
In the Michigan Supreme Court

Appeal from the Michigan Court of Appeals
Hon. Mark J. Cavanagh, Michael J. Riordan, and Sima G. Patel

SARAH MARIE MARKIEWICZ,
Plaintiff-Appellant,

v.

DAVID RANDAL MARKIEWICZ,
Defendant-Appellee,

Supreme Court No. 166782
Court of Appeals No. 363720
Macomb County Circuit Court
LC Case No. 2019-003236-DM

APPELLANT'S APPENDIX

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Attorney for Plaintiff-Appellant

November 8, 2024

TABLE OF CONTENTS

1. Circuit court register of actions.....	3
2. Contracts with and consents given to IVF provider and storage facility (Excerpts from exhibit introduced at September 28, 2022, hearing)	10
3. Transcript of initial hearing regarding embryo (September 30, 2020)	36
4. Order awarding embryo to David Markiewicz (October 28, 2020)	51
5. Court of Appeals opinions in <i>Markiewicz I</i> (March 24, 2022)	52
6. Transcript of evidentiary hearing conducted on remand (September 28, 2022)	66
7. Transcript of decision awarding embryo to David Markiewicz on remand (October 5, 2022)	137
8. Order awarding embryo to David Markiewicz on remand (October 7, 2022)	158
9. Court of Appeals opinions in <i>Markiewicz II</i> (December 7, 2023)	159
10. Court of Appeals order denying reconsideration (January 23, 2024)	177
11. Michigan Supreme Court order directing oral argument (September 7, 2024).....	178

2019-003236-DM MARKIEWICZ, SARAH MARIE vs. MARKIEWICZ, DAVID RANDAL MS2

• Case Type:
 DM-DIVORCE, MINOR CHILDREN
 • Case Status:
 Closed
 • File Date:
 09/30/2019
 • DCM Track:
 TRACK 120 DAYS DISCOVERY - DOMESTIC
 • Action:
 DM CASE TYPE ONLY
 • Status Date:
 09/30/2019
 • Case Judge:
 SWITALSKI, MATTHEW S
 • Next Event:

[All Information](#)
[Docket](#)
[Party](#)
[Event](#)
[Financial](#)
[Receipt](#)
[Disposition](#)

Docket Information

Date	Description	Docket Text	Amount Owed	Amount Due	File Ref Nbr.
09/30/2019	RANDOM JUDGE ASSIGNMENT OVERRIDE DUE TO PRIOR ACTION #	RANDOM JUDGE ASSIGNMENT OVERRIDE DUE TO PRIOR ACTION # 2016-007535-DM The judge was changed from SWITALSKI, MARK S to SWITALSKI, MATTHEW S			
09/30/2019	ENTRY FEE	ENTRY FEE Receipt: 1199855 Date: 09/30/2019	\$150.00	\$0.00	
09/30/2019	\$80 FOC JGMT & ORDER ENTRY FEE CUSTODY/PARENTING TIME	\$80 FOC JGMT & ORDER ENTRY FEE CUSTODY/PARENTING TIME Receipt: 1199855 Date: 09/30/2019	\$80.00	\$0.00	
09/30/2019	ELECTRONIC FILING SYSTEM FEE - CIVIL	ELECTRONIC FILING SYSTEM FEE - CIVIL Receipt: 1199855 Date: 09/30/2019	\$25.00	\$0.00	
09/30/2019	COMPLAINT/PETITION FILED	COMPLAINT/PETITION FILED			
09/30/2019	SUMMONS ISSUED	SUMMONS ISSUED **EXP 12-30-19**			
09/30/2019	RECORD OF DIVORCE/ANNULMENT RECEIVED	RECORD OF DIVORCE/ANNULMNT RECEIVED			
09/30/2019	EX-PARTE ORDER - SGD	EX-PARTE MUTUAL ASSET RESTRAINING ORDER- SGD			
09/30/2019	EX-PARTE ORDER - SGD	EX-PARTE ORDER TO MAINTAIN THAT STAU QUO- SGD			
10/23/2019	APPEARANCE (LITIGANT'S ATTORNEY)	APPEARANCE, PROOF OF SERVICE (LITIGANT'S ATTORNEY) DAVID RANDAL MARKIEWICZ (DEFENDANT); ; LORI M. HENDERSON (Attorney) on behalf of DAVID RANDAL MARKIEWICZ (DEFENDANT)			
10/23/2019	COUNTER COMPLAINT	COUNTER COMPLAINT FOR DIVORCE, PROOF OF SERVICE			
10/23/2019	ANSWER TO COMPLAINT	ANSWER TO COMPLAINT FOR DIVORCE; CERT OF SVC Attorney: HENDERSON, LORI M. (38601) DAVID RANDAL MARKIEWICZ (DEFENDANT);			
10/25/2019	DISCOVERY/SCHEDULING ORDER ISSUED	DISCOVERY/SCHEDULING ORDER ISSUED (N) DISCOVERY ORDER DOMESTIC Sent on: 10/25/2019 14:14:10.76			
10/25/2019	STATUS CONFERENCE SCHEDULED	STATUS CONFERENCE SCHEDULED Event: STATUS CONFERENCE Date: 12/17/2019 Time: 9:00 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE Result: ADJOURNED TO DATE TO BE SET BY CASE MANAGEMENT			
11/04/2019	INTERROGATORIES	NOTICE OF FILING INTERROGS AND REQUES T FOR PRODUCTION OF DOCUMENTS W/ PROOF OF SERVICE			
11/06/2019	DEFENDANTS WITNESS LIST	DEFENDANTS WITNESS LIST; CERTIFICATE OF SERVICE			
11/18/2019	PLAINTIFF'S WITNESS LIST	PLAINTIFF'S WITNESS LIST; PROOF OF SERVICE			
11/19/2019	MOTION FEE	MOTION FEE Receipt: 1210265 Date: 11/19/2019	\$20.00	\$0.00	
11/19/2019	REQUEST FOR HEARING ON A MOTION; NOTICE OF HEARING; PROOF OF SERVICE	REQUEST FOR HEARING ON A MOTION; NOTICE OF HEARING; PROOF OF SERVICE			
11/19/2019	MOTION:	DEFNT'S MTN TO ESTABLISH FINANCIAL STATUS QUO & FOR AN ACCOUNTING OF PLNTFF'S WITHDRAWALS W/ ATTACHED EXHBS; CERT OF SVC			
11/19/2019	HEARING: MTN TO MAINTAIN STATUS QUO	HEARING: MTN TO MAINTAIN STATUS QUO Event: MTN TO MAINTAIN STATUS QUO Date: 12/02/2019 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE HENDERSON			
11/27/2019	RESPONSE TO MOTION	PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO ESTABLISH FINANCIAL STATUS QUO AND FOR AN ACCOUNTING OF PLAINTIFF'S WITHDRAWALS, PROOF OF SERVICE			
12/02/2019	ORDER ADOPTING RECOMMENDED ORDER ON AN INTERIM BASIS & NTC OF JUDICIAL HRG W/PROOF OF SERVICE - SGD	ORDER ADOPTING RECOMMENDED ORDER ON AN INTERIM BASIS & NTC OF JUDICIAL HRG W/PROOF OF SERVICE - SGD			
12/11/2019	FRIEND OF COURT FINAL RECOMMENDATION	FRIEND OF COURT FINAL SUPPT RECOMMENDATION			
12/13/2019	DOCUMENT FILED:	DEFENDANT'S OBJECTION TO FRIEND OF THE COURT FINAL SUPPORT RECOMMENDATION DATED SEPTEMBER 30, 2019; CERTIFICATE OF SERVICE			
12/17/2019	CASE ADJOURNED TO DATE TO BE SET BY CASE MANAGEMENT	CASE ADJOURNED TO DATE TO BE SET BY CASE MANAGEMENT The following event: STATUS CONFERENCE scheduled for 12/17/2019 at 9:00 am has been resulted as follows: Result: ADJOURNED 90 DAYS FOR SETTLMT CONF, DISCVRY TO BE COMPLETED BY 2/24/20, ETC -SGD Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE			
12/17/2019	ORDER FOR ONE-ATTORNEY MEDIATION - SGD	STIP AND ORDER FOR ONE-ATTORNEY MEDIATION W/LORI FINAZZO -SGD			
12/17/2019	(N) SETTLEMT CONFERENCE NTC SENT	(N) SETTLEMT CONFERENCE NTC SENT (N) DOMESTIC SETTLEMENT CONFERENCE NOTICE Sent on: 12/17/2019 15:52:36.21			
12/17/2019	SETTLEMENT CONFERENCE SCHEDULED	SETTLEMENT CONFERENCE SCHEDULED Event: DOMESTIC SETTLEMENT CONFERENCE Date: 03/17/2020 Time: 9:00 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE Result: ADJOURNED-BY COURT			
12/26/2019	HRD BY FOC REFEREE ON MTN DAY, FINAL RECOMMENDED ORDER SGD	HRD BY FOC REFEREE ON MTN DAY, FINAL RECOMMENDED ORDER SGD The following event: MTN TO MAINTAIN STATUS QUO scheduled for 12/02/2019 at 8:30 am has been resulted as follows: Result: HEARD BY FOC REFEREE, RECOMMENDED ORDER SGD Judge: MAIO, ZAIRA Location: OLD COUNTY BUILDING - 5TH FLOOR - HEARING ROOM D			
12/26/2019	PROOF OF SERVICE	PROOF OF SERVICE			
02/25/2020	ORDER OF REFERRAL TO FOC FOR CUSTODY/PARENTING FACILITATION RECOMMENDATION-SGD	ORDER OF REFERRAL TO FOC FOR CUSTODY/PARENTING FACILITATION RECOMMENDATION-SGD			
03/06/2020	MOTION FEE	MOTION FEE Receipt: 1228761 Date: 03/06/2020	\$20.00	\$0.00	
03/06/2020	AFFIDAVIT OF SERVICE	AFFIDAVIT OF SERVICE			

Date	Description	Docket Text	Amount Owed	Amount Due	File Ref Nbr.
03/06/2020	MOTION:	MOTION FOR CHANGE OF STATUS QUO W/ ATTACHMENT			
03/06/2020	NOTICE OF HEARING	NOTICE OF HEARING			
03/06/2020	REQUEST FOR HEARING ON A MOTION; NOTICE OF HEARING; PROOF OF SERVICE	REQUEST FOR HEARING ON A MOTION; NOTICE OF HEARING; PROOF OF SERVICE			
03/06/2020	HEARING: MTN TO MAINTAIN STATUS QUO	<p>HEARING: MTN TO MAINTAIN STATUS QUO Event: MTN TO MAINTAIN STATUS QUO Date: 03/16/2020 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p> <p>ADDIS</p> <p>Result: MOTION HEARING ADJOURNED</p>			
03/13/2020	MOTION FEE	MOTION FEE Receipt: 1230114 Date: 03/13/2020	\$20.00	\$0.00	
03/13/2020	RESPONSE TO MOTION	RESPONSE TO MOTION			
03/13/2020	MOTION:	VERIFIED PETITION FOR ORDER TO SHOW CAUSE			
03/13/2020	REQUEST FOR HEARING ON A MOTION; NOTICE OF HEARING; PROOF OF SERVICE	REQUEST FOR HEARING ON A MOTION; NOTICE OF HEARING; PROOF OF SERVICE			
03/13/2020	HEARING: MTN TO SHOW CAUSE SCHEDULED	<p>HEARING: MTN TO SHOW CAUSE SCHEDULED Event: (E) MTN TO SHOW CAUSE Date: 03/23/2020 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p> <p>HENDERSON</p> <p>Result: MOTION HEARING ADJOURNED</p>			
03/13/2020	MOTION FOR ORDER TO SHOW CAUSE	ORDER TO SHOW CAUSE SET FOR 3/23/20 @ 8:30AM -SGD			
03/16/2020	MOTION HEARING ADJOURNED	<p>MOTION HEARING ADJOURNED The following event: MTN TO MAINTAIN STATUS QUO scheduled for 03/16/2020 at 8:30 am has been resulted as follows:</p> <p>Result: MOTION HEARING ADJOURNED Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p>			
03/16/2020	HEARING: MTN TO MAINTAIN STATUS QUO	<p>HEARING: MTN TO MAINTAIN STATUS QUO</p> <p>The following event: MTN TO MAINTAIN STATUS QUO scheduled for 03/16/2020 at 8:30 am has been rescheduled as follows:</p> <p>Event: MTN TO MAINTAIN STATUS QUO Date: 03/30/2020 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p> <p>ADDIS</p> <p>Result: MOTION HEARING ADJOURNED</p>			
03/16/2020	ADJOURNED-BY COURT	<p>ADJOURNED-BY COURT The following event: DOMESTIC SETTLEMENT CONFERENCE scheduled for 03/17/2020 at 9:00 am has been resulted as follows:</p> <p>Result: ADJOURNED-BY COURT TO 4/7/20 @9AM, ATTYS CONTACTED VIA EMAIL RE NEW DATE, SGD Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p>			
03/16/2020	SETTLEMENT CONFERENCE SCHEDULED	<p>SETTLEMENT CONFERENCE SCHEDULED</p> <p>The following event: DOMESTIC SETTLEMENT CONFERENCE scheduled for 03/17/2020 at 9:00 am has been rescheduled as follows:</p> <p>Event: DOMESTIC SETTLEMENT CONFERENCE Date: 04/07/2020 Time: 9:00 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p> <p>Result: ADJOURNED-BY COURT</p>			
03/18/2020	MOTION HEARING ADJOURNED	<p>MOTION HEARING ADJOURNED The following event: (E) MTN TO SHOW CAUSE scheduled for 03/23/2020 at 8:30 am has been resulted as follows:</p> <p>Result: MOTION HEARING ADJOURNED Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p>			
03/18/2020	HEARING: MTN TO SHOW CAUSE SCHEDULED	<p>HEARING: MTN TO SHOW CAUSE SCHEDULED</p> <p>The following event: (E) MTN TO SHOW CAUSE scheduled for 03/23/2020 at 8:30 am has been rescheduled as follows:</p> <p>Event: (E) MTN TO SHOW CAUSE Date: 03/30/2020 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p> <p>HENDERSON</p> <p>Result: MOTION HEARING ADJOURNED</p>			
03/24/2020	MOTION HEARING ADJOURNED	<p>MOTION HEARING ADJOURNED TO 05/04/20 @ 830AM PER COVID 19 ADVISED BOTH ATTNYS VIA EMAIL The following event: MTN TO MAINTAIN STATUS QUO scheduled for 03/30/2020 at 8:30 am has been resulted as follows:</p> <p>Result: MOTION HEARING ADJOURNED Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p>			
03/24/2020	HEARING: MTN TO MAINTAIN STATUS QUO	<p>HEARING: MTN TO MAINTAIN STATUS QUO</p> <p>The following event: MTN TO MAINTAIN STATUS QUO scheduled for 03/30/2020 at 8:30 am has been rescheduled as follows:</p> <p>Event: MTN TO MAINTAIN STATUS QUO Date: 05/04/2020 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p> <p>ADDIS</p> <p>Result: MOTION HEARING ADJOURNED</p>			
03/24/2020	MOTION HEARING ADJOURNED	<p>MOTION HEARING ADJOURNED TO 05/04/20 @ 830AM PER COVID 19 ADVISED BOTH ATTNYS VIA EMAIL The following event: (E) MTN TO SHOW CAUSE scheduled for 03/30/2020 at 8:30 am has been resulted as follows:</p> <p>Result: MOTION HEARING ADJOURNED Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p>			
03/24/2020	HEARING: MTN TO SHOW CAUSE SCHEDULED	<p>HEARING: MTN TO SHOW CAUSE SCHEDULED</p> <p>The following event: (E) MTN TO SHOW CAUSE scheduled for 03/30/2020 at 8:30 am has been rescheduled as follows:</p> <p>Event: (E) MTN TO SHOW CAUSE Date: 05/04/2020 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p> <p>HENDERSON</p> <p>Result: MOTION HEARING ADJOURNED</p>			
03/26/2020	ADJOURNED-BY COURT	<p>ADJOURNED-BY COURT The following event: DOMESTIC SETTLEMENT CONFERENCE scheduled for 04/07/2020 at 9:00 am has been resulted as follows:</p>			

Date	Description	Docket Text	Amount Owed	Amount Due	File Ref Nbr.
		Result: ADJOURNED-BY COURT TO 4/29/20 @9AM (DUE TO COVID-19 EMERGENCY), ATTY'S NOTIFIED VIA EMAIL Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE			
03/26/2020	SETTLEMENT CONFERENCE SCHEDULED	SETTLEMENT CONFERENCE SCHEDULED The following event: DOMESTIC SETTLEMENT CONFERENCE scheduled for 04/07/2020 at 9:00 am has been rescheduled as follows: Event: DOMESTIC SETTLEMENT CONFERENCE Date: 04/29/2020 Time: 9:00 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE Result: HELD-DOMESTIC			
04/29/2020	HELD:	HELD: The following event: DOMESTIC SETTLEMENT CONFERENCE scheduled for 04/29/2020 at 9:00 am has been resulted as follows: Result: HELD-DOMESTIC, TRIAL IS SCHED FOR 9/16/20 @ 9AM, ETC -SGD Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE			
04/29/2020	TRIAL SCHEDULED	TRIAL SCHEDULED The following event: DOMESTIC SETTLEMENT CONFERENCE scheduled for 04/29/2020 at 9:00 am has been rescheduled as follows: Event: TRIAL Date: 09/16/2020 Time: 9:00 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE Result: ADJOURNED-STIPULATION & ORDER			
04/30/2020	MOTION HEARING ADJOURNED	MOTION HEARING ADJOURNED The following event: MTN TO MAINTAIN STATUS QUO scheduled for 05/04/2020 at 8:30 am has been resulted as follows: Result: MOTION HEARING ADJOURNED Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE			
04/30/2020	HEARING: MTN TO MAINTAIN STATUS QUO	HEARING: MTN TO MAINTAIN STATUS QUO The following event: MTN TO MAINTAIN STATUS QUO scheduled for 05/04/2020 at 8:30 am has been rescheduled as follows: Event: MTN TO MAINTAIN STATUS QUO Date: 06/08/2020 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE ADDIS Result: MOTION DISMISSED			
04/30/2020	MOTION HEARING ADJOURNED	MOTION HEARING ADJOURNED The following event: (E) MTN TO SHOW CAUSE scheduled for 05/04/2020 at 8:30 am has been resulted as follows: Result: MOTION HEARING ADJOURNED Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE			
04/30/2020	HEARING: MTN TO SHOW CAUSE SCHEDULED	HEARING: MTN TO SHOW CAUSE SCHEDULED The following event: (E) MTN TO SHOW CAUSE scheduled for 05/04/2020 at 8:30 am has been rescheduled as follows: Event: (E) MTN TO SHOW CAUSE Date: 06/08/2020 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE HENDERSON Result: MOTION DISMISSED			
06/04/2020	MOTION DISMISSED	MOTION DISMISSED The following event: (E) MTN TO SHOW CAUSE scheduled for 06/08/2020 at 8:30 am has been resulted as follows: Result: MOTION DISMISSED Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE			
06/04/2020	MOTION DISMISSED	MOTION DISMISSED The following event: MTN TO MAINTAIN STATUS QUO scheduled for 06/08/2020 at 8:30 am has been resulted as follows: Result: MOTION DISMISSED Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE			
06/04/2020	NOTICE OF HEARING	(2) NOTICE OF INVEST AND REC W/PATRICIA MOORE			
06/22/2020	FRIEND OF COURT RECOMMENDATION	FRIEND OF COURT ADVISORY RECOMMENDATION ON CUSTODY AND PARENTING TIME			
09/18/2020	ADJOURNED - STIPULATION & ORDER	ADJOURNED - STIPULATION & ORDER The following event: TRIAL scheduled for 09/16/2020 at 9:00 am has been resulted as follows: Result: ADJOURNED BY STIPULATION & ORDER TO 9/30/20 @ 9AM TO ALLOW THE PRYTS TO FINALIZE THE JOD -SGD Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE			
09/18/2020	TRIAL SCHEDULED	TRIAL SCHEDULED The following event: TRIAL scheduled for 09/16/2020 at 9:00 am has been rescheduled as follows: Event: TRIAL Date: 09/30/2020 Time: 9:00 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE Result: PROOFS TAKEN AND PRESERVED			
09/30/2020	PROOFS TAKEN AND PRESERVED	PROOFS TAKEN AND PRESERVED The following event: TRIAL scheduled for 09/30/2020 at 9:00 am has been resulted as follows: Result: PROOFS TAKEN AND PRESERVED, JUDGMT OF DIV GRTD, TO ENTER W/I 21 DAYS Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE HELD ON THE RECORD COURT REPORTER: VIDEO CIRCUIT Certificate #:			
10/08/2020	MOTION TO ENTER JUDGMENT OF DIVORCE	AMENDED MOTION FOR ENTRY OF JUDGMENT OF DIVORCE W/EXHBTS; PRF OF SRVC			
10/08/2020	REQUEST FOR HEARING ON A MOTION; NOTICE OF HEARING; PROOF OF SERVICE	REQUEST FOR HEARING ON A MOTION; NOTICE OF HEARING; PROOF OF SERVICE			
10/08/2020	MOTION TO ENTER JUDGMENT OF DIVORCE	MOTION FOR ENTRY JUDGMENT OF DIVORCE W/EXHBTS; CERT OF SERV			
10/08/2020	MOTION FEE	MOTION FEE Receipt: 1259043 Date: 10/14/2020	\$20.00	\$0.00	
10/08/2020	HEARING: MTN TO ENTER JUDGMENT SCHEDULED	HEARING: MTN TO ENTER JUDGMENT SCHEDULED Event: MTN TO ENTER JUDGMENT Date: 10/19/2020 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE HENDERSON Result: HEARD			
10/19/2020	HEARD:	HEARD: The following event: MTN TO ENTER JUDGMENT scheduled for 10/19/2020 at 8:30 am has been resulted as			

Date	Description	Docket Text	Amount Owed	Amount Due	File Ref Nbr.
		<p>follows:</p> <p>Result: HEARD AND ADJ TO 10/26/20 @ 8:30AM FOR THE REASONS STATED ON THE REC Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p> <p>HELD ON THE RECORD COURT REPORTER: VIDEO CIRCUIT Certificate #:</p>			
10/19/2020	HEARING: MTN TO ENTER JUDGMENT SCHEDULED	<p>HEARING: MTN TO ENTER JUDGMENT SCHEDULED Event: MTN TO ENTER JUDGMENT Date: 10/26/2020 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p> <p>HENDERSON</p> <p>Result: MOTION DISMISSED</p>			
10/23/2020	MOTION DISMISSED	<p>MOTION DISMISSED The following event: MTN TO ENTER JUDGMENT scheduled for 10/26/2020 at 8:30 am has been resulted as follows:</p> <p>Result: MOTION DISMISSED Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p>			
10/28/2020	CONSENT JUDGMENT OF DIVORCE SIGNED	CONSENT JUDGMENT OF DIVORCE SIGNED			
10/28/2020	UNIFORM CHILD SUPPORT ORDER SGD	UNIFORM CHILD SUPPORT ORDER SGD			
10/28/2020	UNIFORM CHILD SUPPORT ORDER DEVIATION ADDENDUM	UNIFORM CHILD SUPPORT ORDER DEVIATION ADDENDUM			
10/28/2020	DOCUMENT FILED:	ORDER FOR DISPOSITION OF FROZEN EMBRYO -SGD			
11/20/2020	MOTION:	MOTION FOR RECONSIDERATION REGARDING EMBRYO, PROOF OF SERVICE, W/ ATTACHMENTS (NO RFH FILED)			
11/20/2020	MOTION FEE	MOTION FEE Receipt: 1264673 Date: 11/24/2020	\$20.00	\$0.00	
11/25/2020	DOCUMENT FILED:	ORDER AFTER MTN FOR RECONSIDERATION, SGD (PLTFS MTN FOR RECONSIDERATION RE EMBRYO IS DENIED)			
11/30/2020	RECORD OF DIVORCE/ANNULMENT SENT	RECORD OF DIVORCE SENT			
12/16/2020	PROOF OF SERVICE	PROOF OF SERVICE			
01/08/2021	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL (OBDH=92646773) REPORTER/RECORDERS CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL			
01/08/2021	E-FILED TRANSCRIPT OF:	E-FILED TRANSCRIPT OF: (OBDH=92646774) E-FILED TRANSCRIPT OF: PROCEEDINGS BEF HON MS2 DTD 9/30/20			
02/05/2021	DOCUMENT FILED:	DOCUMENT FILED: FROM SURETEC INSURANCE CO WITH ATTACHMENT			
02/24/2021	QUALIFIED DOMESTIC RELATIONS ORDER SIGNED	QUALIFIED DOMESTIC RELATIONS ORDER GLPS STAFFING SOLUTIONS, LLC 401K PLAN SIGNED			
06/04/2021	SENT TO COURT OF APPEALS	SENT TO COURT OF APPEALS REGISTER OF ACTIONS COMPLETE ONE VOLUME FILE RECEIPT			
06/15/2021	RECEIPT RETURNED FROM COURT OF APPEALS	RECEIPT RETURNED FRM COURT OF APPEALS			
03/24/2022	COPY OF ORDER FROM COURT OF APPEALS DATED	COPY OF OPINION FROM COURT OF APPEALS RECEIVED/FILED DATED 3-24-22			
03/25/2022	IMAGE OF EVENT NOTICE SENT	IMAGE OF EVENT NOTICE SENT (N) HEARING NOTICE Sent on: 03/25/2022 16:10:37.03			
03/25/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=106972943)			
03/28/2022	TELEPHONE CONFERENCE SCHEDULED	<p>TELEPHONE CONFERENCE SCHEDULED PURSUANT TO COA OPINION DATED 3/24/22 ** ATTYS ADDIS AND HENDERSON NOTIFIED IN-PERSON HEARING CHANGED TO TELEPHONE CONFERENCE *** Event: TELEPHONE CONFERENCE Date: 04/27/2022 Time: 10:00 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p> <p>Result: HELD-DOMESTIC</p>			
03/28/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=107001663)			
04/27/2022	HELD:	<p>HELD: The following event: TELEPHONE CONFERENCE scheduled for 04/27/2022 at 10:00 am has been resulted as follows:</p> <p>Result: HELD-DOMESTIC, EVID HRG SET FOR 6/29/22 @1:30PM, PARTIES TO APPEAR IN PERSON Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p>			
04/27/2022	EVIDENTIARY HEARING SCHEDULED	<p>EVIDENTIARY HEARING SCHEDULED</p> <p>The following event: TELEPHONE CONFERENCE scheduled for 04/27/2022 at 10:00 am has been rescheduled as follows:</p> <p>Event: EVIDENTIARY HEARING Date: 06/29/2022 Time: 1:30 pm Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p> <p>Result: ADJOURNED-BY COURT</p>			
05/13/2022	LTR FROM COA RE: RETURN OF RECORD TO TRIAL COURT OR TRIBUNAL DATED	LTR FROM COA RE: RETURN OF RECORD TO TRIAL COURT OR TRIBUNAL DATED 5-12-22			
05/16/2022	COPY OF ORDER FROM COURT OF APPEALS DATED	COPY OF OPINION FROM COURT OF APPEALS RECEIVED/FILED DATED 3-24-22			
05/16/2022	RETURNED FROM COURT OF APPEALS (LANSING)	RETURNED FROM COURT OF APPEALS (LANSING) COMPLETE ONE VOLUME FILE			
06/02/2022	ADJOURNED-BY COURT	<p>ADJOURNED-BY COURT The following event: EVIDENTIARY HEARING scheduled for 06/29/2022 at 1:30 pm has been resulted as follows:</p> <p>Result: ADJOURNED-BY COURT (COURT UNAVAILABLE) ADJ TO 8/2/22 @10:30AM-IN PERSON, COURT CONTACTED ATTYS REGARDING NEW DATE Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p>			
06/02/2022	EVIDENTIARY HEARING SCHEDULED	<p>EVIDENTIARY HEARING SCHEDULED</p> <p>The following event: EVIDENTIARY HEARING scheduled for 06/29/2022 at 1:30 pm has been rescheduled as follows:</p> <p>Event: EVIDENTIARY HEARING Date: 08/02/2022 Time: 10:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE</p> <p>Result: ADJOURNED-BY COURT</p>			
06/14/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=110163774)			
06/17/2022	ORDER OF SUBSTITUTION - SGD	ORDER OF SUBSTITUTION - SGD (OBDH=110163785) STIP AND ORDER FOR SUBSTITUTION OF COUNSEL FOR PLTF -SGD OLD: PAUL ADDIS NEW: MICHAEL BALIAN			
06/26/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=110496249)			

