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Frozen Pre-Embryo Practice in Missouri

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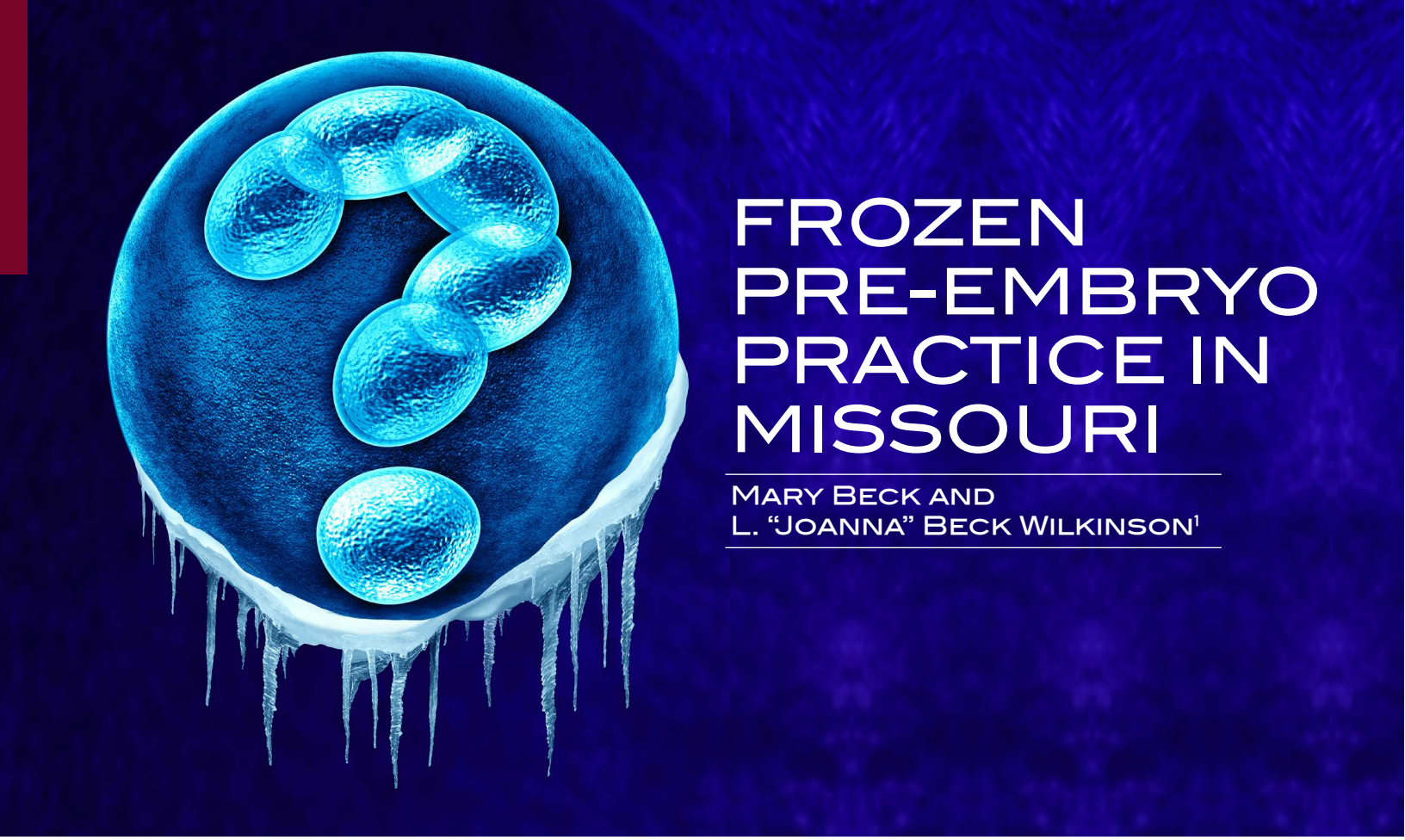

