

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MCKENNA WEST,)
)
 Plaintiff,)
v.)
)
A.B.; C.D.; VICTORIA FERRARA;)
THE FERRARA LAW GROUP, PC;)
WORLDWIDE SURROGACY)
SPECIALISTS, LLC; LORI COLBERT;)
and COLBERT FAMILY LAW, LLC,)
)
 Defendants.)
_____)

Case No. 3AN-26-07180CI

**ORDER ON DEFENDANTS A.B. AND C.D.’S MOTION FOR DECLARATORY
JUDGMENT ON PLACE OF BIRTH**

The issue before the court is where plaintiff, McKenna West, should give birth and whether Alaska or California is the proper jurisdiction to answer that question.

On June 29, 2026, this court vacated and set aside its June 22, 2026, *Order Granting Motion for Temporary Restraining Order*, affording full faith and credit to California’s June 22, 2026, order declaring defendants, A.B. and C.D. (“defendants”), the legal and biological parents of the unborn child.¹ The order further stated that the parties must comply with the forum selection clause of the Surrogacy Agreement.²

¹ Order Granting Defs. A.B. and C.D.’s Mot. to Set Aside TRO, Clerk’s Docket No. 117 (June 29, 2026).

² *Id.* at 2.

On July 20, 2026, defendants filed their motion for expedited consideration of their motion seeking declaratory judgment on the place of birth for the unborn child.³

On July 21, 2026, the court granted defendants' motion for expedited consideration of their declaratory judgment motion, given the time-sensitive nature of the matter.⁴ West filed her opposition to declaratory judgment on July 23, 2026.⁵ Defendants filed their reply on July 24, 2026.⁶

On July 25, 2026, the court received West's surreply and defendants' opposition to surreply, and has considered the filings.⁷

For the following reasons, the court concludes that the birthplace clause is unenforceable to the extent Alaska is no longer a viable birthplace. The court also concludes California is the proper jurisdiction to decide where West will give birth.

³ Defs. A.B. and C.D.'s Mot. for Declaratory J. on Place of Birth and TRO/Prelim. Inj., Clerk's Docket No. 165 (Jul. 20, 2026); Mot. for Expedited Consideration of Defs. A.B. and C.D.'s Mot. for Declaratory J. on Place of Birth and TRO/Prelim. Inj., Clerk's Docket No. 168 (Jul. 20, 2026).

⁴ Order Granting Mot. for Expedited Consideration of Defs. A.B. and C.D.'s Mot. for Declaratory J. on Place of Birth and TRO/Prelim. Inj., Clerk's Docket No. 172 (Jul. 21, 2026).

⁵ Resp. in Opp'n to Mot. for Declaratory J. and TRO or Prelim. Inj., Clerk's Docket No. 178 (Jul. 23, 2026).

⁶ Defs. A.B. and C.D.'s Reply in Supp. of Mot. for Declaratory J. and TRO/Prelim. Inj., Clerk's Docket No. 186 (Jul. 24, 2026).

⁷ Surreply in Opp'n to Mot. for Declaratory J. or TRO/Prelim. Inj., Clerk's Docket No. 194 (Jul. 25, 2026); Defs. A.B. and C.D.'s Obj. to Pl.'s Surreply in Opp'n to Mot. for Declaratory J. or TRO/Prelim. Inj., Clerk's Docket No. 196 (Jul. 27, 2025).

Factual and procedural background

On April 17, 2026, during West's 20-week fetal scan, the unborn child was diagnosed with hypoplastic left heart syndrome ("HLHS").⁸ Children with HLHS require immediate surgery upon birth to ensure the best chance of survival.

The birthplace clause of the Surrogacy Agreement provided for West to give birth in Alaska, prior to the unborn child's HLHS diagnosis. The birthplace clause reads in full:

The Gestational Carrier agrees to make diligent efforts and to take all reasonable steps to *give birth* to any Child carried to this Agreement in the *State where she resides*. The Gestational Carrier understands and acknowledges the importance legally that she *gives birth in her State of residence for the Intended Parents to access the laws of this State to establish their legal parentage*. In the event of a change in the law of the State of residence, the parties shall confer with their lawyers and shall accommodate the best plan as advised by their lawyers to establish the legal parentage of the intended parents. The Gestational Carrier agrees to remain in an area no greater than 75 miles from her residence (and not outside of the U.S. State wherein she resides) from 32 weeks pregnant until *delivery for an uncomplicated singleton pregnancy* or 26 weeks for a multiple pregnancy. If there is a death or major illness that requires Gestational Carrier to travel after 26 weeks for multiples or 30 weeks for a singleton, Gestational Carrier shall obtain written approval from her treating obstetrician and she shall inform the Intended Parents before such travel arrangements are made and undertaken.⁹