Date	Description	Docket Text	Amount Owed	Amount Due	File Ref Nbr.
07/11/2022	ADJOURNED-BY COURT	ADJOURNED-BY COURT The following event: EVIDENTIARY HEARING scheduled for 08/02/2022 at 10:30 am has been resulted as follows: Result: ADJOURNED-BY COURT TO 9/28/22 @10AM - IN PERSON (COURT UNAVAILABLE), COURT CONTACTED ATTY BALIAN AND HENDERSON RE NEW DATE Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE			
07/11/2022	EVIDENTIARY HEARING SCHEDULED	EVIDENTIARY HEARING SCHEDULED The following event: EVIDENTIARY HEARING scheduled for 08/02/2022 at 10:30 am has been rescheduled as follows: Event: EVIDENTIARY HEARING Date: 09/28/2022 Time: 10:00 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE Result: HELD-DOMESTIC			
09/28/2022	HELD:	HELD: The following event: EVIDENTIARY HEARING scheduled for 09/28/2022 at 10:00 am has been resulted as follows: Result: HELD-DOMESTIC, TESTIMONY TAKEN, CT TO RENDER ORAL OPINION ON 10/5/22 @ 11AM VIA ZOOM Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE HELD ON THE RECORD COURT REPORTER: VIDEO CIRCUIT Certificate #:			
09/28/2022	ORAL/WRITTEN OPINION TO RENDER	ORAL/WRITTEN OPINION TO RENDER The following event: EVIDENTIARY HEARING scheduled for 09/28/2022 at 10:00 am has been rescheduled as follows: Event: ORAL/WRITTEN OPINION TO RENDER Date: 10/05/2022 Time: 11:00 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE Result: HELD-DOMESTIC			
10/05/2022	HELD:	HELD: The following event: ORAL/WRITTEN OPINION TO RENDER scheduled for 10/05/2022 at 11:00 am has been resulted as follows: Result: HELD-DOMESTIC, DEFT IS AWARDED EMBRYOS -OTE Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE HELD ON THE RECORD COURT REPORTER: VIDEO CIRCUIT Certificate #:			
10/06/2022	ORDER SIGNED:	ORDER SIGNED: (OBDH=113966226) FINAL ORDER FOR DISPOSITION OF FROZEN EMBRYO - SGD			
10/06/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=113966225)			
10/07/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=114005682)			
10/14/2022	MOTION FOR RECONSIDERATION	MOTION FOR RECONSIDERATION (OBDH=114180412) PLTS MOTION FOR REHEARING AND RECONSIDERATION			
10/14/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=114180409)			
10/14/2022	BRIEF IN SUPPORT	BRIEF IN SUPPORT (OBDH=114180442) plds BRIEF IN SUPPORT OF HER MOTION FOR REHEARING AND RECONSIDERATION REGARDING DISPOSITION OF FROZEN EMBRYO/EXHIBIT			
10/14/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=114180440)			
10/17/2022	MOTION FEE	MOTION FEE Filing Fee mt Receipt: Date: 10/17/2022 5:50:40 PM Receipt: 1353571 Date: 10/17/2022	\$20.00	\$0.00	
10/19/2022	ORDER SIGNED:	ORDER AFTER MTN FOR REHEARING AND RECONSIDERATION, SGD (PLTFS MTN FOR REHRG AND RECONSIDERATION IS DENIED)			
10/19/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=114409241)			
11/08/2022	CLAIM OF APPEAL FILED	CLAIM OF APPEAL FILED (OBDH=115179335) CLAIM OF APPEAL FILED			
11/08/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=115179333)			
11/10/2022	APPEAL TO COURT OF APPEALS FEE	APPEAL TO COURT OF APPEALS FEE Filing Fee mt Receipt: Date: 11/10/2022 10:33:09 PM Receipt: 1356720 Date: 11/10/2022	\$25.00	\$0.00	
11/29/2022	E-FILED TRANSCRIPT OF:	E-FILED TRANSCRIPT OF: (OBDH=115819890) E-FILED TRANSCRIPT OF: PROCEEDINGS BEFORE THE HONORABLE MATTHEW SWITALSKI, JUDGE, MT CLEMENS MICHIGAN, WEDNESDAY, OCTOBER 5, 2022			
11/29/2022	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL (OBDH=115819893) REPORTER/RECORDERS CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL - COURT OF APPEALS			
11/29/2022	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE (OBDH=115819892) REPORTERS NOTICE OF FILING TRANSCRIPT AND CERT OF SERVICE			
11/29/2022	E-FILED TRANSCRIPT OF:	E-FILED TRANSCRIPT OF: (OBDH=115819894) E-FILED TRANSCRIPT OF: EVIDENTIARY HEARING BEFORE THE HONORABLE MATTHEW SWITALSKI, JUDGE MT CLEMENS MICHIGAN, WEDNESDAY, SEPTEMBER 28, 2022			
12/14/2022	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=116383338) PROOF OF SERVICE			
12/14/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=116383332)			
12/16/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=116463179)			
12/16/2022	MOTION:	MOTION: (OBDH=116463182) REQUEST FOR DECLARATORY RELIEF ON STAY OF EXECUTION OR ALTERNATIVELY, MOTION FOR STAY OF EXECUTION			
12/16/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=116463175)			
12/19/2022	HEARING: MTN TO STAY PROCEEDINGS SCHEDULED	HEARING: MTN TO STAY PROCEEDINGS SCHEDULED Event: MTN TO STAY PROCEEDINGS Date: 01/03/2023 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE BALIAN Result: HEARD			
12/19/2022	MOTION FEE	MOTION FEE Filing Fee mt Receipt: Date: 12/19/2022 9:07:23 AM Receipt: 1360710 Date: 12/19/2022	\$20.00	\$0.00	
12/19/2022	ORDER FOR SHOW CAUSE - SGD	ORDER FOR SHOW CAUSE - SGD (OBDH=116519249) ORDER TO SHOW CAUSE SCHED FOR 1/3/23 @ 8:30AM -SGD			

Date	Description	Docket Text	Amount Owed	Amount Due	File Ref Nbr.
12/19/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=116519243)			
12/19/2022	MTN & ORDER TO SHOW CAUSE FOR CONTEMPT - SGD	MTN & ORDER TO SHOW CAUSE FOR CONTEMPT - SGD (OBDH=116519248) DEFENDANTS PETITION FOR ORDER TO SHOW CAUSE			
12/19/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=116519240)			
12/19/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=116519244)			
12/20/2022	HEARING: MTN TO SHOW CAUSE SCHEDULED	HEARING: MTN TO SHOW CAUSE SCHEDULED Event: MTN TO SHOW CAUSE Date: 01/03/2023 Time: 8:30 am Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE ENDERSON Result: HEARD			
12/21/2022	MOTION FEE	MOTION FEE Filing Fee mt Receipt: Date: 12/21/2022 3:51:44 AM Receipt: 1360996 Date: 12/21/2022	\$20.00	\$0.00	
12/21/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=116603605)			
12/21/2022	DOCUMENT FILED:	DOCUMENT FILED: (OBDH=116609674) PLTFS BOND RENEWAL CONFIRMATION			
12/21/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=116609664)			
12/28/2022	RESPONSE TO MOTION	RESPONSE TO MOTION (OBDH=116727074) NON-PARTY MICH CENTER FOR FERTILITY & WOMANS HEALTH RESPONSE TO DEFTS PETITION FOR ORDER TO SHOW CAUSE, EXHIBITS, CERT SVC			
12/28/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=116727072)			
12/29/2022	BRIEF IN SUPPORT	BRIEF IN SUPPORT (OBDH=116766545) AMENDED REQUEST FOR DECLARATORY RELIEF ON STAY OF EXECUTION OR ALTERNATIVELY, MTN FOR STAY OF EXECUTION			
12/29/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=116766540)			
12/29/2022	RESPONSE TO MOTION	RESPONSE TO MOTION (OBDH=116767164) PLTFS OPPOSITION TO DEFTS PETITION FOR ORDER TO SHOW CAUSE			
12/29/2022	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=116767142)			
01/03/2023	HEARD:	HEARD: The following event: MTN TO STAY PROCEEDINGS scheduled for 01/03/2023 at 8:30 am has been resulted as follows: Result: HEARD AND DENIED FOR THE REASONS STATED ON THE REC Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE HELD ON THE RECORD COURT REPORTER: VIDEO CIRCUIT Certificate #:			
01/03/2023	HEARD:	HEARD: The following event: MTN TO SHOW CAUSE scheduled for 01/03/2023 at 8:30 am has been resulted as follows: Result: HEARD, THE FACILITY STORAGE MUST TURN OVER THE EMBRYO TO DEFT BY 1/10/23 @ 4PM - OTE Judge: SWITALSKI, MATTHEW S Location: COURT BUILDING - 2ND FLOOR - COURTROOM 2NE HELD ON THE RECORD COURT REPORTER: VIDEO CIRCUIT Certificate #:			
01/06/2023	STIP & ORDER SGD RE:	STIP & ORDER SGD RE: (OBDH=116932647) ORDER AFTER 1/3/23 HRG -SGD			
01/06/2023	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=116932646)			
01/09/2023	COPY OF ORDER FROM COURT OF APPEALS DATED	COPY OF ORDER FROM COURT OF APPEALS DATED 1-4-23			
01/10/2023	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=117034410)			
03/06/2023	SENT TO COURT OF APPEALS	SENT TO COURT OF APPEALS REGISTER OF ACTIONS COMPLETE ONE VOLUME FILE AND ELECTRONIC PLEADINGS ELECTRONIC TRANSCRIPTS DATED 09-30-20, 09-28-22, AND 10-05-22 RECEIPT			
03/16/2023	RECEIPT RETURNED FROM COURT OF APPEALS	RECEIPT RETURNED FROM COURT OF APPEALS			
12/20/2023	DOCUMENT FILED:	DOCUMENT FILED: (OBDH=133061678) PLTFS BOND RENEWAL CONFIRMATION			
12/20/2023	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=133061676)			
01/24/2024	COPY OF ORDER FROM COURT OF APPEALS DATED	COPY OF ORDER FROM COURT OF APPEALS DATED 1/23/24			
01/26/2024	DOCUMENT FILED:	DOCUMENT FILED: (OBDH=134129149) PLTFS BOND RENEWAL CONFIRMATION			
01/26/2024	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=134129148)			

Party Information**MARKIEWICZ, SARAH MARIE**
- PLAINTIFF

- DOD
 - Disposition
 - Disp Date
- Party Attorney**
 - Attorney
 - BALIAN, MICHAEL J.
 - Bar Code
 - 39972

[More Party Information](#)**MARKIEWICZ, DAVID RANDAL**
- DEFENDANT

- DOD
 - Disposition
 - Disp Date
- Party Attorney**
 - Attorney
 - HENDERSON, LORI M.
 - Bar Code
 - 38601

[More Party Information](#)

Events

<u>Date/Time</u>	<u>Location</u>	<u>Type</u>	<u>Result</u>	<u>Event Judge</u>
12/02/2019 08:30 AM	OLD COUNTY BUILDING - 5TH FLOOR - HEARING ROOM D	MTN TO MAINTAIN STATUS QUO	HEARD BY FOC REFEREE, RECOMMENDED ORDER SGD	MAIO, ZAIRA
12/17/2019 09:00 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	STATUS CONFERENCE	ADJOURNED TO DATE TO BE SET BY CASE MANAGEMENT	SWITALSKI, MATTHEW S
03/16/2020 08:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	MTN TO MAINTAIN STATUS QUO	MOTION HEARING ADJOURNED	SWITALSKI, MATTHEW S
03/17/2020 09:00 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	DOMESTIC SETTLEMENT CONFERENCE	ADJOURNED-BY COURT	SWITALSKI, MATTHEW S
03/23/2020 08:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	(E) MTN TO SHOW CAUSE	MOTION HEARING ADJOURNED	SWITALSKI, MATTHEW S
03/30/2020 08:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	MTN TO MAINTAIN STATUS QUO	MOTION HEARING ADJOURNED	SWITALSKI, MATTHEW S
03/30/2020 08:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	(E) MTN TO SHOW CAUSE	MOTION HEARING ADJOURNED	SWITALSKI, MATTHEW S
04/07/2020 09:00 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	DOMESTIC SETTLEMENT CONFERENCE	ADJOURNED-BY COURT	SWITALSKI, MATTHEW S
04/29/2020 09:00 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	DOMESTIC SETTLEMENT CONFERENCE	HELD-DOMESTIC	SWITALSKI, MATTHEW S
05/04/2020 08:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	MTN TO MAINTAIN STATUS QUO	MOTION HEARING ADJOURNED	SWITALSKI, MATTHEW S
05/04/2020 08:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	(E) MTN TO SHOW CAUSE	MOTION HEARING ADJOURNED	SWITALSKI, MATTHEW S
06/08/2020 08:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	MTN TO MAINTAIN STATUS QUO	MOTION DISMISSED	SWITALSKI, MATTHEW S
06/08/2020 08:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	(E) MTN TO SHOW CAUSE	MOTION DISMISSED	SWITALSKI, MATTHEW S
09/16/2020 09:00 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	TRIAL	ADJOURNED-STIPULATION & ORDER	SWITALSKI, MATTHEW S
09/30/2020 09:00 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	TRIAL	PROOFS TAKEN AND PRESERVED	SWITALSKI, MATTHEW S
10/19/2020 08:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	MTN TO ENTER JUDGMENT	HEARD	SWITALSKI, MATTHEW S
10/26/2020 08:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	MTN TO ENTER JUDGMENT	MOTION DISMISSED	SWITALSKI, MATTHEW S
04/27/2022 10:00 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	TELEPHONE CONFERENCE	HELD-DOMESTIC	SWITALSKI, MATTHEW S
06/29/2022 01:30 PM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	EVIDENTIARY HEARING	ADJOURNED-BY COURT	SWITALSKI, MATTHEW S
08/02/2022 10:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	EVIDENTIARY HEARING	ADJOURNED-BY COURT	SWITALSKI, MATTHEW S
09/28/2022 10:00 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	EVIDENTIARY HEARING	HELD-DOMESTIC	SWITALSKI, MATTHEW S
10/05/2022 11:00 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	ORAL/WITTEN OPINION TO RENDER	HELD-DOMESTIC	SWITALSKI, MATTHEW S
01/03/2023 08:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	MTN TO STAY PROCEEDINGS	HEARD	SWITALSKI, MATTHEW S
01/03/2023 08:30 AM	COURT BUILDING - 2ND FLOOR - COURTROOM 2NE	MTN TO SHOW CAUSE	HEARD	SWITALSKI, MATTHEW S

Financial Summary

<u>Cost Type</u>	<u>Amount Owed</u>	<u>Amount Paid</u>	<u>Amount Adjusted</u>	<u>Amount Outstanding</u>
FILING FEE	\$280.00	\$280.00	\$0.00	\$0.00
MOTION FEE	\$160.00	\$160.00	\$0.00	\$0.00
	\$440.00	\$440.00	\$0.00	\$0.00

Receipts

<u>Receipt Number</u>	<u>Receipt Date</u>	<u>Received From</u>	<u>Payment Amount</u>
1199855	09/30/2019	MARKIEWICZ, SARAH MARIE	\$255.00
1210265	11/19/2019	C	\$20.00
1228761	03/06/2020	MARKIEWICZ, SARAH MARIE	\$20.00
1230114	03/13/2020	MARKIEWICZ, DAVID RANDAL	\$20.00
1259043	10/14/2020	MARKIEWICZ, DAVID R	\$20.00
1264673	11/24/2020	MARKIEWICZ, SARAH MARIE	\$20.00
1353571	10/17/2022	B53278AC-2425-449E-BEE3-B17CE55AD482	\$20.00
1356720	11/10/2022	B53278AC-2425-449E-BEE3-B17CE55AD482	\$25.00
1360710	12/19/2022	B53278AC-2425-449E-BEE3-B17CE55AD482	\$20.00
1360996	12/21/2022	5FA23BA9-4C79-4791-A024-A8EB8B0A3A9F	\$20.00
			\$440.00

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
UNCONTESTED/DEF/SETTLED	09/30/2020	SWITALSKI, MATTHEW S

Michigan Center IVF, PLLC
Fertility Storage, Inc.

Embryo Cryopreservation

Description

Cryopreservation is an optional part of the In Vitro Fertilization (IVF) process. As a result of drug stimulation of the ovaries, ideally five or more eggs will be obtained through ultrasound guided retrieval. The goal of IVF is to achieve 2-4 embryos to be placed back into the female's uterus (after discussion between the patient and the physician on the day of embryo transfer). Embryos available for transfer beyond the ideal number for replacement may now be frozen (cryopreserved) and stored. These embryos may later be thawed and replaced in a controlled cycle if the fresh embryos fail to implant, or in the case of pregnancy, may be stored until another attempt at pregnancy is desired.

Cryopreservation is a freezing process accomplished by laboratory personnel who will put cryoprotectant solution into the culture medium. The embryos will then be cooled in a biological cell freezer and stored in liquid nitrogen. The embryos will be maintained in frozen storage in a small vial. They will be thawed and washed free of the cryoprotectant solution and treated identically to non-frozen embryos during IVF.

Advantages of Cryopreservation

1. Cryopreservation of embryos exceeding an optimal number for transfer to an individual patient. This allows an individual to possibly achieve pregnancy without substantial risk of triplet or quadruplet gestation, which is a greater risk if all embryos are placed at one transfer.
2. Possibly increasing pregnancy rate by placement of the frozen embryos into the uterus during a non-stimulated cycle.
3. Possibly decreasing the number of stimulated egg recovery cycles needed for achieving pregnancy.

Disadvantages of Cryopreservation

1. It is possible that some or all of the embryos may not survive the freezing, storage, and thaw process.
2. There are no guarantees that you will become pregnant upon the transfer of cryopreserved embryos.
3. Cryopreservation uses mechanical support systems and, thus, carries with it the risk of equipment failure and other laboratory accidents. Although reasonable care is used to maintain all cryopreservation equipment in proper function, the risk of equipment failure, laboratory accidents, or other unforeseen events is inherent and unavoidable.

4. A transfer using frozen embryos carries a risk of tubal or ectopic pregnancy, as it does with usual embryo transfer.
5. There may be unknown, unidentified, or unforeseen risks to the patient, fetus or child.

I/we agree to elect to cryopreserve all viable embryo(s) not transferred that are created during an IVF cycle. The process of cryopreservation will be performed in the laboratory of Michigan Center IVF, PLLC. The cryopreserved embryo(s) will be transferred to the long term facility of Fertility Storage, Inc. (FSI). It is my/our intention to have these embryos transferred back to my uterus in a later cycle. The viability of an embryo is to be determined by laboratory personnel. Unless specifically requested by the patient and agreed to by laboratory personnel, non viable embryos will be disposed of in standard fashion.

Patient Signature S. Mauly Date 9/23/14

Spouse/Partner Signature [Signature] Date 9/23/14

Embryo Disposition

1. At any time you may change your decision in regards to keeping the cryopreserved embryos, you have the following options.
 - a. Anonymously donate embryos for a recipient couple to achieve pregnancy.
 - b. Cell culture and degeneration: embryos will be thawed and kept under cell culture conditions until growth ceases and the embryo degenerates. Embryos will then be disposed of according to professional ethical standards.
 - c. Transfer embryos to another IVF program that I/we have designated and requested.
 - d. Donate embryos to an embryo donation center which I/we select.
 - e. Donate embryos for training of laboratory personnel.
2. In the event of the death of 1 partner, what should be done with frozen embryos?

SM DM Transfer embryos to the surviving partner as sole owner of the embryos

_____ Discard embryos by the program using cell culture and degeneration. Embryos will be thawed and kept under cell culture conditions until growth ceases and the embryo degenerates. Embryos will then be disposed of according to professional ethical standards.

_____ Donate embryos for training laboratory personnel

_____ Donate embryos to an embryo donation center which I/we select

3. In the event of the death of both partners, what should be done with the embryos?

- ☐ ☐ Discard embryos by the program
- ☐ ☐ Donate embryos for training lab personnel
- ☐ ☐ Donate embryos to an embryo donation center

SM. J. We appoint Anna Bluj to be the
sole owner of our embryos. Contact # 734-748-2729

4. In the event of a divorce (or separation on non-married partners) what should be done with frozen embryos:

- ☐ ☐ Discarded by the program
- ☐ ☐ Donate embryos for training of laboratory personnel

SM. J. Determined by the applicable Judgment of Divorce or
other court order

- ☐ ☐ Donate embryos to an embryo donation center

Automatic Termination of Cryopreservation

A letter will be sent annually regarding disposition of your embryos. The program will automatically terminate the frozen embryos held by the program in any of the following situations:

- When you notify us that you will no longer participate in the program and request termination of cryopreservation for any reason.
- Upon death or legal incapacity of both of you. (See #3 above)
- Non-payment of storage fees.
- Loss of patient contact

Financial Responsibility

There will be an annual fee charged for the embryo storage. I will notify the office of any address and phone number changes. In the event that the office is unable to contact me regarding my frozen embryos, I understand that FSI may destroy my embryos by cell culture and degeneration.

I understand it is my responsibility to notify FSI immediately of any change in my address and phone number. I understand that the Fertility Storage, Inc. will make

reasonable attempts to establish my whereabouts, however, should they be unable to locate me after three (3) certified and three (3) regular mail letters are sent, it will be presumed that I have voluntarily chosen to abandon my frozen embryos and the Fertility Storage, Inc. may discard the embryos at that time.

Patient Signature S. Maulzy Date 9/23/14

Spouse/Partner Signature [Signature] Date 9/23/14

By our signature(s) below, we hereby acknowledge that we have had the opportunity to discuss fully with our/my physician the nature and purpose of the above procedure, treatment and/or options, the risks, potential disadvantages and advantages, and that all of my/our questions have been answered to our complete satisfaction. We are aware and fully accept that the practice of medicine and infertility treatment is not an exact science and that there are no guarantees in the program. We further understand and fully accept that our treatment in the program involves the risks of unsuccessful results, complications, or injury, from both known and unknown causes. We also hereby acknowledge and understand that laboratory errors or accidents and other equipment failure can occur, which are inherent and unavoidable risks which can be associated with the elections selected. We hereby acknowledge that we have read and understand this consent form in its entirety.

On signing this consent I/we acknowledge that I/we have read the above information regarding cryopreservation of the embryos, and wish to have this therapy instituted

Sarah Markiewicz
Printed Patient Name

Patients Signature S. Maulzy Date 9/23/14

David Markiewicz
Printed Spouse/Partner Name

Spouse/Partner Signature [Signature] Date 9/23/14

Witness B. Kennedy Date 9/25/14

Michigan Center IVF, PLLC
Consent for Frozen Embryo Transfer

The major risk from transfer of frozen and thawed zygotes/embryos is that the procedure may not result in pregnancy. There is a possible increased risk of developmental defects when embryos have been cryopreserved or from long term storage. However, evidence has not demonstrated any increase in such defects beyond that experienced in natural conception. In some cases frozen embryos do not survive the thawing process which would result in loss of the embryo(s) to transfer.

Risks of embryo transfer include:

Infection

Inability to pass catheter through the cervix

Loss of the embryo(s) during the attempt to pass the catheter into the cervix

*These are not common events, but are possible.

Risk of Multiples:

Patient couples and their physician must decide using existing guidelines and their own personal experience, how many embryos should be transferred. Age and prior reproductive history, and couple's desires will be used in this decision making process. The Michigan Center IVF, PLLC reserve the right to limit the number of embryos transferred.

When more than one embryo is transferred, there will be a risk of twins and triplets and more, depending on the number of embryos transferred.

Very rarely, an embryo will divide and result in two babies from one transferred embryo.

If you choose, fetal reduction is a process performed at around 10 weeks of pregnancy. It involves the injection of potassium chloride into the heart of the fetus in an attempt to reduce the number of fetuses to be carried. This procedure is best avoided, as are multiples in pregnancy. Multiples in pregnancy have increased risks, including loss of the entire pregnancy, as well as premature birth, resulting in babies with cerebral palsy and other disabilities which may include blindness, and other chronic medical problems.

MSM We have discussed and understand these risks as they have been explained to us.

_____ We elect to proceed with the frozen embryo transfer and authorize the transfer of _____ embryo(s) from Fertility Storage, Inc. to Michigan Center IVF, PLLC.

Sarah Markiewicz

Printed Patient Name

S. Mauley

Patient signature

6/9/15

Date

*Diff all markers looked
1 if cycle is not going well*

David Markiewicz

Printed Partner Name

D. Mauley

Partner signature

6/9/15

Date

[Signature]

Witness signature

6-9-15

Date

Michigan Center IVF, PLLC
Consent for Frozen Embryo Transfer

The major risk from transfer of frozen and thawed zygotes/embryos is that the procedure may not result in pregnancy. There is a possible increased risk of developmental defects when embryos have been cryopreserved or from long term storage. However, evidence has not demonstrated any increase in such defects beyond that experienced in natural conception. In some cases frozen embryos do not survive the thawing process which would result in loss of the embryo(s) to transfer.

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Very rarely, an embryo will divide and result in two babies from one transferred embryo.

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SM ☒ We have discussed and understand these risks as they have been explained to us.

SM ☒ We elect to proceed with the frozen embryo transfer and authorize the transfer of embryo(s) from Fertility Storage, Inc. to Michigan Center IVF, PLLC.

Sarah Marriawicz
 Printed Patient Name

S. Marli
 Patient signature

2/3/15
 Date

David Markiewicz
 Printed Partner Name

[Signature]
 Partner signature

2/3/15
 Date

M. Delidias RN
 Witness signature

Michigan Center for Fertility and Women's Health, PLC
4700 13 Mile Road
Warren, MI 48092
586)576-0431 ~Fax 586)576-0924

Male Name: David Markiewicz DOB: 6/1/77

Female Name: Sarah Markiewicz DOB: 2/1/78
 (if applicable)

If Donor Sperm, Ordered From: _____ Donor #: _____

I choose to have my cryopreserved ^{sperm} sample(s) that are stored at Fertility Storage, Inc., thawed and disposed according to the CRH Andrology Laboratory policies and in a manner consistent with professional ethical standards and applicable laws.

This agreement is made on the 10th day of October, 2014.

David Markiewicz
 Male Printed Name

[Signature]
 Male Signature

10/10/14
 Date

 Female Printed Name (if applicable)

 Female Signature (if applicable)

 Date

[Signature]
 Fertility Storage, Inc. Witness

10-10-14
 Date

OR

 Signature of Notary Public

 Date

(Commission Expires)

Revised 1/2011

66

Fertility Storage, Inc

4700 Thirteen Mile Road
Warren, Michigan 48092
Phone: 586-619-9566 Ext 226
Facsimile: 586-576-0924

Authorization to Accept Transferred Cryopreserved Tissue for Storage

This letter acknowledges that the human tissue (embryo(s)/semen/oocyte(s)) indicated below, which were received for storage from another (facility) SERM, Vegas, by Fertility Storage, Inc. (FSI)

Sarah Markiewicz
(Female patient)

David Markiewicz
(Male patient)

Address: 12229 Stephane Dr.
Shelby Twp, MI 48315

This release absolves Fertility Storage, Inc. of all the responsibilities regarding the risk of transportation of cryopreserved specimens to the Fertility Storage, Inc.

Description of specimen released:

Human Embryo(s)/Semen/Oocyte(s) (circle one)
Received number of human embryo(s)/Oocyte(s) for storage 1
Received number of vial(s)/straw(s) of human embryo(s)/Oocyte(s) for storage 1
Received number of vial(s) of semen 1

SM / DM We understand that the cryopreserved tissue stored at the Fertility Storage, Inc, will be subject to an annual storage fee.

I/We acknowledge transfer of the cryopreserved specimen indicated above to the Fertility Storage, Inc.

Sarah Markiewicz
Female Printed Name

S. Maule 9-25-14
Female Signature Date

David Markiewicz
Male Printed Name

David Markiewicz 9-25-14
Male Signature Date

FSI Witness 9-25-14 K. Hassett Date

KRISTEN HASSETT
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF OAKLAND
My Commission Expires Nov. 7, 2019
Acting in the County of Macomb

2/2011

**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
CONSENT FORM FOR THE
HUMAN IMMUNODEFICIENCY VIRUS (HIV) ANTIBODY TEST**

I have been informed that my blood obtained from a finger stick or vein, a urine sample, or an oral sample from my mouth, will be tested for antibodies to the Human Immunodeficiency Virus, the virus that causes AIDS.

I acknowledge that I have been given an explanation of the test, including its uses, benefits, limitations and the meaning of test results.

I have been informed that the HIV test results are confidential and shall not be released without my written permission, except to: _____ * and as permitted under state law.

I understand that I have a right to have this test done without the use of my name. If my private physician does not provide anonymous testing, I understand that I may obtain anonymous testing at any Michigan Department of Community Health-approved HIV counseling and testing site.

I understand that I have the right to withdraw my consent for the test at any time before the test is complete.

I acknowledge that I have been given a copy of the pamphlet "What You Need to Know about HIV Testing." I have been given the opportunity to ask questions concerning the test for HIV antibodies, and I acknowledge that my questions have been answered to my satisfaction.

By my signature below, I consent to be tested for HIV.

Patient/Parent/Guardian Signature

Date

Witness

Date

AT THIS TIME, I DO NOT WANT TO BE TESTED FOR THE HUMAN IMMUNODEFICIENCY VIRUS

Patient/Parent/Guardian Signature

Date

Witness

Date

* Please write in the physician or health facility name who will receive the HIV test results

MDCH is an Equal Opportunity Employer,
Services and Programs Provider
DCH-0675CF
Authority: P.A. 368/1978

WHITE - For Records
YELLOW - For Client

MARKIEWICZ, DAVID

Michigan Center for Fertility and Women's Health, PLC
Michigan Center IVF, PLLC

IN VITRO FERTILIZATION PATIENT INFORMATION AND CONSENT FOR THERAPY

Introduction

Before agreeing to participate in this therapy, it is important that the following explanation of the proposed procedure be read and understood. It describes procedures, benefits, risks, discomforts and precautions of the treatment. It also describes the right to withdraw from the procedure at any time.