FROZEN PRE-EMBRYO PRACTICE IN MISSOURI

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L. "JOANNA" BECK WILKINSON[1]

McQUEEN V. GADBERRY[2] WAS AN EASTERN DISTRICT DISSOLUTION DISPUTE OVER FROZEN PRE-IMPLANTATION EMBRYOS FORMED FROM MCQUEEN'S EGGS AND GADBERRY'S SPERM. THE ST. LOUIS COUNTY TRIAL COURT FOUND THE PRE-EMBRYOS TO BE MARITAL PROPERTY OF A SPECIAL CHARACTER AND AWARDED THEM JOINTLY TO EACH OF THE FORMER SPOUSES. THE APPELLATE COURT AFFIRMED.

McQueen is an important decision because the finding that pre-embryos are marital property was an issue of first impression that affects many Missouri families. Infertility is a common problem, couples frequently utilize assisted reproductive technologies (ART) to form families, and the extra frozen pre-implantation embryos (hereinafter pre-embryos) have fueled increasing legal disputes. Family law, health law, and estate planning attorneys should factor pre-embryo disposition into their repertoires.

The Issue

"[A]s many as a million 'leftover' . . . pre-embryos" are in frozen storage in the United States.[3] Nationally, infertility affects 13 percent of couples, male infertility is the cause of infertility in 33 percent of couples,[4] over 12 percent of women suffer from infertility, and 7.3 million women of ages 15-44 years have utilized ART.[5] ART "includes fertility treatments in which eggs or embryos are handled in the laboratory (i.e., in vitro fertilization [IVF] and related procedures)."[6] Implicit in ART is the collection of gametes (ova/eggs and/or sperm) which fertility clinics may use to form pre-embryos, to freeze before or after forming pre-embryos, to artificially inseminate women, and/or to transfer such pre-embryos to a woman's uterus.

Couples have choices as to the disposition of their leftover frozen pre-embryos: "(1) keep them frozen for future use or indefinitely, (2) discard them by letting them thaw, (3) donate them to another recipient . . ., or (4) donate them to research."[7] Such designation may also authorize posthumous use of gametes of embryos by the other progenitor, relatives, or friends of either progenitor.

Congress passed the Fertility Clinic Success Rate and Certification Act (FCSRCA) in 1992 requiring all U.S. fertility clinics performing ART procedures to annually report data on every ART procedure performed to the Centers for Disease Control.[8] In 2013, the last year for which statistics are published, the CDC reported a national total of 160,521 ART procedures with the intent to transfer at least one embryo (range: 109 in Wyoming to 20,299 in California) performed in 467 U.S. fertility clinics. These procedures resulted in 53,252 live-birth deliveries, which constituted 1.6 percent of all infants born in the United States that year.

In 2013, Missouri's fertility clinics (located in Kansas City, St. Louis, Creve Coeur, Columbia, St. Peters, and Chesterfield)[9] reported 2,006 ART procedures, including 1,728 embryo transfers resulting in 794 pregnancies and 671 live births.[10]

Conception differs from in vitro fertilization (IVF) in that conception is "the onset of pregnancy" whereas IVF is a laboratory procedure in which eggs are fertilized by sperm.[11] Following IVF, the resultant pre-embryos may be transferred to a uterus, frozen, or discarded. The success rate of developing a pregnancy from transfer of a pre-embryo is statistically equal whether implanting fresh or frozen pre-embryos.[12] Courts have struggled to legally define frozen pre-embryos. Tennessee famously held in *Davis v. Davis* that frozen pre-embryos are neither property or person "but occupy an interim category that entitles them to special respect because of their potential for human life."[13] By contrast, *McQueen*, the first Missouri case to address the legal status of frozen pre-embryos, defined pre-embryos as "marital property of a special character."[14]

This paper will review the *McQueen* decision, summarize the United States pre-embryo case law, and close with recommendations for Missouri lawyers. "Posthumous conception" or the parentage of a deceased intended parent figures into frozen pre-embryo and gamete case law, but this paper will not examine these cases.

