

Psychology and Family Law

Why It's Unwise to Define Frozen Embryos as Human Life

By Mark Baer, Esq.



The Missouri legislature is currently considering the enactment of legislation that would define frozen embryos as human life. According to the bill's sponsor, Rep. John McCaherty, "the judicial system has no clear direction what to do with frozen human embryos so they are treating them as property." Rep. McCaherty is correct that the current case law in Missouri on this issue defines frozen embryos as property. As a result, when a divorcing or post-divorce couple is at odds as to whether to gestate or destroy their frozen embryos, the courts have ruled in favor of the party who did not want the embryos gestated. Most courts in other states have ruled the same way, recognizing a right not to reproduce. As the New York Times reported on January 19, 2016, "anti-abortion groups are seeking a foothold on a new battlefield: custody disputes over frozen embryos."

This is by no means an insignificant issue. In fact, according to the U.S. Department of Health & Human Services, "there are more than 600,000 cryo-preserved embryos in the United States." Two years ago, the agency published a report which stated: "Twelve percent of women aged 15-44 in 2006-2010 (7.3 million women), or their husbands or partners, have used infertility services. Among women aged 25-44, 17% (6.9 million) have used infertility service. Thirty-eight percent of nulliparous women [i.e., have never given birth] with current fertility problems in 2006-2010 have used infertility services."

Most people are unaware of the number of couples in the United States which have received or are receiving infertility services. This issue was raised during a plenary at the American Bar Association's Spring 2015 CLE Conference, in a workshop on family law. The speaker noted that people receiving such services don't tend to share that information with friends, family members, employers, and others for various reasons, including shame, fear of being terminated from employment, and fear that their children will be treated differently.

Legislation and case law defining frozen embryos as human life are unwise and inappropriate for so many reasons. Here are my thoughts on the matter.

First, try freezing a live human being and bringing him or her back to life. Once you can do that, I might consider entertaining the argument that an *embryo* is a human life.

Second, under the "human life" definition, embryos can't be destroyed in the event a couple divorces or their non-marital relationship ends. Therefore, the couple will be able to fight over who gets to keep the "human life," and possibly try to gestate them.

Third, if said frozen embryos are gestated, the former spouse who wanted them destroyed can pay child support for the children and fight over the amount and payment of that support until the children reach the age of majority. This will make tens of thousands of lawyers wealthy.

Fourth, if children are created from the frozen embryos, the former couple can also fight over custody and visitation of those children from birth until age of majority. Another coup for lawyers.

Fifth, since frozen embryos will literally survive for thousands of years, such a definition would impose a higher obligation on fertility clinics to ensure they are "kept alive" during that entire time. Just how much money will that cost people who currently only pay for a fixed number of years? As you might imagine, such issues will be another source of litigation to keep lawyers busy and their wallets full.

Sixth, creating such a definition might also be a boon to insurance companies because of the legal exposure associated with the "maintenance" of those frozen embryos for thousands of years.

This legislation, if passed and signed into law by the governor; will generate a tremendous amount of business for lawyers, while also helping to ensure a great deal of parental conflict for the children born under such circumstances to endure. Since parental conflict harms kids, such legislation will help parents to raise even more emotionally damaged children. I suppose, this would be a boon for psychologists?

As David Brooks said in his article titled, The Post-Trump Era, "Conservatism needs a worldview that is accurate about human nature." Conservatives and others who support the notion of regarding embryos as "human life" lack such a realistic and broad worldview.

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