1. We have elected to participate in the Michigan Center for Fertility and Women's Health P.L.C. In Vitro Fertilization Program (hereinafter the "Program"). Any reference to the "Program" includes Dr. Carole Kowalczyk and any of her assistants, employees or agents.

I/we have made, and consent to the following procedures as indicated below:

SM DM In Vitro Fertilization Program
SM DM Gonadotrophin Therapy
SM DM Micromanipulation (as indicated) (ICSI, assisted hatching)
SM DM Election of cryopreservation of embryos

Explanation of Procedure:

- a. Standard infertility tests (including laparoscopy) may be done to determine if I am a suitable candidate for the procedure.
- b. Fertility drugs will be used to produce ovulation at a more predictable time.
- c. Ultrasound examinations will be used to assist in predicting the time of expected ovulation.
- d. My eggs will be retrieved by transvaginal ultrasound guided technique with intravenous sedation.
 A needle will be inserted into my ovary to obtain the eggs prior to the predicted time of ovulation.
- e. My partner will obtain a sperm specimen, which will be treated in the laboratory to prepare it for fertilization.
- f. The egg(s) and sperm will be mixed together or the sperm will be injected into the egg(s) (called ICSI) to allow fertilization to occur.
- g. After fertilization the egg(s) will be transferred into a different media for growth.
- h. After several cell divisions if the embryo(s) is (are) developing normally the embryo(s) will be transferred into my uterus by means of a small tube inserted through my cervix via pelvic exam, requiring no anesthesia.
- i. Blood samples will be obtained before and after attempted fertilization to determine if my hormone levels are normal and if pregnancy has occurred and is proceeding normally.

Status of the therapy

I understand that any of the following occurrences or others could delay or prevent the establishment of a pregnancy, including but not limited to:

- a. The time of ovulation may be unpredictable, may occur prior to egg retrieval or development of the eggs may not occur in the monitored cycle thus precluding any attempt at obtaining an egg.
- b. Pelvic adhesions may prevent access to the ovary with the follicles.
- c. Attempts to obtain an egg(s) or sufficient number of eggs may be unsuccessful by transvaginal ultrasound ovum retrieval.
- d. The egg (s) may not be normal.
- e. My partner may be unable to obtain a semen sample.
- f. Fertilization may not occur or may occur abnormally.
- g. Cleavage or cell division of the fertilized egg may not occur.
- h. The embryo may not develop normally
- i. Implantation (attachment of the embryo to the uterus) may not occur.
- j. There may be intervening loss or damage to the fertilized egg or embryo.
- k. Due to cervical factors, it may be difficult or impossible to transfer the embryos to the uterus.

We understand and fully accept that there are no guarantees that we will become pregnant through our participation in the program. We also understand and fully accept that if we do achieve pregnancy, there is no guarantee that a successful, full-term pregnancy will result. We understand that an ectopic pregnancy may occur and that some intrauterine pregnancies can miscarry. We also understand and fully accept that a multiple gestation pregnancy may occur through our participation in the program. If a multiple pregnancy occurs, the risks include, but are not limited to, premature labor and delivery, fetal injury or death due to pre-maturity, toxemia of pregnancy, increased risk of congenital anomalies, and other risks to the life and health of the mother and the baby. Multiple births may also result in financial, emotional and physical difficulty associated with the caring for multiple children the same age

We hereby understand that, in certain situations, selective reduction is an option in regard to multiple gestations. We hereby understand and agree that if this is an option we are interested in, it is our responsibility to discuss this option with our physician.

We understand, and fully accept, that should we become pregnant, there are no guarantees that congenital anomalies (birth defects) in the fetus or obstetrical complications will not occur.

Patient Signature S. Murchy Date 9/23/14

Spouse/Partner Signature [Signature] Date 9/23/14

Risks/discomforts

I acknowledge that the possible risks and discomforts associated with this procedure have been fully explained by Dr. Carole Kowalczyk or her team including but not limited to:

- a. Blood drawing: Mild discomfort with blood drawing and a slight risk of developing a bruise at the needle site.
- b. Fertility drugs:
 - Ovarian Hyperstimulation: Ovarian hyperstimulation may cause pain, excessive fluid accumulation, blood clotting disorders, kidney damage and in rare instances, death.
 - Multiple Pregnancies.
 - Association with Ovarian Cancer: Despite some older reports suggesting a link with ovarian cancer, more recent studies fail to provide any convincing evidence that supports any association between fertility drugs and ovarian cancer.

- c. Transvaginal ultrasound guided retrieval: May result in discomfort due to the procedure which may not be completely relieved by IV sedation (anesthesia). Risks may include infection, perforation of bowel, bladder, or other pelvic structures, or blood vessel incidental to insertion of the needle.
- d. Embryo Transfer: Minimal discomfort is associated with the embryo transfer. There is also a risk of developing infection and the inability to transfer embryos due to cervical factors.
- e. Although the program uses reasonable care to maintain all equipment in proper function, the risk of equipment failure or other laboratory accidents or unforeseen events is inherent and unavoidable.

Other matters that have been explained to me:

- a. I may withdraw from the treatment at any time.
- b. I may be photographed and have been assured that all information about me obtained will be handled in a confidential manner. I consent to photographing or televising of the operations or procedures performed, including appropriate portions of my body for medical, scientific or educational purposes as determined by Dr. Carole Kowalczyk, provided my identity is not revealed by the picture or by the descriptive texts accompanying them.
- c. I understand that in the rare event that a health care worker sustains a significant exposure to my blood and/or body fluids, I will be asked to perform laboratory studies on my blood to detect the presence of a potentially serious incubating communicable disease such as hepatitis or AIDS. The results of any tests will be treated confidentially.
- d. Prior to participating in In Vitro Fertilization I understand my blood will be tested for disease markers (i.e. hepatitis or AIDS). If the test is positive for a disease marker, I may not be able to participate in In Vitro Fertilization.

Financial Responsibility:


I also understand that insurance coverage for any or all of the In Vitro Fertilization procedures may not be available and that I will be personally responsible for all costs and expenses related to my participation in this procedure. Costs and expenses will consist of office/hospital charges, laboratory charges and professional fees as outlined on the attached estimated statement of charges. I will be responsible to make payment in advance for the total amount indicated on the attached estimated statement.

Waiver/Release

As consideration for the agreement by the Program to perform the procedures enumerated above, and intending to be legally bound hereby, for ourselves, our heirs, beneficiaries, personal representatives and assigns, we hereby forever release the physician, the program, and any assistants, employees or agents from any and all past, present and future claims, liabilities, losses, damages, and/or other harm whether known or unknown that we may suffer as a result of my/our participation in the Program.

Arbitration

In the event that a dispute, controversy or other issue(s) arises out of any care or treatment provided by the Program or Dr. Carole Kowalczyk, or out of this consent form, we hereby agree to submit to binding arbitration for resolution of the issues. The arbitration is to be governed by the American Arbitration Association arbitration rules and shall be conducted in the County of Macomb, State of Michigan.


Patient initial


Spouse/Partner Initial

By our signature(s) below, we hereby acknowledge that we have had the opportunity to discuss fully with Dr. Carole Kowalczyk the nature and purpose of the above listed procedures, treatments and/or options, the risks, potential disadvantages and complications, the alternatives, the risks/potential disadvantages to the alternatives, and that all of my/our questions have been answered to our complete satisfaction. We are aware and fully accept that the practice of medicine and infertility treatment is not an exact science and that there are no guarantees in the program. We further understand and fully accept that our treatment in the program involves the risks of unsuccessful results, complications, or injury, from both known and unknown causes. We also hereby acknowledge and understand that laboratory errors or accidents and other equipment failure can occur, which are inherent and unavoidable risks which can be associated with the elections selected. We hereby acknowledge that we have read and understand this consent form in its entirety. We willingly consent to participate in Michigan Center for Fertility's In Vitro Fertilization Program

We hereby authorize and direct the IVF team to treat us in accordance with accepted protocols, which have been discussed with us, and we hereby specifically consent to such infertility treatment

S. Markiewicz
Signature of Patient

David Markiewicz
Signature of Spouse

Sarah Markiewicz
Printed Name of Patient

David Markiewicz
Printed Name of Spouse

9/23/14
Date

9/23/14
Date

S. Kennedy
Witness Signature

9/25/14
Date

I hereby certify that I have explained to the above individual(s) the nature and purpose of the IVF Program and any option, treatment and/or procedure(s) elected and the related risks and alternatives. I also hereby certify that I have answered any questions that have been asked of me.

[Signature]
Physician Signature

9/25/14
Date

Consent for the Use of Fertility Drugs

I have been advised that my treatment is to include fertility drugs and that the following information is known and accepted by me.

Clomiphene (Clomid)

- A tablet which is administered for five (5) days to induce the growth and release of one or more eggs.
- The most commonly used fertility medication.
- Side effects may include hot flashes, ovarian pain at ovulation, the formation of ovarian cysts or mood changes in the second half of the cycle.
- May rarely cause temporary changes in vision.
- The chance of multiple pregnancy is approximately 8%.

Gonadotropins

- Potent injectable medications used to directly stimulate the ovaries and to promote follicular (egg) development.
- Composed of follicle stimulating hormone (FSH) and luteinizing hormone (LH).
- The risk of multiple births is increased to approximately 20% with the use of these drugs (90% are twins). Multiple pregnancy may be complicated by miscarriage or premature birth and may result in extensive medical problems for both mother and child.
- Ovarian hyperstimulation syndrome can occur. The ovaries enlarge and may become painful. This problem usually resolves spontaneously. However, in severe cases, fluid accumulates in the abdominal cavity and chest, requiring hospitalization for the relief of pain and management of other potentially life-threatening complications. Fortunately this is a rare occurrence.
- Circumstances may arise in which the stimulation cycle may need to be stopped due to either an inadequate or excessive response.

SM Despite some older reports suggesting a link with ovarian cancer, more recent studies fail to provide any convincing evidence that supports any association between fertility drugs and ovarian cancer.

SM I understand and fully accept that there are no guarantees that I will become pregnant through my participation in the Program or that, if I do achieve pregnancy, a successful full-term pregnancy will result. I also understand and full accept that a multiple gestation pregnancy may occur through participation in the Program.

SM I understand and fully accept that should I become pregnant, there are no guarantees that congenital anomalies (birth defects) in the fetus or obstetrical complications will not occur.

SM I hereby specifically agree to pay the Program for all charges for services rendered that are not covered by, or otherwise billable to my health insurance which is accepted by the Program. I am personally liable for any deductible, coinsurance and/or services not covered by my insurance, which is accepted by insurance. Te charges have been discussed with me by the Program team and I understand that I am personally liable for them. Further, I understand that I am also directly responsible for charges for various other services provided in connection with my therapy including but not limited to, examinations, pharmaceutical products, or other fees.

Consent for the Use of Fertility Drugs

SM In exchange for agreement by the Program, and Dr. Carole Kowalczyk, including such assistants as may be selected by the Program, to perform any procedures that we have selected above, and intending to be legally bound hereby, for ourselves and our heirs, we hereby forever release Dr. Carole Kowalczyk, the Program, and any assistants from any and all claims, liabilities, losses, damages, and/or other harm we may suffer as a result of my/our participation in the Program except for liabilities or losses directly arising from any professional misconduct by the Physician, their employees or agents.

SM In the event that a dispute, controversy or other issue(s) arises out of any care or treatment provided by the Program or Dr. Carole Kowalczyk, or out of this consent form, we hereby agree to submit to binding arbitration for resolution of the issue(s). The arbitration is to be governed by the American Arbitration Association arbitration rules and shall be conducted in the County of Macomb, State of Michigan.

By my signature below, I hereby acknowledge that I have had the opportunity to discuss with Dr. Carole Kowalczyk the nature and purpose of Gonadotropin therapy, the treatments and/or options, the risks, potential disadvantages and complications, the alternatives, the risk, potential disadvantages to the alternatives, and that all my questions have been answered to my complete satisfaction. I am aware and fully accept that the practice of medicine and infertility treatment is not an exact science and that there are no guarantees in the Program. I further understand and fully accept that my treatment in the Program involves the risks of unsuccessful results, complications, injury or even rarely death, from both known and unknown causes. I hereby acknowledge that I have read and understand this consent form in its entirety.

I have had the opportunity to ask questions and understand the consequences of these risks. In addition, I understand that I must be available for blood studies and ultrasound appointments as required to safely monitor the administration of these medications. I willingly give my consent to the use of fertility drugs.

I understand that I am free to discontinue participation in the Program at any time, either verbally or in writing.

S. Mank
Patient Signature

9/23/14
Date

D. Keane
Witness Signature

9/25/14
Date

Michigan Center for Fertility and Women's Health, PLC
Michigan Center IVF, PLLC
 Multiple Pregnancy Risk, Gonadotropins, and Embryo Transfer

The risk of multiple pregnancy is ~20% for Gonadotropins (mainly twins), but could be higher if more than two (2) embryos are placed at time of embryo transfer. You also have an increased chance of having triplets or higher. There are risks associated with multiple pregnancy including preterm labor, early bed rest (around week 18 of the pregnancy), miscarriage, and preterm birth. If you were to become pregnant with triplets or higher, you would be given the option of selective reduction. This procedure is done around the 12th week of pregnancy and is done in Michigan, New York and Chicago. Sometimes insurance does not cover this procedure and the cost is \$3000-\$8000, if performed out of state it does require that you go to that state for approx 3-4 days.

In light of this information my plan would be: (please initial below one of the following)

_____ I/We understand the risk of getting pregnant with a multiple pregnancy, and would do a selective reduction if I was to get pregnant with triplets or higher.

on/on

I/We understand the risk of getting pregnant with a multiple pregnancy and choose not do a selective reduction but I am willing to continue care, knowing that my health and/or the health of the pregnancy are at risk.

Patient Name: Sarah Markiewicz

Patient Signature: S. Markiewicz Date: 9/23/14

Partner's Name: Daniel Markiewicz

Partner's Signature: D. Markiewicz Date: 9/23/14

Witness B. Kennedy Date: 9/25/14

REVISED: 5/2009

Michigan Center IVF, PLLC

Information/Consent for Intracytoplasmic Sperm Injection (ICSI)

Intracytoplasmic Sperm Injection (ICSI) is a process which involves injecting a single sperm into the cytoplasm of a mature egg (oocyte) using a glass needle (pipette). This process increases the likelihood of fertilization.

The need to utilize ICSI as a treatment option may be unknown until the day of retrieval in conjunction with in vitro fertilization (IVF). Some indications may be:

1. Very low numbers of motile sperm.
2. Decreased or no fertilization from a previous IVF cycle.
3. Decreased/Low number of eggs produced.
4. High amount of abnormally shaped sperm (decreased sperm morphology).
5. Frozen sperm (limited number and quality).
6. Sperm obtained from surgical procedure from testes.

There are risks associated with the procedure of ICSI. Some risks include but are not limited to, the following:

1. The process may damage some or all of the eggs.
2. The fertilized egg may fail to divide, or the embryo may arrest at an early stage of development.
3. There is a chance that there is an increased risk of congenital abnormalities 1% (birth defects). This percentage is the same for traditional fertilization where sperm is overlaid onto the egg.

I/we have reviewed the above information on ICSI, have discussed the contents with my/our medical provider and all of my/our questions have been answered.

Sm/Don I/we consent to have ICSI performed. Furthermore, I/we consent to have ICSI performed when it is determined necessary by my/our provider including the occasion when it is unknown until the day of the retrieval if the procedure is necessary, in conjunction with IVF.

_____ I/we do not consent to have ICSI performed under any circumstance.

Patient Name: Sarah Markiewicz

Signature of Patient: S. Markiewicz Date: 9/23/14

Name of Spouse/Partner: David Markiewicz

Signature of Spouse/Partner: David Markiewicz Date: 9/23/14

Witness: D. Kennedy Date: 9/25/14

Michigan Center IVF, P.L.L.C.

Information /Consent for Assisted Hatching

Assisted Hatching is a process which involves creating a small hole in the shell (zona pellucida) surrounding the embryo. As the embryo must escape the shell before it can implant in the uterine wall, assisted hatching may increase the chance of implantation and pregnancy.

Potential Indications of Use:

1. Advanced maternal age
2. Thick zona pellucida
3. Previous IVF failure
4. High FSH level

Risks:

1. Increase rate of monozygotic twins (identical)
2. Damage to or loss of the embryo(s).

I/we have reviewed the above information on Assisted Hatching, have discussed the contents with my/our physician and all of my/our questions have been answered.

Sm. I/we consent to have Assisted Hatching performed. *if needed*

 I/we do not wish to have Assisted Hatching performed.

Patient Name: Sarah Markiewicz

Signature of Patient: S. Markiewicz Date: 9/23/14

Name of Spouse/Partner: David Markiewicz

Signature of Spouse/Partner: [Signature] Date: 9/23/14

Witness S. Kennedy Date 9/25/14

Michigan Center IVF, PLLC

4700 E Thirteen Mile Road

Warren, Michigan 48092

586-576-0431

Facsimile 586 576-0924

Consent forPre-implantation Genetic Diagnosis (PGD)/Pre-implantation Genetic Screening (PGS) Biopsy**Purpose**

Pre-implantation Genetic Diagnosis (PGD)/Pre-implantation Genetic Screening (PGS) is used in conjunction with in vitro fertilization (IVF) to detect numerical or structural anomalies in the chromosomes of embryos, as well as conditions caused by single gene defects. When embryos are affected by certain chromosomal conditions, these can prevent implantation to the uterine lining, lead to pregnancy loss, or result in the birth of a child with physical problems and/or mental retardation.

PGD/PGS can help prevent adverse outcomes by identifying affected embryos in the laboratory and thus preventing them from being transferred to the uterus.

Biopsy of Blastomeres

A blastomere is a cell within the embryo. To perform PGD/PGS on an embryo a blastomere is removed from the embryo, this is a biopsy. This is done on embryo incubation day 3. An opening is made in the covering of the embryo when the embryo has 5 to 10 cells. A blastomere is removed via aspiration with a pipette. The embryo is then returned to the incubator and the removed cell is analyzed.

Analysis

The biopsied cells are analyzed at a genetics laboratory. The specimen sample(s) are sent the day of biopsy to the genetics laboratory where analysis is done and a report is provided to Michigan Center IVF, PLLC on day 5 of embryo incubation.

Risks

There is risk of damage to an embryo during biopsy. This risk is relatively low and is influenced by the experience of the embryologist and the quality of the embryo(s). If an embryo is damaged by the procedure it will stop growing and will not be suitable for transfer to the uterus. The future fetus will be complete even if one or two cells are removed from the embryo. The procedure merely delays cell division for a few hours, after which the embryo continues its development.

Legal statement

We have read the entire consent form, or it has been read to us. We understand that PGD/PGS biopsy has benefits and risks, some of which may be unknown at this time. We have been given the

opportunity to ask questions about the biopsy procedure and the contents of this consent. We want to proceed with PGD/PGS biopsy

Sarah Markiewicz
Female patient printed name

S. Markiewicz
Female patient signature

9/23/14
Date

David Markiewicz
Male partner printed name

[Signature]
Male partner signature

9/23/14
Date

D. Kennedy
Printed name of MCFW/MCIVF employee witness

[Signature]
Signature of MCFW/MCIVF employee

9/25/14
Date

Michigan Center IVF, PLLC
Fertility Storage, Inc.

Embryo Cryopreservation

Description

Cryopreservation is an optional part of the In Vitro Fertilization (IVF) process. As a result of drug stimulation of the ovaries, ideally five or more eggs will be obtained through ultrasound guided retrieval. The goal of IVF is to achieve 2-4 embryos to be placed back into the female's uterus (after discussion between the patient and the physician on the day of embryo transfer). Embryos available for transfer beyond the ideal number for replacement may now be frozen (cryopreserved) and stored. These embryos may later be thawed and replaced in a controlled cycle if the fresh embryos fail to implant, or in the case of pregnancy, may be stored until another attempt at pregnancy is desired.

Cryopreservation is a freezing process accomplished by laboratory personnel who will put cryoprotectant solution into the culture medium. The embryos will then be cooled in a biological cell freezer and stored in liquid nitrogen. The embryos will be maintained in frozen storage in a small vial. They will be thawed and washed free of the cryoprotectant solution and treated identically to non-frozen embryos during IVF.

Advantages of Cryopreservation

1. Cryopreservation of embryos exceeding an optimal number for transfer to an individual patient. This allows an individual to possibly achieve pregnancy without substantial risk of triplet or quadruplet gestation, which is a greater risk if all embryos are placed at one transfer.
2. Possibly increasing pregnancy rate by placement of the frozen embryos into the uterus during a non-stimulated cycle.
3. Possibly decreasing the number of stimulated egg recovery cycles needed for achieving pregnancy.

Disadvantages of Cryopreservation

1. It is possible that some or all of the embryos may not survive the freezing, storage, and thaw process.
2. There are no guarantees that you will become pregnant upon the transfer of cryopreserved embryos.
3. Cryopreservation uses mechanical support systems and, thus, carries with it the risk of equipment failure and other laboratory accidents. Although reasonable care is used to maintain all cryopreservation equipment in proper function, the risk of equipment failure, laboratory accidents, or other unforeseen events is inherent and unavoidable.

4. A transfer using frozen embryos carries a risk of tubal or ectopic pregnancy, as it does with usual embryo transfer.
5. There may be unknown, unidentified, or unforeseen risks to the patient, fetus or child.

I/we agree to elect to cryopreserve all viable embryo(s) not transferred that are created during an IVF cycle. The process of cryopreservation will be performed in the laboratory of Michigan Center IVF, PLLC. The cryopreserved embryo(s) will be transferred to the long term facility of Fertility Storage, Inc. (FSI). It is my/our intention to have these embryos transferred back to my uterus in a later cycle. The viability of an embryo is to be determined by laboratory personnel. Unless specifically requested by the patient and agreed to by laboratory personnel, non viable embryos will be disposed of in standard fashion.

Patient Signature S. Manly Date 9/23/14

Spouse/Partner Signature [Signature] Date 9/23/14

Embryo Disposition

1. At any time you may change your decision in regards to keeping the cryopreserved embryos, you have the following options:
 - a. Anonymously donate embryos for a recipient couple to achieve pregnancy.
 - b. Cell culture and degeneration: embryos will be thawed and kept under cell culture conditions until growth ceases and the embryo degenerates. Embryos will then be disposed of according to professional ethical standards.
 - c. Transfer embryos to another IVF program that I/we have designated and requested.
 - d. Donate embryos to an embryo donation center which I/we select.
 - e. Donate embryos for training of laboratory personnel
2. In the event of the death of 1 partner, what should be done with frozen embryos?

SM DM Transfer embryos to the surviving partner as sole owner of the embryos

_____ Discard embryos by the program using cell culture and degeneration. Embryos will be thawed and kept under cell culture conditions until growth ceases and the embryo degenerates. Embryos will then be disposed of according to professional ethical standards

_____ Donate embryos for training laboratory personnel

_____ Donate embryos to an embryo donation center which I/we select

3. In the event of the death of both partners, what should be done with the embryos?

- ☐ ☐ Discard embryos by the program
- ☐ ☐ Donate embryos for training lab personnel
- ☐ ☐ Donate embryos to an embryo donation center

SM John We appoint Anna Bluj to be the
sole owner of our embryos Contact # 734-748-2729

4. In the event of a divorce (or separation on non-married partners) what should be done with frozen embryos?

- ☐ ☐ Discarded by the program
- ☐ ☐ Donate embryos for training of laboratory personnel

SM John Determined by the applicable Judgment of Divorce or
other court order

- ☐ ☐ Donate embryos to an embryo donation center

Automatic Termination of Cryopreservation

A letter will be sent annually regarding disposition of your embryos. The program will automatically terminate the frozen embryos held by the program in any of the following situations:

- When you notify us that you will no longer participate in the program and request termination of cryopreservation for any reason.
- Upon death or legal incapacity of both of you. (See #3 above)
- Non-payment of storage fees
- Loss of patient contact

Financial Responsibility

There will be an annual fee charged for the embryo storage. I will notify the office of any address and phone number changes. In the event that the office is unable to contact me regarding my frozen embryos, I understand that FSI may destroy my embryos by cell culture and degeneration.

I understand it is my responsibility to notify FSI immediately of any change in my address and phone number. I understand that the Fertility Storage, Inc. will make

reasonable attempts to establish my whereabouts, however, should they be unable to locate me after three (3) certified and three (3) regular mail letters are sent, it will be presumed that I have voluntarily chosen to abandon my frozen embryos and the Fertility Storage, Inc. may discard the embryos at that time.

Patient Signature S. Maury Date 9/23/14

Spouse/Partner Signature [Signature] Date 9/23/14

By our signature(s) below, we hereby acknowledge that we have had the opportunity to discuss fully with our/my physician the nature and purpose of the above procedure, treatment and/or options, the risks, potential disadvantages and advantages, and that all of my/our questions have been answered to our complete satisfaction. We are aware and fully accept that the practice of medicine and infertility treatment is not an exact science and that there are no guarantees in the program. We further understand and fully accept that our treatment in the program involves the risks of unsuccessful results, complications, or injury, from both known and unknown causes. We also hereby acknowledge and understand that laboratory errors or accidents and other equipment failure can occur, which are inherent and unavoidable risks which can be associated with the elections selected. We hereby acknowledge that we have read and understand this consent form in its entirety.

On signing this consent I/we acknowledge that I/we have read the above information regarding cryopreservation of the embryos, and wish to have this therapy instituted.

Sarah Markiewicz
Printed Patient Name

Patients Signature S. Maury Date 9/23/14

David Markiewicz
Printed Spouse/Partner Name

Spouse/Partner Signature [Signature] Date 9/23/14

Witness B. Kennedy Date 9/25/14

Michigan Center IVF, P.L.L.C.

Authorization for Disposition of Unfertilized Oocytes, Abnormally Fertilized Oocytes, and Non-Viable or Poor Quality Embryos

I/we Sarah Markiewicz and David Markiewicz indicate below our decision for disposition of unfertilized oocytes (eggs), abnormally fertilized oocytes, and non-viable or poor quality embryos.

This decision is made with my/our understanding that the actions necessary for executing my/our decision will be made by laboratory personnel of Michigan Center IVF, PLLC following their evaluation of these oocytes and embryos. It is acknowledged that at times the following situations may occur after the retrieval process:

1. Some oocytes may not fertilize during in vitro fertilization.
2. Some oocytes may be fertilized by more than one sperm (abnormal fertilization).
3. Following fertilization, the development of the embryo(s) may arrest and therefore become non-viable and/or of such poor quality they can not support cryopreservation.

In these situations I/we agree that these oocytes/embryos may be disposed of by the laboratory personnel of Michigan Center IVF, PLLC

Name of Patient Sarah Markiewicz
 Signature of Patient S. Markiewicz Date 9/23/14
 Name of Spouse/Partner David Markiewicz
 Signature of Spouse/Partner D. Markiewicz Date 9/23/14
 Witness D. Keady Date 9/25/14

Michigan Center for Fertility and Women's Health,
P.C.

Multiple Pregnancy Risk and Gonadotropins

The risk of multiple pregnancy is ~20% for Gonadotropins (mainly twins), but could be higher if more than two (2) embryos are placed at time of embryo transfer. You also have an increased chance of having triplets or higher. There are risks associated with multiple pregnancy including preterm labor, early bed rest (around week 18 of the pregnancy), miscarriage, and preterm birth. If you were to become pregnant with triplets or higher, you would be given the option of selective reduction. This procedure is done around the 12th week of pregnancy and is done in Michigan, New York and Chicago. Sometimes insurance does not cover this procedure and the cost is \$3000-\$8000, if done out of state it does require that you go to that state for approx 3-4 days.

In light of this information my plan would be: (please initial below one of the following)

_____ I/We understand the risk of getting pregnant with a multiple pregnancy, and would do a selective reduction if I was to get pregnant with triplets or higher.

SM/ym

I/We understand the risk of getting pregnant with a multiple pregnancy and choose not do a selective reduction but I am willing to continue care, knowing that my health and/or the health of the pregnancy are at risk.

_____ I/We understand the risk of getting pregnant with a multiple pregnancy, we choose not to do a selective reduction and we do choose to cancel this cycle. I understand that I should either have protected intercourse or no intercourse until my menses.

Patient Name: Sarah Markiewicz

Patient Signature: S. Markiewicz Date: 6/23/14

Partner's Name: David Markiewicz

Partner's Signature: David Markiewicz Date: 6/23/14

Witness _____ Date: _____

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TABLE OF CONTENTS

PAGE

WITNESSES: PLAINTIFF

None.

WITNESSES: DEFENDANT

None.

EXHIBITS

ADMITTED

None offered.