The Missouri Case: *McQueen v Gadberry*

The Facts

During their marriage, McQueen (wife) and Gadberry (husband) patronized a St. Louis fertility clinic to harvest their own gametes to form frozen pre-embryos. This was because Gadberry's military deployment complicated their conceiving children and not because either party had infertility problems, a factor that played in the court's balance of interests. The pre-embryos were transferred to McQueen's uterus resulting in the birth of the couple's twins. The parties' remaining frozen pre-embryos were transported to the Fairfax Cryobank storage facility when their St. Louis clinic closed. The Fairfax Cryobank required the parties to complete a "Fairfax Cryobank Directive Regarding the Disposition of Embryos."[15] Gadberry and McQueen signed the Fairfax directive which purported to give control of the frozen pre-embryos to McQueen.

Upon the couple's divorce, McQueen wanted to undergo embryo transfer with the pre-embryos. Gadberry was opposed to her plan.

Neither McQueen nor Gadberry "dispute(d) that at the time the pre-embryos were created, there was no agreement or express recording of the parties' intentions regarding the number of pre-embryos to be created, if or when implantation of any or all would occur, or any procedure for addressing excess or unused pre-embryos."[16] However, Gadberry's and McQueen's testimonies conflicted; the wife said the parties discussed giving the frozen pre-embryos to her in event of dissolution while husband said no such discussion occurred.

In the dissolution, McQueen sought "custody" of the pre-embryos and essentially argued that they constituted children under § 1.205, RSMo, which provides that "[l]ife begins at conception" and "[u]nborn children have protectable interests in life."[17] McQueen cited § 188.015, RSMo for its definitions of "'unborn child' as 'the offspring of human beings from the moment of conception until birth and at every stage of its biological development, including the human conceptus, zygote, morula, blastocyst, embryo, and fetus[.]'" and "'conception' as 'the fertilization of the ovum of a female by a sperm of a male[.]'"[18] In the alternative, she argued that the pre-embryos constituted property controlled by the Fairfax directive, which required that the court award the pre-embryos to her.

Gadberry argued that awarding the pre-embryos to McQueen would force him to procreate against his wishes and violate his fundamental constitutional rights to privacy and equal protection under the 14th Amendment. Gadberry argued that the pre-embryos constituted property which should be awarded jointly to the spouses, who could use them only with signed authorizations of both parties. Gadberry was agreeable to these four options:

> . . . (1) for the frozen pre-embryos to be donated to an infertile couple, preferably outside of the St. Louis area; (2) for the frozen pre-embryos to be donated to science; (3) for the frozen pre-embryos to be destroyed; or (4) for the frozen pre-embryos to remain in their status quo of being frozen and stored until the parties could agree upon a disposition.[19]

Missouri Analysis and Holding

The trial court extended the appointment of a guardian ad litem for the couple's twins to the frozen pre-embryos, found execution of the Fairfax Cryobank directive flawed and invalid, held that the frozen pre-embryos were marital property of special character, and awarded the frozen pre-embryos to the parties jointly such that no party could decide their disposition without the other's consent. McQueen appealed.

The Eastern District Court of Appeals affirmed the trial court's award of the frozen pre-embryos to the parties jointly. The court indicated it was "only required to decide whether frozen pre-embryos have the *legal* status of children under our dissolution of marriage statutes"[20] and quoted a New Jersey court that "advances in medical technology have far outstripped the development of legal principles to resolve the inevitable disputes arising out of the new reproductive opportunities now available."[21]

