very next day after her return, Mrs O took D to the GP with whom she had had dealings throughout the previous 9 months to register him and then to have him checked over. The check-up took place on 16 April and on 17 April, the balloon went up, because of course, as in the other case the vigilant GP in this country became extremely concerned when she saw a child, apparently having been born to this lady in circumstances where the GP knew only too well that at no stage had she been pregnant.

[18] The rest, as they, say is history. The local authority became involved, police came to be involved and in due course, little D was removed from their care under an interim care order. The child has not been with them since July of this year. He is now living with foster parents, the second lot that have taken on the task of looking after him and now the question of his future of course remains to be dealt with by this court.

[19] This hearing has, as with the last one, been concerned to try and establish the extent to which Mr and Mrs O knew that what they were involving themselves in was an entirely bogus process. The parties' positions are somewhat different to the previous case. In this case, the local authority and indeed the police, having carried out their own examination of the available evidence and having interviewed Mr and Mrs O at some length, have concluded that what they say is to be believed and that they were indeed completely innocent of any wrongdoing.

[20] The guardian's position has not been easy. She has had to remain extremely sceptical and is very anxious that no stone should be left unturned in deciding the extent to which the two of them knew what was going on. At an earlier stage I had the chance of reading the extensive statements and other evidence filed by Mr and Mrs O and her husband and the quite voluminous documents that they have produced in support. As part of the case management process, I gave leave for the local authority and the guardian to ask written questions of the Os, to ensure that they put down in writing the answers to some of the obvious questions that needed to be asked. I have those documents in the papers as well, together with as I say the documents that they have produced in response to that questioning.

[21] One of the concerns was that there may have been some connection between the respondents in this case and the respondents in the previous case. But I think I can say that no one is now suggesting that that is the case; these cases are completely separate. There has been no communication of any kind between the respondents in that case and the respondents in this case and no one has sought to suggest that there has been. That again is another interesting feature of these two cases, because in fact both respondents in both sets of cases are members of a particular church; albeit a very large and widely

extended church and so unsurprisingly alarm bells rang at an earlier stage, when it was thought that perhaps this was becoming something of a routine.

[22] The position I have reached is as follows, having heard careful submissions by all parties. I emphasise that I started in this case as sceptical about the explanation for these events as I did on the previous occasion. The local authority, although playing a neutral, but concerned and questioning role, asked me particularly to bear in mind the features which would, they say, have put any person on notice about the position of what was going on in Port Harcourt.

[23] They draw attention to the process itself, the so-called incubation and the use of the silicone womb. Miss Cabeza, for the local authority, says that 'a woman as intelligent as the female respondent in this case, could not possibly have done anything other than explore in enormous detail the process which she was told she was going to have to undergo'. She asks me to draw conclusions about the extent to which the delivery date of this child, or the supposed delivery date of this child and the last trip to Nigeria, do not really make sense; in the sense that she must have known if she went to Nigeria at the very end of November, or the early part of December, she was right in the zone when the birth would take place and that was scarcely consistent with her determination to have the delivery in this country.

[24] Miss Forster on behalf of the guardian draws attention to the fact that Mr O was not always present at some of the more important events during the period of this bogus pregnancy, and she raises a number of other questions. Some of them I think she raises a little unfairly insofar as they called for comment, and they were properly to be put to the witnesses themselves for comment. That is especially so in a case of this kind, where almost every explanation on the face of it is unbelievable.

[25] The obvious case made by those who would seek to persuade the court that this is something with which the Os must have knowingly been involved in, is that the facts are simply too incredible to believe. It is too incredible to believe that two intelligent people could be taken in in this way. That of course is to beg the question with the enormous advantage of hindsight to the facts as they have now emerged and then to make the comment as I say, with the benefit of hindsight that these activities are simply beyond belief.

[26] As I say, I remain and have always remained highly sceptical of the whole factual edifice presented by the Os.

[27] On the other hand, I have listened to them give evidence and I have read their evidence. I found them extremely impressive as witnesses. I found that their accounts were in all material respects, completely consistent, both to the police, to the local authority, in their statements and finally in oral evidence. Indeed, the more detailed the questioning became (and they were subjected to very detailed questioning, both by counsel for the local authority and the children's guardian), the more convinced I became that they were telling the truth on the old-fashioned basis, that if you are inventing, it is simply not possible to think up answers fast enough to deal with the sort of detail that they were being asked to produce, in explanation for some of the events. I start from the position that having heard them and seen them give evidence; I am entirely comfortable that these two are honest witnesses. However, if the conclusions that I have come to rested entirely on that impression, I would be concerned, but they do not.