It is undisputed that at the time the parties entered into the Surrogacy Agreement, West was a resident of Alaska, where she was to give birth.¹⁰ It is undisputed that defendants sought a pre-birth order for parentage and custody of the unborn child in

⁸ Mot. for Declaratory J. at 5.

⁹ Surrogacy Agreement at 11, ¶ 29. [hereinafter birthplace clause].

¹⁰ Mot. for Declaratory J at 12; Birthplace clause at 11, ¶ 29.

California, which the California superior court granted on June 22, 2026.¹¹ The parentage and custody order is stayed until the birth of the unborn child.¹² This court's June 29, 2026, order gave full faith and credit to the California Order.¹³

On July 17, 2026, West, through her attorneys, informed defendants and the court that she relocated to Dallas, Texas, where she intends to deliver the unborn child.¹⁴ West is 34 weeks pregnant as of the date of defendants' instant motion. West has been advised against any further travel once she reaches 36 weeks.¹⁵

Applicable law

A.S. 22.10.020 authorizes a court to “declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought.”¹⁶ A court retains discretion to grant declaratory relief to a party, where at baseline, there must be a live controversy, adverse interest, and “sufficient immediacy to warrant the issuance of a declaratory judgment.”¹⁷

¹¹ Ex. 9-13, Case Mot. #13: Mot to Set Aside TRO – Ex. 11.F California pre-birth order, Clerk's Docket No. 90 (June 24, 2026).

¹² *Id.* at 2, ¶ 10. “Enforcement of the Judgment is stayed until the birth of any child delivered by Respondent MCKENNA JAYLENE WEST after December 16, 2025, and before October 16, 2026.”

¹³ Order Granting Defs. A.B. and C.D.'s Mot. to Set Aside TRO, Clerk's Docket No. 117 (June 29, 2026).

¹⁴ Notice of Factual Development, Clerk's Docket No. 175 (Jul. 17, 2026).

¹⁵ Mot. for Declaratory J. at 3

¹⁶ ALASKA STAT. § 22.10.020(g).

¹⁷ *Exxon Mobil Corp. v. Dep't of Revenue*, 488 P.3d 951, 958 (Alaska 2021).

Alaska Civil Rule 60(b)(5) allows a court, upon a motion, to relieve a party from an order or final judgment when:

the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application[.]¹⁸

Argument

Defendants argue three main points in their request for declaratory judgment. As a threshold matter, they argue this court should deem unenforceable the birthplace clause of the Surrogacy Agreement because it is undisputed that Alaska is not medically equipped to provide for the unborn child's cardiothoracic surgery upon birth. Second, they ask the court to lift its June 29, 2026, order, which enforces the forum selection clause of the Surrogacy Agreement, so that the California Superior Court may retain jurisdiction over the birthplace issue. Third, in the alternative, if this court retains jurisdiction, defendants request an order that West deliver the unborn child in California.

West argues that, if the birthplace clause is unenforceable, it must be read in conjunction with the residency and travel provisions in the same paragraph, which she argues were not breached and operate as unconstitutional restrictions on travel. West agrees with defendants that an unenforceability ruling alone does not resolve the underlying jurisdictional birthplace dispute. Ultimately, West maintains Alaska should retain jurisdiction on this matter and that she should not be compelled to give birth in California.

¹⁸ ALASKA R. CIV. P. 60(b)(5).

In reply, defendants reiterate their request for a ruling that the birthplace clause is unenforceable and for relief from the court's June 29, 2026, order.

