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# **FAMILY ISSUE FACT SHEET**

No. 2018-03 (Updated February 2018)



## **PARENTAL RIGHT TO EMBRYO SB 1393 DISSOLUTION; HUMAN EMBRYOS; DISPOSITION**

### **EXECUTIVE SUMMARY**

Arizona law is silent as to the disposition of in vitro human embryos in a divorce proceeding, thereby leaving the issue completely to the discretion of the courts. In an effort to protect a parent's right to his or her embryos, this bill requires courts to award the embryos to the spouse that wants them for the purpose of having children. However, to protect the interest of the spouse that does not want the embryos, the bill also removes any right, obligation, or interest between the spouse and any resulting child.

### **BACKGROUND AND OVERVIEW**

In 2014, before undergoing treatment for cancer, Ruby Torres and her fiancée agreed to complete in vitro fertilization so that they could have children in the future.<sup>1</sup> They created seven frozen embryos. Ruby underwent cancer treatment, and her cancer went into remission. However, their marriage ended in a divorce, leaving a Maricopa County Superior Court judge to decide how to award their embryos. Ruby wanted the embryos because they were likely her only chance to have biological children. Her husband did not want Ruby to be awarded the embryos because he was concerned with future financial obligations and how a child might affect any inheritance he might receive.<sup>2</sup>

The Superior Court judge noted that Arizona law is silent on the matter, and based on language in their contract with the fertility clinic, ordered the embryos to be donated to a fertility bank or another couple.<sup>3</sup> Ruby is appealing the decision to the Arizona Court of Appeals.

This bill ensures that parents in Ruby's position will be awarded the embryos and will no longer be at risk of losing them to a third party. The bill provides that in a dispute over in vitro embryos in a divorce proceeding, the court must award the embryos to the spouse that wants the embryos for the purpose of having children. In the situation where both spouses are biologically related to the embryos and both want the embryos for the purpose of having children, the court must award in a way that provides the best chance for the embryos to develop to birth. However, if only one of these spouses is biologically related to the embryos, the court must award the embryos to the spouse that is biologically related.

In addition, to protect the interests of the spouse that does not want the embryos, the bill provides

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<sup>1</sup> Ken Alltucker, [Cancer Survivor Battling Ex-Husband Ordered to Donate Embryos](#), azcentral.com, August 31, 2017.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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that the spouse is not liable for child support for any resulting child, and that any resulting child does not have any legal interest in that spouse. However, if the spouse is biologically related to the embryos, the spouse may consent during the proceedings to being a parent to any resulting child.

Finally, the spouse that is biologically related to the embryo and does not want the embryo must provide his or her health and genetic history to the spouse that is awarded the embryos. This provides any resulting child the possibility of access to important medical information the child may need.

## **TALKING POINTS**

1. Women like Ruby should not lose their embryos to a third party simply because their spouse does not want to pay child support.
2. This bill properly balances the interest of both spouses. One spouse can have the embryos for the purpose of having children and the other spouse has no obligation as to any resulting child.
3. This bill provides much needed direction to the courts as they face these types of disputes. This bill will lead to more consistent rulings and will prevent unjust results like in Ruby's case.
4. The legislature should set the public policy for these types of cases, not the judiciary. The Maricopa County judge that ruled in Ruby's case noted that Arizona law was silent and invited the legislature to act because it was not the job of the judiciary to make law.

## **CONCLUSION**

This bill protects a parent's right to his or her in vitro embryos in a divorce proceeding. A spouse in Ruby's position should not lose his or her embryos simply because the other spouse no longer wants to be a parent. This bill balances the interests of the spouses by removing any right, obligation, or interest between the spouse that no longer wants to be a parent and any resulting child.