1 Mount Clemens, Michigan
2 Wednesday, September 30,
3 2020

4 At about 10:24 a.m.

5 - - -

6 **REPORTER'S NOTE:** "Inaudible" or
7 "indiscernible" means a word or words were not heard
8 well enough to be able to discern a proper
9 interpretation either because of shuffling of
10 papers, or the speaker did not talk loud enough, or
11 was not picked up by the microphones.)

12 (Court, Counsel and parties present)

13 THE CLERK: Case number 2019-3236-DM,
14 Markiewicz versus Markiewicz.

15 THE COURT: All right. Ms. Henderson, can
16 you hear me?

17 MS. HENDERSON: Yes.

18 THE COURT: All right. Sarah Markiewicz,
19 can you hear me?

20 MS. MARKIEWICZ: Yes.

21 THE COURT: David Markiewicz, can you hear
22 me?

23 MR. MARKIEWICZ: I can.

24 THE COURT: Extreme close-up, can you hear
25 me?

1 MR. ADDIS: Yes, Your Honor.

2 THE COURT: I mean, Mr. Addis, can you hear
3 me?

4 MR. ADDIS: Yes, Your Honor.

5 THE COURT: Okay. All right. Where we're
6 at?

7 MS. HENDERSON: I've been waiting for them
8 to give me a response to the Judgment, Judge, and I
9 thought we would be entering the proofs today, but I
10 have not gotten a response.

11 MR. ADDIS: Your Honor, we do have the
12 Judgment copy. I have gone through it with my
13 client. There are a -- there is an issue regarding
14 an embryo that was not discussed during mediation;
15 that seems to be something that the parties don't
16 agree on at this point. And so, therefore, I think
17 at this point we would either need to return to
18 mediation with Ms. Finazzo, maybe get Mr. Elias
19 involved, or set it for a trial date moving forward.

20 MS. HENDERSON: Judge, we didn't realize
21 that plaintiff was going to take it upon herself to
22 remove the children from the marital home. And
23 since the Judgment's not being entered today, I
24 think that we need to bring the kids back home,
25 because it was like one of these middle of the night

1 my client was working and she raided the house and
2 took the kids and left and if we're going to have a
3 prolonged issue in this case and it's going to go
4 on, then they need to come back. We need the kids.
5 Ms. Markiewicz can stay wherever she wants, but the
6 kids need to come back to the house.

7 MR. ADDIS: So, Judge, since we already have
8 a Parenting Time Agreement that the parties agreed
9 to, I don't know Ms. Markiewicz moving out with no
10 -- it wasn't a secret. As a matter of fact, it was
11 encouraged. She did move out. She does have a
12 house. I don't know why we wouldn't continue with
13 the Parenting Time Agreement that the parties have
14 already agreed to. The disagreement has to do with
15 property.

16 MS. HENDERSON: It's a huge secret and for
17 Mr. Addis to say that I'm surprised in that he --
18 according to what he said previously, he instructed
19 his client not to remove anything from that house
20 and that everything stays the way it is until the
21 Judgment's entered. So to hear this this morning is
22 a big surprise to me.

23 MR. ADDIS: No, I was talking about the
24 kids, not the property.

25 THE COURT: Okay. Would you both raise

1 your right hands, please? Do you solemnly swear or
2 affirm the testimony you're about to give will be
3 the truth, the whole truth and nothing but the
4 truth, so help you God?

5 MR. MARKIEWICZ: I do.

6 MS. MARKIEWICZ: Yes.

7 THE COURT: All right. So put your hands
8 down. All right. Counsel, you say there's one
9 outstanding property issue. Get to it.

10 MR. ADDIS: Judge, there is an embryo that
11 the parties have that my client would like to keep
12 and Mr. Markiewicz would like to have destroyed.

13 THE COURT: Okay. A frozen embryo?

14 MR. ADDIS: Yes, Judge.

15 THE COURT: Is it --

16 MS. HENDERSON: Judge --

17 THE COURT: -- an embryo that is --

18 MS. HENDERSON: -- that embryo is not --

19 THE COURT: -- it is not yet inseminated?
20 Is that the right word, Krystal?

21 MS. HENDERSON: Yes.

22 THE COURT: Okay. So it is, what,
23 something that could be inseminated who knows how
24 many years from now by whatever hypothetical source
25 of insemination, true?

1 MR. ADDIS: I think that is correct, Judge,
2 yes.

3 THE COURT: All right.

4 MS. HENDERSON: Judge, it is not. It is not
5 the defendant's egg. It's her sister's and it's my
6 client's sperm and he does not want to be -- he does
7 not want another child. These are parties are in
8 their 40s, they have four children. He does not
9 want another child born from these embryos that were
10 already -- that's how they have their first four
11 children. And to make him responsible for or to
12 have another child that he doesn't choose to have is
13 absolutely, according to the research I've done it's
14 inappropriate and she can't, she can't basically
15 plant an embryo that he doesn't agree that's going
16 to be planted when it's his sperm.

17 THE COURT: Okay. So the embryo has been
18 provided from somebody else?

19 MS. HENDERSON: Yes.

20 MR. ADDIS: Ms. Markiewicz's sister, Your
21 Honor.

22 MS. HENDERSON: The egg has. The egg has.

23 MR. ADDIS: The egg has.

24 THE COURT: And is there already a semen
25 sample?

1 MS. HENDERSON: That's why it's an embryo.

2 THE COURT: Okay. So, it has been
3 inseminated?

4 MS. HENDERSON: Yes. But it hasn't been
5 placed anywhere.

6 THE COURT: Has to be placed inside a
7 viable person?

8 MS. HENDERSON: Correct.

9 MR. ADDIS: Correct, Your Honor.

10 THE COURT: All right. I would say -- I
11 mean, Mr. Addis, what would the argument be? She
12 get --

13 MR. ADDIS: Well, Judge, the issue is --
14 yeah. The issue is, is that it's probably my
15 client's last chance to have children if she so
16 chooses, which is why she would want to keep it.
17 There is obviously the argument and we have no
18 problem indicating in a judgment that Mr. Markiewicz
19 is not responsible in anyway shape or form if she
20 were to decide to do that. But, at this point, I
21 mean, we can write all the language that we need to
22 in order to make sure that Mr. Markiewicz is not in
23 anyway financially responsible for anything to do
24 with -- with this embryo should it become a child.
25 And that being said, I don't -- I understand his

1 argument that he doesn't want to be the father, but
2 we can very easily do that through a judgment.

3 MS. HENDERSON: That's ridiculous. It
4 ridiculous for a child to be out there with my
5 client's sperm and you're going to tell him that
6 he's not financially responsible when there's
7 another child running around that's his. No, he
8 does not want this child to be born, for a child to
9 be born. They have four children. She's in her
10 40s. To make another child at that time I just
11 don't even understand where the argument is coming
12 from.

13 THE COURT: Okay.

14 MS. HENDERSON: It's not her egg.

15 THE COURT: And how old are the children?

16 MS. HENDERSON: Eight, eight --

17 MR. ADDIS: Sarah, how old are the children?

18 MS. HENDERSON: -- seven -- eight, seven,
19 and four, Judge. Yes, eight, seven, and four.

20 MR. MARKIEWICZ: The twins are four.

21 MR. ADDIS: Twins are four, Judge.

22 MS. HENDERSON: Twins our four. There's
23 four children.

24 THE COURT: Eight, seven, four, and four.

25 MS. HENDERSON: Yes.

1 THE COURT: Okay. Now, when you say it's
2 not even her egg, we agree it's marital property?

3 MR. ADDIS: Yes, Judge, it is marital
4 property.

5 THE COURT: Ms. Henderson?

6 MS. HENDERSON: I don't know if I agree with
7 that, Judge.

8 THE COURT: Well --

9 MS. HENDERSON: I don't know. I would --

10 THE COURT: Whose property is it?

11 MS. HENDERSON: Well, it be would marital if
12 it -- if they had another child from it, yes. It
13 would be -- I think it's more his than hers, it's
14 his sperm.

15 THE COURT: Well, who paid for it?

16 MS. HENDERSON: Both of them.

17 THE COURT: Okay.

18 MS. HENDERSON: Well, my client was the one
19 working.

20 THE COURT: Okay. It's marital property,
21 although I'm having flashbacks to Legally Blond and
22 the scene about the emissions with Reese
23 Witherspoon.

24 MR. ADDIS: Yup.

25 THE COURT: Okay. Here's what I would say.

1 I have three, I wanted more, a couple did not go to
2 term, it was all I could ask of from my wife and we
3 retired. I'm the youngest of seven. I didn't want
4 to kill her, you know. Three is a good effort. Five
5 pregnancies and three is a good effort.

6 You've had four. We're divorcing. She's
7 not pregnant. There's a -- it's not science fiction
8 but there's an embryo sitting there that cannot live
9 on its own. It's, it's frozen; it's not triggered
10 into anything. It's easy to say, Hey, we'll write
11 whatever language, you know, who have no financial
12 responsibility. Well, I guess some people wouldn't
13 care. I hear from a lot of them each day, they
14 don't care. If my number's zero, I'll never see her
15 again. That's not everybody and I wouldn't want
16 that knowledge myself around. I'd feel horrible
17 about myself. First, I would be angry that I had no
18 say in it, it was ordered that it go forward
19 completely on the other person's decision, and then
20 I'd feel awful about myself and who knows what would
21 be said about me going forward. And then I would
22 give some legalistic explanation, Well, no. It was
23 in the Judgment that I didn't have to. No, you're
24 still a horrible person. So I don't think it's fair
25 to the plaintiff on this set of facts. So, I guess I

1 will award that marital property to the plaintiff.
2 I'm sorry, to Mr. Markiewicz.

3 MS. HENDERSON: Thank you, Judge.

4 THE COURT: So that resolves your issues.
5 Sarah --

6 MS. HENDERSON: The other --

7 MS. MARKIEWICZ: Yes.

8 THE COURT: Are there any other issues,
9 counsel?

10 MS. HENDERSON: Yes. Judge --

11 THE COURT: I was told this was the only
12 issue.

13 MS. HENDERSON: -- okay. They haven't
14 decided on personal property, but I think they can
15 go to binding arbitration if they don't decide to it
16 if that's all right with your honor?

17 THE COURT: Yes. Sarah, when did you get
18 married?

19 MS. MARKIEWICZ: (Inaudible) 9/19/09.

20 THE COURT: When did you file for divorce?

21 MS. MARKIEWICZ: Nine -- 2019.

22 THE COURT: At the time you filed --

23 MS. MARKIEWICZ: Originally there was
24 (inaudible) -- I apologize.

25 THE COURT: That's all right.

1 MS. MARKIEWICZ: That was the second time.
2 There was a first time as well and it was at the end
3 of 2016.

4 THE COURT: That's okay. That's okay. At
5 the time you filed had you lived in the state of
6 Michigan at least six months and the county of
7 Macomb at least 10 days?

8 MS. MARKIEWICZ: Yes.

9 THE COURT: At the time you filed did you
10 allege there had been a breakdown in your marital
11 relationship beyond the point of repair?

12 MS. MARKIEWICZ: Yes.

13 THE COURT: Were all the allegations in
14 your Complaint true at the time you made them and
15 they're still true today?

16 MS. MARKIEWICZ: Yes.

17 THE COURT: Is there any chance of
18 reconciliation?

19 MS. MARKIEWICZ: No.

20 THE COURT: Are you currently pregnant?

21 MS. MARKIEWICZ: No.

22 THE COURT: I find there's been a breakdown
23 in the marital relationship beyond the point of
24 repair, the objects of matrimony have been
25 dissolved, I'll grant the judgment of divorce. Good

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luck.

MR. ADDIS: Thank you, Judge.

MS. HENDERSON: Thank you, Judge.

THE COURT: All right.

(Proceedings concluded).

* * *

1 CERTIFICATE OF REPORTER

2 STATE OF MICHIGAN)

3) SS

4 COUNTY OF MACOMB)

5 I, Angela M. Little, a Certified
6 Shorthand Reporter for the State of Michigan, do
7 hereby certify that this transcript, is a complete,
8 true and correct transcript, to the best of my
9 ability, of the proceedings and testimony taken in
10 this case and that this is a full, true, complete
11 and correct transcription of said proceedings.

12 I further certify that this transcript was
13 prepared by me, or under my supervision, from a
14 Zoom/videotape copy supplied to me by the Circuit
15 Court of Macomb County Court, the original of which
16 was duly recorded by means of Zoom/videographic
17 technology, monitored and logged by the Court on the
18 date(s) and time(s) set forth herein.

19
20 _____/s/ Angela M. Little_____

21 Angela M. Little, RPR, CSR 6444

22
23 DATE: 12/10/2020

STATE OF MICHIGAN

IN THE 16th CIRCUIT COURT FOR THE COUNTY OF MACOMB

SARAH MARIE MARKIEWICZ,

Plaintiff,

-vs-

Case No. 2019-3236-DM
Hon. Matthew S. Switalski

DAVID RANDAL MARKIEWICZ,

Defendant.

PAUL B. ADDIS, P61691
Attorney for Plaintiff
18 1ST Street
Mount Clemens, Michigan 48043
(586) 221-4100
paddis@michiganjustice.com

LORI M. HENDERSON, P38601
Attorney for Defendant
21941 Nine Mile Road
St. Clair Shores, Michigan 48080
(586) 776-5144
Lori@lmh-familylaw.com

ORDER FOR DISPOSITION OF FROZEN EMBRYO

The Court having heard arguments of the parties through their attorneys and being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that Defendant, DAVID RANDAL MARKIEWICZ, shall be awarded the parties' frozen embryo, forthwith.

OCT 28 2020

CIRCUIT COURT JUDGE

MATTHEW S. SWITALSKI

Approved as to form:

Paul B Addis
PAUL B. ADDIS, P61691

Lori M. Henderson
LORI M. HENDERSON, P38601

FILED

20 NOV -2 PM 4:21

**STATE OF MICHIGAN
COURT OF APPEALS**

SARAH MARIE MARKIEWICZ,

Plaintiff-Appellant,

v

DAVID RANDAL MARKIEWICZ,

Defendant-Appellee.

UNPUBLISHED

March 24, 2022

No. 355774

Macomb Circuit Court

Family Division

LC No. 2019-003236-DM

Before: GADOLA, P.J., and BORRELLO and M. J. KELLY, JJ.

PER CURIAM.

This appeal involves the disposition of a cryogenically-preserved embryo. As part of divorce proceedings between defendant, David Markiewicz, and plaintiff, Sarah Markiewicz, the trial court awarded the embryo to David. Sarah now appeals as of right. For the reasons stated in this opinion, we reverse and remand for further proceedings.

I. BASIC FACTS

David and Sarah married in 2009. During their marriage, they both financially contributed to the creation of a number of embryos using *in vitro* fertilization (IVF) techniques. The eggs used in the process were from Sarah’s sister and the sperm was from David. Using some of the embryos, Sarah gave birth to four children during the marriage.¹ In 2019, Sarah filed for divorce. The parties were able to resolve all issues, save for the disposition of one remaining embryo, which had been cryogenically preserved.

¹ When the judgment of divorce was finalized, the oldest child was eight years old, the next child was seven years old, and a pair of twins were four years old.

On September 30, 2020, the parties addressed the issue of the frozen embryo at a hearing. Sarah's lawyer represented that Sarah wanted to keep the embryo, noting that it was probably Sarah's "last chance to have children if she so chooses." Sarah's lawyer offered to include language in the judgment of divorce stating that David would not be responsible—financially or otherwise—if Sarah had a child from the embryo. The lawyer clarified that if David did not want to be the child's father, "we can very easily do that through a judgment." In response, David's lawyer stated:

[David] does not want another child. These are [sic] parties are in their 40s, they have four children. He does not want another child born from these embryos that were already—that's how they have their first four children. And to make him responsible for or to have another child that he doesn't choose to have is absolutely, according to the research I've done it's inappropriate and she can't, she can't basically plant [sic] an embryo that he doesn't agree that's going to be planted [sic] when it's his sperm.

David's lawyer added:

[It would be] ridiculous for a child to be out there with my client's sperm and you're going to tell him that he's not financially responsible when there's another child running around that's his. No, he does not want this child to be born, for a child to be born. They have four children. She's in her 40s. To make another child at that time I just don't even understand where the argument is coming from. . . . It's not her egg.

The court asked whether the frozen embryo was marital property. Sarah's lawyer stated, unequivocally, "it is marital property." David's lawyer was less certain, stating: "I don't know," and then clarifying that because it was created with David's sperm, but not Sarah's egg, it was "more his than hers." The trial court held that it was marital property because both David and Sarah had contributed financially to its creation.

The trial court then determined that it would award the frozen embryo to David, reasoning:

I have three, I wanted more, a couple did not go to term, it was all I could ask of from my wife and we retired. I'm the youngest of seven. I didn't want to kill her, you know. Three is a good effort. Five pregnancies and three is a good effort.

You've had four. We're divorcing. She's not pregnant. There's a—it's not science fiction but there's an embryo sitting there that cannot live on its own. It's, it's frozen; it's not triggered into anything. It's easy to say, Hey, we'll write whatever language, you know, you have no financial responsibility. Well, I guess some people wouldn't care. I hear from a lot of them each day, they don't care. If my number's zero, I'll never see her again. That's not everybody and I wouldn't want that knowledge myself around. I'd feel horrible about myself. First, I would be angry that I had no say in it, it was ordered that it go forward completely on the other person's decision, and then I'd feel awful about myself and who knows what would be said about me going forward. And then I would give some legalistic

explanation, Well, no. It was in the Judgment that I didn't have to. No, you're still a horrible person. So I don't think it's fair to the plaintiff on this set of facts. So, I guess I will award that marital property to [Sarah], I'm sorry, to [David].

Thereafter, the court entered a written order awarding the frozen embryo to David.²

On November 20, 2020, Sarah moved for reconsideration, contending that she had been unable to brief whether the embryo should be treated as property. She represented that, as a result of legal research and consultation with experts in the medical field, she believed that the embryo should not be considered property. She sought permission to brief the issue. The court denied her motion. This appeal follows.³

II. DUE PROCESS

Sarah argues that she was denied her constitutional right to due process because the trial court did not permit her to present evidence or make an argument regarding the legal status of the embryo. We disagree. Procedural due process requires “notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker.” *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). Sarah only argues that she was denied an opportunity to be heard in a meaningful manner. At the hearing on September 30, 2020, Sarah's lawyer stated that the disposition of the embryo was a contested issue. The court then permitted Sarah, through her lawyer, to argue why the embryo should be awarded to Sarah. The trial court did not limit the argument and asked questions where clarification was necessary. Further, although Sarah contends that she was denied an opportunity to present testimony or evidence, she has not directed us to any statements by the trial court that actually prevented her from presenting testimony or evidence at the hearing.⁴

² On appeal, Sarah argues that the trial court's order lacked clarity because the court first stated that it was awarding the embryo to Sarah and then that it was awarding it to David. However, viewed in context, it is clear that the court misspoke when it stated that it was awarding the embryo to Sarah. Moreover, the court's written order unambiguously awarded the embryo to David, not Sarah. See *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009) (“[A] court speaks through its written orders and judgments, not through its oral pronouncements.”). Accordingly, Sarah's argument is wholly without merit.

³ In December 2020, the facility where the embryo is being stored notified the parties that, as a result of the legal dispute regarding the ownership of the embryo, it would “remain frozen,” and “no action to destroy the embryo” would be taken “until this matter is adjudicated by the courts.”

⁴ In her motion for reconsideration, Sarah asserted, for the first time, that she believed the embryo should not be classified as “property,” and she requested permission to brief that issue. However, issues raised for the first time on a motion for reconsideration are not preserved for appellate review. *Dep't of Environmental Quality v Morley*, 314 Mich App 306, 316; 885 NW2d 892 (2015).

III. RELIGIOUS FREEDOM AND THIRD-PARTY RIGHTS

Sarah argues that the trial court impeded her religious freedom by awarding the embryo to David. She also argues that the trial court order did not account for any rights her sister may have related to the embryo. Neither issue was raised in the proceedings before the trial court. “Failure to timely raise an issue waives review of that issue on appeal.” *Baxter v Geurink*, 493 Mich 924 (2013), citing *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). Because a waived error is extinguished, there are no errors for this Court to review.

IV. CLASSIFICATION OF A FROZEN EMBRYO DURING DIVORCE

Sarah argues for the first time on appeal that she believes a frozen embryo is a human life, not simply marital property. However, in the proceedings before the trial court, Sarah stated unequivocally that the embryo was marital property, and the trial court agreed. As a result, she is judicially estopped from challenging the determination that the frozen embryo is marital property.

“Judicial estoppel precludes a party from adopting a legal position in conflict with a position taken earlier in the same or related litigation. The doctrine protects the integrity of the judicial and administrative processes.” *Ford Motor Co v Pub Serv Comm*, 221 Mich App 370, 382-383; 562 NW2d 224 (1997). This Court has held that “[u]nder the doctrine of judicial estoppel, a party that has unequivocally and successfully set forth a position in a prior proceeding is estopped from setting forth an inconsistent position in a later proceeding.” *Detroit Int’l Bridge Co v Commodities Export Co*, 279 Mich App 662, 672; 760 NW2d 565 (2008). For the doctrine to apply, the party’s position in the prior proceeding must have been “ ‘wholly inconsistent’ ” with the same party’s position in the later proceeding. *Szyszlo v Akowitz*, 296 Mich App 40, 51; 818 NW2d 424 (2012), quoting *Paschke v Retool Indus*, 445 Mich 502, 510; 519 NW2d 441 (1994). The doctrine was developed to prevent parties from playing “ ‘fast and loose’ with the legal system.” *Paschke*, 445 Mich at 509 (citation omitted). [*Wells Fargo Bank, NA v Null*, 304 Mich App 508, 537; 847 NW2d 657 (2014).]

Here, because Sarah unequivocally and successfully argued that the embryo was marital property, she is precluded from advancing an inconsistent argument now.⁵ Because Sarah is judicially estopped from challenging the classification of a frozen embryo as property, we do not—and cannot—address whether, under Michigan law, frozen embryos constitute property subject to equitable distribution.

⁵ Sarah argues, briefly, that the trial court erred in awarding the property to David because it did not properly consider her contribution to the creation of the embryo. The record belies that claim. The trial court expressly inquired as to Sarah’s contribution to the creation of the embryo, and, on the basis of her contribution, determined that the embryo was marital, not separate property.

V. DISPOSITION OF A FROZEN EMBRYO DURING DIVORCE

A. STANDARD OF REVIEW

Sarah next argues that, even if a frozen embryo is considered property, the trial court erred by awarding it to David.⁶ In a divorce case, we review the trial court's factual findings for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts." *Id.* at 151-152. That dispositional ruling is to be affirmed unless this Court is left with a firm conviction that the property division was inequitable. *Id.* at 152.

B. ANALYSIS

"The goal behind dividing marital property is to reach an equitable distribution in light of all the circumstances." *Washington v Washington*, 283 Mich App 667, 673; 770 NW2d 908 (2009). Therefore, "[a]lthough marital property need not be divided equally, it must be divided equitably in light of a court's evaluation of the parties' contributions, faults and needs." *Richards v Richards*, 310 Mich App 683, 694; 874 NW2d 704 (2015). In *Sparks*, 440 Mich at 159-160, our Supreme Court provided the following list of factors "to be considered wherever they are relevant to the circumstances of the particular case:"

- (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity.

This list is not exhaustive. *Id.* at 160. "There may be additional factors that are relevant to a particular case." *Id.* Consequently, "[t]he determination of relevant factors will vary depending on the facts and circumstances of the case." *Id.*⁷

⁶ While we agree with the partial dissent that "the award of a frozen embryo in a divorce or other proceeding is an extremely important issue worthy of scholarly examination and debate" and that we are precluded from addressing or determining the status of the frozen embryo as anything other than property, we do not agree that we are constrained from discussing the special nature of the frozen embryo as property, nor do we believe that, in doing so, we are producing orbiter dictum. To be sure, Sarah's argument on appeal is that, if the frozen embryo is property, then the court abused its discretion because it did not properly consider the *Sparks* factors, including the additional fact concerning the special nature of the embryo. This is not an argument that she is judicially estopped from making, and, therefore, it is not improper for us to consider it on appeal. Indeed, we are obligated to do so.

⁷ Sarah argues that the court made no findings related to the *Sparks* factors. She then asserts that the court made findings related to two of the factors, but erred by not making findings related to each factor. She has not, however, offered any analysis as to why the factors not addressed by the court were relevant to the disposition of the embryo in this case. "It is not enough for an appellant

Sarah contends that an additional factor the court should have considered was the unique nature of a frozen human embryo. Although there are no cases in Michigan directly addressing the nature of a frozen embryo, our legislature has indicated a public policy that includes special protections for nonviable embryos. We reach this conclusion based on the legislature's enactment of the fetal protection act in 1998. See MCL 750.90a *et seq.* As explained in *People v Kurr*, 253 Mich App 317, 321-322; 654 NW2d 651 (2002):

[The fetal protection action] punishes individuals who harm or kill fetuses or embryos under various circumstances. MCL 750.90a and 750.90b set forth penalties for harming a fetus or embryo during an intentional assault against a pregnant woman. MCL 750.90a punishes an individual for causing a miscarriage or stillbirth with malicious intent toward the fetus or embryo or for causing a miscarriage or stillbirth while acting "in wanton or willful disregard of the likelihood that the natural tendency of [his or her] conduct is to cause a miscarriage or stillbirth or great bodily harm to the embryo or fetus." MCL 750.90b punishes an individual for harming or killing a fetus or embryo during an intentional assault against a pregnant woman without regard to the individual's intent or recklessness concerning the fetus or embryo. MCL 750.90c punishes an individual for harming or killing a fetus or embryo during a grossly negligent act against a pregnant woman, again without regard to the individual's state of mind concerning the fetus or embryo.

The plain language of these provisions shows the Legislature's conclusion that fetuses are worthy of protection as living entities as a matter of public policy. See, generally, *People v Matelic*, 249 Mich App 1, 10, 641 NW2d 252 (2001) (the main indication of legislative intent is the plain language of the statute). Indeed, we note that a violation of MCL 750.90a is punishable by up to life imprisonment, nearly the harshest punishment available in our state. Moreover, in enacting the fetal protection act, the Legislature did not distinguish between fetuses that are viable, or capable of surviving outside the womb, and those that are nonviable. In fact, the Legislature used the term "embryo" as well as the term "fetus" in describing the prohibited conduct, and Black's Law Dictionary (7th ed, 1999), p. 540, defines "embryo" as "[a] developing but unborn or unhatched animal; esp., an unborn human from conception until the development of organs (i.e., until about

in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, Sarah has abandoned this argument on appeal and we will not address it further. Nonetheless, remand is necessary in this case. As a result, although we do not address Sarah's argument, nothing in our opinion should be read to preclude her from presenting evidence and arguing on remand that specific *Sparks* factors are relevant and should be weighed in favor of awarding the embryo to her.

the eighth week of pregnancy).” This definition clearly encompasses nonviable fetuses. . . .

Additionally, civil protection exists for embryos. Specifically, MCL 600.2922a, provides that “[a] person who commits a wrongful or negligent act against a pregnant individual is liable for damages if the act results in a miscarriage or stillbirth by that individual, or physical injury to or the death of the embryo or fetus.” Although the criminal statutes do not extend to embryos that “exist outside a woman’s body, i.e., frozen embryos,” see *Kurr*, 253 Mich App at 323, and although MCL 600.2922a expressly requires that the wrongful act be committed against a “pregnant individual,” we conclude that as a matter of public policy, through the enactment of those statutes, the legislature has expressed that an embryo is something more than just human tissue.

Indeed, other jurisdictions that have grappled with the issue have concluded that, because of its unique potential for human life, a frozen embryo is entitled to special respect.⁸ In *Davis v Davis*, 842 SW2d 588, 596 (Tenn, 1992), the Supreme Court of Tennessee referenced the ethical standards set forth by The American Fertility Society, noting:

Three major ethical positions have been articulated in the debate over preembryo status. At one extreme is the view of the preembryo as a human subject after fertilization, which requires that it be accorded the rights of a person. This position entails an obligation to provide an opportunity for implantation to occur and tends to ban any action before transfer that might harm the preembryo or that is not immediately therapeutic, such as freezing and some preembryo research.

At the opposite extreme is the view that the preembryo has a status no different from any other human tissue. With the consent of those who have decision-making authority over the preembryo, no limits should be imposed on actions taken with preembryos.

A third view—one that is most widely held—takes an intermediate position between the other two. It holds that the preembryo deserves respect greater than that accorded to human tissue but not the respect accorded to actual persons. [citation omitted.]

⁸ See Samuel B Casey & Nathan A Adams, IV, *Specially Respecting the Living Human Embryo by Adhering to Standard Human Subject Experimentation Rules*, 2 Yale J. Health Pol’y, L. & Ethics 111 (2001), noting that in the debate over what legal status should be accorded to a human embryo:

The undisputed, scientifically verifiable facts agreed to by even the most liberal proponents of human embryonic stem cell research are that (1) the embryo is living and genetically unique; (2) the embryo is human and capable of developing into an adult; and (3) derivation of human stem cells from embryos terminates them. [footnotes omitted.]

