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Surrogate offered \$10,000 to abort baby

By **Elizabeth Cohen**, Senior Medical Correspondent

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A surrogate's unimaginable dilemma

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STORY HIGHLIGHTS

- Surrogate mother refuses to have abortion after abnormalities spotted on ultrasound
- Baby's parents sue for custody of the child, plan to surrender her to the state of Connecticut
- Surrogate mother moves to Michigan where she is legally ..

(CNN) -- Crystal Kelley ran through the calendar once again in her head.

It was August, and if she got pregnant soon, she could avoid carrying during the hot summer months -- she'd done that before and didn't want to do it again. There was no time to lose.

But there was one problem: She had no one to get her pregnant.

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Kelley picked up the phone and called a familiar number. What about the nice single man who'd inquired before -- would he be interested? No, the woman told her. She hadn't heard from him in weeks.



Surrogate mom offered \$10K to abort baby

Disappointed, Kelley asked if there was anyone else who would hire her. She'd had two miscarriages herself and wanted to help someone else with fertility problems. In return, she'd get a \$22,000 fee.

Hold on, the woman said, let me see.

Yes, she said, there was a couple who wanted to meet her. Was she ready to take down their e-mail address?

Absolutely, Kelley answered.

[Surrogate mother: A new wrinkle in the abortion debate](#)

A playground meeting

Most surrogacies have happy endings, and this one should have too -- with a couple welcoming a new baby into their home and Kelley enjoying her fee, plus the satisfaction that she'd helped another family.

Instead, it ended with legal actions, a secretive flight to another state, and a frenzied rush to find parents for a fragile baby.

After speaking with the surrogacy agency, Kelley, then 29, arranged to meet the couple at a playground near her home in Vernon, Connecticut, a suburb of Hartford. When she arrived, she liked what she saw. The couple was caring and attentive with their three children, who were sweet and well-mannered and played nicely with her own two daughters. The couple desperately wanted a fourth child, but the mother couldn't have any more babies. Yes, Kelley told them right then and there. Yes, I will have a child for you.

CNN made several unsuccessful attempts to contact the couple by phone and e-mail.

The couple had conceived their children through in-vitro fertilization and had two frozen embryos left over. Doctors thawed them out and on October 8, 2011, put them in Kelley's uterus.

About 10 days later, a blood test showed she was pregnant -- one of the embryos had taken.

Kelley and the parents were thrilled, and over the next few weeks, the mother was attentive and caring. When Kelley had morning sickness the mother called every day to see how she was feeling. She gave Kelley and Kelley's daughters Christmas presents. When Kelley couldn't make rent, the mother made sure she got her monthly surrogate fee a few days early.

"She said, 'I want you to come to us with anything because you're going to be part of our lives forever,' " Kelley remembers.

The highs and lows of foreign surrogacy

'There's something wrong with the baby'

"Congratulations! You made it half through!" the mother emailed Kelley on February 6.

It was one of the last friendly e-mails between Kelley and the woman who'd hired her.

A few days later, Kelley, five months pregnant, had a routine ultrasound to make sure the baby was developing properly. The ultrasound technician struggled to see the baby's tiny heart and asked her to come back the next week when the baby would be more developed.

At that next ultrasound, the technician said it was still hard to see the heart and asked Kelley to go to Hartford Hospital, where they could do a higher-level ultrasound.

Apparently, there was more to it than that.

As Kelley was driving home, her cell phone rang. It was the baby's mother.

"She kept saying, 'There's something wrong with the baby. There's something wrong with the baby. What are we going to do?' " Kelley remembers. "She was frantic. She was panicking."

Then the midwife called. She told Kelley the ultrasound showed the baby had a cleft lip and palate, a cyst in her brain and serious heart defects. They couldn't see a stomach or a spleen.

The next ultrasound was three days away, and Kelley grew increasingly anxious with each passing day. By the time she walked into Hartford Hospital on February 16, 2012, she was 21 weeks pregnant and "absolutely terrified" of what the ultrasound would show and what the parents' reaction would be.

An emotional standoff

With the parents standing behind her, the ultrasound technician at the hospital put the wand on Kelley's stomach. The test confirmed her worst fears: It showed the baby did have a cleft lip and palate, a cyst in the brain, and a complex heart abnormality.

The doctors explained the baby would need several heart surgeries after she was born. She would likely survive the pregnancy, but had only about a 25% chance of having a "normal life," Kelley remembers the doctors saying.

