LEGAL UPDATE

Legal Services Division

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IOWA SUPREME COURT DECISION — ASSISTED REPRODUCTION FRAUD AND STATUTORY CONSTRUCTION

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Bert Miller and Nancy Duffner v. State of Iowa
Filed March 14, 2025
No. 24-1017
www.iowacourts.gov/courtcases/22796/embed/SupremeCourtOpinion

Factual and Procedural Background. In the early 1950s, Bert Junior Miller and Donna Miller sought fertility treatment from Dr. John H. Randall at the Department of Obstetrics and Gynecology at the University of Iowa Hospitals and Clinics in Iowa City. Through the fertility treatments, Donna Miller gave birth to Nancy (Miller) Duffner in 1954, Bert Jay Miller in 1956, and Randy Miller in 1958. Bert Junior Miller, Donna Miller, and Dr. Randall died in 2010, 2018, and 1959, respectively.

Now in their 60s, Nancy, Bert Jay, and Randy Miller submitted their DNA to Ancestry.com and discovered Dr. Randall was the biological father of Nancy and Bert Jay. Donna never disclosed to her children that Bert Junior was not the father of Nancy and Bert Jay.

Enacted in 2022, Iowa Code chapter 714I, the Fraud in Assisted Reproduction Act (Act), provides a private right of action against health care professionals and health care facilities for fraudulent actions related to assisted reproduction by a patient, a patient's spouse, a donor, or a child born as a result of a fraudulent action. Nancy and Bert Jay asserted claims against the State under the Act, alleging that Dr. Randall provided false information about the identity of the sperm donor during the fertility treatments. The State moved to dismiss the lawsuit, arguing that the Act does not apply retroactively. The district court agreed and granted the State's motion on the grounds that the Act only applies prospectively. Nancy and Bert Jay appealed and the Iowa Supreme Court retained the case.

Issue. Does the Act apply retroactively to conduct that occurred prior to the effective date of the Act?

Holding. The Act only applies prospectively to fertility fraud that occurs on or after the effective date of the Act.

Analysis. The Court applied a three-pronged test to determine whether the Act applies retroactively. *Hedlund v. State*, 991 N.W.2d 752, 757 (Iowa 2023) (quoting *Nahas*, 991 N.W.2d at 777). The parties agreed that the first prong, whether the Act's application is retrospective, was not in dispute. Id. The Court's analysis focused on the second prong of the test — whether the Act should apply retroactively. Id. Iowa Code section 4.5 provides that a statute applies prospectively unless there is express language

for retroactive application. The Court reasoned that while the statute did not need to contain the word "retroactive" or "retrospective" the statute must include express terms for the statute to apply retroactively.

The Court noted that the actions prohibited under the Act are written in present tense, not past tense which would address prior conduct. Iowa Code section 714I.3(2)(a) prohibits the knowing or intentional use of reproductive material other than the material a patient consents to. The Court noted that written informed consent was not required in Iowa until 1975. The Court agreed with the State that applying the Act retroactively to conduct from the 1950s was nonsensical because obtaining written informed consent was not required at the time of Dr. Randall's alleged conduct.

The Court examined the bill (2022 Iowa Acts, ch. 1123, §7) that enacted the Act and noted that it included sexual abuse criminal penalties. The ex post facto clause of the federal and Iowa constitutions prohibits the retroactive application of a criminal penalty. While a civil penalty may be applied retroactively, the Court stated that the plaintiffs did not cite any statute with both criminal penalties and civil remedies in which the Court had interpreted the criminal penalties to apply prospectively and the civil remedies to apply retroactively.

Iowa Code section 714I.4(1)(a) allows a child who is born as a result of a violation of the Act to bring a cause of action if the parents affected by the fraud are deceased or unable to bring the cause of action. The Court opined that Iowa Code section 714I.4(1)(a) simply addresses who may bring a cause of action.

Under Iowa Code section 714I.4(3), a patient or the patient's spouse may recover a $200,000 statutory penalty, and a health care professional found to be the biological parent is personally liable for child support, medical support, and college expenses for the child. A biological child of the health care professional may recover a $5,000 statutory penalty, Iowa Code section 714I.4(4)(a). The Court found that the Act imposes a substantial new civil liability, and when a person's substantive rights are specifically affected, a statute is construed to apply prospectively in the absence of express language or necessary and unavoidable implication. *Anderson Fin. Servs., LLC v. Miller*, 769 N.W.2d 575, 578 (Iowa 2009) (quoting *Baldwin v. City of Waterloo*, 372 N.W.2d 486, 491 (Iowa 1985) (en banc)).

The plaintiff's case focused on the final provision of the Act, "[n]otwithstanding any provision of law to the contrary, an action brought pursuant to this section is not subject to a statute of limitations and may be commenced at any time." Iowa Code section 714I.4(6). The Court stated that the provision only addresses how the statute of limitations should apply to prospective violations of the Act. The Court acknowledged overlap exists between the phrase "may be commenced at any time" and "not subject to a statute of limitations," but found both phrases were congruent with prospective application. The Court reasoned that when a statute is drafted, language in the statute may be repeated and words may be included that add no substance to the statute.

The Court noted the Act's lack of a retroactivity provision. A similar statute in Illinois provided express intent for retroactive application by stating "it is the intent of the General Assembly that any civil action authorized by this Act shall be retroactive and apply to any treatment by a health care provider occurring prior to the effective date of this Act." 815 Ill. Comp. Stat. §540/5 (2024). Colorado and Nevada also have similar statutes and chose to limit the applicability of the statutes.

The Court presumed that the General Assembly knows current law and caselaw when the General Assembly enacts a new statute. The Court held that the Act failed the second prong of the *Hedlund* test and does not apply retroactively. The Court did not analyze the final prong — whether any substantive law prevents the Act from being applied retroactively. The Court affirmed the district court's ruling which granted the State's motion to dismiss the case with prejudice.

Per Curiam Decisions. The Court filed per curiam decisions for *Stoughton v. State*, No. 24-1018, and *Bright v. State*, No. 24-1019, based on the Court's ruling in this case. In both of those cases, the plaintiffs also argued for retroactive application of the Act. The facts in these cases were similar to the Millers. The Court affirmed the dismissal of both cases.

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