Having considered the three ethical positions related to the status of a “pre-embryo,” the *Davis* court concluded “that preembryos are not, strictly speaking, either ‘persons’ or ‘property,’ but occupy an interim category that entitles them to special respect because of their potential for human life.” *Id.* at 597. See also *McQueen v Gadberry*, 507 SW3d 127, 149 (Mo App, 2016) (holding that frozen pre-embryos are “entitled to special respect” because even though they “may never realize their biologic potential, even if implanted, they are unlike traditional forms of property or external things because they are comprised of a woman and man’s genetic material, are human tissue, and have the potential to become born children.”); and *Jocelyn P v Joshua P*, 250 Md App 435, 446; 250 A3d 373 (2021) (recognizing “the special respect due cryopreserved pre-embryos in light of their potential for human life as well as the fundamental and coextensive rights of their progenitors to decide whether to bear or beget a child.”) (quotation marks and citation omitted). Like the courts in *Davis*, *McQueen*, and *Jocelyn P*, we agree that a frozen embryo deserves special respect because of its unique potential for human life. As a result, any disposition of a frozen embryo must start with the recognition that, even when a frozen embryo is treated as property, it nevertheless may one day develop into a born child.

Keeping in mind the special respect due to a frozen embryo, we must determine a legal framework to allow for the equitable distribution of a frozen embryo, when, as in this case, it is being treated as property. Generally, other states have recognized three approaches to determine the disposition of a frozen embryo in a divorce: the contemporaneous mutual consent approach, the contractual approach, and the balancing approach. The approaches were explained by the Virginia Court of Appeals in *Jessee v Jessee*, 74 Va App 40, 52-53; 866 SE2d 46 (2021):

Under the contemporaneous mutual consent approach, the pre-embryos must remain in storage until the parties agree to a disposition. *Bilbao v Goodwin*, 217 A3d 977, 985 (Conn, 2019); *In re Marriage of Witten*, 672 NW2d 768, 777-78 (Iowa 2003). If they cannot agree, then the status quo is maintained, and “the pre-embryos remain in storage indefinitely.” *Bilbao*, 217 A.3d at 985. The contractual approach provides that a pre-existing agreement between the parties regarding the disposition of preserved pre-embryos is “presumed valid and enforceable.” See, e.g., *id.* at 984, 992 (determining that the parties had an enforceable agreement); *Kass v Kass*, 91 NY2d 554; 673 NYS2d 350; 696 NE2d 174, 179 (1998) (holding that the parties’ agreement controlled). The balancing approach requires a circuit court to weigh the parties’ respective interests in the pre-embryos. *Bilbao*, 217 A3d at 985.

The exceedingly rare mutual consent approach is disfavored. See, e.g., *Jocelyn P v Joshua P*, 250 Md App 435; 250 A3d 373, 405 (2021); *In re Marriage of Rooks*, 429 P3d 579, 592 (Colo, 2018); *Reber v Reiss*, 42 A3d 1131, 1136 (Pa Super Ct 2012). But see *Witten*, 672 NW2d at 783 (using this approach); cf. *McQueen*, 507 SW3d at 145-47 (affirming award of joint ownership to both of the spouses using the balancing approach). Most jurisdictions that have considered the approach have held it to be impractical and unworkable. See, e.g., *Jocelyn P*, 250 A3d at 405; *Rooks*, 429 P3d at 592; *Reber*, 42 A.3d at 1136. As the Colorado Supreme Court persuasively explained, “[i]t is . . . unrealistic to think that parties who cannot reach agreement on a topic so emotionally charged will somehow reach resolution after a divorce is finalized.” *Rooks*, 429 P3d at 592.

In contrast, the contractual approach, which recognizes the validity of a contract between the parties as governing the disposition of preserved pre-embryos, is embraced by the majority of jurisdictions that have addressed the issue. See *Jocelyn P*, 250 A3d at 381; *Bilbao*, 217 A3d at 986, 992; *Szafranski v Dunston*, 393 Ill Dec 604; 34 NE3d 1132, 1147 (Ill App Ct 2015); *In re Marriage of Dahl & Angle*, 222 Or App 572; 194 P3d 834, 840 (2008); *Roman v Roman*, 193 SW3d 40, 48 (Tex App, 2006); *Kass*, 673 NYS2d 350; 696 NE2d at 180; *Davis v Davis*, 842 SW2d 588, 598 (Tenn, 1992), petition to rehear granted in part, No. 34, 1992 WL 341632 (Tenn, 1992) (per curiam). But see *Witten*, 672 NW2d at 781 (rejecting this approach); *AZ v BZ*, 431 Mass 150; 725 NE2d 1051, 1057 (2000) (noting that it would not uphold an agreement between the parties if it “would compel one donor to become a parent against his or her will”).

In the absence of such an agreement through contract, courts commonly use the third approach, which balances the parties’ competing interests. See, e.g., *Jocelyn P*, 250 A3d at 380; *Rooks*, 429 P3d at 593-94; *Davis*, 842 SW2d at 603-04.

We agree with the courts in other jurisdictions that have rejected as impractical the contemporaneous mutual consent approach. See *Rooks*, 429 P3d at 592; *Reber*, 42 A3d 1135 n 5; *Jessee*, 74 Va App at 54; *Jocelyn P*, 250 Md App at 447. Forcing the parties to “decide later is making no decision at all.” *Jessee*, 74 Va App at 54 (quotation marks and citation omitted). Indeed, as recognized by the court in *Rooks*, the mutual contemporaneous consent approach “gives one party a de facto veto over the other party by avoiding any resolution until the issue is eventually mooted by the passage of time.” *Rooks*, 429 P3d at 589. Because this approach is inherently impractical, we reject it.

Instead, like the Maryland Special Court of Appeals in *Jocelyn P*, we hold that disputes that arise during a divorce regarding the disposition of a frozen embryo should be decided using a blend of the contractual approach and the balancing approach. See *Jocelyn P*, 250 Md App at 486. This blended approach requires courts to first look to see if there is a valid agreement between the parties addressing the disposition of the embryo. In the absence of such an agreement, the court must then “balance the interests of the parties to determine disposition of the frozen pre-embryos.” *Id.* at 479.

Balancing the parties interests will require the consideration of many factors. The court should consider the original reasons that the parties underwent IVF treatment. Consideration of this factor should account for the parties’ beliefs as they relate to the creation of an embryo. For instance, in *Jocelyn P*, the court noted that Jocelyn P had testified that she and Joshua P had “agreed that every single embryo would be used because we create a life and it was our responsibility to give that embryo the opportunity for life.” *Id.* at 496. The court directed that Jocelyn’s testimony, if credible, would be a fact pertinent to the original reasons for undergoing IVF. *Jocelyn P*, 250 Md App at 496. A party’s stated belief that an embryo is a human being, as opposed to mere

property, is also relevant to this inquiry. See *id.* at 465 (noting that Jocelyn believed, as do others, that ‘the embryo is human and capable of developing into an adult.’).⁹

The trial court should consider the parties’ positions related to the disposition of the embryo. In this case, David seeks to avoid procreation because he already has four children, whereas Sarah would like to preserve her ability to potentially have a child in the future. A court should also consider whether the party seeking procreation would have any other reasonable means of achieving parenthood were the embryos at issue to be destroyed.¹⁰ As it relates to the party seeking to destroy an embryo, it is appropriate to consider the implications of imposing unwanted parenthood on that party, including the possible financial and psychological consequences of doing so. *Davis*, 842 SW2d at 603; see also *McQueen*, 507 SW3d at 146-147 (noting that awarding the embryo to McQueen “would impose unwanted parenthood on Gadberry, with all of its possible life-long emotional, psychological, and financial responsibilities.”). “In addition, courts should consider the possibility of a party’s bad faith and attempt to use the frozen pre-embryo[s] as leverage in the divorce proceeding.” *Jessee*, 74 Va App at 57 (quotation marks and citation omitted).

In light of our decision to adopt a blend between the contractual approach and the balancing approach, it is necessary to reverse and remand for further proceedings because the trial court did not have the benefit of this legal framework when it initially made its decision to award the embryo to David. On remand, the trial court shall consider the applicable *Sparks* factors. With regard to the additional relevant factor identified in this opinion, i.e., the special nature of the embryo, the trial court should first consider whether the disposition of the embryo is governed by a valid contract between the parties. If such a contract exists, the matter should be concluded in accord with the contractual terms that the parties agreed upon in that contract. If there is no contract, then

⁹ In contrast, in *McQueen*, the original reason the parties sought IVF treatment was because of geographical distance as opposed to fertility concerns. *McQueen*, 507 SW3d at 145. Specifically, the record reflected that McQueen had two children using IVF with Gadberry before she had a third child with traditional methods with another man. *Id.* Although she wanted to have another child with Gadberry, he did not want another child with her because they had extensive problems co-parenting their existing children. *Id.* Because IVF was not used for fertility purposes, this factor weighed against awarding the embryos to McQueen for purposes of having a child or children with Gadberry.

¹⁰ The facts of each case will dictate whether there is a reasonable alternative available. For instance, adoption is not a reasonable alternative for an individual interested in becoming a genetic parent. *Jessee*, 74 Va App at 58 n 14. Additionally, in *Jocelyn P*, Jocelyn P argued that her only means of achieving genetic parenthood was using IVF. *Jocelyn P*, 250 Md App at 494. Joshua P preferred that it either be destroyed or donated to another couple with both parents giving up their parental rights. *Id.* at 495. Although Jocelyn P testified that she was physically capable of repeating the IVF process, the court concluded that the existence of other means to achieve parenthood must be reasonable. *Id.* The court reasoned that requiring the IVF process to be repeated must account for the “physical and emotional toll the IVF process bore on Jocelyn; her age; or the possibility of a successful process.” *Id.* at 495.

the court must balance the interests of the parties using the framework stated in this opinion. In doing so, the trial court may again consider the facts—as argued below—that Sarah has already bore four children with David; that the egg used to produce the embryo was not Sarah’s, but her sister’s; and that Sarah offered to include language in the judgment of divorce indicating that David would have no financial obligations related to any child born as a result of the embryo being implanted. With regard to the remaining *Sparks* factors, additional factors, such as the ages and health of the parties, may also be relevant and should be addressed. Financial considerations may also be considered. The cost of the IVF process is ascertainable. Therefore, it would be appropriate to consider the costs Sarah would incur were she to obtain another embryo using IVF techniques should the court again decide that it is equitable to award the existing embryo to David. Resolution on remand will require the trial court to reopen the proofs to allow presentation of evidence related to the potential existence of a contract between the parties, and legal argument related to whether such a contract is valid. The court should also, if necessary, take testimony relevant to the balancing factors stated in this opinion.

Reversed and remanded for further proceedings. Sarah may tax costs as the prevailing party. MCR 7.219(A). We do not retain jurisdiction.

/s/ Michael F. Gadola

/s/ Michael J. Kelly

If this opinion indicates that it is “FOR PUBLICATION,” it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

SARAH MARIE MARKIEWICZ,

Plaintiff-Appellant,

v

DAVID RANDAL MARKIEWICZ,

Defendant-Appellee.

UNPUBLISHED

March 24, 2022

No. 355774

Macomb Circuit Court

Family Division

LC No. 2019-003236-DM

Before: GADOLA, P.J., and BORRELLO and M. J. KELLY, JJ.

BORRELLO, J. (*concurring in part and dissenting in part*).

In this appeal of a judgment of divorce, appellant, for the first time, tries to change the classification of the frozen embryo at issue from property to, presumably “a person.” Appellant argues she wants “custody” or possession of the frozen embryo in order to have another child. However, rather than address the trial court’s ruling on the merits, appellant seeks to turn this case into a referendum related to reproductive rights or rather the denial thereof. In this sense, it appears appellant’s counsel view this case as a conduit for a much larger discussion about much larger issues, none of which I find germane to the issues presented on appeal.

From the outset, I wish to make clear that I take no issue with my colleagues’ presentation of the record in this matter, nor do I dissent from their conclusions and analysis in sections I-IV of their opinion. Where we differ is found in both the result and the analysis and conclusions employed by my colleagues in section V of their opinion.

In section IV of their opinion, my colleagues end with the following statement:

Here, because Sarah (appellant) unequivocally and successfully argued that the embryo was marital property, she is precluded from advancing an inconsistent argument now. Because Sarah is judicially estopped from challenging the classification of a frozen embryo as property, we do not—and cannot—address whether, under Michigan law, frozen embryos constitute property subject to equitable distribution. (footnote excluded).

I concur with this statement based on this Court's holding in *Wells Fargo Bank, NA v Null*, 304 Mich App 508, 537; 847 NW2d 657 (2014). Unfortunately, the majority goes on to, in my opinion, contradict this holding, by concluding:

In light of our decision to adopt a blend between the contractual approach and the balancing approach, it is necessary to reverse and remand for further proceedings because the trial court did not have the benefit of this legal framework when it initially made its decision to award the embryo to David. On remand, the trial court shall consider the applicable *Sparks* factors. With regard to the additional relevant factor identified in this opinion, i.e., the special nature of the embryo, the trial court should first consider whether the disposition of the embryo is governed by a valid contract between the parties. If such a contract exists, the matter should be concluded in accord with the contractual terms that the parties agreed upon in that contract. If there is no contract, then the court must balance the interests of the parties using the framework stated in this opinion. With regard to the remaining *Sparks* factors, additional factors, such as the ages and health of the parties, may also be relevant and should be addressed. Financial considerations may also be considered. The cost of the IVF process is ascertainable. Therefore, it would be appropriate to consider the costs Sarah would incur were she to obtain another embryo using IVF techniques should the court again decide that it is equitable to award the existing embryo to David. Resolution on remand will require the trial court to reopen the proofs to allow presentation of evidence related to the potential existence of a contract between the parties, and legal argument related to whether such a contract is valid. The court should also, if necessary, take testimony relevant to the balancing factors stated in this opinion.

It was incumbent on appellant to demonstrate to this Court that the trial court abused its discretion in its findings of fact. As previously stated by this Court, an abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Loutts v Loutts*, 298 Mich App 21, 25-26; 826 NW2d 152 (2012). Because the majority was initially correct in their holding that appellant was judicially estopped from "challenging the classification of a frozen embryo as property, we do not—and cannot—address whether, under Michigan law, frozen embryos constitute property subject to equitable distribution," and because the appellant points to no factual or legal errors justifying reversal in the trial court's findings on this issue, instead of granting appellant the relief she seeks, I would affirm the trial court.

I understand the majority's point that providing a road map for similar cases is necessary, if not essential to the proper advance of this area of jurisprudence. However, here, as the majority correctly acknowledges, appellant is estopped from making any of the arguments necessary for a proper resolution of the issue. As a consequence, following the majority's conclusion that appellant is estopped from arguing anything other than the embryo is property, the remainder of the opinion becomes dictum. "[O]biter dictum" is "[a] judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (though it may be considered persuasive)." *People v Higuera*, 244 Mich App 429, 437; 625 NW2d 444 (2001) (second alteration in original; quotation marks and citation omitted).

Certainly, the award of a frozen embryo in a divorce or other proceeding is an extremely important issue worthy of scholarly examination and debate. However, here, because appellant was estopped from adopting a different argument on appeal than she adopted at trial, coupled with her inability to point out any factual or legal errors in the trial court's ruling, such examination is precluded *Loutts*, 298 Mich App at 25-26 and the trial court should be affirmed.

For these reasons, I respectfully dissent.

/s/ Stephen L. Borrello

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24
25

TABLE OF CONTENTS

WITNESSES: PLAINTIFF:

SARAH MARKIEWICZ 5

Direct Examination By Mr. Balian 26

Cross-Examination By Ms. Henderson

DAVID MARKIEWICZ 41

Direct Examination By Mr. Balian 60

Cross-Examination By Ms. Henderson

Exhibit No.	INDEX TO EXHIBITS Description	Page
PX 1	Document - 89 pages	4

1
2 Mount Clemens, Michigan
3 Wednesday, September 28,
4 2022

5 At about 10:23 a.m.

6 — — —
7 **REPORTER'S NOTE:** "Inaudible" or

8 "indiscernible" means a word or words were not heard
9 well enough to be able to discern a proper
10 interpretation either because of shuffling of
11 papers, or the speaker did not talk loud enough, or
12 was not picked up by the microphones.

13 (Court, Counsel and parties present.

14 THE CLERK: 2019-3236-DM, Markiewicz versus
15 Markiewicz.

16 MS. HENDERSON: Good morning, Judge.

17 MR. BALIAN: Good morning, Your Honor. For
18 the record Michael Balian on behalf of Sarah
19 Markiewicz.

20 MS. HENDERSON: Good morning, Judge. Lori
21 Henderson on behalf of Mr. Markiewicz.

22 THE COURT: All right. Go ahead.

23 MR. BALIAN: Your Honor, a couple things
24 that Ms. Henderson and I have spoken about before
25 the case. I have exhibits that we will stipulate to

1 for their admission. May I approach?

2 THE COURT: Yes.

3 MR. BALIAN: It's 1 exhibit of 89 pages just
4 marked as Plaintiff'S exhibit. Do you use letters
5 or numbers for plaintiff?

6 THE COURT: Doesn't matter.

7 MR. BALIAN: All right.

8 THE CLERK: Did you mark it already?

9 MR. BALIAN: No.

10 THE CLERK: You can just write it on there.
11 (Plaintiff's Exhibit 1, was admitted into evidence.)

12 MR. BALIAN: All right. Thank you. And
13 another issue, Your Honor, is I was going to have a
14 doctor here testifying, an in vitro fertilization
15 specialist testify in terms of the fact that women
16 who are, he's had women who are 60-years old carry,
17 with medicine and science be able to carry to term.
18 And Ms. Henderson has stipulated to that. We're not
19 going to enter the percentages or anything else in
20 terms of that issue, but as to the fact that there's
21 an issue with my client being post menopausal
22 whether she'd have the ability to carry a child and
23 the doctor will testify that in all likelihood she'd
24 have that ability.

25 MS. HENDERSON: Well, hold on. I stipulated

1 to the fact that somebody can have a child at 60,
2 but not --

3 MR. BALIAN: Well, that's fine.

4 MS. HENDERSON: -- we didn't do your
5 client's --

6 MR. BALIAN: No, that's fine. No, that's
7 fair. That's true. That's true, Judge. It's fair.

8 THE COURT: So it's possible?

9 MR. BALIAN: Right. Yes.

10 THE COURT: Okay. All right.

11 MR. BALIAN: And then now I'd like to call
12 my first witness which would be my client, Sarah
13 Markiewicz.

14 THE COURT: Sure. Up here, ma'am. Raise
15 your right hand, please. Do you solemnly swear or
16 affirm the testimony you're about to give will be
17 the truth, the whole truth, nothing but the truth so
18 help you God?

19 THE WITNESS: I do.

20 THE COURT: Okay. Go ahead, counsel.

21 SARAH MARKIEWICZ,
22 After having been first duly sworn to tell the truth
23 the whole truth and nothing but the truth, was
24 examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BALIAN:

2 Q. Ms. Markiewicz, would you please state your name for
3 the record?

4 A. Sarah Marie Markiewicz.

5 Q. And you're the plaintiff in this case?

6 A. Yes.

7 Q. And this matter that we're dealing with today deals
8 with a frozen embryo, correct?

9 A. Yes.

10 Q. And it's an issue that the court has decided before
11 or back for the court to make a new finding,
12 correct?

13 A. Yes.

14 Q. All right. I'm just going to hand you right now what
15 is Plaintiff's Exhibit A. Sarah, you can hold on to
16 that and when I have questions, I will refer to
17 that. How long was your marriage?

18 A. Ten years.

19 Q. And in terms of contributions to the marital estate
20 would have been equal between you and your husband
21 at the time financially?

22 A. I worked more part-time to take care of the kids and
23 he works full-time.

24 Q. And right now what -- are you working?

25 A. Yes.

1 Q. Where -- what do you do?

2 A. I'm self employed. I work as a physician assistant
3 and do hormone therapy.

4 Q. And in terms of finances with -- do you have any
5 difficulties with respect to day-to-day finances?

6 A. There's not that much extra, but I'm making it
7 through.

8 Q. You have how many children?

9 A. Four.

10 Q. And what are their ages?

11 A. 10, 9, and 6-and-a-half twins.

12 Q. And your first child how was she conceived?

13 A. Through IVF.

14 Q. And through IVF in what -- whose did you use your
15 eggs in that conception or not?

16 A. My sister's.

17 Q. So your sister, what's her name?

18 A. Anna, married name Bleu.

19 Q. And so you used your sister's egg and your husband's
20 sperm for that process, correct?

21 A. Yes.

22 Q. And your second child is how old?

23 A. Nine.

24 Q. And how was that child conceived?

25 A. Spontaneous.

1 Q. When you say spontaneous, what do you mean?

2 A. Natural. Through natural intercourse.

3 Q. So it happened naturally. It's your egg and your
4 husband's sperm?

5 A. Yes.

6 Q. And that wasn't done in vitro fertilization?

7 A. No medication, no IVF.

8 Q. And then you have two more children that were twins,
9 correct?

10 A. Yes.

11 Q. And they are how old?

12 A. Six-and-a-half.

13 Q. And how were they brought about?

14 A. Through IVF.

15 Q. And whose eggs were used for them?

16 A. My sister's.

17 Q. Same sister as for your first child?

18 A. Same and only.

19 Q. And your husband's sperm for those children as well?

20 A. Yes.

21 Q. And when you went through this process to become
22 pregnant through IVF, how many eggs were there that
23 you had an option of having implanted into you?

24 A. Three.

25 Q. And did you make a decision in terms of how many to

1 implant?

2 A. Yes.

3 Q. And you decided to do what?

4 A. Decided on two.

5 Q. Why did you decide on two at that point?

6 A. Because there's procedure called selective reduction
7 and I did not want to undergo selective reduction.

8 Q. And after you had --

9 THE COURT: Can you explain what that is if
10 you know?

11 THE WITNESS: It's where if for instance
12 they transferred three of the embryos into the
13 uterus and all three happen to take, that there's
14 selective reduction would mean that they would
15 inject potassium chloride into the heart so that
16 they would no longer have three and would have two.

17 THE COURT: So they'll do three at once you
18 mean.

19 BY MR. BALIAN:

20 Q. Could you do three at once?

21 A. I had the option of doing three at once.

22 THE COURT: That's what you're describing.
23 You could do three at once, hoping that one would
24 take, and then they'd resolve the other two and you
25 voted no on that.

1 THE WITNESS: I voted no and not resolving
2 of the other two. With your example would be the
3 selective reduction.

4 THE COURT: Can I ask --

5 BY MR. BALIAN:

6 Q. And since you're on that, would you please turn to
7 page 85 of exhibit A?

8 THE COURT: Before -- pause on that. How do
9 you come up with three eggs as opposed to one or
10 five or 10 or 20? How does that --

11 THE WITNESS: So around by the
12 (indiscernible) stimulate with medication in order
13 to produce eggs, a good amount would be 15 but it
14 could be one but you're hoping for basically a
15 hierarchy. So you start with so many, so many of
16 them looked good, so many of them take to
17 fertilization, so many of them continue until you
18 end up with less and less, so at the end we had the
19 opportunity to have three looked at to be placed.

20 THE COURT: All right. And is -- I haven't
21 been in biology in a while, (inaudible. The concept
22 is the egg which is seemed to be being promising is
23 fertilized outside of the wound.

24 THE WITNESS: Mm-hmm.

25 THE COURT: Preserved. And then if we

1 agree implant it and it could be in you, it could be
2 in a surrogate but it's implanted in a woman and now
3 we've gotten past a lot of what could be trouble in
4 the process.

5 THE WITNESS: There's multiple hurdles.
6 But, yeah, they -- after further --

7 THE COURT: We've heard some of them but
8 we've jumped the line, it could still go wrong but
9 we've assume with a lot women they can never even
10 get that far on their own. They miscarry or don't
11 get pregnant, correct?

12 THE WITNESS: Correct.

13 THE COURT: All right. Go ahead.

14 BY MR. BALIAN:

15 Q. All right. Would you please turn to page 85 of the
16 exhibit.

17 A. Okay.

18 Q. And that's titles Multiple Pregnancy Risks, correct?

19 A. Yes.

20 Q. And that is giving you options in terms of what to
21 do if you have a multiple pregnancy, correct?

22 A. Yes.

23 Q. And it was both your decision and signed by you and
24 that's your husband's signature, correct, on the
25 bottom there?

1 A. At the time, yes.

2 Q. And you both initialed what you want to have done,
3 correct?

4 A. Yes.

5 Q. So you had a discussion with your husband, you made
6 a determination that if you have multiple
7 pregnancies regardless of the risk you don't want,
8 you do not want to have selective reduction of them?

9 MS. HENDERSON: Objection. This is during
10 the marriage and it's irrelevant to what they're
11 doing now that they're divorced.

12 MR. BALIAN: Your Honor, I think it's
13 extremely relevant. It goes to the intent of the --
14 a lot of this all goes to the intent of the parties
15 during the course of the marriage which goes to how
16 the Court's going to make a decision in terms of
17 awarding this property; they're going to have to
18 have look at the special nature of the embryo as
19 well as what the Court of Appeals said.

20 MS. HENDERSON: And one other thing, when
21 you asked the question I believe you stated multiple
22 pregnancies. You meant one pregnancy with multiple
23 embryos. I don't, this had nothing to do --

24 MR. BALIAN: Right. Right, no. You're -- I
25 apologize.

1 MS. HENDERSON: You said multiple
2 pregnancies.

3 MR. BALIAN: I was just trying to read just
4 the line, Your Honor.

5 THE COURT: All right. I'll take the
6 testimony, but we'll -- it maybe trumped by other
7 factors when all said and done, but I'll take the
8 testimony.

9 MR. BALIAN: That's fair, Your Honor.

10 THE COURT: Go on.

11 BY MR. BALIAN:

12 Q. And then if you turn to page 84, and that's where
13 authorization for disposition on fertilized oocytes
14 and poor quality embryos, correct?

15 A. Yes.

16 Q. And that's signed by again by both you and your
17 husband at the time, correct?

18 A. Yes.

19 Q. And what was your decision, on that form it
20 indicates that your decision is if the embryos are
21 poor, become nonviable, then you want them disposed
22 of, correct?

23 A. Can I -- I'm sorry. I was listening and --

24 Q. Sure?

25 A. Okay. I'm not clear, I'm sorry. Can you ask the

1 same question.

2 Q. Yeah. You agree was that if the embryos are maybe
3 disposed of and if they fall under the conditions of
4 1, 2, and 3, right?

5 A. Correct.

6 Q. And the embryo that of the three they have the
7 opportunity to have them implanted into you, two you
8 did, and one you froze, right?

9 A. Correct.

10 Q. And that embryo would not fall under this category
11 to be disposed of, correct? Because it wasn't poor
12 quality or it's (inaudible) IVF is (inaudible) it's
13 viable, to be a viable embryo?

14 A. Correct, it's viable.

15 MS. HENDERSON: I didn't hear, I'm sorry.

16 MR. BALIAN: She said correct, it's viable.

17 MS. HENDERSON: It was?

18 MR. BALIAN: Yes.

19 MS. HENDERSON: Okay.

20 BY MR. BALIAN:

21 Q. The -- I'm going to direct your attention to page
22 60.

23 A. I'm sorry, 60.

24 Q. 60, yes.

25 A. Okay.

1 Q. You have that in front of you?

2 A. Mm-hmm.

3 Q. And that deals with embryo cryopreservation,
4 correct?

5 A. Yes.

6 Q. And the Court of Appeals judge said that if there's
7 a contract in this situation the contract would
8 prevail, and if not then you have to do a balancing
9 approach on this issue. We do have a contract here
10 and where you made decisions, you and your husband,
11 at the time made decisions what to do with embryos
12 that are preserved, correct?

13 A. Yes.

14 Q. And you know it says in the event of one partner is
15 a first option who the frozen embryo go to and what
16 was your selection?

17 A. In the events it end, in the events of the death of
18 one partner the frozen embryos would be transferred
19 to or -- sorry. Or surviving partner as a sole
20 owner.

21 Q. Right. And there are other options to choose from on
22 that as well, right. Such as discard the embryo,
23 donate the embryo for training or donate it for --
24 to the embryo center, correct?

25 A. Yes.

1 Q. And then on the next page if there's an option to
2 choose if both of you are deceased what to do with
3 the embryo, correct?

4 A. Yes.

5 Q. And your decision is to, to do what with it?

6 A. It was to be given to my sister.

7 Q. All right. And the last option is the event of
8 divorce, what do you want to have done with the
9 embryo, what was your decision at the time?

10 A. The decision that was the most (indiscernible) was
11 on through a court order.

12 Q. So you chose determine by judgment of the court?

13 A. Yes.

14 Q. And you had the opportunity you could have just
15 chose to discard it by the program, correct?

16 A. Correct.

17 Q. Donate the embryo for training?

18 A. Correct.

19 Q. And donate the embryo to an embryo donation center?

20 A. Correct.

21 Q. All right. And your decision at that time was to
22 make the decision to leave it up to the court to
23 determine who's awarded the embryo?

