

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

WENDY AND RICK PENNIMAN,
individually and on the behalf of all others
similarly situated,
c/o Taubman Law
1826 West 25th
Cleveland, Ohio 44113

Plaintiffs,

v.

**UNIVERSITY HOSPITALS HEALTH
SYSTEM, INC.;**

c/o Janet L. Miller, Statutory Agent
3605 Warrensville Center Road
Shaker Heights, Ohio 44122

-and-

**UNIVERSITY HOSPITALS
CLEVELAND MEDICAL CENTER
d/b/a as, inter alia, University Hospitals
Rainbow Babies & Children's Hospital
And University Hospitals MacDonald
Women's Hospital;**

c/o Janet L. Miller, Statutory Agent
3605 Warrensville Center Road,
Shaker Heights, Ohio 44122

-and-

**UNIVERSITY HOSPITALS AHUJA
MEDICAL CENTER, INC.**

c/o Janet L. Miller, Statutory Agent
3605 Warrensville Center Road,
Shaker Heights, Ohio 44122

CASE No:

JUDGE:

**COMPLAINT FOR
DECLARATORY JUDGMENT
WITH MEMORANDUM IN
SUPPORT**

-and-)
)
JOHN DOE PROFESSIONAL CORP)
)
-and-)
)
JOHN DOE MECHANIC)
)
JOHN DOES I-X)
)
-and-)
)
JOHN DOE MANUFACTURER)
)
-and-)
)
JOHN DOE MONITOR)
)
-and-)
)
JOHN DOE SECURITY COMPANY)

Defendants.

1. On April 7, 2014, Plaintiff and Defendant entered into a contract where Defendant would provide Plaintiff with in vitro fertilization procedures, harvesting eggs, fertilization with sperm, storing the embryos and safe guarding them.
2. Certain controversies have arisen between Plaintiff and Defendant concerning the legal status of the IVF embryos. A declaration of the legal status of the IVF embryos will terminate this controversy before one of the parties further suffers irreparable damages.
3. The controversy is whether life begins at conception, therefore making the an embryo a "person."

WHEREFORE, Plaintiff prays that a declaratory judgment be entered in her favor, declaring that the life of a person begins at the moment of conception, declaring that the legal status of an embryo is that of a person; and for costs incurred herein.

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Attorney for Plaintiffs

MEMORANDUM IN SUPPORT OF PLAINTIFFS' COMPLAINT
FOR DECLARATORY JUDGMENT

I. STATEMENT OF FACTS

Wendy and Rick Penniman, the Plaintiffs, began going to the Defendant's fertility clinic in May 2013 to address their unexplained recurrent miscarriages. In April 2014, the Plaintiffs decided to undergo IVF treatment in an effort to have a child at a later date when the underlying cause of her prior eleven miscarriages could be determined. In April 2014, Plaintiff Wendy Penniman went through IVF treatment and had three high graded viable embryos frozen.

After discovering the underlying cause of their miscarriages, the Plaintiffs were able to have two successful pregnancies and planned to use the frozen viable embryos to have a third child. Plaintiffs' frozen embryos were under the Defendant's care and protection being stored in a storage tank at the fertility clinic at Ahuja Medical Center.

On or about March 3, 2018, the storage tank housing the Plaintiffs embryos had a significant temperature increase, going from -160/-170 degrees to around -40 degrees, thereby destroying the viability of the embryos. The Defendant did not become aware of the temperature change until March 4, 2018.

While the Defendant has publicly taken responsibility for the loss of the embryos, the Defendant is treating the embryos as chattel and simply offering to reimburse the Plaintiffs for the production of the embryos. The Plaintiffs view the embryos as patients of the Defendant, who should have been protected as such. The Defendant knew weeks prior to the incident that the storage tanks were malfunctioning and ran the risk of losing embryos due to the malfunctioning tanks. Had the Defendant treated these embryos as

patients, and as persons, immediate steps would have been taken to prevent their loss. The Defendant, however, did not take these immediate steps therefore showing that the Defendant regards the embryos as chattel.

