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# Embryos aren't property, judge says, dismissing woman's case against ex

The judge dismissed Honeyhline Heidemann's lawsuit against her ex-husband, and rejected a previous opinion that referenced a 19th-century state law on the division of enslaved people.

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By Victoria Bisset

A judge in northern Virginia has dismissed the long-running case of a cancer survivor who sued her ex-husband for access to two frozen embryos created during their marriage, saying that human embryos are not divisible property.

Honeyhline Heidemann was diagnosed with Stage 3 breast cancer in 2017, two years after she and her then-husband, Jason, froze the embryos created during a cycle of IVF. When the Heidemanns divorced in 2018, their settlement listed the embryos as property — that would be kept in storage until either the couple or a court reached a decision on what would happen to them, The Washington Post previously reported.

In 2019, Honeyhline Heidemann requested permission to use the two frozen embryos to have more children, something Jason Heidemann refused, saying it would violate his privacy and personal liberty, the judge wrote. Honeyhline Heidemann later sued her former husband for access to the embryos, saying she would prefer to be awarded both, but would also accept the court dividing the embryos "in kind" so that each ex-spouse received one.

The case previously made national headlines when a judge controversially referenced a 19th-century state law on the division of enslaved people to allow the case to proceed.

Honeyhline Heidemann, who has a biological child with her former husband and has since had two more children through donor embryos, argued that the two frozen embryos represented her last opportunity to have another biological child after undergoing cancer treatment, and said she would consent to her ex-husband not being involved in raising the new children.

Jason Heidemann, who is the primary custodian of the couple's daughter, said he did not want to become a father again, even if he would not be involved in raising the child. While on the witness stand, he also described incidents during which he felt his former wife had made poor parenting decisions.

In an opinion letter dated March 7, but first reported on Friday, Fairfax Circuit Court Judge Dontaè L. Bugg dismissed Honeyhline Heidemann's lawsuit with prejudice, concluding that human embryos "do not constitute goods or chattels capable of being valued and sold" and therefore cannot be divided under Virginia law.

Carrie M. Patterson, an attorney for Jason Heidemann, said that her client was "relieved and pleased" with the outcome and expressed hope that state lawmakers would pass measures affording prospective parents legal protections around reproductive technology.



The case's dismissal comes as abortion restrictions in parts of the country have fueled debate over the personhood of embryos and fetuses — with significant implications for those seeking fertility treatment.

In Alabama, some IVF clinics halted their operations after the state's top court ruled last year that frozen embryos are legally children; the U.S. Supreme Court later rejected one clinic's appeal against the ruling. And in June, Senate Republicans blocked a bill to protect access to in vitro fertilization.

The court case between the Heidemanns attracted widespread attention in 2023. The previous judge in the case, Richard E. Gardiner, had rejected Jason Heidemann's argument that embryos could not be considered property, by citing a 19th-century state law that said that enslaved people could be considered "goods or chattels," separate from the land they worked on rather than part of it.

However, Bugg wrote in his opinion last week that he was "not persuaded" that human embryos constituted "goods or chattels."

He added that he "takes issue" with Gardiner's reference to a version of the Virginia code that predated the abolition of slavery, and argued that the application of the law to frozen embryos "is a strained construction never envisioned" by the Virginia General Assembly, which issued a statement of "profound regret" over slavery in 2007.

He also rejected the idea of assigning monetary value to the embryos, saying that "the unique nature of each human embryo means that an equal division cannot be made."

"It is obvious that these two human embryos, if implanted and carried to term, would not result in the same two people," he wrote. "In fact, the embryos are as unique as any two people that may be selected from the population, including siblings with the same biological parents."

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