

Introductory remarks

# Basic questions of wrongful birth and wrongful life claims

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# Road to wrongful birth and wrongful life claims

- Advancements in science and modern medicine have made it possible to control or prevent conception, detect pregnancy earlier, and more easily discern the risk of genetic disease or defects.
- These medical advancements and evolving social attitudes "offered unprecedented reproductive choices for women. With these choices came the freedom to control reproduction, giving women the ability to time childbearing around careers or personal desires. Hutton Brown et al., *Legal Rights and Issues Surrounding Conception, Pregnancy, and Birth*, 39 VAND. L. REV. 597,603-04 (1986).

# History

- *Park v. Chessin – USA*

„In June, 1969, Hetty Park gave birth to a baby who lived only five hours. The cause of death was determined to be polycystic kidney disease, a fatal hereditary disease of such a nature that there exists a substantial probability that any future baby of the same parents will be born with it. Park and her husband alleged that immediately after the death of this infant they sought the advice of the defendant obstetricians, who advised them that the chances of having any future baby with polycystic kidney disease were "practically nil,"... . In reliance on the defendants' assurances, the plaintiffs conceived a second child, which was delivered in July, 1970. Contrary to the defendants, assurances, this child too was born with polycystic kidney disease.“

The parents brought a lawsuit on their own behalf claiming damages for medical expenses, emotional distress, and loss of the wife's services incident to the birth and care of the second child. In addition, as the legal representatives of the child, the parents brought suit to recover for the child's physical pain and suffering.

- This case involves two similar yet distinct types of actions: "wrongful life" and "wrongful birth."

# Prenatal/Reproductive torts

- More recently, the terms 'wrongful birth', and 'wrongful life' have been referred to as 'reproductive torts, or prenatal torts
- This language connotes that it is a woman's right of self-determination and a father's right to 'planned reproduction' lie at the crux of the problem

# Prenatal/Reproductive torts

- Wrongful birth and wrongful life cases also differ from ordinary prenatal tort cases. In wrongful birth and wrongful life cases it is not contended that the defendant did or failed to do anything to cause the damaged condition of the child, as in ordinary prenatal tort cases.
- Rather, the allegation in wrongful birth or wrongful life suits is that the defendant's negligence resulted in the birth of an infant who otherwise would not have been born.

# Wrongful birth and wrongful life claims

- "wrongful life" denotes an action brought **by a *child*** claiming injury because of the failure to prevent its birth
- "wrongful birth" denotes an action brought **by the *parents or prior born children***

# Different types of claims

- *Wrongful Pregnancy or Conception*

In an action for wrongful pregnancy or conception, the parents of a child born following a negligently performed sterilization procedure, negligently performed abortion, negligent failure to diagnosis pregnancy, or negligence through the provision of ineffective contraception bring suit against the treating physician or other responsible parties.

The gravamen of the complaint is that the plaintiffs sought and relied on healthcare professionals after making a deliberate choice not to conceive or to terminate an existing pregnancy, yet a child was born due to negligence in that care.

Plaintiffs seek monetary and emotional damages on their own behalf for the birth of an unplanned and unwanted child, usually born normal and healthy.

# Different types of claims

- *Wrongful Birth*

Wrongful birth is a cause of action brought by the parents of a disabled child, claiming they would have avoided conception or elected to terminate an existing pregnancy through abortion but for the negligence of those responsible for prenatal testing, counseling of risks, or disclosure of abnormalities or defects.

The parents allege this negligence prevented them from making an informed decision regarding termination of the pregnancy, which they would have chosen to do to prevent the birth of a child with a defect or disease.

- *Wrongful Life*

Wrongful life is a cause of action brought by or on behalf of the child suffering from the defect or disease and is equivalent to the parents' suit for wrongful birth. In other words, but for the negligence of the physician in failing to advise or inform the parents of the risks, the child would not have been born into a life of pain and suffering resulting from the condition.



# Thank you for your attention!



*"I don't feel quite as fulfilled when I've saved a lawyer."*