

Oregon court's ruling on frozen embryos raises ethical problems

PORTLAND, Ore. – An Oregon divorce ruling that frozen embryos can be considered as property confirms an outcome predicted and feared by Catholic leaders decades ago.

In the wake of the Oct. 8 decision by the Oregon Court of Appeals, Catholic ethicists say other technologies, like the genetic selection of infants before birth, will pose more problems soon.

The court unanimously upheld a woman's decision to kill six frozen embryos by thawing, despite an appeal by the husband to keep them alive. Though the court stopped just short of actually calling embryos property, the key to the decision was a determination that embryos are to be considered under property laws.

The mother, Dr. Laura Dahl, said she wanted the embryos killed because she did not want someone else raising the children if they were ever carried to term. She is a pediatrician in Lake Oswego, a Portland suburb.

The father, Dr. Darrell Angle, argued that the embryos are alive and so their protection should override a pre-treatment agreement saying that the mother could decide on their fate. Angle's lawyers also contended that the destruction amounted to an unfair distribution of property.

Dr. Dahl and Dr. Angle wed in 2000 and had a son. In 2004, they decided to conceive again through in vitro fertilization at Oregon Health and Science University. The treatment foundered, leaving the six embryos frozen for preservation. They had signed an agreement that left Dr. Dahl to decide on the embryos in case of a divorce. Shortly after the 2004 treatment failed, they decided to get divorced.

The court's decision on the fate of the frozen embryos has nationwide importance, because tens of thousands of couples have frozen embryos in storage leftover from in vitro fertilization. The number of embryos is estimated at more than 100,000.

“Generally when parents are permitted to be decision-makers for their offspring, the courts assume that the parents have the best interest of their offspring in mind when the decision is being made,” said Margaret Hogan, executive director of the Garaventa Center for Catholic Intellectual Life and American Culture at the University of Portland.

“Dr. Dahl maintains that she would not want someone else to raise her child – so she chooses to have them killed. This is hardly in the best interest of her offspring,” Hogan added.

When in vitro fertilization was new, rules required that for any couple only four embryos could be created and all four would be implanted in the woman. That rule was rooted in the generally accepted scientific recognition that the life of a new human individual begins when the gametes of the parents unite.

The Catholic Church’s teaching is that life begins at conception, but from a legal perspective, when life begins became muddled with *Roe v. Wade* and *Doe v. Bolton*. In those 1973 rulings – which legalized abortion virtually on demand – the majority of the U.S. Supreme Court justices said they did not know when human life begins.

“On the foundation of this learned ignorance, they declared that the early developing human being is not a person,” Ms. Hogan told the *Catholic Sentinel*, newspaper of the Portland Archdiocese.

So, as in vitro fertilization became a successful industry, guidelines disappeared, resulting in tens of thousands of frozen embryos. In addition, legal cases involving embryos are handled not in family court, but in courts that work out property settlements.

“It is emblematic of the problems associated with artificial reproductive technology,” said Dr. William Toffler, a professor at Oregon Health and Science University and a member of Holy Rosary Parish in Portland. “This was predictable.”

The most frightening development, said Dr. Toffler, is the implication that embryos are property. “That is chilling when you think of the 19th century, when African-Americans were thought of as property,” he said.