24 A. Correct.

25 THE COURT: The language you used did you

1 say the decision or option that was most opportune?

2 THE WITNESS: If you had to choose one of
3 them, that would be that would be the one defaulted
4 to. The other ones we would not have agreed to
5 dispose or to give rid it or so it default, that was
6 the other option.

7 BY MR. BALIAN:

8 Q. And there's no option on this agreement to award it
9 to you or to award it to your husband at the time
10 correct?

11 A. Correct.

12 Q. And based upon, and based upon what you're saying
13 here today that based upon the options you decided
14 that was the best decision to make?

15 A. Correct.

16 Q. The -- starting on page seven through page 59, I
17 don't need you to go through that, but there's a
18 whole litany of cost associated with the in vitro
19 fertilization, correct?

20 A. Yes.

21 Q. And what was the cost for this in vitro process?

22 A. I know usually they quote about 15,000. It's
23 unusually quite high.

24 Q. And in terms of the an in vitro process today would
25 it be the same cost or higher?

1 THE WITNESS: I'm assuming that it would be
2 the same cost --

3 MS. HENDERSON: I'm going to object to that.
4 Since she doesn't have a knowledge of what it cost.
5 She said she's assuming.

6 THE COURT: Well, we'll say we know at one
7 time it was at least 15 grand.

8 MR. BALIAN: Thank you, Your Honor.

9 THE COURT: 15,000 to go forward with the
10 IVF.

11 THE WITNESS: For an IVF cycle.

12 BY MR. BALIAN:

13 Q. And is there another cost associated with having the
14 embryo implanted in you and carrying it to term?

15 A. That's -- it's usually a package so you start and
16 then the transfer of the embryo would be included in
17 that package that's quoted to you.

18 Q. Would this embryo that's remaining still be included
19 in that package, or would it be a new process?

20 A. A hundred percent I'm not sure but the only way that
21 I would be able to confirm any answers is that I
22 know there would be some medication that would not
23 fall under that category, but I'm not a hundred
24 percent sure.

25 Q. Now --

1 A. It would be a portion of that. It wouldn't be the
2 full amount.

3 Q. You've indicated this embryo is your sister's,
4 correct?

5 A. Yes.

6 Q. And genetically it's the same embryo as the other,
7 your twins?

8 A. Yes.

9 Q. And would you or do you have the ability at this
10 time to have any of your eggs harvested to use for
11 any type of IVF?

12 A. No.

13 Q. Would you be able to use your sister's eggs now for
14 this process as well?

15 A. No. Usually they recommend 25 and under.

16 Q. When you had to make a decision about implanting 2
17 or 3 and you decided on two, what was your
18 understanding would happen to the third embryo?

19 A. Just to make sure I heard you correctly, if I chose
20 to have three transferred back --

21 Q. No. You made a decision as to two and there was one
22 embryo left of?

23 A. Mm-hmm.

24 Q. Yes?

25 A. Yes.

1 Q. What was your decision as to that embryo?

2 A. To freeze it.

3 Q. And what is your, what's your feeling about that
4 embryo?

5 A. That there was an option of placing that back in. I
6 did not want to choose, the selective reduction.
7 There, all three of them were together. We chose two
8 and those two did take and that third one was left
9 and therefore I did not want to have anything done
10 to it and therefore we decided to freeze it.

11 Q. Do you look at that embryo, how do you look at that
12 embryo then? What's your feelings toward it?

13 A. I feel that that embryo was one that was within the
14 same grouping as the other two that we chose to put
15 back and therefore is still looked at, like a
16 sibling to be to the other two because all three
17 fertilized egg and embryos for this at the same time
18 and you just chose those two instead of three to be
19 placed back. So they all started from the same point
20 and that's why I felt that I didn't want to have
21 anything happen to that or dispose, you know,
22 disposed of because they all started at the same
23 point and now there's two live children that are
24 living healthy from that same process and there's a
25 third left.

1 Q. And if you were to have another child through IVF,
2 genetically how close would it be to you?

3 A. I would not have the same option of having a child
4 that would be as closest to what the twins would be.

5 Q. Because of your sister's egg that was used?

6 A. Because of her eggs (inaudible).

7 Q. You're asking the court here to award you the
8 embryo, correct?

9 A. Yes.

10 Q. Why?

11 A. For all of the same reasons s that I had -- that's
12 we've -- for the same reasons that we had gone
13 through. At that time I would not be able to make
14 the decision to have these five cells that
15 eventually with the children that we have, have
16 these healthy children and decide that one, just
17 because that one wasn't picked that that would be
18 the one that you chose to destroy. It's, it's a
19 triplet to me.

20 Q. If you're awarded this embryo, would you have it
21 implanted in you?

22 A. Yes.

23 Q. Why did you undergo IVF in the first place?

24 A. Tried multiple times to have children. We went
25 through a couple of -- one full round. I think there

1 was a partial round here. We went out to Las Vegas,
2 Nevada, and I took time off from work and we did a
3 couple of rounds out there and then finally took my
4 sister out there in which she had to go through the
5 same process for it to be, you know, in sync and
6 that was with the first child.

7 Q. So it's the first child that you had was done
8 through Las Vegas and your sister donated eggs,
9 correct?

10 A. Yes.

11 Q. And there were no eggs leftover from that process
12 after it was implanted into you in that case,
13 correct?

14 A. There may have been one but it did, nothing came of
15 it because it wasn't of good quality.

16 Q. Right. And your next child was born naturally?

17 A. Yes.

18 Q. And then you made the decision, your husband talked
19 about having more children?

20 A. Yes.

21 Q. And you made then the decision again to have IVF?

22 A. Yes.

23 Q. Why IVF instead of trying for natural?

24 A. Because actually natural, natural didn't work at
25 that point and then there was also a series of other

1 procedures including intrauterine insemination that
2 were also not working and therefore we went back to
3 the IVF with my sister as a donor.

4 Q. And the process at this time which is your second
5 round of IVF, correct? You have the first one in
6 Vegas and now you have the one here in Michigan?

7 A. Yes.

8 Q. Is to have more children?

9 A. Yes.

10 Q. And you did in fact have more children, correct?

11 A. Yes.

12 Q. And there was one embryo leftover?

13 A. Mm-hmm.

14 Q. Yes?

15 A. Yes.

16 Q. And that's what you want to have --

17 MS. HENDERSON: Objection, Judge. This is
18 repetitive. She said yes she wants to have implanted
19 and have another child with this one embryo. We've
20 heard it three times.

21 MR. BALIAN: I don't know if I've asked
22 three times, Judge, but I just want it to be clear
23 about what her intentions are with respect to the
24 embryo for the court to be able to make a decision.

25 THE COURT: To use it. I have a question.

1 If you two were still married and you wanted to use
2 the embryo and he didn't, could you do that?

3 THE WITNESS: I don't know. I don't know how
4 that works honestly.

5 THE COURT: That might be an exhibit.

6 MS. HENDERSON: No, it's not.

7 THE COURT: Is there a contingency for that
8 in the exhibit?

9 THE WITNESS: I think it just said if in the
10 case of a death of a partner I think it is what the
11 paperwork said in regards to the contract.

12 THE COURT: Is it your understanding or
13 assumption that to go forward assuming you're still
14 married, you both have to be on board?

15 THE WITNESS: Yes.

16 THE COURT: Okay. Otherwise, they would not
17 assist you if both were not on board? If you don't
18 know, that's fine.

19 THE WITNESS: I've never, I've never been
20 presented so I can't hundred percent --

21 THE COURT: Okay. That's fine. And how
22 old are you, ma'am?

23 THE WITNESS: I'm 44.

24 THE COURT: And you're a PA?

25 THE WITNESS: Yeah.

1 THE COURT: Physician assistant?

2 THE WITNESS: Yeah.

3 THE COURT: Go ahead.

4 BY MR. BALIAN:

5 Q. Ms. Markiewicz, in the Court of Appeals decisions
6 and I think what the judge said in terms of his
7 reasoning it talks about Mr. Markiewicz's impact it
8 would have psychologically on him if he has another
9 child in this world that he has no contact or
10 communication or ability to see, right?

11 A. Yes.

12 Q. What type of psychological impact would it have on
13 you if you couldn't have this child?

14 MS. HENDERSON: Objection. I don't know if
15 she's qualified to talk about her psychological
16 impact.

17 BY MR. BALIAN:

18 Q. Well, what kind of emotional impact would it have on
19 you?

20 THE COURT: Go ahead.

21 THE WITNESS: Without speaking
22 (indiscernible) without any fear of any labeling, I
23 mean, going through the process can send people into
24 depression and therefore going through all of that
25 and then not being able to finish it would have the

1 same effect it would, it would be very disturbing
2 for me for a very long time.

3 BY MR. BALIAN:

4 Q. So it could have a profound impact on you?

5 A. Yeah.

6 Q. Have you gone to a doctor recently?

7 A. Yes.

8 Q. Gynecologist?

9 A. Yes.

10 Q. Have you had a check up?

11 A. Yes.

12 Q. And were you told that anything was wrong with you?

13 A. Everything was fine. Everything was normal.

14 Q. If you were to have this child would you expect or
15 request any financial support from Mr. Markiewicz?

16 A. No.

17 Q. Would you be in agreement to waive any and all
18 expenses and financial liability.

19 A. Yes.

20 MR. BALIAN: I don't have any other
21 questions at this time, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. HENDERSON:

24 Q. Good morning.

25 A. Good morning.

1 Q. Okay. Mrs. Markiewicz, you didn't change your name.
2 Did you change your name?

3 A. No.

4 Q. Okay. I wasn't sure. I didn't want to address you
5 improperly.

6 A. No, I did not.

7 Q. Okay. How old are you right now?

8 A. 44.

9 Q. 44. Have you been through menopause?

10 A. Yes.

11 Q. When? How long ago?

12 A. Officially 2018.

13 Q. So while you were still married?

14 A. Yes.

15 Q. Okay. And when you got -- you filed for divorce in
16 September of 2009?

17 A. And at that time your youngest children were how
18 old? I'm sorry, you were you married in September
19 of 2009; you filed in 2019. How old were your
20 children when you filed for divorce, the youngest?

21 Three-and-a-half, so 2019 to 2022
22 approximately.

23 Q. Did they turn four during the process?

24 A. Their birthday's in January.

25 Q. Okay. When you were married to Mr. Markiewicz, how

1 much planning did you do to have that last embryo
2 planted, implanted?

3 A. There was a lot of planning.

4 Q. Pardon me?

5 A. There's a lot of planning and coordination into it.

6 Q. No. For the last embryo, the one that's still
7 frozen, did you discuss having that implanted ever?

8 A. Are you saying at the --

9 Q. After you had the twins?

10 A. Briefly.

11 Q. Did you have plans, did you make plans to have that
12 implanted?

13 A. The plans would be to have it to use and that's why
14 we froze it.

15 Q. Okay. And if you didn't use it, did you plan on
16 donating it if eventually you didn't use it?

17 A. Well, to answer your question, the plan would be to
18 use it because otherwise we would not have frozen
19 it.

20 Q. Okay. Did you decide to have it frozen when you
21 found out you were pregnant with the twins? When
22 did you decide to have that third embryo frozen?

23 A. We had to choose by day six so that would have been
24 within the procedures of having the twins
25 (inaudible).

1 Q. So could that be in case the twins didn't take or
2 the birth didn't occur that you would have it there
3 in case those two embryos didn't turn into children?

4 A. It could be.

5 Q. Okay. What's your income right now without child
6 support?

7 A. Well, I was making \$45 an hour, so approximately --

8 Q. Yearly, what did you make last year?

9 A. Well, last year it was partial so it was close to
10 40.

11 Q. 40,000?

12 A. Yeah.

13 Q. Okay.

14 THE COURT: You're working part-time,
15 ma'am?

16 THE WITNESS: I was working part-time and
17 gradually increasing to full time.

18 BY MS. HENDERSON:

19 Q. Okay --

20 THE COURT: Are you full time now?

21 THE WITNESS: No.

22 THE COURT: If you were full time, what
23 would you come in at?

24 THE WITNESS: Between 90 and 110.

25 THE COURT: Okay. And what kind of work do

1 you do as a PA?

2 THE WITNESS: I'm working family practice
3 and hormone therapy.

4 THE COURT: Okay.

5 BY MS. HENDERSON:

6 Q. And you're a physician assistant, correct?

7 A. Yes.

8 Q. And how many hours a week do you work right now as
9 part-time?

10 A. It fluctuates.

11 Q. About average?

12 A. I was offered another job and it was -- so it
13 fluctuates.

14 Q. Okay. Is it 30? Is it 20?

15 A. It's more contingent at this point.

16 Q. What does contingent mean? Two days a week? Three?

17 A. I'm working between a couple of physicians and
18 working with them.

19 Q. Okay. So you don't know how days you're working
20 every week?

21 A. Some weeks it isn't any and then some weeks we're
22 working on projects, so...

23 Q. If you're working on a project, is it 40 hours?

24 A. No.

25 Q. It's how many hours?

1 A. A couple, a few hours right now.

2 Q. Okay. And that's the going to -- the way you're
3 working right now is going to have you make about
4 \$40,000?

5 A. No. It was, it's supposed to be increasing from
6 there. Technically I'm contract.

7 Q. Okay.

8 A. That's why it's harder to --

9 Q. Technically you're contracted at 45 hours per week.
10 I mean at \$45 per hour?

11 A. \$45, yeah.

12 Q. How many different doctors do you work for?

13 A. I'm offered one job right now and they just
14 retracted and then I'm working in conjunction on
15 another project and then also working together with
16 a pharmacy to create another project.

17 Q. When that's all said and done were those total
18 40 hours eventually?

19 A. 40, plus, yeah.

20 Q. When will that start?

21 A. Hopefully within the next couple months.

22 Q. Okay.

23 A. So it's through a different --

24 Q. Different employers?

25 A. Different, yeah. It's contract, so ...

1 Q. Okay. And you stated earlier that you have the four
2 children?

3 A. Mm-hmm.

4 Q. And what kind of, tell me what your routine is with
5 taking care of them. You have a majority of the
6 parenting time, 203 I think, 201 to 203 overnights.
7 What do you do when you're working with those
8 children?

9 A. Well, I've always geared my hours around trying to
10 work while they're in school or, you know, on my own
11 after they're in bed or while they're with
12 (indiscernible).

13 Q. So will you be able to do that once you start aiming
14 for this 40 hours a week?

15 A. Yes.

16 Q. Okay. So do you own a home?

17 A. Yes.

18 Q. Okay. Is it mortgaged?

19 A. Yes.

20 Q. Okay. And you receive support from your husband or
21 ex-husband?

22 A. Child support.

23 Q. Child support. And is he paying above the
24 guidelines?

25 A. I'm not a hundred percent sure if I can -- I don't

1 know. Can you --

2 Q. Do you remember, can you remember at all that he's
3 paying you a couple hundred dollars, 300 and some
4 dollars more than the monthly amount so you can make
5 your bills?

6 A. That has not happened post --

7 Q. No. There was an order, there was a recommendation
8 and he agreed to pay, to deviate and pay more it,
9 and take judicial notice of this, pay more than the
10 recommended amount so that you could make your
11 bills. Do you remember that?

12 A. When you say to make my bills that --

13 Q. To pay your expenses and exist?

14 A. From my understanding it was to help out with like
15 to help a little bit with schooling because I had
16 the majority of the cost for schooling so it was
17 when you say to pay my bills I don't expect him to
18 pay like utilities --

19 Q. No, no. I just meant that he was paying more than
20 the recommended amount of child support so that you
21 could be able to pay your bills and put the kids
22 wherever you wanted for school. You did not want the
23 kids in public school, correct?

24 A. Yes.

25 Q. Okay. What kind of credit card balances do you have

1 right now?

2 A. I have one credit card.

3 Q. What do you owe on it?

4 A. Around 15.

5 Q. Thousand?

6 A. Thousand. Yes.

7 Q. Okay. Do you have outstanding medical bills?

8 A. Outstanding, no, I don't think so. There's, I know
9 that there's like a few that come in from labs and,
10 you know, things like that but there's nothing
11 significant. A couple hundred I'm assuming in labs.
12 I haven't received a bill from my recent labs a
13 month ago so there's some lab fees --

14 Q. Do you have a significant other right now?

15 A. No.

16 Q. No one lives with you? No males?

17 A. No males, no.

18 Q. Are you dating?

19 A. No.

20 Q. Okay. So do you think it's fair for this embryo to
21 be implanted and then a child born that doesn't have
22 a father?

23 A. I think that any child that has a good household and
24 a good home that is loving and has people around
25 them that take care of them, that is the best

1 situation for them. It doesn't matter if it's a male
2 or if it's a female, or if it's two females or two
3 males or a married couple. The fact that they have
4 a home that's safe for them is what I feel is
5 important.

6 Q. Okay. Is it possible, you know more about IVF than I
7 do, is it possible for you to have other people
8 donate eggs? Could you get a donor egg from
9 someone?

10 A. Yes.

11 Q. And someone else's sperm other than your
12 ex-husband's; is that possible?

13 A. Yes.

14 Q. Okay. And Mr. -- when your attorney asked you some
15 questions about the contracts you signed and
16 everything that was subpoenaed from your Michigan
17 Center for Fertility. And when he did that, he
18 addressed several signatures that you and your
19 husband both had to give in order for certain things
20 to happen. One was the selective, what you call it,
21 selective reduction. That's after the implant,
22 correct?

23 A. After the embryos are transferred and implant, then
24 that would be a procedure that would be an option.

25 Q. Okay. That was an option. And you both had to sign

1 because you didn't agree to that?

2 A. We both had to sign.

3 Q. And you both had to sign that the Judgment of
4 Divorce would decide or other court order would
5 decide what happens to your embryo?

6 A. Yes.

7 Q. And you both had to decide that it -- if you both
8 died at the same time, or whatever, it would go to
9 your sister?

10 A. Yes.

11 Q. And that if one of you lived while you were married,
12 one of you would have the embryo to do with as you
13 please. You both signed that?

14 A. Yes.

15 Q. So don't you think you both would have to sign if
16 you wanted to have this embryo implanted now after
17 six years or seven years? Your children are
18 six-and-a-half so a little over seven years?

19 MR. BALIAN: Your Honor, I'm going to
20 object. It calls for facts that are not in evidence.
21 It's speculative in nature as well.

22 MS. HENDERSON: It's not. It's not
23 speculative. We've been asking about this stuff all
24 day. I mean, if we had to sign for everything else
25 why would we sign for this.

1 THE COURT: I'll allow it to the extent she
2 knows.

3 MS. HENDERSON: I can't hear you, I'm sorry.

4 THE COURT: To the extent she knows.

5 MS. HENDERSON: Okay.

6 THE COURT: I'll allow it.

7 MS. HENDERSON: To the extent she knows.

8 BY MS. HENDERSON:

9 Q. Do you think you both would have to sign in order
10 for this embryo to be used?

11 A. To answer that question, I feel that that's why
12 we're here now.

13 Q. Okay.

14 THE COURT: The kids go to private school?

15 THE WITNESS: They do.

16 THE COURT: Where at?

17 THE WITNESS: Birch Grove Montessori.

18 THE COURT: What's the first name?

19 THE WITNESS: Birch Grove. Birch like the
20 tree.

21 THE COURT: Where's that?

22 THE WITNESS: North Rochester Road.

23 THE COURT: And you live what city?

24 THE WITNESS: Rochester Hills.

25 THE COURT: Okay. Go ahead.

1 BY MS. HENDERSON:

2 Q. Okay. Your twins or not identical. They're
3 fraternal, correct?

4 A. Yes.

5 Q. So this other embryo would be a completely different
6 embryo. You have no idea if it's a boy or girl or
7 do you?

8 A. We do not at this time know if it's a boy or a girl.

9 Q. Okay. And isn't it true that you chose the best two
10 embryos to have implanted when you were having the
11 twins ?

12 A. The physicians did, yes.

13 Q. Did they pick the healthiest?

14 A. Mm-hmm.

15 Q. Okay.

16 A. Yes.

17 Q. So what condition was this third embryo in if it
18 wasn't one of the best two?

19 A. Good.

20 Q. Good?

21 A. Yes.

22 Q. Okay. And the other ones were an excellent?

23 A. Not a hundred percent sure if they were grade A or
24 grade B or a grade A/B.

25 Q. So what grade is this embryo?

1 A. B/C.

2 Q. Okay. So C is the lowest?

3 A. I do not know a hundred percent for sure.

4 Q. Okay.

5 A. I think it does go below that.

6 Q. Okay.

7 A. But I'm not a hundred percent sure.

8 Q. Okay. So if the judge decided to award the marital
9 property of the embryo to you, you would have it
10 implanted immediately?

11 A. I don't like using the word "property," but to fully
12 answer your question I would -- you said immediately
13 --

14 Q. It is property. The appeals court said it was
15 marital property. It's marital property according to
16 the appeals court. So if it's awarded to you, you'd
17 have it implanted immediately?

18 A. If it was awarded to me, I would have it implanted
19 soon but not immediately.

20 Q. Okay. And where would you get the money for that?

21 A. The reason why it wouldn't be immediately is because
22 I'd want to be fully full time.

23 Q. Okay.

24 A. I want to make sure that that was established first.

25 Q. Do you think you have your hands full with four kids

1 already?

2 A. Yeah, I do. Whether you have one child if you feel
3 like you don't have anytime, or whether you have two
4 children you don't have anytime, whether you have
5 three, you don't have anytime.

6 MS. HENDERSON: One second, Judge.

7 THE COURT: Yup. Where did you go to
8 school to be a PA?

9 THE WITNESS: Physician Assistant
10 (inaudible) where I went to Nova Southeastern
11 University in Florida.

12 THE COURT: What's the name of it?

13 THE WITNESS: Nova Southeastern University.
14 And my undergrad was Michigan State.

15 MS. HENDERSON: I have nothing further,
16 Judge.

17 MR. BALIAN: Your Honor, I don't have
18 anymore questions of my client.

19 THE COURT: You can step down.
20 (At 11:08 a.m., witness was excused).

21 MR. BALIAN: At this time, I'd like to call
22 David Markiewicz to the stand.

23 THE COURT: Raise your right hand, please.

24 THE WITNESS: Yes sir.

25 THE COURT: Do you solemnly swear or affirm

1 the testimony you're about to give will be the
2 truth, the whole truth, nothing but the truth so
3 help you God?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: All right. Have a seat.

6 DAVID MARKIEWICZ,
7 After having been first duly sworn to tell the truth
8 the whole truth and nothing but the truth, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BALIAN:

12 Q. Would you please state your name for the record?

13 THE COURT: One second. Be right back.

14 (At 11:08 a.m., court recessed).

15 (At 11:29 a.m., back on the record).

16 THE COURT: Sir, you've been sworn. Just
17 take a seat. Counsel, when you're ready.

18 BY MR. BALIAN:

19 Q. Mr. Markiewicz, would you please state your name for
20 the record?

21 A. David Randall Markiewicz.

22 Q. And you're the defendant in this case, correct?

23 A. Yes.

24 Q. And you've had a divorce from your wife Sarah and
25 we're here on the issue in terms of a frozen embryo,

1 right?

2 A. Yes.

3 Q. While you were married you and your wife decided to
4 have in vitro, correct?

5 A. Yes.

6 Q. And you decide that and you did that process with
7 your first child, your daughter, correct?

8 A. Yes. Yes. After years of being unsuccessful
9 naturally, yes we went to IVF.

10 Q. All right. And you were making a conscience decision
11 to have a family at that point, correct?

12 A. Yes.

13 Q. And that worked?

14 A. After multiple attempts and lots and lots of money,
15 yes we finally were able to have a family.

16 Q. And the, your second child was natural?

17 A. Yes.

18 Q. So it was the first child as your ex-wife indicated
19 was from your sister-in-law, the egg?

20 A. Yes.

21 Q. And the sperm was yours?

22 A. Yes.

23 Q. And then the twins, the eggs were from your
24 sister-in-law again?

25 A. Yes, a separate donation from her sister. We had

1 sister eggs retrieved and there were three embryos
2 that were created from that and the twins were the
3 two best possible best quality embryos that were out
4 of the three.

5 Q. And, Mr. Markiewicz, what do you do for a living?

6 A. I'm a certified registered nurse anesthetist.

7 Q. And who do you work for?

8 A. I work for a company called GLPS. We are contracted
9 out of McLaren Macomb right down the street here so
10 we are, we provide the anesthesia services for
11 McLaren Macomb.

12 Q. Mrs. Markiewicz testified that the cost for this in
13 vitro, the last round with the twins, was right
14 around \$15,000; is that correct?

15 A. I would -- somewhere around there I would agree.

16 Q. And would you agree that today it would be even more
17 expensive to do in vitro?

18 A. Possibly. I actually work for that clinic for some
19 time back when we went through that I was doing
20 anesthesia services for them, so I believe we were
21 discounted for around there a little bit, probably
22 to be helpful to me from us for (indiscernible) that
23 it should be around the same, 15.

24 Q. And when the twins were, when your twins were
25 implanted, there were three embryos?

1 A. Yes.

2 Q. Not -- (inaudible) three correct?

3 A. Correct.

4 Q. And there was a decision made to implant two of
5 those embryos?

6 A. Correct.

7 Q. And you were part of that process. Did you and
8 Mrs. Markiewicz decide together that you were just
9 going to implant two?

10 A. Yes.

11 Q. And at that point what was your option as to the
12 three embryo?

13 A. Like Sarah said the, there was you could either, I
14 think you could either dispose of it, you could
15 donate to science, or you could freeze it I believe
16 were the options.

17 Q. And you made a decision to freeze it, right?

18 A. Correct. Yes.

19 Q. And at that point in time you didn't want to destroy
20 it?

21 A. Correct.

22 Q. And then I'd like to direct your attention to page
23 60 of exhibit A.

24 A. Okay. Okay.

25 Q. And that's the Embryo Cryopreservation, correct?

1 A. Yes, the consent form for frozen embryo transfer it
2 says.

3 Q. All right. So this is dealing with the frozen embryo
4 that we're here today on, correct?

5 A. Yes, I believe so. I'm just trying to scan it
6 quickly, but I believe so, yes.

7 Q. And the -- your wife, your ex-wife testified that if
8 one, in the event of the death of one partner that
9 the frozen embryo would go to the other. Is that a
10 fair statement?

11 A. Yes.

12 Q. And that if both of you died that would then go to
13 Anna
14 Blue, right?

15 A. Yes, Anna Blue.

16 Q. And then if there's a divorce you made a
17 determination that the Court would make a
18 determination what should be done with the embryo?

19 A. Yeah, I did sign that. I honestly never thought
20 divorce was a possibility. I mean, look again now I
21 should have been more considerate of that situation
22 but we've known each other since high school so I
23 really didn't think that there, I never really
24 thought we'd be here.

25 THE COURT: Sir, were there options to

1 choose from under divorce?

2 THE WITNESS: Yes, they were listed that was
3 on the sheet.

4 THE COURT: What are they?

5 MR. BALIAN: Your Honor, it says discard --
6 it's in the contract. It says in event of divorce
7 what should be done with --

8 THE COURT: What page?

9 MR. BALIAN: -- frozen embryo. The first
10 option is discharged by the program.

11 THE COURT: What page?

12 MS. HENDERSON: Page 61.

13 MR. BALIAN: 62, Your Honor.

14 MS. HENDERSON: I'm sorry. You're right.
15 Number four.

16 THE COURT: In the event of a divorce --

17 THE WITNESS: Yes.

18 THE COURT: -- discarded by the program,
19 donate embryos for training to be determined by the
20 applicable judgment of divorce or the court order,
21 donate to an embryo donation center. Okay.

22 BY MR. BALIAN:

23 Q. So it was your decision not to destroy the embryo,
24 correct?

25 A. It was my decision at the time of us being married

1 and creating a family together, yes.

2 Q. And as a result of preserving it, freezing this
3 embryo, there's a certain cost to that as well?

4 A. Yes.

5 Q. And do you know what that cost is to preserve it?

6 A. I believe it's increased a little bit over the
7 years. I believe it costs \$600 a year. It may be up
8 as high now as \$700 for the full year.

9 Q. Who pays that cost?

10 A. While we were married I paid it.

11 Q. All right.

12 A. Since we've divorced I have not paid it.

13 Q. So do you know if Mrs. Markiewicz has been paying
14 that?

15 A. I hate to use the word "assume," but I assume she
16 has been since I have not.

17 Q. And if you look at page 66.

18 A. Okay.

19 Q. It deals with semen that you had stored at the
20 facility that was preserved, correct?

21 A. (Indiscernible) I think this is, I think it says to
22 thaw it and dispose.

23 Q. Right. So you made a request that whatever semen
24 samples you had there for the in vitro process you
25 made a request to have that destroyed?

1 A. Yes.

2 Q. And that was just your decision, right?

3 A. Yes.

4 Q. And then on page 84.

5 A. Okay.

6 Q. It was for the authorization for disposition of poor
7 quality embryos, correct?

8 A. Poor quality --

9 Q. I'd say the other words but I don't think I'm saying
10 them correctly?

11 A. It is (indiscernible). Yes, yes, I'm familiar with
12 this.

13 Q. All right. So you and Mrs. Markiewicz had signed
14 this document which said that if we have any eggs
15 that are leftover that are not viable or of poor
16 quality or I guess unfertilized that they should be
17 destroyed?