In a letter to Kelley's midwife, Dr. Elisa Gianferrari, a maternal fetal medicine specialist at Hartford Hospital, and Leslie Ciarleglio, a genetic counselor, described what happened next.

"Given the ultrasound findings, (the parents) feel that the interventions required to manage (the baby's

medical problems) are overwhelming for an infant, and that it is a more humane option to consider pregnancy termination," they wrote.

Kelley disagreed.

"Ms. Kelley feels that all efforts should be made to 'give the baby a chance' and seems adamantly opposed to termination," they wrote.

The letter describes how the parents tried to convince Kelley to change her mind. Their three children were born prematurely, and two of them had to spend months in the hospital and still had medical problems. They wanted something better for this child.

"The (parents) feel strongly that they pursued surrogacy in order to minimize the risk of pain and suffering for their baby," Gianferrari and Ciarleglio wrote. They "explained their feelings in detail to Ms. Kelley in hopes of coming to an agreement."

The two sides were at a standoff. The doctor and the genetic counselor offered an amniocentesis in the hope that by analyzing the baby's genes, they could learn more about her condition. Kelley was amenable, they noted, but the parents "feel that the information gained from this testing would not influence their decision to consider pregnancy termination."

The atmosphere in the room became very tense, Kelley remembers. The parents were brought into the geneticist's office to give everyone some privacy.

After a while, Kelley was reunited with the parents.

"They were both visibly upset. The mother was crying," she remembers. "They said they didn't want to bring a baby into the world only for that child to suffer. ... They said I should try to be God-like and have mercy on the child and let her go."

"I told them that they had chosen me to carry and protect this child, and that was exactly what I was going to do," Kelley said. "I told them it wasn't their decision to play God."

Then she walked out of the room.

"I couldn't look at them anymore," she said.

[Best friend becomes surrogate mother](#)

\$10,000 to have an abortion

The next day, according to medical records, the mother called Hartford Hospital to ask about different types of abortion. It was explained to her that they could induce birth (the baby wouldn't survive) or they could do a dilation and evacuation, in which case the pregnancy would be vacuumed out of the womb. The mother, after asking about whether the fetus would feel any pain, said she thought the second option was best.

She asked if the procedure had been scheduled. No, she was told. Only Kelley could do that.

The mother noted that the surrogacy agency was getting in touch with Kelley, and a few days later, Kelley received an e-mail from Rita Kron at Surrogacy International telling her that if she chose to have the baby, the couple wouldn't agree to be the baby's legal parents.

"You will be the only person who will be making decision about the child, should the child is born (sic)," Kron wrote.

CNN contacted Surrogacy International, and a woman who said her name was Rita answered the phone.

"You have to understand something -- there is a privacy that exists and that's the end of the story," she said and then hung up. Kron did not return CNN's e-mails.

Kelley didn't want to be the baby's mother -- she'd gotten pregnant to help another family, not to have a child of her own. Kron gave her an option: the parents would pay her \$10,000 to have an abortion.

The offer tested Kelley's convictions. She'd always been against abortion for religious and moral reasons, but she really needed the money. Just before getting pregnant, she'd lost her job as a nanny, and the only income she had coming in was child support from her daughters' father and her monthly surrogacy fee of \$2,222, which was about to end because of the dispute with the parents.

Her resolve began to falter. Then it nearly crumbled.

Kron took Kelley to lunch.

"She painted a picture of a life of a person who had a child with special needs. She told me how it would be painful, it would be taxing, it would be strenuous and stressful. She told me it would financially drain me, that my children would suffer because of it," Kelley remembers.

Kelley had a counter offer. "In a weak moment I asked her to tell them that for \$15,000 I would consider going forward with the termination," she said.

But as soon as she got in the car to go home, she regretted it, Kelley said.

Kron let Kelley know the parents had refused to pay \$15,000. By that point, it didn't matter to Kelley -- she'd decided against abortion no matter what. Kron sent her an e-mail asking if she'd scheduled the appointment for the abortion.

Kelley wrote back a one-word answer: no.

'TIME IS OF THE ESSENCE'

On February 22, 2012, six days after the fateful ultrasound, Kelley received a letter. The parents had hired a lawyer.

"You are obligated to terminate this pregnancy immediately," wrote Douglas Fishman, an attorney in West Hartford, Connecticut. "You have squandered precious time."

On March 5, Kelley would be 24 weeks pregnant, and after that, she couldn't legally abort the pregnancy, he said.