The court affirmed the trial court's credibility determination that the Fairfax Cryobank directive regarding disposition of the pre-embryos was invalid and unenforceable, and thus eliminated its use in dividing marital property because "it was not entered into freely, fairly, knowingly, understandingly, and in good faith with full disclosure."[22] The directive contained irregularities in the signature dates vis a vis notarization; the timing of McQueen's handwritten notes on the directive were questionable; and the parties' testimony conflicted about the directive and applicable discussions. The court expressly took "no position on whether gamete providers may enter into a valid and enforceable agreement [in Missouri] regarding disposition of frozen pre-embryos" but noted that Florida, Texas, and Oregon had found such agreements enforceable.[23]

The court found that the pre-embryos in dispute had not been transferred to McQueen's uterus, she was not pregnant, and the use of the pre-embryos did not constitute her last procreational chance. Therefore, McQueen's bodily integrity and her ability to procreate was not implicated and the pre-embryo disposition

required balancing the interests of "entirely equal gamete providers."[24] Allowing McQueen's use of the pre-embryos would subject Gadberry to "unwarranted governmental intrusion into" his procreation and force him to become a parent.[25] The court held that the "declarations in section 1.205 relating to the potential life of frozen pre-embryos were not sufficient to justify any infringement upon the freedom and privacy of [the parties]" and affirmed the trial court's award of the pre-embryos to the parties jointly.[26]

The court further affirmed the trial court's finding that, though not explicitly mentioned in Chapter 452, the pre-embryos did constitute "marital property of a special character" and not children who have been born and whose "custody, visitation or support" were at issue.[27] Thus, the trial court had lacked authority to appoint a guardian ad litem for the pre-embryos.

In his dissent, Judge Dowd cited § 1.205 (life begins at conception), § 188.010 (conception is the fertilization of the ovum of a female by a sperm of a male), and § 188.015 (intent to grant life to all humans, born and unborn) and, importantly, conflated fertilization and conception stating that "[i]t is undisputed that conception occurred in this case,"[28] and finding that pre-embryos constitute humans. He posited that Gadberry had irrevocably released his reproductive rights by providing semen for the formation of embryos.[29] The Supreme Court of Missouri declined to review the case.[30]

Sister State Decisions

Fifteen states have rendered decisions in disputes over the products of ART.[31] A three-tiered decision tree has emerged that the authors use to categorize cases. First, a court evaluates any cryopreservation agreement typically signed in a fertility clinic in which the intended parents agreed to a disposition of frozen pre-implantation embryos. Second, courts balance the interests of the parties, including whether utilization of the embryos constitutes one person's last procreative chance. Third, at least one court has required contemporaneous mutual consent despite prior agreement and wife's last procreative chance. In these analyses, the existence and applicability of public policy to the frozen pre-embryos, constitutional rights to privacy, and the characterization of frozen pre-embryos as person, property, or an interim category with special characteristics is often discussed.

A fourth category of miscellaneous cases involves pre-embryo disputes, including the viability of a wrongful death action for destroyed pre-embryos, the various pre-embryo dispositions allowed, and the availability of survivor benefits for children formed by ART following the death of the intended parent.

Written Agreements

New York decided *Kass v. Kass* in 1998 following a couple's divorce where the ex-wife wanted custody of pre-zygotes.[32] The *Kass* court held that hospital consent forms signed by both spouses controlled the dispute, that right of privacy in wife's reproductive choice was not implicated, and that the pre-zygotes were not persons and explicitly did not decide whether they deserved special respect. The *Kass* court directed that the unused pre-zygotes be donated to research as directed by the hospital consent forms and opined that the progenitors rightly made the decision rather than the state.

Washington relied upon a cryopreservation agreement executed by divorcing spouses in 2002 to enforce a contract provision for the Loma Linda Fertility Center to thaw pre-embryos and disallow their further development.[33] Husband's sperm and donor eggs formed the pre-embryos in vitro. The Washington Supreme Court explicitly declined to decide if the pre-embryos were children or whether wife was a progenitor though not a biological participant.

