York v. Jones (1989) [1]

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In the case *York v. Jones* (1989), the United States District Court for the Eastern District of Virginia was one of the first US courts to address a dispute about a cryopreserved preembryo. Steven York and Risa Adler-York (the Yorks), a married couple, provided their gametes to doctors who created the preembryo, which the court referred to as a pre-zygote [4], as part of an *in vitro* [5] fertilization [6] (IVF) program at the Howard and Georgeanna Jones Institute for Reproductive Medicine [7] (Jones Institute) in Norfolk, Virginia. The couple sued the institute when the doctors at the Jones Institute refused to release the preembryo to the Yorks for use at a different IVF clinic. The Virginia district court denied the Jones Institute's attempt to have the *York v. Jones* case dismissed, and instead upheld the Yorks' right to move forward with their lawsuit. The *York v. Jones* decision influenced future disputes about cryopreserved preembryos because it treated the Yorks' cryopreserved preembryo as legal property over which the Yorks retained the authority to make decisions.

The Yorks married in 1983 and attempted to have a child the following year. Risa was unable to get pregnant due to problems with her fallopian tubes [8], and in 1986 the couple began the IVF process at the Jones Institute in Virginia. Doctors used the IVF procedure to create six preembryos from Risa's eggs and Steven's sperm [9], and they transferred five of the preembryos to Risa's uterus [10] in 1987, placing the remaining preembryo in cryopreservation [11] for possible later use. Risa did not become pregnant, and the couple had moved to California during the course of IVF treatment. In early 1988, with the single preembryo remaining in cryopreservation [11] at the Jones Institute, the Yorks decided to attempt pregnancy [12] with the assistance of doctors at the Institute for Reproductive Research at the Hospital of the Good Samaritan in Los Angeles, California. Despite requests from both the Yorks and their California physician, doctors at the Jones Institute refused to transfer the cryopreserved preembryo to the Yorks' new medical facility.

The Yorks petitioned the Eastern District Court of Virginia for a temporary restraining order and preliminary injunction against the Jones Institute, and a hearing was held in June 1989. A judge can issue a preliminary injunction before or during a trial to prevent irreparable injury to the requesting party while the case is being decided. The district court denied the Yorks' request for a preliminary injunction because they had not demonstrated that any irreparable harm would result to the preembryo in the time span of the court case.

The Jones Institute filed a motion to dismiss the lawsuit, claiming that the Yorks had not presented enough facts to support their legal claims. Examining this assertion, the district court focused on a consent form the Yorks had signed to participate in the IVF program at the Jones Institute. This consent form, titled “Informed Consent: Human Pre-Zygotes Cryopreservation” (Cryopreservation Agreement), explained the preembryo cryopreservation [11] process. The form also discussed the couple's rights. For instance, the Cryopreservation Agreement allowed the Yorks to withdraw their participation in the IVF program at any time, and it recognized that the couple had the authority to decide what would happen to any preembryos created during the IVF process. The Cryopreservation Agreement also indicated that no preembryos could be used to attempt pregnancy [12] unless the Yorks both consented in writing.

Among other claims, the Yorks alleged that the Jones Institute had breached the Cryopreservation Agreement by controlling the preembryo after the Yorks requested its transfer to their new medical facility. In response, the Jones Institute claimed they were following a provision in the Cryopreservation Agreement that stated, “Should we for any reason no longer wish to attempt to initiate a pregnancy [12], we understand we may choose one of three fates for our pre-zygotes that remain in frozen storage.” The three options listed were: (1) donation to an infertile couple; (2) donation to research; or (3) destruction.

Judge J. Calvitt Clarke, Jr., in his July 1989 opinion, resolved the Jones Institute's motion to dismiss in favor of the Yorks. Treating the matter as a contract dispute, the court concluded that the parties had formed a bailment contract by signing the Cryopreservation Agreement. A bailment contract may exist when one person, called the bailor, gives another person, called the bailee, possession but not ownership of the bailor's property. When the bailment ends, the bailee has an obligation to return the property to the bailor. Under Virginia law at the time, a bailment relationship was automatically created if a party lawfully possessed another's personal property and had a duty to account for it. The court found that the Jones Institute lawfully possessed and had a duty to account for the preembryo. The court also declined to restrict the Yorks to the three options for the preembryo because the Yorks clearly intended to use the preembryo to attempt to initiate a pregnancy [12], albeit under the care of a new physician.

Furthermore, the court inferred from the Cryopreservation Agreement that the Jones Institute had, in fact, also recognized the Yorks' property rights in the preembryo. For instance, the Cryopreservation Agreement, drafted by the Jones Institute and written as if the Yorks were speaking, consistently used the phrase “our pre-zygote” and referred to the preembryo as the Yorks' “property.” The Cryopreservation Agreement indicated that the Yorks retained “the principal responsibility” to make decisions about the preembryo and, in the event of divorce, would be obligated to resolve any dispute regarding legal ownership in a property settlement. Given this contractual language and the nature of the relationship between the parties, the court denied the Jones Institute's motion to dismiss. The *York v. Jones* case did not reach any higher courts in Virginia, suggesting that the parties settled their larger dispute out of court.

An outcome of *York v. Jones* was the court's conclusion that the Yorks, as the progenitors of the preembryo, should have authority to make decisions about it. An Ethical Statement by the American Fertility Society [13], now called the American Society for Reproductive Medicine and headquartered in Birmingham, Alabama, supported this perspective, and courts in other states would apply it in future disputes involving cryopreserved preembryos. Furthermore, rather than addressing the legal or philosophical status of the preembryo, the York court treated the preembryo as property, as opposed to a person with legal rights. In coming years, other courts across the US would interpret, not only the legal, but the moral and ethical status of these frozen entities.

Sources

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