"TIME IS OF THE ESSENCE," he wrote.

Fishman reminded Kelley that she'd signed a contract, agreeing to "abortion in case of severe fetus abnormality." The contract did not define what constituted such an abnormality.

Kelley was in breach of contract, he wrote, and if she did not abort, the parents would sue her to get back the fees they'd already paid her -- around \$8,000 -- plus all of the medical expenses and legal fees.

Fishman declined to comment on the specifics of the case.

"The situation... is complicated. It's very complicated," Fishman said.

Speaking generally, he said everyone who enters into a surrogacy contract needs to be clear from the beginning about what they are willing and able to do.

"When there's a lack of clarity then you start to have a recipe for problems," he said. "You want to position yourself to not have to be addressing these kinds of issues for the first time when the crisis hits."

After receiving Fishman's letter, Kelley decided it was time to get her own attorney.

Michael DePrimo, an attorney in Hamden, Connecticut, took the case for free. He explained that no matter what the contract said, she couldn't be forced to have an abortion.

DePrimo sent an e-mail to Fishman, the parents' lawyer, stating that Kelley was not going to have an abortion.

"Ms. Kelley was more than willing to abort this fetus if the dollars were right," Fishman shot back.

"The not-so-subtle insinuation that Ms. Kelley attempted to extort money from your clients is unfounded and reprehensible," DePrimo responded. "If you wish to propose a solution to this unspeakable tragedy, I will listen and apprise my client accordingly (sic)."

"However, as I mentioned in my previous correspondence, abortion is off the table and will not be considered under any circumstance," he said.

[Carrying babies for my brother](#)

A secret flight

In an affidavit filed in Connecticut Superior Court, DePrimo described what happened next.

DePrimo received a phone call from Fishman telling him the parents had changed their minds. They now planned to exercise their legal right to take custody of their child -- and then immediately after birth surrender her to the state of Connecticut. She would become a ward of the state.

DePrimo explained to Kelley that this was no empty threat. Under state law, they were the parents, not her, and under [Connecticut's Safe Haven Act for Newborns](#), parents can voluntarily give up custody of a baby less than a month old without being arrested for child abandonment.

Kelley couldn't stand the thought of the baby in foster care. She'd heard the nightmare stories.

She felt like her back was up against the wall.

Her lawyer explained she could go to court and fight to get custody of the baby, or fight to appoint a guardian for the baby, but Connecticut law is very clear that the genetic parents are the legal parents, so she'd likely lose in court.

There was one more option, DePrimo told her. She could go to a place where she, not the genetic parents, would be considered the baby's legal mother.

That place was 700 miles away.

Over the years, states have developed different laws about surrogacy. Some, like Connecticut, say the genetic parents -- the ones who supplied the sperm and the egg -- are the baby's legal parents. Other states don't recognize surrogacy contracts, and so the baby legally belongs to the woman who's carrying the baby.

On April 11, in her seventh month of pregnancy, Kelley and her daughters left for one of those states -- Michigan. While she was gassing up her car to leave, her lawyer informed the parents' lawyer about her plans.

"Once I realized that I was going to be the only person really fighting for her, that Mama bear instinct kicked in, and there was no way I was giving up without a fight," Kelley said.

Kelley chose Michigan because of its laws, but also its medicine: she'd been doing research on the baby's condition, and concluded C.S. Mott Children's Hospital at the University of Michigan had one of the best pediatric heart programs in the country.

When she arrived, she found an inexpensive summer sublet from a University of Michigan student and applied for Michigan Medicaid. She made appointments with a high-risk pregnancy specialist and a pediatric cardiologist and settled into life in Ann Arbor with her girls.

There was one thing left to do: She had to decide if she would keep the baby.

She was a single mother with no job and no permanent place to live, but she'd grown emotionally attached to the life inside her, and some days she wanted to keep her.

Kelley struggled, and finally decided she wasn't the right person to raise the child. But she knew who was: in her online research, she'd met other mothers of children with special needs. One of them had been particularly helpful, putting her in touch with support groups and sharing stories and photos of her own children -- both biological and adopted -- with medical problems.

The woman and her husband helped Kelley pack up to move to Michigan, and gave her emotional support as well.

"While it is true that (the baby) will face some life-long challenges, it is also true that it is also more than possible for her to have a wonderful life and to thrive," the mother wrote to Kelley in an e-mail. "I am sorry that (her) biological parents have abandoned their daughter and left you navigating this new, unexpected journey as the sole person bearing responsibility for (her) well-being and care."