Texas used new gestational agreement legislation in 2006 to determine that its public policy would permit enforceable agreements.[34]

Oregon held that pre-embryos were personal property in 2008 and found no public policy to inform its decision when it enforced an agreement giving an ex-wife control of pre-embryos she intended to destroy.[35]

Florida enforced the terms of a dissolution settlement agreement in 2008 "that required wife to 'provide' [pre-embryos] to the husband so that he could dispose of them."[36]

California decided *Findley v. Lee* in 2013, upholding a consent form agreeing to destroy any frozen embryos in the event of divorce.[37] California law requires clearly specified written documents on embryo disposition. The *Findley* court found that public policy supported enforcement of such contracts and agreements similar to advance directives and that a balancing of the parties' interests constituted a fallback position where no enforceable agreement existed. The *Findley* court held that ex-husband's right not to procreate was equal to ex-wife's right to procreate, although the court acknowledged that wife underwent more invasive and repeated procedures than husband. The *Findley* court further declined to nominate the pre-embryos as property or life, and called them "the nascent stage of five human lives."[38]

Contemporaneous Mutual Consent

Iowa held that its child custody statute did not control the disposition of pre-embryos in a dissolution where the parties had signed a valid hospital contract directing continued storage until certain events occurred requiring authorizations from both spouses.[39] The wife was unable to conceive. Iowa's public policy was against enforcing the parties' agreement in a highly personal area of reproductive choice and instead applied the contemporaneous mutual consent principle and made the party opposing destruction responsible for storage fees.

The *McQueen* decision is the only other case ordering contemporaneous mutual consent to resolve a pre-embryo dispute but as a fallback position given its facts invalidating the suspect cryopreservation agreement.[40]

Balancing of Interests

In *Davis v. Davis*, Tennessee's seminal case decided a frozen pre-embryo matter in 1992 where an ex-wife wanted control of "frozen embryos" for implantation post-divorce.[41] The *Davis* trial court awarded "custody" to ex-wife giving her the "opportunity to bring these children to term through implantation."[42] The Tennessee Supreme Court explicitly repudiated the bright line rules proposed to resolve the dispute and balanced the interests of each party.[43] The court first tackled the nomenclature and

"conclude[d] that preembryos [were] not 'persons' or 'property' but occup[ied] an interim category" entitled "to special respect because of their potential for human life."[44] It further held that progenitor agreements are presumed valid and enforceable. The court discussed that the right of privacy should protect individuals from government intrusion into the right to and the right not to procreate and found that the state's interest in potential life in pre-embryos is not sufficient to justify infringing upon the progenitor decisions. Ultimately, the court balanced the interests of the parties and held that ex-husband's right not to procreate outweighed ex-wife's desire to donate the embryos but noted the decision would be closer if use of the pre-embryos constituted ex-wife's last procreative chance.[45]

Twenty years later in *Reber v. Reiss,* Pennsylvania determined a dissolution appeal in 2012 where wife lost her ability to procreate as a result of cancer treatment. This prompted the spouses to develop pre-embryos before wife's treatment began. The spouses eventually separated and acknowledged that pre-embryos were marital property.[46] In absence of a signed agreement as to pre-embryo disposition, the *Reber* court held that wife's last procreative chance outweighed husband's right not to procreate and noted that, despite wife's vow not to seek child support, "a parent cannot bind a child or bargain away that child's right to support."[47]

Illinois used last procreative chance in 2015 to award pre-embryos to a woman who had the formed pre-embryos with her ex-boyfriend after her diagnosis of lymphoma with expected ovarian failure following planned chemotherapy.[48] The Illinois court found the parties entered into a binding oral agreement giving control of pre-embryos to the girlfriend, which was not modified by the subsequent written medical consent, but also upheld the trial court's determination that girlfriend's interests in procreation outweighed boyfriend's interest in avoiding it and future child support.