[28] There are certain facts, what I described in the previous case as smoking guns; facts and events which are in my judgment only consistent with innocent involvement. First, the repeated trips to doctors, both in this country and indeed in Nigeria. What possible purpose or advantage was there to Mrs O continuing to visit the English GPs in order only for her lie to be confirmed repeatedly? It could only have sensitised the medical profession to what was going on and indeed, that is precisely in the event what happened. The GP surgery, to whom Mrs O took D, within almost hours of her returning to this country, took very little time to put two and two together and realise there was something very seriously amiss.

[29] But it is not only her trips to the doctors in this country; it is her flights over and over again to Nigeria, to go back to Dr Chinyere to question what was going on and to ask for explanations as to why it was, having apparently become pregnant, the pregnancy was not showing up on English scans.

[30] Why, I ask rhetorically, would you go backwards and forwards and spend your hard-earned money on aeroplane flights if you knew that all that was in fact going to take place, was that you were going to pick up a baby at or around the date when such a child would be produced in the course of a normal gestation? The combination of the repeated scans, the repeated trips to the doctor, the attempts to register for antenatal classes in this country and antenatal in Nigeria leads inexorably to the conclusion that these were two innocent victims.

[31] Secondly, the evidence seems to me to be clear, both written and oral, that Mrs and Mr O never intended to have the child in Nigeria. Their overwhelming wish was always to have the child in this country. That again is only consistent with the genuine belief that they were taking part in a real fertility and birth process. The scam could not be perpetrated, self-evidently, anywhere except Nigeria where the supply of unwanted babies was located. As part of that same point, it is interesting to note that Mrs O took nothing with her when she went out in October to check yet again with Dr Chinyere and have the so-called silicone lining removed. Why did she take nothing with her if she intended to pick the child up then and there? Because it seems to me she knew and then intended that she was going to fly back to this country to have the child here.

[32] Thirdly, as I have already indicated and much reliance is placed on by Mr Powell, her visit to the doctor within days of returning to this country, as with the previous case. It is again unthinkable that she would have taken the child to her Nigerian doctor in London if she had known that this child had only been produced as a result of this nefarious scam.

[33] There is simply no explanation for that. To run the risk that what has happened would happen, flies in the face of common sense. Fourthly, there are text messages that I have not been shown, but I am told are entirely consistent with Mrs O's story. These text messages were sent by Mrs O to her husband, at around the time when the bogus delivery and labour were underway. I am told that the social worker has seen them and they are indeed consistent with the mother believing she was going into labour.

[34] Fifthly, there is the reaction of her and her husband to the revelation after the DNA, that this child was not theirs. It was one of complete and genuine disbelief and of course huge upset. It is not without note and it is right to point out that looking at the case from the other point of view; the events

which took place in Nigeria are completely consistent with the clinic being in the know and the parents not being in the know. In particular, the sudden speeding up of the process at the end of November, when the clinic must have realised that if the baby was going to be produced, it had to happen within the next few days or the mother was going to get back on the aeroplane and go back to London and there would then be no birth in England. The clinic would then have lost a significant portion of the price that had been paid for this treatment. It is also significant I think that the evidence was that her niece who accompanied the mother to the birth process was not allowed into the delivery room. For obvious reasons she could not attend. She would have been the one person who could have blown the whistle on the 'magician'.

[35] I think, and as I have already mentioned, the supposed use of the silicone womb as part of a scam is all part and parcel of this being an elaborate fiction. It is not as I say complete fantasy, although it is little more at the moment than an early medical possibility. To add authenticity to the process, Dr Chinyere repeatedly told the mother to have scans which of course the mother did do when she came back to this country. This would do nothing but provide confidence to the mother that she was in the hands of a genuine professional, helping her.

[36] I have come, once again, to the clear and unhesitating conclusion that Mr and Mrs O were completely duped and entirely innocent. Gullible they may well have been, dishonest they most certainly were not. They had no inkling of the scam in which they were involved and the light only dawned after the production of the DNA tests. That is the conclusion to which the police and the local authority each independently have come and I think they are right.

[37] I only conclude by saying at this point, that this appalling process which exploits the overwhelming desire of childless parents to have children has got to be brought to an end. As I say, it involves the desperate plight of the childless with the most horrible exploitation of people in this situation and the fraudulent removal from them of large amounts of money.

[38] I conclude only by making reference to the position of public funding in this case. This is the second time when a very difficult care case involving quasi parents has not attracted, in my judgment, the speedy decision making that one would expect of the Legal Services Commission. Once again, the court has had to depend upon the pro bono services of the Bar. This time Mr Powell has generously carried out his task of representing the Os on a pro bono basis. That is simply not good enough in the circumstances of a case of this complexity and I really do hope that the Legal Services Commission will speed up their processes, so that people facing the sort of difficult hearings that these parties have had to face can do so with proper legal representation and advice.

Order accordingly.

Solicitors: *A local authority solicitor*
Bar Pro Bono Unit for the respondent
Creightons for the guardian

SAMANTHA BANGHAM
Law Reporter