

[Jeter v. Mayo \(2005\)](#) [1]

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In *Jeter v. Mayo*, the Court of Appeals of Arizona in 2005 held that a cryopreserved, three-day-old pre-embryo is not a person for purposes of Arizona's [wrongful death](#) [3] statutes, and that the Arizona Legislature was best suited to decide whether to expand the law to include cryopreserved pre-embryos. The Court of Appeals affirmed a decision by the Maricopa County Superior Court to dismiss a couple's [wrongful death](#) [3] claim after the Mayo Clinic (Mayo) allegedly lost or destroyed several of their cryopreserved pre-embryos. In reaching its decision, the Court of Appeals explored ethical and legal issues relating to cryopreserved pre-embryos, including prior case law, the principles of statutory construction, and the Arizona Legislature's role in balancing the societal interests involved.

Belinda and William Jeter (the Jeters) undertook [in vitro](#) [4] [fertilization](#) [5] (IVF) treatments at Mayo in Scottsdale, Arizona, resulting in several cryopreserved pre-embryos. After two unsuccessful [implantation](#) [6] attempts, they decided to pursue an alternative procedure, called tubal [embryo transfer](#) [7], at the Arizona Center for Fertility Studies Ltd., also in Scottsdale, Arizona. Upon transferring their cryopreserved pre-embryos from Mayo, the Jeters learned that five of the ten pre-embryos were not present. Using the available pre-embryos, Belinda underwent a tubal [embryo transfer](#) [7] procedure, resulting in the birth of a daughter. The Jeters remained concerned, however, whether their missing pre-embryos had been lost, destroyed, or mistakenly implanted into the wrong patient, potentially resulting in the birth of their biological child to another woman.

The Jeters sued Mayo in the Maricopa County Superior Court, in Phoenix, Arizona, alleging four claims. Count I was a claim under Arizona's [wrongful death](#) [3] statutes, while Count II was a negligence claim for the loss or destruction of the pre-embryos. Count III alleged that Mayo had breached its fiduciary duty to maintain the pre-embryos, and Count IV alleged Mayo had breached its bailment contract with the Jeters, under which Mayo was responsible for keeping the pre-embryos safe.

Mayo asked the Superior Court to dismiss the Jeters' entire complaint, a request the court granted in 2003. The Superior Court held that the missing pre-embryos were not persons under the Arizona [wrongful death](#) [3] law. It also agreed with Mayo that Arizona did not recognize a claim for the alleged negligent loss of the pre-embryos and dismissed the breach of fiduciary duty and bailment contract claims as barred by Arizona's Medical Malpractice Act.

On appeal to the Court of Appeals of Arizona, Division 1, in Phoenix, Arizona, the Jeters challenged the Superior Court's dismissal of their complaint, winning the support of the intermediate court on three of their four claims. The Court of Appeals, whose unanimous opinion was authored by Judge Donn Kessler, reversed the lower court's dismissal of the Jeters' claims for negligent loss or destruction of the pre-embryos, breach of fiduciary duty and breach of a bailment contract. The appellate court, however, affirmed the Superior Court's dismissal of the Jeters' [wrongful death](#) [3] claim.

In their appeal, the Jeters had asked the court to include their cryopreserved pre-embryos under the scope of Arizona's wrongful death statutes. The Arizona [wrongful death](#) [3] statutes allowed compensation under certain circumstances for the death of a person, but the statutes did not legally define the concept of a person or clearly indicate whether that concept would include a cryopreserved pre-embryo.

In reaching its decision, the Court of Appeals looked to a 1985 case *Summerfield v. Superior Court*. In *Summerfield*, the Arizona Supreme Court had modified a prior judicial decision that required a live birth to take place in order for a [fetus](#) [8] to qualify as a person under the Arizona [wrongful death](#) [3] statutes. The *Summerfield* court broadened the definition of a person to include a [viable](#) [9] [fetus](#) [8], one that would have been [born alive](#) [10] and capable of sustaining life independent of the [womb](#) [11] had it not been injured. The Jeters contended that the advancement of knowledge regarding embryonic development and [viability](#) [12] since *Summerfield* warranted further expansion of the definition of a person in [wrongful death](#) [3] actions, beyond the point of [viability](#) [12], to include cryopreserved pre-embryos.

In considering the Jeters' request, the Court of Appeals summarized the state of medical knowledge regarding embryonic development, concluding that a one- to eight-celled frozen pre-embryo does not meet the [viability](#) [12] requirement of *Summerfield* and only possesses a remote potential for future [viability](#) [12]. Given that more than twenty years had passed since *Summerfield* and most jurisdictions still limited their definition of a person for [wrongful death](#) [3] statutes to the period after which a [fetus](#) [8] achieves [viability](#) [12], the court declined to expand the definition of a person to include entities with the potential to become [viable](#) [9], such as cryopreserved pre-embryos. Further, based on the relatively low number of cryopreserved pre-embryos that lead to childbirth, the court declined to conclude that the Jeters' missing pre-embryos would have resulted in the birth of one or more children had the pre-embryos not been lost or accidentally destroyed.

The court also used several principles of statutory construction to assess the meaning of a person under the [wrongful death](#) [3]

statutes. Courts sometimes use statutory construction, or interpreting the meaning of a statute based on the legislature's intent when it enacted the law, when the language of a statute is ambiguous.

One principle of statutory construction holds that if a legislature amends or recodifies a statute without addressing a prior judicial decision that interpreted the statute, the court can presume the legislature approved of the judicial decision. In 2000, after the decision in *Summerfield*, the Arizona Legislature had amended the state's [wrongful death](#)^[3] statutes without addressing the court's decision in *Summerfield* or otherwise amending the statutes to include cryopreserved pre-embryos. The Court of Appeals, therefore, presumed that the Arizona Legislature approved of *Summerfield's* definition of a person, which included [viable](#)^[9] fetuses, but not nonviable fetuses or cryopreserved pre-embryos.

A second principle of statutory construction requires that a court consider the consequences of its statutory interpretation and avoid an interpretation that would bring about an absurd outcome. The *Jeter* decision reasoned that including a cryopreserved pre-embryo in the definition of a person under the [wrongful death](#)^[3] law might lead to [wrongful death](#)^[3] liability for IVF clinics and other unintended consequences. Based on this analysis, the Court of Appeals concluded that the principles of statutory construction weighed in favor of maintaining the [viability](#)^[12] requirement as stated in *Summerfield*.

The court acknowledged that broadening the definition of a person involved many divergent viewpoints and required balancing various societal interests, a task best left to the Arizona Legislature. In the court's view, the debate over when life begins is inseparable from societal interests. On the one hand, for instance, the court acknowledged potential benefits of human embryonic stem cell research in treating serious medical conditions. On the other hand, those benefits must be balanced against society's interest in respect for human life. The court reasoned that the Arizona Legislature, as representatives of the people, would be best suited to balance the broader public policy issues relating to cryopreserved pre-embryos.

The Court of Appeals declined to interpret the [wrongful death](#)^[3] statutes as including a cryopreserved, three-day-old pre-embryo. It concluded that the Arizona Legislature, not the Arizona court system, was best suited to decide whether to expand the definition of a person under the [wrongful death](#)^[3] statutes beyond that stated in *Summerfield*. The Court of Appeals, therefore, dismissed the Jeters' [wrongful death](#)^[3] claim for the loss or destruction of their cryopreserved pre-embryos, although it returned the case to the Superior Court for further consideration of the Jeters' remaining claims.

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