The Massachusetts Supreme Court decided *A.Z. v. B.Z.* in 2000 and based its permanent injunction against ex-wife's use of the frozen pre-embryos on a "public policy" against ex-husband's "forced procreation."[49] The *A.Z.* court discounted consent forms because husband had signed five blank forms out of six that wife subsequently completed granting her control of the pre-embryos in the event of separation or divorce.

In the 2001 case of *J.B. v. M.B.*, New Jersey authorized destruction of pre-embryos by wife in the absence of any written agreement directing their disposition where husband's ability to procreate was not lost with destruction of the pre-embryos.[50] The so-called "*J.B.* rule" holds that agreements are enforceable if "entered into [when the IVF process begins] subject to the right of either party to change of his or her mind [in writing] up to the point of use or destruction of . . . pre-embryos."[51] Alternatively, the court held that husband could pay fees for continued storage.

Other countries have struggled with balancing progenitor interests and pre-embryo disputes. The United Kingdom declined to award pre-embryos that represented a woman's last procreative chance where the progenitor man opposed their transfer to progenitor woman.[52] The Grand Chamber of the European Court of Human Rights found that pre-embryos do not have a right to life and that European law showed no consensus on when life begins.

Miscellaneous Actions

Arizona held that a wrongful death action did not lie against a fertility clinic for negligent destruction of pre-embryos because it declined to extend personhood to the non-viable pre-embryos and instead held that pre-embryos occupy an interim position between person and property due special respect.[53] The court also found that an action in negligence, malpractice, breach of fiduciary duty, or bailment might lie. Such an action was filed following a storage tank failure at an Ohio fertility clinic which caused the loss of more than 4,000 frozen embryos and gametes.[54]

The United States Supreme Court decision in *Astrue v. Capato* held that state law determined whether a mother could

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claim Social Security survivor benefits for her twins conceived posthumously with pre-embryos formed in vitro with her gametes and those of her deceased husband.[55] While not a dispute over pre-embryos or gametes, the *Astrue* decision does inform attorneys counseling progenitors. And newspapers have reported grandparents seeking control of a dead son's semen to make a grandchild.[56]

In a federal diversity case, the Eastern District of Virginia denied motions to dismiss California residents' attempts to obtain interinstitutional transfer of their pre-zygotes from a Virginia Medical College to a Los Angeles clinic.[57] The husband and wife had signed an informed consent that provided "three fates" of the pre-zygotes that did not include the requested interinstitutional transfer.[58]

Attorney Recommendations

Pre-embryo disputes fall in the ambit of family law, health law, and probate law attorneys. Missouri family law attorneys should prompt their clients about the existence of pre-embryos or gametes, because forgetfulness, religious convictions, or moral reasons may prevent spouses from including pre-embryos or gametes in the listing of property to be divided in dissolution. Unmarried and married same-sex couples and different-sex couples may have frozen ova, sperm, or pre-embryos. Attorneys should acquire all the agreements previously executed by clients using ART to determine any previous agreements as to disposition of gametes or pre-embryos. Such clients typically sign multiple documents which might include informed treatment consent forms, donated gamete agreements, cryopreservation agreements, and surrogacy contracts (hereinafter collectively called "Agreements"). Family law attorneys may incorporate the various IVF or cryopreservation consent options discussed below into Agreements they might draft or evaluate in the event of dissolution, death, dispute, or separation between progenitors, intended parents, or donors.

Missouri ART attorneys who review, draft, and negotiate collaborative reproduction agreements should carefully explain the options and consequences, but also emphasize to clients that the intent expressed in clinical forms typically controls in frozen gamete or pre-embryo disputes during dissolution or separation, and upon the death of either or both signors. Alerting clients to the import of such agreements informs their choices.