Discussion

I. The birthplace clause is factually impossible, not unenforceable.

Defendants argue, in light of West's "unilateral" relocation to Dallas, Texas, that the birthplace clause under the Surrogacy Agreement is unenforceable.¹⁹ Defendants argue the birthplace dispute is well-suited for declaratory relief because the controversy is "concrete and imminent" as birth in Alaska is "medically impossible" given the unborn child's HLHS diagnosis.²⁰

West argues any analysis of unenforceability of the birthplace clause must be read in conjunction with the travel and residency provisions of the same paragraph, which she argues must also be ruled unconstitutional as a restriction on travel under the Alaska Constitution.²¹

The court does not reach the issue of whether the travel and residency provisions in paragraph 29 are constitutional because those issues are beyond the two narrow questions before the court. The only two questions before the court are (1) enforceability of the clause and (2) proper jurisdiction for place of birth. For the following reasons, the court determines the birthplace clause is factually impossible, not unenforceable.

¹⁹ Mot. for Declaratory J. at 15, 17.

²⁰ *Id.* at 17, 18.

²¹ Resp. in Opp'n to Mot. for Declaratory J. and TRO or Prelim. Inj. at 15.

The first two sentences of the birthplace clause in paragraph 29 of the Surrogacy Agreement read:

The Gestational Carrier agrees to make diligent efforts and to take all reasonable steps to *give birth* to any Child carried to this Agreement *in the State where she resides*. The Gestational Carrier understands and acknowledges the *importance legally that she gives birth in her State of residence for the Intended Parents to access the laws of this State to establish their legal parentage*.²²

It is undisputed that, at the time of signing the Surrogacy Agreement, West was a resident of Alaska. This is further reflected by the Surrogacy Agreement’s opening paragraph listing defendants “of Los Angeles, CA and West, of Anchorage, AK.”²³

It is undisputed that the parties’ intent, in anticipation of an uncomplicated pregnancy, was for West to give birth in Alaska, consistent with the requirement that West “make diligent efforts and to take all reasonable steps to give birth to any Child carried to this Agreement in the State where she resides.”²⁴

Having determined the clear language and intent of the parties regarding a birth in Alaska, the court now turns to the operative purpose of the clause. To the extent defendants argue that the purpose of this second sentence of the birthplace clause has already been satisfied, the court agrees.

The second sentence of the birthplace clause states that West “understands and acknowledges the importance legally that she gives birth in her State of residence” to allow

²² Birthplace clause at 11, ¶ 29, sentence 1-2 (emphasis added).

²³ Surrogacy Agreement at 1, ¶ 1.

²⁴ Birthplace clause at 11, ¶ 29, sentence 1.

defendants to “access the laws of this State to establish legal parentage.”²⁵ This language reflects the parties’ intent that defendants would establish parentage in Alaska, tied to the unborn child’s Alaska birth. Defendants did establish parentage, but not in Alaska as contemplated by the birthplace clause and the forum selection clause.²⁶ Instead, parentage and custody were established through a California pre-birth order.²⁷ Accordingly, while the objective of allowing defendants to “access the laws of [Alaska] to establish legal parentage” has effectively been achieved, it was accomplished in California rather than Alaska.²⁸

The court concludes that, and the parties agree, since the unborn child’s HLHS diagnosis in April 2026, Alaska is not a viable place for delivery. That factual impossibility supports relief as to Alaska as a birthplace. It does not, however, render every sentence within the birthplace clause necessarily unenforceable or violated.

West points to additional language in the same paragraph addressing residency and travel. The fourth sentence of the birthplace clause provides that West “agrees to remain in an area no greater than 75 miles from her residence (and not outside of the U.S. State wherein she resides) from 32 weeks pregnant until delivery for an *uncomplicated singleton pregnancy* or 26 weeks for a multiple pregnancy.”²⁹ The court agrees with West that the language of the residency and travel clause does not establish a violation by West. By its

²⁵ *Id.* at 11, ¶ 29, sentence 2.

²⁶ *Id.* at 11, ¶ 29, sentence 2; *Id.* at 2, ¶ 6.1 (forum selection clause).

²⁷ Ex. 11.F California pre-birth order.

²⁸ Birthplace clause at 11, ¶ 29, sentence 2.

²⁹ *Id.*, sentence 4 (emphasis added).

terms, the travel restriction is tied to an “*uncomplicated pregnancy* at 32 weeks.”³⁰ The provision provides no comparable guidance for travel upon a complicated pregnancy—of which a pregnancy involving an HLHS diagnosis certainly qualifies.