Kelley asked the couple to adopt the baby.

They said yes. The baby now had a home, and it would be undisputed.

Or so Kelley thought.

An unexpected challenge

Kelley hadn't heard from the biological parents in months when in May, about one month before the baby's

due date, the parents filed in Connecticut Superior Court for parental rights. They wanted to be the legal parents. They wanted their names on the birth certificate.

The legal papers included a stunning admission: the wife was not the baby's genetic mother -- they'd used an anonymous egg donor.

The case had now become very complicated. The lawyers were still negotiating about who would be the legal parents when the baby was born June 25.

She was full-term and six pounds nine ounces, but she wasn't breathing. Her body was limp and blue. Her heart rate was dangerously low.

The pediatricians pumped oxygen into her tiny lungs, and in about 20 seconds her heart rate went up to normal. She breathed on her own. Her color normalized.

"Infant appears to be moving all extremities and crying appropriately," the medical record stated.

Kelley's name went on the birth certificate. Kelley said she left the space for the father's name blank.

Three weeks later, the two sides struck a deal: The father agreed to give up his paternal rights as long as he and his wife could keep in touch with the adoptive family about the baby's health. Since then, the couple has visited the baby. The father has held her.

"They do care about her well-being. They do care about how she's doing," the adoptive mother said.

[Share your experience with surrogacy](#)

A long list of med problems -- and an infectious smile

The baby's medical problems turned out to be much more extensive than the ultrasound at Hartford Hospital had revealed.

She has a birth defect called [holoprosencephaly](#), where the brain fails to completely divide into distinct hemispheres. She has [heterotaxy](#), which means many of her internal organs, such as her liver and stomach, are in the wrong places. She has at least two spleens, neither of which works properly. Her head is very small, her right ear is misshapen, she has a cleft lip and a cleft palate, and a long list of complex heart defects, among other problems.

Baby S. -- her adoptive parents are comfortable using her first initial -- has a long road in front of her. She's already had one open-heart surgery and surgery on her intestines, and in the next year she'll need one or two more cardiac surgeries in addition to procedures to repair her cleft lip and palate. Later in childhood she'll need surgeries on her jaw and ear and more heart surgeries.

Her adoptive parents, who asked to remain anonymous to protect their family's privacy, know Baby S. might not be with them for long. The cardiac procedures she needs are risky, and her heterotaxy and holoprosencephaly, though mild, carry a risk of early death, according to doctors.

If Baby S. does survive, there's a 50% chance she won't be able to walk, talk or use her hands normally.

In some ways, Baby S. looks different from other 8-month-olds babies. In addition to the facial abnormalities, she's very small, weighing only 11 pounds and she gets food through a tube directly into her stomach so she'll grow faster.

Her adoptive parents know some people look at her and see a baby born to suffer -- a baby whose suffering could have been prevented with an abortion.

But that's not the way they see it. They see a little girl who's defied the odds, who constantly surprises her doctors with what she's able to do -- make eye contact, giggle at her siblings, grab toys, eye strangers warily.

"S. wakes up every single morning with an infectious smile. She greets her world with a constant sense of enthusiasm," her mother said in an e-mail to CNN. "Ultimately, we hold onto a faith that in providing S. with love, opportunity, encouragement, she will be the one to show us what is possible for her life and what she is capable of achieving."

Savior or Satan?

Just as there are two ways to look at Baby S., there are two ways to look at Crystal Kelley, the woman who carried her.

In one view, she's a saint who fought at great personal sacrifice for an unborn child whose own parents did not want her to live. In another view, she recklessly absconded with someone else's child and brought into the world a baby who faces serious medical challenges when that wasn't her decision to make.

Kelley knows some people hate her.

She's [blogged about Baby S.](#), and many readers, especially other surrogates, have attacked her.

"I can't tell you how many people told me that I was bad, that I was wrong, that I should go have an abortion, that I would be damned to hell," she said.

In the end, she feels like she did the right thing.

"No one else was feeling this pregnancy the way that I was. No one else could feel her kicking and moving around inside," she said. "I knew from the beginning that this little girl had an amazing fighting spirit, and whatever challenges were thrown at her, she would go at them with every ounce of spirit that she could possibly have."

"No matter what anybody told me, I became her mother."

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CNN's John Bonifield contributed to this story.

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