Missouri probate attorneys who develop estate planning documents should designate whether the signatory has or may have frozen gametes or pre-embryos and the client/s' wishes as to the disposition of the gametes or pre-embryos that are then in existence, planned or not yet planned. The choices include thawing/destruction, donation to the other intended parent or to the client/s' parents/relatives or to other named individuals, and donation to research. Missouri has no caselaw on parentage of children formed by IVF or conceived by alternative insemination after the death of the intended parent who may be the progenitor or a partner of a progenitor, although wrongful death actions do lie for a viable fetus.[59]

However, other courts have considered cases regarding Social Security benefits for children conceived posthumously by artificial insemination with previously frozen semen or by embryo transfer.[60] Both the American Bar Association and the National Conference of Commissioners on Uniform State Laws have developed proposals for use of gametes or pre-embryos following death of the progenitor. The American Bar Association (ABA) approved the Model Act Governing Assisted Reproductive Technology, which basically adopts the "posthumous conception" provisions of the Revised Uniform Parentage Act (RUPA).[61]

The Revised Uniform Parentage Act 2017 delineates parentage of a deceased intended parent in Section 810:

> (b) Except as otherwise provided in Section 812, an intended parent is not a parent of a child conceived by assisted reproduction under a gestational surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:
> (1) the agreement provides otherwise; and
> (2) the transfer of a gamete or embryo occurs not later than [36] months after the death of the intended parent or birth of the child occurs not later than [45] months after the death of the intended parent.[62]

Additionally,

> . . . the Restatement (Third) of the Law of Property as to wills and trusts contains the following language:
>
> Unless the language or circumstances indicate the transferor had a different intention, a child of assisted reproduction is treated for class gift purposes as a child of a person who consented to function as a parent to the child and who functioned in that capacity or was prevented from doing so by an event such as death or incapacity.
>
> Unless the language or circumstances indicate that the transferor had a different intention, a class gift that has not yet closed physiologically closes to future entrants on the distribution date if a beneficiary of the class gift is then entitled to distribution.[63]

The guidance in the model act, uniform law, and restatement revolve around issues of control of gametes and pre-embryos, parentage, and inheritance. Timing of the start of pregnancy (conception by artificial insemination or after embryo transfer) and expressed written intent are the major determinants. Importantly, the ABA Model Act, the RUPA, and the Restatement Third of Property Law are informative but not controlling; Missouri has not enacted the RUPA or the ABA Model Act. Thus, while not controlling in Missouri, these documents do inform probate practitioners of what might constitute national best practices. Importantly, it is state law that determines the availability of Social Security benefits for children conceived posthumously.[64]

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largely a self-regulated industry with no federal and few state laws governing them.[65] The Food and Drug Administration regulation of certain human cells, including gametes, to prevent the transmission of communicable and infectious diseases is not addressed in this article.[66]

Best practices for any IVF center should require execution of an informed consent form/s and cryopreservation agreement by donors and intended parents such that they are informed of their rights and options. This includes length of storage; thawing with destruction; donation to each other, to other family members, to another family, or to science; and potential triggers for such options, such as length of time, pregnancy, death, or divorce. Importantly, a properly executed document should lay out their intentions.

These sorts of agreements walk a fine balance among state public policy, individual constitutional rights, and contractual rights. While courts may or may not force a progenitor to procreate against his/her wishes or to pay for frozen storage indefinitely, IVF center contracts may provide options to occur specifically upon a specified length of time, or upon death, divorce, a change of heart, successful pregnancy/ies, or other events. The contract can specify storage fees from a progenitor who wants to preserve pre-embryos against the other progenitor's wishes for donation or destruction. A contract may not bargain away child support to a party opposing embryo transfer, as the right of support belongs to the child.

