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Sofia Vergara’s embattled embryos

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Couples who create embryos through infertility treatments do so with great hope, fully expecting to use the embryos to create a family. But what happens when the couple breaks up?

Modern families from modern technology

Turns out that when a relationship ends, life—particularly of the embryonic variety—can get pretty complicated. Take celeb couple Sofia Vergara (*Modern Family*) and Nicholas Loeb: They created embryos together, but soon split (Vergara is now engaged to actor Joe Manganiella). Now, [Loeb is asking a California court](#) for ownership of the embryos while Vergara wants them destroyed.

Sound cold-hearted? This high-profile couple isn’t the only one locked in an embryo battle. Also making news is California couple Mimi Lee and Stephen Findley, who [created their embryos](#) after Lee was diagnosed with cancer. They divorced, and now Lee, whose cancer treatments left her infertile, is suing for the embryos, since she has no other way to have biological children (Vergara, for her part, already has a son from a previous relationship, while Loeb is childless).

Agreements or contracts?

When a couple does in vitro, they sign consent forms agreeing about the fate of any unused embryos. They have the choice to preserve the embryos for their own future use (as long as they pay the storage fees), or agree to destroy them, or donate them to research or other infertile couples. The couple also agrees what will happen if either or both of them dies, or if they divorce or break up. Fertility clinics will not move forward with treatment until the couple signs a consent form declaring their agreement.

Vergara, Loeb, Lee, and Findley all signed consent forms that clearly stated they were creating agreements about the disposition of the embryos, and no one was confused at the time. But, of course, at the time of the agreement, no one imagined breaking up. Vergara and Loeb had agreed that they both must consent to destruction of the embryos, but it’s unclear what their plans were if they couldn’t agree. Lee and Findley’s agreement says the embryos should be destroyed if they divorced.

How should courts rule?

Although Loeb and Lee might claim in the media that they are seeking “custody” of the embryos, in fact embryos are not legally children and no one can have [custody](#) of them. They are considered personal property and the only thing a court can decide is ownership.

Should a court deny a woman her last chance to procreate with her own biological material? Should someone be forced to become a parent who does not want to?

In addition to moral quandaries, there are tough legal questions. When couples sign a directive that clearly states their wishes and is legally binding, should there be any wiggle room? Loeb and Lee claim that when they signed they didn’t think the document was irrevocable. Vergara and Findley see it as a clear contract. Who’s right?

If the court rules that Loeb and Lee are allowed to obtain the embryos and if they do in fact create children with them, it poses problems for Vergara and Findley. Through their lawyers, both Loeb and Lee have stated that they do not want or need involvement by the other person who helped create the embryos and that they won’t seek child support. However, a court cannot make anyone legally waive their right to child support.

Moreover, the only way to prevent Vergara and Findley from deciding they want custody or visitation at some point in the future is to terminate their parental rights – something only done when a parent willingly places a child for adoption or when a court determines that a parent has been so abusive or neglectful that it is necessary. But it’s not possible to terminate parental rights for a child that does not yet exist.

Although courts almost always rule in favor of the right NOT to procreate, there is a precedent for letting one parent keep and raise the embryos. An Illinois appeals [court ruled](#) that a woman whose fertility was destroyed via cancer treatments be given ownership of embryos created with her boyfriend.

Caveats for baby makers

The decisions in these cases have implications for fertility clinics who find themselves in the crossroads of the battle. One way to avoid these problems is for couples to freeze eggs (and sperm, separately if they wish) instead of embryos. Dr. James Goldfarb, division chief of endocrinology and [infertility](#) at University Hospitals Case Medical Center in Cleveland, says the [success rates](#) of frozen embryos vs eggs are virtually the same. There is no question who should have ownership of an egg in a split.

However these cases are decided, it’s clear that reproductive technology can result in messy disputes that raise complex moral and legal questions. Couples should do all they can while their relationships are healthy to get rock solid agreements in place, lest the happy bliss of eternal love prove to be rather more temporary.

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