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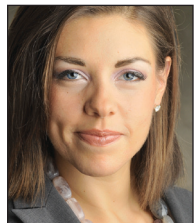
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THE EXPERTS

LAW

Embryo donation a vexing legal issue

The multitude of embryos held in storage facilities throughout the United States has generated legal issues that must be confronted. Estimates suggest there are approximately 500,000 cryopreserved embryos created by in vitro fertilization stored in domestic fertility clinics today.



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In response to this incredible number of unused but viable frozen embryos, many families are entertaining the option of adopting – this term is used loosely as typical adoption terminology refers to placement of a child after birth – these embryos. This form

of adoption is called embryo donation and transfer.

One may wonder why there are so many cryopreserved embryos. The process of IVF often produces more embryos than can be used at one time. Excess embryos are typically created because the survival rate is relatively low and the price of creation is high.

The decision about what to do with the extra embryos rests with the family who had the embryos produced. However, the family's options are dictated by the laws of each state. Some embryos are immediately destroyed. Others are donated for medical re-

search. Still others are frozen and stored for later use by the biological family. Some families choose to donate their unused embryos to fertility clinics for use by genetically unrelated families. Thus, the birth of embryo donation and transfer.

In most states the transfer of a donated frozen embryo from a storage facility to a non-genetically related family is not considered or treated as adoption. Rather, the transfer is treated as a contractual property remittal. The rights of the biological family to the embryo terminate at the time of the donation to the center. Then, the rights to the embryo are shifted to the recipient – when they chose their embryo and have it implanted. Beyond this general procedure, there is little consistency between states as to the legal intricacies of embryo donation.

According to the National Embryo Donation Center, only six states have legislation directly concerning embryo donation or adoption. Georgia and Louisiana have enacted comprehensive legislation. Georgia allows couples to obtain a final order of adoption once a child results from the donation, granting the family the benefits of a traditional adoption. Louisiana considers embryos “judicial persons.” As judicial persons, there is a prohibition against intentionally destructing the embryos and/or using the embryos for research.

Mississippi is attempting to pass legislation that would define a “person” as a human being from the moment of fertilization.

Twenty-six other states, Virginia included, have laws pertaining to some, but not all, aspects of embryo donation. In Virginia, the transfer of the embryo is solidified by a legal agreement between the parties.

Because few states have specific rules governing this process, hotly contested legal debates result. For example, if embryos are given full rights of personhood before implantation, medical professionals could theoretically be held criminally liable if frozen embryos are accidentally thawed or destroyed. This dilemma came to light in Louisiana after Hurricane Katrina.

Also, the cost of storage is an issue because it could be thousands of dollars per year. What is a family to do if they fail to pay for the storage of embryos and the embryos cannot be destroyed? In this situation, does the burden of preservation shift to the medical facility storing them? A more common problem is what to do with embryos if the parties choose to divorce?

IVF provides an opportunity to infertile couples desiring to have a family, but it also assists couples seeking to adopt as it provides another option. As information about this option spreads, more adoption agencies have incorporated embryo adoption programs as an option for adopting families. Eventually, as the trend grows, the need for more complete statutory regulations will be necessary.

No matter a person's circumstance, building families is filled with joy, even though the topic of assisted-reproduction remains controversial. While legal debate continues, embryo donation/adoption offers new and untapped opportunities for adopting families.

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