Other provisions that IVF or cryopreservation clinical forms should contain include: distinguishing oral or written agreements between parties with contracts or forms executed with IVF/cryopreservation centers; the center's definition of abandoned gametes/pre-embryos and their policies upon abandonment, including the center's options to thaw and destroy or donate abandoned gametes/pre-embryos to science; the center's policy upon its own closure; and the center's liability for lost, misused, or accidentally destroyed gametes/pre-embryos. Abandonment of pre-embryos has been defined as couples not paying for continued storage of their pre-embryos or gametes.[67]

Health law attorneys should consider inclusion in their Agreements the rule developed in *J.B.* that pre-embryo agreements are enforceable if entered into when the IVF process begins, subject to the right of either party to signify a change of his/her mind in writing up to the point of use or destruction of pre-embryos.[68] Attorneys would also be wise to include a caveat that the effect of §§ 1.205, 188.010, and 188.015 or subsequent legislation as discussed below may influence clinic conduct where thawing, destroying, or scientific use of pre-embryos might constitute a crime. However, the *McQueen* definition of pre-embryos as property of a special character may influence IVF facility concerns regarding criminal penalties attaching around the disposition of frozen pre-embryos.

None of the courts in the United States cases on pre-embryo disputes found that pre-embryos constituted human beings, although Louisiana law provides that an IVF ovum is a juridical person, and New Mexico law requires that an IVF embryo be stored until transferred or donated.[69]

While McQueen's case was on appeal, she approached Rep. John McCaherty, who unsuccessfully introduced House Bill 2558 during the 2016 Missouri legislative session.[70] HB 2558 would have directed courts to render custody decisions for preimplantation frozen embryos utilizing certain criteria and included a best interest of the embryo factor.[71] Rep. Mike Moon introduced House Joint Resolution 53 in the 2018 legislative session to hold a general/special election to amend the constitution to declare life in every preborn human child at every stage of development from the moment of conception.[72] This measure also failed to gain legislative approval.

Scientists argue that such laws, and perhaps the Missouri proposal, would not just prevent abortion and the embryonic stem cell research that might constitute the motivation behind such laws, but also significantly restrict infertility treatments including IVF, cryopreservation of pre-embryos and gametes, and treatment to remove life-threatening ectopic pregnancies.[73] Given that more than 2,000 Missourians utilized assisted reproduction more than five years ago, legislation that restricts ART treatment for infertility would affect many Missourians.

Conclusion

Assisted reproductive technologies are widely used, including in Missouri. The *McQueen* decision makes pre-embryos property deserving special respect and subject to marital division. While the *McQueen* decision explicitly did not decide if a valid agreement about pre-embryo disposition was enforceable in Missouri, the court notes other states which are enforcing such agreements. And most state courts agree that effectuating the intent of the progenitors is the best outcome in a dispute over pre-embryos. To that end, lawyers should carefully craft clinic treatment consent forms for gamete collection, alternative insemination, in vitro fertilization, embryo transfer, and cryopreservation agreements; agreements for gamete donation, embryo transfer, and surrogacy; and all probate instruments such that the intent of all relevant parties is clearly explained and memorialized.

Importantly, attorneys should guarantee that every party to any such agreement is represented by independent counsel, for to do otherwise allows a party to act in ignorance in a matter of constitutional significance, to allege ignorance or undue influence in a dispute, or to lodge a complaint against an attorney for conflict of interest or representing one perhaps more powerful party to an agreement where the other party goes unadvised. A waiver of conflict agreement is appropriate where a couple hires the same attorney to represent each of them.

Best practices for Missouri family, health, and probate attorneys would problem solve issues presented in decisions made in other states and by the U.S. Supreme Court as well as provisions found in model and uniform laws. These issues commonly include property division in dissolution or separation or other triggers, motivation for ART participation, last procreative chance, beliefs regarding destruction of pre-embryos, and progenitor and intended parent intent for gametes and pre-embryos following death.

As *McQueen* noted, science does indeed outpace legislation. Nonetheless, many Missourians are utilizing ART and scientists are now gene-editing human embryo cells via CRISPR to "correct defective genes that cause inherited diseases."[74] Legislation to adopt RUPA 2017 would promote the welfare of the thousands of Missourians utilizing assisted reproduction to form a family and the potential to spare would-be children inherited diseases.

Endnotes

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