



RABBI GIDEON

**Machon Puah for Fertility and
Gynecology in Accordance with Halacha**

WEITZMAN

The Genetic Mother

Last time we presented the unique case of the baby girl born recently in Israel after being conceived during an in-vitro fertilization. Tragically, there was a mix up in the clinic and the baby born was not genetically the daughter of the woman carrying the baby, or her husband. Unfortunately, the clinic was not able to ascertain the identity of the genetic parents.

This case has been compared to King Solomon's decision in determining who was the mother. However, our modern-day case is unique in that the question is not whether woman A or woman B are the mother. Rather, this case raises a novel question; is the birth mother the mother, otherwise, do we have to search for the child's biological parents?

The first question needs to be clarified. There has been much discussion over the past couple of decades regarding children conceived using an egg donor or a gestational carrier, who was in the past called a surrogate. In such a case the debate is to whether the mother is considered the genetic mother who supplied the egg, or is the woman who carried the pregnancy and delivered the baby considered the mother halachically?

Some opinions are that the genetic mother is the mother and therefore if the egg came from a non-Jewish woman the child would need to be converted. Many opinions hold the exact opposite view, that the birth mother is the mother, were she to be a non-Jew then the child would need a conversion.

There are some sources and allusions in the copious halachic literature that have been used to "prove" both sides of this argument. In a famous passage the Talmud (Niddah 31a) writes "there are three partners in the creation of man: God, his father and his mother." This is quite a well-known phrase. What is less famous is the continuation of the Gemara; "the father gives the white stuff from which comes bones, sinews, fingernails, brain and the white of the eyes. The mother gives the red stuff from which comes the skin, the flesh, the hair and the pupil in the eye. And God gives the spirit, the soul, the countenance, the ability to see, the ability to hear and speak, the ability to walk and understanding and intelligence." It appears to state that what makes the mother is her "genetic" or biological contribution. This is a source that suggests that the genetic mother is the halachic mother.

There are sources that suggest the exact opposite.

More on this next time. ■