18 A. Yes.

19 Q. But you wanted to preserve the embryo that was
20 viable?

21 A. Yes. Like what Mrs. Markiewicz said you had to
22 decide I think by the sixth day after implantation
23 to decide whether or not you were going to keep the
24 embryo or not or freeze it, but all the options that
25 were there. So yes we decided to keep the frozen

1 one.

2 Q. All right. There were certain things I guess the
3 Court of Appeals wanted us to ask about in terms of
4 different factors to consider here today.

5 A. Okay.

6 Q. And, you know, one of them is the duration of the
7 marriage which, you know, if I'm looking at
8 something being equal in terms of duration between
9 you and my client, would you say that that category
10 would be equal?

11 A. I'm sorry, I don't --

12 Q. It should not be a factor to consider in who to
13 award the embryo to?

14 A. I think -- I guess --

15 THE COURT: What shouldn't be?

16 MR. BALIAN: The duration of the marriage.

17 THE WITNESS: The duration of the marriage
18 be a factor as to --

19 MS. MARKIEWICZ: Right. Should the court
20 consider the duration of marriage to be a factor
21 into whether to award the embryo to you or to my
22 client?

23 THE WITNESS: I don't, I don't see --

24 MS. HENDERSON: Objection. That is up to
25 the judge.

1 MR. BALIAN: You think it's a factor. I
2 think he can answer it, Your Honor.

3 MS. HENDERSON: Well, if he understands it.

4 MR. BALIAN: I don't think it's an issue and
5 I want to know whether he thinks it's an issue if
6 the court should consider. I don't think it's a
7 factor to consider.

8 THE COURT: I'm not sure. I mean, if the
9 were married 20 years is that different than if they
10 were married five years on this issue. I'm trying to
11 understand what is probative about like the
12 marriage. This is why they're up there and I'm just
13 down here.

14 MS. HENDERSON: I will stipulate that it
15 doesn't matter. We can stipulate that it doesn't
16 matter.

17 THE WITNESS: I --

18 MR. BALIAN: I'm fine with that, your Honor.

19 THE WITNESS: I don't --

20 THE COURT: Did you ask it in terms like
21 would either have an advantage?

22 MR. BALIAN: Right.

23 THE COURT: Almost like a factor?

24 MR. BALIAN: Yes.

25 MS. HENDERSON: It is a factor.

1 THE COURT: What do you think. What was
2 it, ten years?

3 MS. HENDERSON: Eleven.

4 THE WITNESS: It was 11 years, yeah we were
5 married and we've known each other since high
6 school.

7 THE COURT: And do you think for some
8 reason on this issue --

9 MR. BALIAN: I don't think it should be
10 taken --

11 THE COURT: -- what should be done with
12 this property that the length of the marriage cuts
13 one or another?

14 THE WITNESS: In my opinion no. I think what
15 matters is the genetic makeup of the embryo. If
16 you're asking my opinion, I don't want to, I know
17 feelings aren't facts, to me it's the genetic makeup
18 of the embryo. It's my sperm. I don't think it has a
19 timeframe that necessarily makes --

20 THE COURT: Let me ask this. I touched on
21 this when your ex was on the stand. Your
22 understanding of the process.

23 THE WITNESS: Yes, very familiar with it.

24 THE COURT: If you were still married and
25 the issue came up maybe like now you're of a

1 different opinion on it, the two of you, she wants
2 to go forward with that frozen embryo, you do not,
3 would she be able to go forward?

4 THE WITNESS: With everything that we've
5 gone through I would say no. I would say that
6 everything we've signed on there except for like the
7 lawyer said here, everything we signed on here was
8 my signature or my initials, her initials, the sperm
9 is mine. I only made the call on that. That was my
10 decision to dispose of it. That was not her because
11 that's my genetic material, much like I feel that
12 this embryo is my genetic material, my genetic
13 makeup.

14 THE COURT: All right. Go ahead.

15 BY MR. BALIAN:

16 Q. Along the same line of the question Judge asked you,
17 if you were still married today and you wanted to
18 destroy the embryo and your wife didn't, would you
19 be able to?

20 A. If we were still married I do not believe so, no. I
21 think that would be, have to be a joint decision.

22 Q. I think in the first decision, the first court
23 hearing that happened there was an indication in the
24 transcript that, you know, the parties contributed
25 equally to this marriage. Would that be a fair

1 statement?

2 A. I would say it's fair in the sense I was the, mostly
3 the financial breadwinner of the family and she
4 contributed more along the lines of trying to make
5 the house a home with the children. But, she
6 worked. I mean she worked full time before we had
7 kids.

8 Q. Right. And that was in terms of her staying home
9 with the kids and working less, that was a mutual
10 decision between you?

11 A. Yeah, it went a number of different ways. I mean,
12 we tried originally working, you know, part-time,
13 she was working part-time, and then she tried just
14 doing contingent and then she wanted to be more
15 full-time, so she kind of changed a little bit
16 throughout while we had kids trying to find that
17 happy spot where she was still having enough time
18 for her, so she didn't lose her skills working and
19 at the same time had time to spend at home with the
20 kids.

21 Q. Have you had a vasectomy?

22 A. I have not.

23 Q. Do you have the ability as far you know to have, to
24 be able to have more children naturally?

25 A. I do. And to answer your first question I'm

1 actually scheduled to have a vasectomy this month on
2 the 26th of October I believe it is.

3 Q. So your decision going forward is you don't want any
4 more children?

5 A. No. I have four beautiful kids and I'm happy there.

6 Q. Is there anything in the relationship that you had,
7 you and your wife at the time had that you think was
8 an issue and my client is more at fault for the
9 divorce?

10 A. Fault?

11 Q. Yes.

12 A. I mean, to answer the question to me is yes. I
13 never wanted to be divorced. I didn't want her to
14 leave this family that we created. I don't know, I
15 still really don't even know why she wanted, she
16 wanted to leave. She just couldn't do it anymore.
17 And I don't have any ideas to -- I work really hard,
18 I worked really hard to support my family to give
19 the kids everything that they, that she wanted for
20 the kids and that I wanted to try and give them too.
21 And, so is it her fault, yeah. She's the one that
22 filed. She's the one that wanted to end the family.
23 I never wanted that.

24 Q. Was she having an affair?

25 A. I don't believe so, no.

1 Q. Was she in terms of fault in trying to see like a
2 specific issue, can you come up with one? Is she an
3 alcoholic? Was she on drugs?

4 THE COURT: Do we need to go into this?

5 MS. HENDERSON: Yes. I object --

6 MR. BALIAN: Well, it's part of the Court of
7 Appeals opinion and remand, Your Honor, in term
8 terms of past conduct and relationship of the
9 parties. So if you're going to take things into
10 consideration, I want to know whether there was or
11 wasn't. He's indicating fault. I just want to know
12 is there a specific issue.

13 THE COURT: Well, I take that to mean did
14 they talk about this scenario, what was their idea
15 as to what to do with this embryo. I don't think the
16 Court of Appeals meant to turn no-fault divorce into
17 fault divorce for purpose of this hearing. I don't
18 -- is there language you can point me to in that
19 opinion?

20 MS. HENDERSON: Judge, I just want to
21 clarify. I think what you're doing is running
22 through the factors according to the appeals court
23 order.

24 MR. BALIAN: It is.

25 MS. HENDERSON: So it's one of the factors,

1 he's addressing it. That's what I think.

2 MR. BALIAN: They listed certain factors --

3 MS. HENDERSON: They listed, they the
4 (inaudible) ones apply.

5 MR. BALIAN: Right.

6 MS. HENDERSON: Okay.

7 MR. BALIAN: And then they said that there
8 is certain factors that they haven't even enumerated
9 that the court should take into consideration, while
10 which would be the specific nature of the embryo as
11 well.

12 THE COURT: Okay.

13 MR. BALIAN: So my line of questioning is
14 relatively short. I just, you know, there is no
15 specific factor in terms --

16 MS. HENDERSON: Stipulate there's no fault.

17 THE WITNESS: No. Yeah, she's not a drug
18 addict.

19 MS. HENDERSON: She filed for divorce but
20 there's no fault.

21 THE WITNESS: No. She's not a drug addict
22 or --

23 BY MR. BALIAN:

24 Q. If the court -- why do you want the court to award
25 you this embryo?

1 A. I believe it's my, my genetic property. It was
2 created in a situation that has now changed
3 completely. It's a total 180 from what was once and
4 what is now. I have a financial, moral ethical deep
5 connection with all four of my children. I love
6 them all. I see them every chance I get. I want, I
7 have them, you know, we basically have, it's almost
8 50/50, it's 45/55 during the winter because she
9 lives closer to school and it's 50/50 in the summer.
10 I want my kids. I don't want to have another
11 biological child of mine that I have no access to at
12 all out there. Hence, the reason I'm getting a
13 vasectomy next month. I don't, that's why I don't
14 -- if she wants to have another child, God bless
15 her. I mean, it took me two years to get over her
16 and it still hurts, but I can say that if she wants
17 to have another child, her sister donated an egg
18 before, I don't know if she can do it again, there's
19 donor banks that you can get eggs from, we looked at
20 that as options, too. I don't want another genetic
21 child out there for me.

22 Q. And, Mr. Markiewicz, as you indicated there are
23 other options she could have, right. And when you
24 started the IVF process, they could have been donor
25 eggs from anonymous women, right?

1 A. Yes, that's true.

2 Q. And in this situation you made a conscious effort to
3 have my client's sister be the egg donor, right?

4 A. I wouldn't say I made that. I said I would say we
5 did that with the idea being that that would be the
6 most genetically like her that is available.

7 Q. So the reason why you used her sister is because
8 genetically it's as close to Mrs. Markiewicz as she
9 humanly possible?

10 A. Correct.

11 Q. And as you go further down the line in terms of
12 cousins and even then strangers, it gets less and
13 less genetic makeup that she would have?

14 A. Correct.

15 Q. And she indicated she only has one sister, correct?

16 A. Correct.

17 Q. And you've been involved in the IVF process --

18 A. Every step of the way.

19 Q. All right. And you know about the age at which a
20 donation should occur?

21 A. I do.

22 Q. And would Mrs. Markiewicz's sister be of that age
23 where she'd be able to donate eggs?

24 A. From what -- the researched that I've looked at and
25 again opinions like that, she is under 40 I believe

1 still. They say 90 percent of women's eggs over 40
2 are considered genetically abnormal, that's why you
3 don't see a lot of pregnancies after that time.
4 Below 40, I believe there's another percentage
5 bracket from 35 to 39 and a small 1 between 30 and
6 to fourth. So is it possible, yes. Anything's
7 possible I guess.

8 Q. As to this embryo if the court awards you the
9 embryo, what are you going to do with it?

10 A. I would probably donate it to science or have it
11 discarded. I don't want it to become a child,
12 another child that's out there. I shouldn't say
13 probably, that's what I would do.

14 THE COURT: Sir, what kind of income do you
15 make?

16 THE WITNESS: I make about \$200,000 a year.

17 THE COURT: What was your schooling for
18 that?

19 THE WITNESS: Same as Mrs. Markiewicz. We
20 --Sarah and I have Bachelors of science, and then a
21 masters of science as she does too.

22 THE COURT: What's the masters in?

23 THE WITNESS: Masters of science in
24 anesthesia. Bachelors of science is in nursing.

25 MR. BALIAN: Your Honor, I don't have

1 anymore questions.

2 CROSS-EXAMINATION

3 BY MS. HENDERSON:

4 Q. Mr. Markiewicz?

5 A. Yes.

6 Q. Can you tell me about the actual embryos. You
7 stated that you selected the best two and your
8 understanding is the third one that's frozen was not
9 in the best condition. It was the lowest, lowest
10 acceptable condition?

11 A. Lowest, lowest to lower, it was the lowest of all
12 three embryos. We selected the best two to have the
13 best chance. Yeah.

14 Q. Okay. And when you selected the best two was there a
15 chance that only one would take?

16 A. Absolutely.

17 Q. Okay. And you said you only had six days from the
18 time that the embryos were implanted to decide
19 whether or not to freeze that other embryo?

20 A. That was Sara's terminology. I believe it is around
21 that time, too.

22 Q. So you either decided -- this is what I'm trying to
23 figure out -- you decided six days when you don't
24 know if the other two are going to take, but if you
25 want to freeze it, you have to freeze it right then?

1 A. You have to -- I don't know exactly the expiration
2 time of having once they're put together and how
3 long they can be out before they're supposed to be
4 frozen, but I -- it's biological tissue. I mean, it
5 can't, it's not going to live outside without being
6 frozen.

7 Q. Okay. So if one or both of those twins did not take
8 there's a chance that you would have had the third
9 one implanted?

10 A. Not at the same time.

11 Q. No, I meant at a different time. Say, one of the
12 twins didn't make it or let's say neither of the
13 twins made it, is there a chance you would have used
14 that third embryo at that time. Is that the reason
15 you preserved it?

16 A. It would have been at a much later time. But, yes,
17 if we were still married of course and we're still
18 creating a family together that would have been
19 possible.

20 Q. Okay. Do you want at all a child to be born with
21 your ex?

22 A. No.

23 Q. And you?

24 A. No. If you were married, it's different.
25 Everything's backward now. No, I don't.

1 Q. Okay. And one of factors was the contribution of the
2 parties to the marital estate and there was multiple
3 attempts prior to your first child being born?

4 A. Oh, yes.

5 Q. How many IVF attempts? Where did you go?

6 A. We went through one IVF cycle at an office out of
7 Birmingham. Doctor, his name was Dr. Mersol-Barg.
8 We went through one cycle there. Probably was 15 to
9 \$20,000. We produced one embryo. We put it back. It
10 did not take. Then we went like she said to Vegas.
11 They had a thing called a "have a baby program." It
12 gave you three chances to have a child for a cost of
13 \$20,000. So, we went out there. I paid for us to go
14 out there, I paid for this program, it's 20,000. We
15 went through three different IVF cycles all with her
16 eggs, received very few to one time we got none.
17 They refunded the money when we were unsuccessful. I
18 turned around and gave them the 20,000 right back
19 and we went back and did a donation with her sister
20 --

21 Q. So how those eggs before were your ex-wife's eggs?

22 A. All, yes. The ones that were there until that third
23 attempt, round, yeah.

24 Q. Okay. When you got your divorce did you ever think
25 that you would ever have to worry about an embryo?

1 Was that, did you contemplate an issue with the
2 embryo at all?

3 A. I never thought I'd be divorced. I never thought I
4 would be divorced. No.

5 Q. And then your ex-wife's attorney asked you who paid
6 for the storage. Did you pay for everything during
7 the divorce and during the marriage?

8 A. Yes. I was the primary breadwinner by far. Like she
9 said, she worked contingent. I killed myself to
10 working 24-hours shift and doubling back to other
11 places to make money to pay for these IVF cycles, to
12 pay for, you know, school and stuff like that when
13 they're if it. Yeah, I worked a lot.

14 Q. If there was a child born as a result of this
15 embryo, what's your position with regard to that
16 child?

17 A. I would be in absolute, just mind twist for me to
18 know that there's a child out there that has my DNA
19 that I have no connection with or anything like
20 that. It's -- I hear all these people that have been
21 in here before and it blows my mind how they don't
22 see them, they don't pay their child support. It's
23 like I pay more than what they asked for my child
24 support.

25 Q. Okay. You stated you would either have the embryo

1 donated to science?

2 A. Mm-hmm.

3 Q. Or you would have it discarded?

4 A. Right.

5 Q. If it was awarded to you?

6 A. Correct.

7 Q. Because you did not want another being out there
8 that you created?

9 A. I don't. No.

10 Q. Okay. One other thing. You said that you chose if
11 you got a divorce, you and your wife both signed
12 this form that says is if you get a divorce the
13 judgment of divorce would control or other court
14 order?

15 A. Mm-hmm.

16 Q. And you said you didn't give it much thought and you
17 signed it because you thought you would never be
18 divorce. Is that still true?

19 A. Yes, a hundred percent.

20 MS. HENDERSON: I have nothing further.

21 MR. BALIAN: I don't have any follow-up
22 questions, Your Honor.

23 THE COURT: All right. You're all set, sir.

24 THE WITNESS: Thank you.

25 (At 11:59 a.m., witness was excused).

1 MR. BALIAN: I do not have anymore
2 witnesses.

3 MS. HENDERSON: I have no witnesses, Judge.

4 THE COURT: All right. Argument.

5 MR. BALIAN: Your Honor, the Court of
6 Appeals in its decision remanded this matter back to
7 the Court for the Court to undertake additional
8 proofs and make a determination of you know who the
9 embryo should be awarded to. They are specific in
10 terms of stating that this embryo has a special
11 nature so I guess if you're going to refer to it as
12 a property settlement, you have to afford this
13 embryo because it's a potential and the way I read
14 their decision, it's a potential for human life. And
15 as a result of it's potential for human life is a
16 special nature that the Court needs to address as to
17 what's going to happen with respect to property.

18 We talked about, you talked about in your
19 original decision the emotional harm to
20 Mr. Markiewicz, the fact that he would have a child
21 out there that he has no contact with and what kind
22 of emotional harm that would be, but there's also
23 emotional harm that would happen to Mrs. Markiewicz
24 with in her mind having a potential for another
25 child that's genetically the same or similar to

1 their twins and having that destroy. When she had
2 to make a decision, or the parties had to make a
3 decision how many embryos to implant for this IVF
4 process, they made a conscience decision to implant
5 two. There were three. They implanted two. And then
6 in terms of what to do with this embryo, it wasn't
7 though they said, okay, we're going to discard it.
8 That would have been the easiest thing to do. At
9 that point in time both parties are on the same page
10 that that's what they want to have happen. Nowhere
11 in that contract, Judge, does it indicate that the
12 parties ever wanted this embryo discarded. If
13 something had happened to one of the parties, it was
14 to be preserved. If something was to happen to both
15 of the parties, to be preserved. If something was to
16 happen with a divorce, it's not to be discarded.
17 It's to be decided by this court. And in terms of a
18 court of equity and in terms of disposition of
19 marital assets, it's always been my understanding
20 that divorce courts look to and try to preserve the
21 assets of an estate and not dissipate them. And if
22 you're going to look to this as property and the
23 preservation of property, the -- in all factors
24 being equal in terms of under sparse that the Court
25 of Appeals wanted you to review, the scale tips, you

1 know, in my mind to award this embryo to my client.

2 Mr. Markiewicz makes a claim that, you
3 know, it's his sperm and it is, but they also made a
4 decision where they had a specific donor. It was
5 not an anonymous donor. It was a specific donor by
6 my client's sister so that these children would be
7 as genetically close to my client as possible. She's
8 the one that carried these children, she would be
9 the one that would be able to carry them in the
10 future.

11 I'd also like the Court to look at the, at
12 this point look at the, you know, because this is,
13 there aren't any real cases out there, Judge, and
14 the Court of Appeals relies on decisions from other
15 states in terms of the balancing approach that
16 they'd want you to look at with respect to this.
17 But, I would like up you to look at the child
18 support manual. And in the child support manual in
19 the state of Michigan does refer to conception by,
20 through artificial reproductive technology. And in
21 this situation, Your Honor, in terms of that, the --
22 if information is provided where there is assisted
23 reproductive technology to create an embryo, which
24 was done in this situation, and the custodial party
25 can provide designation, and there's a form DHS 998

1 indicating that it was used to conceive a child,
2 which is in this situation, that they will not
3 compel the custodial party to divulge any
4 information about the donor, a father, after
5 verifying that the artificial reproductive
6 technology was used and resulted in the conception
7 of a child. So if there's a concern with respect to
8 any type of financial obligations or liability on
9 the part of Mr. Markiewicz --

10 MS. HENDERSON: Judge, this wasn't, this
11 wasn't anything that was said during the testimony.
12 I don't know what we're --

13 MR. BALIAN: This is, well, this is, this is
14 the support manual for the State of Michigan in
15 terms of what they, how they go about determining
16 whether to enforce child support. So there's --
17 and, Judge, I said before, there is no case law on
18 this so you can look to other avenues in terms of
19 what the court may decide to rely on.

20 THE COURT: It's argument.

21 MS. HENDERSON: Okay.

22 MR. BALIAN: And as I indicated if that's
23 the situation, because they're not married, this,
24 this embryo would be implanted within my client
25 through artificial means. There's no presumption

1 that Mr. Markiewicz is the father so if there's any
2 concern about that or any type of financial
3 obligation that he would have, it's nonexistent. The
4 only concern that the Court expressed before was the
5 fact that psychologically it may have an impact on
6 him knowing that there's a child out there that's
7 his. But the same thing is the psychological impact
8 upon my client knowing that there's, there could
9 have been a child out there that was hers that is no
10 longer there; that she made a decision that there
11 were three eggs to implant, she had three eggs to
12 implant, she decided on two with the understanding
13 looking at of this is the brother or sister of my
14 twins. So, if you look at the special nature of
15 this matter, Your Honor, if you look at my client's
16 request to be able to be awarded this embryo, if you
17 look at the fact that you're preserving, you know,
18 the marital state, you're not destroying it because
19 Mr. Markiewicz would go ahead and destroy the
20 embryo, the only decision really the Court can make
21 is to award, with special considerations award the
22 embryo to my client. Thank you.

23 THE COURT: Okay.

24 MS. HENDERSON: Judge, plaintiff's attorney
25 is arguing that he's concerned about what life the

1 embryo has. When they had these embryos created
2 they were married. One big happy family. They were
3 going to have children, everything was wonderful.
4 They had to make a decision within six days
5 according to plaintiff as to whether or not they
6 were freezing the other embryo. They didn't plan to
7 have the other embryo implanted. They just had the
8 other embryo and then stored it and left it off to
9 the side. Then all of a sudden we're going to get a
10 divorce and then now we want another child. I can't
11 imagine why you would want a child when you're
12 divorced with your husband's sperm, ex-husband's
13 sperm, who you can't stand, that you divorced. I
14 just don't get it. My client should not ever have
15 to worry about a being out there, a human being out
16 there that he fathered that wasn't a human being
17 when they got a divorced.

18 When there was testimony here today that
19 the parties did not know, neither, both parties said
20 they did not know if those two embryos would take
21 that were put in, were implanted and they became
22 their lovely twins, but they did take and they got
23 the two kids. They have four kids in their divorced
24 family. That's a lot nowadays. Wife said, or ex-wife
25 said that she's not going to do it right now. She

1 makes about 40,000 right now, plans on making
2 between 90 and 110 eventually, but she's 44-years
3 old, she's been through menopause, and I understand
4 that she still, she's healthy so she could get a
5 donor egg, she can get an anonymous sperm because of
6 what plaintiff's counsel was stating, get an
7 anonymous sperm and then we won't know who fathered
8 the child and that's perfect if that's what you want
9 to do when you're a single woman. Both of these
10 parties are single, neither of them are in a
11 relationship at this time. Ex-wife stated she's
12 very healthy and she said it's possible to get
13 another donor egg and she can get the -- and the
14 sperm can be donated as well. She stated that it's
15 hectic, she has four children, and it's always
16 hectic, it's hectic for everybody who has children,
17 and that she works, employment work, around her
18 parenting time. It's not fair to have a child out
19 there without a father. I mean, you can't even adopt
20 unless you've been married to someone for a year, if
21 the other person's terminated and the whole nine
22 yards, so equity would dictate special circumstances
23 or not that this, this embryo be awarded to my
24 client. Thanks, Judge.

25 THE COURT: I can do the opinion some time

1 next week by Zoom. What's a day that's convenient?

2 MS. HENDERSON: Any day but the 6th. I'm in
3 mediation but I can take a break for it.

4 MR. BALIAN: Would it be a particular time,
5 Your Honor? I can do the morning of -- I can do the
6 morning of the 5th.

7 MS. HENDERSON: I will stop what I'm doing
8 to do it.

9 THE COURT: About the 5th around 11:00 a.m.

10 MR. BALIAN: All right.

11 MS. HENDERSON: Okay. Thanks, Judge.

12 MR. BALIAN: Thank you, Your Honor.

13 THE COURT: All right. Good luck to both of
14 you.

15 MS. HENDERSON: Thank you.

16 (At 12:10 p.m., proceedings concluded).

17 * * *

1 CERTIFICATE OF REPORTER

2 STATE OF MICHIGAN)

3) SS

4 COUNTY OF MACOMB)

5 I, Angela M. Little, a Certified
6 Shorthand Reporter for the State of Michigan, do
7 hereby certify that this transcript, is a complete,
8 true and correct transcript, to the best of my
9 ability, of the proceedings and testimony taken in
10 this case and that this is a full, true, complete
11 and correct transcription of said proceedings.

12 I further certify that this transcript was
13 prepared by me, or under my supervision, from a
14 videotape copy supplied to me by the Circuit Court
15 of Macomb County Court, the original of which was
16 duly recorded by means of videographic technology,
17 monitored and logged by the Court on the date(s) and
18 time(s) set forth herein.

19
20 _____/s/ Angela M. Little_____

21 Angela M. Little, RPR, CSR 6444

22
23 DATE: 11/12/2022

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TABLE OF CONTENTS

PAGE

WITNESSES: PLAINTIFF

None.

WITNESSES: DEFENDANT

None.

EXHIBITS

ADMITTED

None offered.

Mount Clemens, Michigan
 Wednesday, October 5, 2022
 At about 11:08 a.m.

- - -

REPORTER'S NOTE: "Inaudible" or
 "indiscernible" means a word or words were not heard
 well enough to be able to discern a proper
 interpretation either because of shuffling of
 papers, or the speaker did not talk loud enough, or
 was not picked up by the microphones.)

(Court, Counsel and parties present.

THE CLERK: 2019-3236-DM, Markiewicz versus
 Markiewicz.

THE COURT: All right. Appearances, please.

MR. BALIAN: Good morning, Your Honor. For
 the record, Michael Balian appearing on behalf of
 Sarah Markiewicz.

THE COURT: Ms. Henderson, can you hear me?

MS. HENDERSON: I can.

THE COURT: And you are here on before of.

MS. HENDERSON: Oh, my gosh. Mr.
 Markiewicz. Sorry.

THE COURT: All right. Sarah, can you hear
 me?

MS. MARKIEWICZ: Yes.

1 THE COURT: David can you hear me?

2 MR. MARKIEWICZ: Yes, I can. I can hear you.

3 THE COURT: All right. This is the date and
4 time set for entry of an opinion regarding the
5 dispute. We had the hearing the other day. I've
6 reflected on the testimony, reviewed the appellate
7 opinion, ready to give the decision.

8 First in terms of the testimony, we heard
9 from the two parties, heard from Sarah. We're
10 dealing with a ten-year marriage. She's
11 self-employed. She's a physician assistant, kind of
12 specializing in hormone therapy. The parties have
13 four children, approximate ages ten, nine,
14 six-and-a-half, six-and-a-half. The IVF was done
15 with her sister's eggs and the husband's sperm.
16 Although the second child, and I've heard of this
17 before where you write it off, it's we've done
18 everything, we can't have one and then it happens.
19 So the nine-year old from natural means. The twins
20 also IVF. Sister's egg, husband's sperm. They had
21 the option that for that last pregnancy, that last
22 insertion, there were three eggs that were
23 potentially viable. They scheduled to insert two.
24 And the testimony was they, they picked the best
25 two. You know, not all are created equal. They

1 picked the two most viable.

2 Parts of the contract or parts of the legal
3 paperwork were cited and there was language in
4 regard to selective reduction. And it's like a
5 reduction as understood in this context is if you
6 insert one and one or more and you in consulting
7 with the physicians if it's determined that that one
8 may not be a good bat, or that one may prejudice one
9 that's already in there, you can engage in selective
10 reduction, get rid of one of them. And they had
11 agreed that they weren't going to do that, but
12 that's following implementation, that scenario. Said
13 in the another section of the contract that if one
14 was not viable, idea that you would dispose of it,
15 well this one is in theory viable, this remaining
16 embryo.

17 Another provision. If death of one party,
18 well the other gets the embryo and to decide what to
19 do with it. If both die, I believe their decision
20 was it goes to her sister, the one who originally
21 supplied the eggs. If divorced, we'll determine it
22 by a court order. The cost of the procedure at
23 least 15 grand. And I believe Mr. Markiewicz's
24 testimony was that this company they used was in
25 some way affiliated with his employer. He's a nurse

1 anesthetist but doesn't just work for a hospital,
2 works for some umbrella group and they're associated
3 with this one so that fifteen may have been the
4 friend price, believe it or not. So, it may
5 actually be more than that. Testimony was Sarah
6 herself she's been through menopause. She has no
7 eggs and the sister now is too old. Question the
8 Court asked was if you were still married and you
9 weren't on the same page, would they need his
10 consent to go forward. And, my recollection of the
11 testimony is yes and there were as the paperwork was
12 gone through, there were multiple scenarios of
13 either needing two signatures or two initials, but
14 needing them from both parties to advance a stage in
15 the process.