Thus, where Alaska is a factually impossible birthplace, it is not “reasonable” for West to give birth there in light of the HLHS diagnosis, and the court concludes she did not violate the residency or travel clause on this basis.³¹ The court declines to address the fifth sentence, which more broadly contemplates travel in the event of a “death or major illness” after 30 weeks and whether the HLHS diagnosis qualifies as a “major illness.”³²

II. The California superior court is the proper jurisdiction to address the birthplace dispute.

As the parties agree, questions concerning the birthplace clause do not resolve the more pressing issue: the place of birth.³³ Defendants ask the court to lift its June 29, 2026, order and allow California to decide the birthplace.³⁴

West opposes that relief. She argues lifting the court’s June 29, 2026, order and ceding the birthplace question would “reward” defendants’ breach of the forum selection clause, and that no inequity would result from Alaska retaining jurisdiction.³⁵

³⁰ *Id.*

³¹ Resp. in Opp’n to Mot. for Declaratory J. and TRO or Prelim. Inj. at 15.

³² Birthplace clause at 11, ¶ 29, sentence 5.

³³ Mot. for Declaratory J. at 19; Resp. in Opp’n to Mot. for Declaratory J. and TRO or Prelim. Inj. at 13.

³⁴ Mot. for Declaratory J. at 21-22.

³⁵ Resp. in Opp’n to Mot. for Declaratory J. and TRO or Prelim. Inj. at 16, 18.

The court will not retain jurisdiction over the birthplace question. Alaska’s practical jurisdictional ties to this dispute have steadily eroded, and the court’s remaining connection is, at most, a disputed Surrogacy Agreement executed in Alaska, to govern a birth that is now medically impossible.

In *Szabo v. Municipality of Anchorage*, the Alaska Supreme Court clarified and detailed a sufficiency of changed circumstances to support Rule 60(b)(5) relief.³⁶ *Szabo* held that “a party may only prevail on a Rule 60(b)(5) motion where a change in conditions renders prospective application of a judgment inequitable.”³⁷

Here, the court concludes that substantial changes have occurred since the court’s June 29, 2026, order, justifying relief under Rule 60(b)(5). It would be inequitable to require the parties to continue litigating the birthplace issue in Alaska.

At this stage—on the narrow question of the unborn child’s birthplace—this court has, at best, a threadbare connection to the controversy. West no longer appears to be an Alaskan resident; birth in Alaska is medically impossible; defendants reside in California; and there is an existing California pre-birth order and ongoing litigation in California concerning that order. Under these circumstances, *Szabo* and Rule 60(b)(5) support a change of conditions to render California the proper venue to decide the birthplace question.

³⁶ 320 P.3d 809 (Alaska 2014).

³⁷ *Id.* at 814.

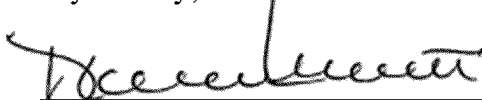
The court emphasizes that the basis for this change is not West's relocation to Texas. Rather, it is the combination of (1) the medical impossibility of an Alaska birth and (2) the ongoing California litigation addressing more substantive issues of parentage and custody. The court further clarifies that its order is narrow: it does not decide the place of birth. That determination will be made by the California superior court. This court will address any further contract-related or other issues as the parties choose to bring them before this court.

Conclusion

Based on the foregoing, the court concludes that the birthplace clause is unenforceable only to the extent Alaska is no longer a viable birthplace. Accordingly, the defendants' motion is **GRANTED** in part. California shall exercise jurisdiction to resolve the birthplace issue. The court hereby lifts its June 29, 2026, order to the extent described above.

IT IS SO ORDERED.

DATED in Anchorage, Alaska, this 27th day of July, 2026.

A handwritten signature in black ink, appearing to read 'David A. Nesbett', written over a horizontal line.

David A. Nesbett
Superior Court Judge

Alaska Trial Courts

Certificate of Distribution

Case Number: 3AN-26-07180CI

Case Title: WEST, MCKENNA VS. A. B.

The Alaska Trial Courts certify that the ORDER ON DEFENDANTS A.B. AND C.D.'S MOTION FOR DECLARATORY JUDGMENT ON PLACE OF BIRTH Case Motion #21: Defendants A.B. and C.D.'s Motion for Declaratory Judgment on Place of Birth and TRO/Preliminary Injunction was distributed to:

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