II. LAW AND ANALYSIS

A. Declaratory Judgment Standard

In order to maintain an action for declaratory judgment, the party seeking a declaratory judgment must show that a real controversy exists between the parties, the controversy is justiciable in character, and speedy relief is necessary to preserve the rights of the parties. *Burger Brewing Co. v. Liquor Control Comm.*, 34 Ohio St.2d 93, 97 (1973). The Eighth District has held that a justiciable controversy exists when “there is a genuine dispute between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Wagner v. Cleveland*, 62 Ohio App.3d 8, 13 (8th Dist. 1988).

B. Controversy

Here, a real controversy exists because there is a genuine dispute between the parties involving the legal status of embryos. Plaintiffs contend that life begins at conception, meaning that embryos have the legal status of a “person.” The Defendant, however, disagrees by treating the embryos as chattel rather than as persons. By failing to take immediate corrective steps after discovering the tanks were malfunctioning and offering to reimburse the Plaintiffs for production of the embryos, the Defendant is regarding the embryos as chattel; therefore, creating a genuine dispute regarding the legal status of embryos.

Ohio's laws support the Plaintiffs contention of embryos having the legal status of a person. Ohio's definition of "person" includes an individual, corporation, business trust, estate, trust, partnership, and association. O.R.C. §1.59(C). In considering whether an embryo is a person, O.R.C. Chapter 2919 definitions help to interpret when life begins. O.R.C. Chapter 2919 defines "fetus" as "human offspring developing during pregnancy from the moment of conception and includes the embryonic stage of development." O.R.C. §2919.19(B).

Although the United States Supreme Court held that a fetus is not a person for the purpose of the Fourteenth Amendment, *Roe v. Wade*, 410 U.S. 113 (1973); the Ohio Supreme Court held that a "viable fetus is a person." *Werling v. Sandy*, 17 Ohio St.3d 45, 49 (1985). Since the definition of "fetus" begins at conception, the life of a person begins at the moment of conception.

C. Justiciable in Character and Requiring Speedy Relief

The United States Supreme Court developed a two-fold test to determine whether a controversy is justiciable in character. *Burger*, 34 Ohio St.3d at 97 citing *Toilet Goods Ass'n v. Gardner*, 387 U.S. 158, 162 (1967). The first factor to consider is "whether the issues tendered are appropriate for judicial resolution." *Id.* Under O.R.C. §2721.02, courts may declare rights, status, and other legal relations whether or not further relief is or could be claimed. The controversy here is appropriate for judicial resolution because it involves the legal status of embryos.

The second factor is to "assess the hardship to the parties if judicial relief is denied." *Burger*, 34 Ohio St.3d at 97. In regards to the second factor, the Ohio Supreme

Court held that when the “impact on the plaintiffs is sufficiently direct and immediate” the issues are appropriate for judicial review. *Id.*

The uncertainty of the controversy directly impacts the relief sought by the Plaintiffs. If the legal status of embryos is not declared to be that of a person, the Plaintiffs will not be able to bring a cause of action for wrongful death and will not be able to seek relief for the mental anguish incurred by the Plaintiffs as surviving parents. Further, Plaintiffs will not be able to bring a cause of action on behalf of their other children for the loss of a sibling. Therefore, speedy relief is necessary because the impact of the declaration will determine relief available to the Plaintiffs.

III. CONCLUSION

The legal status of embryos poses an actual controversy between Plaintiffs and Defendant, which is justiciable in character and requires speedy relief. The legal status of embryos is in controversy because the Plaintiffs treat an embryo as a person, whereas the Defendant treats an embryo as chattel. The controversy is appropriate for judicial review because the law specifically allows for courts to resolve issues of legal status. Further, the impact of this declaration is sufficiently direct and immediate on the Plaintiffs requiring speedy relief because it will determine relief available to the Plaintiffs. Plaintiffs seek a declaratory judgment declaring that life begins at the moment of conception; therefore declaring the legal status of embryos is that of a person.

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