16 Contrasting analogy might be when I would
17 take my daughter's, my wife or I would take our
18 daughters to the family physician to get the shots,
19 we don't both need to be there to sign. They just
20 need one parent there. Initial this and then we
21 give them the shots. Here, they seem to want both
22 over and over or it didn't go forward.

23 Now, her testimony is look, I will waive
24 any and all expenses and any liability; I will take
25 it all on myself. Now whether she can waive child

1 support ahead of time, that's another issue but I'd
2 take it as good faith that she can do that. She's
3 44, she's post-menopause. The question came up after
4 the twins what was the plan for this remaining
5 embryo. To freeze it. And my conclusion from their
6 testimony was it was essentially what we do a lot of
7 time, let's punt. We don't need to decide it right
8 now, we're going to kick it down the road, we'll see
9 if either of us have any desire to go forward with
10 it again, you know. It's not the biggest thing on
11 their agenda at that time. They're hoping the
12 pregnancy with the two eggs goes well. It's not a
13 priority at that time. So, like many things in
14 life, if you don't have to make a big decision on
15 something why make a big decision right then. All
16 right. So just freeze it.

17 In terms of her income, she's making around
18 40,000. She's working part-time. She's got a little
19 more than half of the parenting time. She has 203
20 overnights, he pays the child support. Acknowledge
21 she could if she was interested enough try to
22 proceed throughout alternative means with someone
23 else's sperm and someone else's egg, but obviously
24 she'd prefer this. We heard from David. Like many
25 families, struggle to have children, tried any

1 number of things and decided to go in ultimately in
2 vitro. He's a nurse, nurse anesthetist. Makes
3 about 200 grand a year. Works very hard. In the
4 order there was some Q and A about choosing, because
5 there was a menu of options like what to do if
6 there's a divorce. And, again, he essentially said
7 I never dreamed I could ever be a statistic. In the
8 event of a divorce, just let the court decide. And
9 I find that to be credible. Never thought he'd be
10 here. His position is it's my genetic material, I
11 don't want another child out there with no access to
12 it or no rights to it, and he would dedicate it to
13 science or to be discarded as are options on the
14 menu when they discussed those at the agency. That
15 was the important parts of the testimony.

16 Plaintiff's argument is that this would
17 essentially be dissipation of assets and that goes
18 against policy public. Those are the important
19 parts.

20 Now, in terms of the framework from the
21 Court of Appeals, it's a settled issue that it's
22 marital property but to be given some special
23 consideration given the nature of the property, and
24 they want it to be two-step approach. Number one,
25 ascertain, and we're dealing with since it's

1 property, all property should be equitably
2 distributed. In terms of this special property, was
3 there a valid agreement between the parties
4 regarding disposition of the embryo. And if not,
5 balance the interest of the parties. And before I
6 get into any of this, I'd just say both parties
7 wonderful people. They've produced four children.
8 They worked very hard to produce four children when
9 other people would have stopped. Their relationship
10 ended. I don't know or care why it ended. It's easy
11 to think it's a failure because it ended, but I'm
12 sure they have four wonderful children who they're
13 good parents to. It would be a very horrible thing
14 to think of yourselves as a failure because your
15 marriage ended. They end sometimes, doesn't make
16 either person a bad person. You have a great
17 legacy. I hope you're being kind to each other in
18 the co-parenting. People get to do what they want.
19 It's you don't control another person, but it's
20 people are too hard on themselves at times over the
21 end of a relationship. So, they were both, they're
22 good hard working people; they made a good
23 impression on the Court.

24 Now, was there a valid agreement between
25 the parties regarding the disposition of the embryo.

1 Well, it depends on what you mean by that. They
2 agree to enter a process. They choose which of
3 three embryos to prioritize, because the other two
4 were a better bet. Does that mean this one is
5 non-viable. It doesn't mean that but the profile was
6 not as good as the other two. Still potentially
7 viable. Again, at the time is there an agreement.
8 Well, there's an agreement to keep it in the game so
9 to speak, to keep it viable, to kick the can down
10 the road. So there's not an agreement at the time
11 that it should either be used or not used. It's
12 just a punt at the time. I think it is significant
13 that while married while they're going through the
14 process, nothing I'll call it positive, no positive
15 step can be taken without both of them signing on to
16 it. So it certainly can't be said that they had
17 agreed to go forward, that's clear. Now it's I
18 guess it's just as clear, well, they hadn't agreed
19 to get rid of it in the event of the divorce. The
20 bottom line agreement is if a divorce, which neither
21 were contemplating at the time, the court decides.
22 So I guess the long and short of it has to be
23 there's not a meaningful valid agreement as to
24 disposition of the embryo. It's in this context,
25 which we couldn't imagine seeing ourselves in which

1 which we're now in, the Court will decide. So, I
2 think we can move to the second part of the
3 equation.

4 Balance the interest of the parties. Now,
5 besides normal property factors, which most of which
6 we can dispense with, duration of the marriage.
7 It's a ten-year marriage. It's not, I don't see that
8 as particularly meaningful. Wouldn't matter if it
9 was 15 or if it was five, it's ten. It's just a
10 number in this context. Contributions of the parties
11 to the marital estate. To dispense with some of
12 this, this is not a situation where the disposition
13 of this was holding up other things or was some
14 major bargaining chip or I gave up A, B, and C in
15 the negotiation because I was relying on getting
16 this, there's none of that here. All right. So
17 contributions of the parties to the marital estate,
18 I mean, how do you value contributions. He brought
19 in more money; she's growing and the children in her
20 body and going through a lot to have them and taking
21 a hit in her career and doing a lot of the rearing
22 at home. We each have roles. They divided it up that
23 way. There's no advantage to anyone there.

24 Age of the parties. She can't, I guess even
25 if she had had a bunch of children naturally, age is

1 the great equalizer, she's gone through menopause.
2 She can't have them anymore. He's of an age I don't
3 remember his precise age, but he's at least as old
4 as her. He's at the age where you start thinking do
5 you want to have another one. Are you sure you want
6 to go through that again. So, I guess age of the
7 parties in the context of an equitable division of
8 property, in one way it's not relevant here the way
9 it normally would be. I guess what's relevant about
10 their age is she can't have them on her own again.
11 Health of the parties, not a factor here in terms of
12 distribution of property.

13 Life status of the parties. Not really a
14 factor here. Necessities and circumstances of the
15 parties. She wants to have another one, he doesn't.
16 Earning abilities of the parties. He earns more. If
17 she gets to the stage where they're in school all
18 the time established, she can work more, and I
19 believe the testimony was she could get it up to
20 about a hundred if she put more hours in.

21 Past relations and conduct of the parties
22 in general principles of equity. Those are probably
23 the ones more relevant to our inquiry here.

24 Now, after they went through the
25 intellectual part of it, parts that were of interest

1 to me, they're saying that should be a blend of the
2 contractual approach and balancing approach. I've
3 already dealt with the contractual approach that all
4 we can really say is they didn't go forward again
5 and in the event of a divorce, the court decides.

6 Now, the court must balance the interests
7 of the parties to determine disposition of the
8 frozen pre-embryo. Balancing the parties' interests
9 will require the consideration of many factors. The
10 court should consider the original reasons that the
11 parties underwent IVF treatment. Consideration of
12 this factor should account for the parties' beliefs
13 as they relate to the creation of an embryo. This
14 is not a referendum on Right to Life or any, there
15 was to none of that in this case and it's not
16 relevant to anything in this case. They wanted to
17 have a family. They couldn't have one naturally,
18 they thought. They did it once successfully. They
19 got lucky. I'm sure they couldn't believe it. They
20 actually, they thought what happened they thought
21 couldn't happen, so they got their second child,
22 they wanted to keep going, they had twins. It's a
23 means to an end. There was nothing about, there were
24 no -- there was metaphysical testimony on the
25 record. Okay. It's simply a practical she would

1 like to at least explore the option of converting
2 that last embryo into another child, see it as her
3 last, her last hurrah as a mother. All right. So
4 there's nothing exalted, that's exalted enough.
5 There's no ideology at work here.

6 All right. Again, it is relevant. Going
7 through the process, it could not advance without
8 both of them signing onto it while they're going
9 through it. All right.

10 The trial court should consider the
11 parties' positions related to the disposition of the
12 embryo. And they say, I'm quoting, "In this case,
13 David seeks to avoid procreation because he already
14 has four children. Where as Sarah would like to
15 preserve her ability to potentially have a child in
16 the future." Well, that was covered the first time.

17 The court should also consider whether the
18 parties seeking procreation would have any other
19 reasonable means of achieving parenthood were the
20 embryos at issue to be destroyed. There seemed to
21 be testimony that she could do that. None of this is
22 easy, and I believe the point of IVF is if you're
23 having trouble naturally having a child, IVF allows
24 you to skip some of the highest hurdles in the
25 process and hopefully have relatively smooth sailing

1 going on. Now. At her age, does that means she's
2 not high risk. I don't know enough about that. I'm
3 sure the parties know that better than I do. But,
4 the testimony was she could explore it through other
5 means. All right.

6 As it relates to the parties seeking to
7 destroy an embryo, it's appropriate to consider the
8 implications of imposing unwanted parenthood on that
9 party. That's in the first hearing and that was in
10 this last hearing. You know, he doesn't want another
11 child. The opinion quotes me from the first
12 hearing. He doesn't, he would feel, he would not
13 feel right having his DNA out there and he has no
14 role in it. And, he thinks enough is enough under
15 these circumstances. Who knows what would have
16 happened if they stayed together. We'll never know.

17 In addition, courts should consider the
18 possibility of a party's bad faith in attempt to use
19 the frozen pre-embryo as leverage in the divorce
20 proceeding. There's absolutely nothing about that
21 on this record from either party.

22 It goes on, the trial court should first
23 consider whether the disposition of the embryo is
24 governed by a valid contract. If such exists, the
25 matter should be concluded in accord with those

1 terms. If not, the court must balance the interest
2 of the parties using the framework stated in the
3 opinion. So, again, relevant to me is they couldn't
4 advance during the process without both agreeing.
5 Also relevant, it's her sister's egg but it's his
6 semen. In other words, in a way in terms of it being
7 marital property, I don't know how you get around
8 saying it's more his than hers. If it, if they were
9 her eggs and his semen, that's a fascinating
10 scenario. That's a wash on that argument and that
11 would be very interesting, but I don't see how it's
12 not very relevant that it's not her egg but it's his
13 semen, it's his DNA prior to implementation. So, in
14 terms of the balancing of the equities, we have she
15 could go another way. It's not her preference but
16 if she's feeling strong enough, she could go another
17 way. If you try to argue that finance is an issue,
18 well, finance is going to be an issue either way for
19 her. She said if she felt strong enough she would
20 make it work. I take her at her word that, you know,
21 I wouldn't ask him for anything; I would figure out
22 a way to make it happen even though I'm working less
23 than I ultimately will, my income is not what it
24 eventually will be, that is not a criticism of her.
25 She's doing other things right now, raising the

1 kids.

2 I would also add the fact that she already
3 has four, I wouldn't care if she has 20. It's
4 irrelevant to the fact that she wants one more.
5 There's no prejudice to the argument what's wrong
6 with her, she has four, call it a day. That's,
7 that's a groundless argument. Everyone is precious
8 if you have them. There's nothing against her on the
9 record because of that. But, they would have to
10 proceed together for it to go during the whole
11 process. If they didn't agree, like they don't agree
12 now, it could not have gone forward. Add to that,
13 it's his semen, it's not her egg. If you're asking
14 us to make a tough call at this point, something
15 like that is significant. And, I think it is there
16 was to let it go forward over his objection is more
17 inequitable to him on these facts than to award the
18 property to him is inequitable to her. I don't think
19 it's inequitable but it would certainly be more
20 inequitable to go against his wishes on these facts,
21 at least with me.

22 So, that's my finding that the balancing of
23 the equities is directed by the Court of Appeals, as
24 I've done on the record, weigh in favor of awarding
25 the property to Mr. Markiewicz, the defendant and he

1 may do as he sees fit. Any questions from the
2 attorneys?

3 MR. BALIAN: No, Your Honor. I think your
4 decision is clear. Thank you.

5 MS. HENDERSON: Judge, do you do the order?
6 Do you send it out?

7 THE COURT: I think I would just rely on
8 you.

9 MS. HENDERSON: Okay.

10 THE COURT: What do you want? Do you guys
11 want to draft one?

12 MS. HENDERSON: I'll do the order.

13 THE COURT: You guys draft --

14 MS. HENDERSON: Yeah, I'll do it.

15 THE COURT: You guys draft the order, agree
16 on the language, and we'll sign it. Good luck to
17 both of you. You're both nice people.

18 MS. HENDERSON: Thanks, Judge.

19 MR. BALIAN: Thank you, Your Honor.

20 THE COURT: All right.

21 MR. MARKIEWICZ: Thank you, Your Honor.

22 MS. MARKIEWICZ: Thank you.

23 (At 11:38 a.m., proceedings concluded).

24 * * *

1 CERTIFICATE OF REPORTER

2 STATE OF MICHIGAN)

3) SS

4 COUNTY OF MACOMB)

5 I, Angela M. Little, a Certified
6 Shorthand Reporter for the State of Michigan, do
7 hereby certify that this transcript, is a complete,
8 true and correct transcript, to the best of my
9 ability, of the proceedings and testimony taken in
10 this case and that this is a full, true, complete
11 and correct transcription of said proceedings.

12 I further certify that this transcript was
13 prepared by me, or under my supervision, from a
14 videotape copy supplied to me by the Circuit Court
15 of Macomb County Court, the original of which was
16 duly recorded by means of videographic technology,
17 monitored and logged by the Court on the date(s) and
18 time(s) set forth herein.

19
20 _____/s/ Angela M. Little_____

21 Angela M. Little, RPR, CSR 6444

22
23 DATE: 11/2/2022

RECEIVED by MSC 11/8/2024 6:24:27 AM

STATE OF MICHIGAN

IN THE 16th CIRCUIT COURT FOR THE COUNTY OF MACOMB

SARAH MARIE MARKIEWICZ,

Plaintiff,

-vs-

Case No. 2019-3236-DM
Hon. Matthew S. Switalski

DAVID RANDAL MARKIEWICZ,

Defendant.

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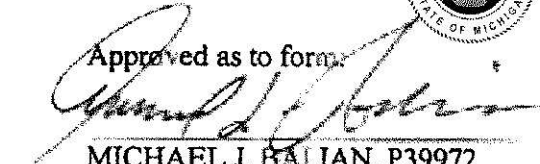
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FINAL ORDER FOR DISPOSITION OF FROZEN EMBRYO

This matter having come before the Court as a result of a remand ordered by the Court of Appeals; an evidentiary hearing having been held where testimony was taken, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that, for the reasons stated on the record, Defendant, DAVID RANDAL MARKIEWICZ, shall be awarded the parties' frozen embryo currently held at Fertility Storage, Inc. (FSI).

Approved as to form:

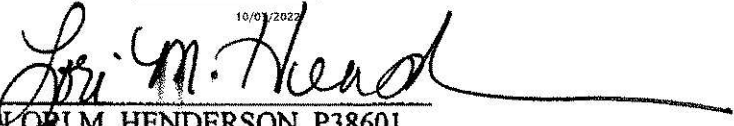

MICHAEL J. BALIAN, P39972
Plaintiff's Attorney





10/07/2022

CIRCUIT COURT JUDGE
/s/ MATTHEW SWITALSKI
CIRCUIT COURT JUDGE, P51433


LORI M. HENDERSON, P38601
Defendant's Attorney

STATE OF MICHIGAN
COURT OF APPEALS

SARAH MARIE MARKIEWICZ,

Plaintiff-Appellant,

v

DAVID RANDAL MARKIEWICZ,

Defendant-Appellee.

UNPUBLISHED
December 7, 2023

No. 363720
Macomb Circuit Court
LC No. 2019-003236-DM

Before: CAVANAGH, P.J., and RIORDAN and PATEL, JJ.

PER CURIAM.

In this postjudgment divorce proceeding, plaintiff, Sarah Markiewicz, appeals as of right the trial court’s order awarding the parties’ cryogenically-preserved embryo to defendant, David Markiewicz.¹ We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

The parties married in 2009, and had four children during their marriage.² Because the couple experienced fertility issues, their first child was conceived through an *in vitro* fertilization (IVF) process using Sarah’s sister’s egg and David’s sperm. The second child was conceived naturally. And the third and fourth children (twins) were conceived through IVF, again using Sarah’s sister’s egg and David’s sperm. During the IVF process with the twins, the parties had

¹ This case returns to this Court after our remand in *Markiewicz v Markiewicz*, unpublished per curiam opinion of the Court of Appeals, issued March 24, 2022 (Docket No. 355774).

² When the judgment of divorce was finalized in 2020, the oldest child was eight years old, the next child was seven years old, and a pair of twins were four years old.

three embryos at their disposal. They chose to proceed with implanting two of them in Sarah and cryogenically preserved the last one.³ The two they chose were the most viable of the three.

In 2019, Sarah filed for divorce. In October 2020, the parties were able to resolve all issues, except for the disposition of the remaining frozen embryo, and entered into a consent judgment of divorce. In the initial lower court proceedings, Sarah argued that she should receive the embryo because it likely was her “last chance to have children if she so chooses.” David argued that he simply did not want another child, and he did not want another child to be born from his DNA. *Markiewicz v Markiewicz*, unpublished per curiam opinion of the Court of Appeals, issued March 24, 2022 (Docket No. 355774), p 2. During those proceedings, Sarah’s counsel unequivocally asserted that the embryo was “marital property.” *Id.* David’s counsel was not sure that the embryo was marital property because, as between the two parties, only David had contributed biologically to the embryo, making it “more his than hers.” The trial court agreed with Sarah and ruled that the embryo was marital property. But after evaluating the equities, the court awarded the embryo to David.

Sarah appealed the trial court’s decision to this Court. In pertinent part, this Court rejected her argument that the trial court erred by categorizing the embryo as marital property. This Court found that Sarah was “judicially estopped from challenging the classification of a frozen embryo as property” because she had “unequivocally and successfully argued that the embryo was marital property” in the lower court proceedings. *Id.* at 4. Because the embryo was marital property, this Court stated that the *Sparks*⁴ factors must be considered in dividing the marital property. *Id.* at 5. Additionally, this Court determined “that a frozen embryo deserves special respect because of its unique potential for human life. As a result, any disposition of a frozen embryo must start with the recognition that, even when a frozen embryo is treated as property, it nevertheless may one day develop into a born child.” *Id.* at 8.

This Court recognized that other states generally use one of three different approaches to decide how the disposition of frozen embryos are to be undertaken after a divorce: the contemporaneous mutual consent approach, the contractual approach, and the balancing approach. *Id.* This Court summarized the different approaches as follows:

Under the contemporaneous mutual consent approach, the pre-embryos must remain in storage until the parties agree to a disposition. *Bilbao v Goodwin*, 217 A3d 977, 985 (Conn, 2019); *In re Marriage of Witten*, 672 NW2d 768, 777-778 (Iowa 2003). If they cannot agree, then the status quo is maintained, and “the pre-embryos remain in storage indefinitely.” *Bilbao*, 217 A3d at 985. The contractual approach provides that a pre-existing agreement between the parties regarding the disposition of preserved pre-embryos is “presumed valid and enforceable.” See, e.g., *id.* at 984, 992 (determining that the parties had an enforceable agreement); *Kass v Kass*, 91 NY2d 554; 673 NYS2d 350; 696 NE2d 174, 179 (1998) (holding

³ Cryopreservation is a freezing process. After the embryo is frozen, it is maintained in frozen storage.

⁴ *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992).

that the parties' agreement controlled). The balancing approach requires a circuit court to weigh the parties' respective interests in the pre-embryos. *Bilbao*, 217 A3d at 985.

The exceedingly rare mutual consent approach is disfavored. See, e.g., *Jocelyn P v Joshua P*, 250 Md App 435; 250 A3d 373, 405 (2021); *In re Marriage of Rooks*, 429 P3d 579, 592 (Colo, 2018); *Reber v Reiss*, 42 A3d 1131, 1136 (Pa Super Ct, 2012). But see *Witten*, 672 NW2d at 783 (using this approach); cf. *McQueen*, 507 SW3d at 145-147 (affirming award of joint ownership to both of the spouses using the balancing approach). Most jurisdictions that have considered the approach have held it to be impractical and unworkable. See, e.g., *Jocelyn P*, 250 A3d at 405; *Rooks*, 429 P3d at 592; *Reber*, 42 A3d at 1136. As the Colorado Supreme Court persuasively explained, "[i]t is . . . unrealistic to think that parties who cannot reach agreement on a topic so emotionally charged will somehow reach resolution after a divorce is finalized." *Rooks*, 429 P3d at 592.

In contrast, the contractual approach, which recognizes the validity of a contract between the parties as governing the disposition of preserved pre-embryos, is embraced by the majority of jurisdictions that have addressed the issue. See *Jocelyn P*, 250 A3d at 381; *Bilbao*, 217 A3d at 986, 992; *Szafranski v Dunston*, 393 Ill Dec 604; 34 NE3d 1132, 1147 (Ill App Ct, 2015); *In re Marriage of Dahl & Angle*, 222 Or App 572; 194 P3d 834, 840 (2008); *Roman v Roman*, 193 SW3d 40, 48 (Tex App, 2006); *Kass*, 673 NYS2d 350; 696 NE2d at 180; *Davis v Davis*, 842 SW2d 588, 598 (Tenn, 1992), petition to rehear granted in part, No. 34, 1992 WL 341632 (Tenn, 1992) (per curiam). But see *Witten*, 672 NW2d at 781 (rejecting this approach); *AZ v BZ*, 431 Mass 150; 725 NE2d 1051, 1057 (2000) (noting that it would not uphold an agreement between the parties if it "would compel one donor to become a parent against his or her will").

In the absence of such an agreement through contract, courts commonly use the third approach, which balances the parties' competing interests. See, e.g., *Jocelyn P*, 250 A3d at 380; *Rooks*, 429 P3d at 593-594; *Davis*, 842 SW2d at 603-604. [*Markiewicz*, unpub op at 8-9, quoting *Jessee v Jessee*, 74 Va App 40, 52-53; 866 SE2d 46 (2021).]

The *Markiewicz* Court rejected the contemporaneous mutual consent approach because it is "inherently impractical." *Markiewicz*, unpub op at 9. Instead, this Court adopted a blended approach that "requires courts to first look to see if there is a valid agreement between the parties addressing the disposition of the embryo. In the absence of such an agreement, the court must then 'balance the interests of the parties to determine disposition of the frozen pre-embryos.'" *Id.*, quoting *Jocelyn P*, 250 Md App at 479. This Court recognized that the balancing of the parties' interests will require consideration of many factors, including (1) "the original reasons that the parties underwent IVF treatment," (2) "the parties' positions related to the disposition of the embryo," (3) "whether the party seeking procreation would have any other reasonable means of achieving parenthood were the embryos at issue to be destroyed," (4) as "to the party seeking to destroy an embryo, it is appropriate to consider the implications of imposing unwanted parenthood on that party, including possible financial and psychological consequences of doing so," and (5)

the presence of any “party’s bad faith and attempt to use the frozen pre-embryos as leverage in the divorce proceeding.” *Markiewicz*, unpub op at 9-10 (cleaned up).

Because the trial court rendered its original decision without “the benefit of this legal framework,” this Court vacated the trial court’s decision and remanded for it to perform the proper analysis. *Id.* at 10-11. Specifically, this Court directed that

the trial court shall consider the applicable *Sparks* factors. With regard to the additional relevant factor identified in this opinion, i.e., the special nature of the embryo, the trial court should first consider whether the disposition of the embryo is governed by a valid contract between the parties. If such a contract exists, the matter should be concluded in accord with the contractual terms that the parties agreed upon in that contract. If there is no contract, then the court must balance the interests of the parties using the framework stated in this opinion. In doing so, the trial court may again consider the facts—as argued below—that Sarah has already bore four children with David; that the egg used to produce the embryo was not Sarah’s, but her sister’s; and that Sarah offered to include language in the judgment of divorce indicating that David would have no financial obligations related to any child born as a result of the embryo being implanted. With regard to the remaining *Sparks* factors, additional factors, such as the ages and health of the parties, may also be relevant and should be addressed. Financial considerations may also be considered. The cost of the IVF process is ascertainable. Therefore, it would be appropriate to consider the costs Sarah would incur were she to obtain another embryo using IVF techniques should the court again decide that it is equitable to award the existing embryo to David. [*Id.*]

On remand, the trial court held an evidentiary hearing at which only Sarah and David testified. The parties stipulated to the admission of, among other things, their agreement with the cryopreservation storage facility, wherein the parties agreed that (1) in the event of the death of one of them, any remaining embryos would be transferred to the surviving party as sole owner; (2) in the event of the death of both parties, any remaining embryos would be given to Sarah’s sister, who was the donor of the egg; and (3) in the event of divorce, the disposition of any frozen embryos would be “[d]etermined by the applicable Judgment of Divorce or other court order.”

At the time of the hearing, Sarah was 44 years old and was postmenopausal. The parties agreed that the cost of a full cycle of IVF is approximately \$15,000. Sarah testified that she and David initially embarked on IVF treatment because of infertility issues. She stated that she would have the last embryo implanted in her if it was awarded to her. If she had such a child, she would not seek any financial support from David and would agree to waive any obligations on his part. Sarah acknowledged that if she were not awarded the embryo, she could get a donor egg and sperm from other people. However, she maintained that this embryo represented her last opportunity to have a child that is “closest” genetically to the couple’s twins. Sarah testified that she currently is working part time and that after daily expenses, “[t]here’s not that much extra.” But she noted that she is “making it through” and “hopefully” would be going to full-time employment in the next couple of months. She testified that, if she were awarded the embryo, she would not have it implanted until she was employed full-time. Notably, no evidence was introduced regarding Sarah’s religious views.

David testified that although he was more of the breadwinner while the parties were married, the parties nonetheless equally contributed to the household. David stated that he does not want any more biological children, especially with Sarah now that they are divorced. He maintained that he wants the embryo because it is his genetic property, not Sarah's. And if the embryo was awarded to him, he would donate it to science or have it discarded. David explained that if Sarah were awarded the embryo and she had a child with it, he would suffer mental anguish knowing he had a biological child to whom he would have no access or rights. David reiterated that if Sarah desired to have more children, nothing was preventing her from accomplishing that through obtaining other donor eggs, including possibly from her sister.⁵

The trial court accepted, without deciding, that Sarah could waive child support. The court also noted that it was settled that the embryo was marital property, but that it was to be given special consideration in light of the nature of the property. The court found that the parties' Embryo Cryopreservation Agreement did not control the outcome in this case because it simply allowed a court to decide in the event of a divorce.

The trial court therefore balanced the interests of the parties. For the "normal property factors," the court dispensed with most of them as not relevant or neutral, but found that Sarah's age,⁶ the past relations and conduct of the parties, and general principles of equity were relevant. The court noted that the original reason for why the parties underwent IVF treatment was to address their infertility issues and to have a family. Regarding the parties' current positions related to the disposition of the embryo, the court recognized that David wanted to avoid procreation and that Sarah wanted to preserve her ability to potentially have a child in the future. Regarding whether there were any alternate means of achieving parenthood, the court indicated that the testimony indicated that Sarah could do that.

The trial court also considered the implications of imposing unwanted parenthood on David, noting that David indicated he would not feel right having a biological child without having a parental role. Regarding whether there was any bad faith by any party to use the frozen embryo as leverage in the divorce proceedings, the court found that there was none. When balancing the interests of the parties, the court noted that the embryo was made using Sarah's sister's egg and David's sperm. Consequently, the court found that there was no escaping the logical conclusion that the embryo was "more his than hers." Additionally, because Sarah had other options if she wanted to have more children, that factor weighed in favor of David. The court added that the fact that Sarah already had four children was irrelevant and did not weigh against her.

⁵ Sarah was of the opinion that her sister was now too old to donate eggs because "[u]sually they [presumably, the doctors] recommend" the donor to be 25 years of age or younger. However, there was no expert testimony or other evidence introduced establishing whether Sarah's or David's opinion was more accurate. But Sarah's testimony was couched as describing a preference that was "usual" and a "recommendation," which by its terms would not be exact or controlling.

⁶ The court noted that Sarah's age and the fact that she was postmenopausal was relevant because she could not naturally conceive children.

In the final analysis, the court determined that, based on these facts, awarding the embryo to Sarah would be more inequitable to David, compared to the inequity Sarah would suffer if the embryo were awarded to David.

Sarah moved for reconsideration, arguing that the trial court did not properly consider the parties' Embryo Cryopreservation Agreement, the parties' religious beliefs, and David's ability to have the frozen embryo carried by a surrogate. The trial court denied the motion. Sarah now appeals.⁷

II. EFFECT OF CONSTITUTIONAL AMENDMENT

Sarah first argues that a remand is necessary to allow the trial court to consider the ramifications of Const 1963, art 1, § 28, which was ratified by the voters of this state after the trial court rendered its decision. We disagree.⁸

The trial court held an evidentiary hearing on September 28, 2022, and rendered its decision on October 5, 2022, which was effectuated in an order entered on October 7, 2022. On November 8, 2022, the people of the state of Michigan approved amending our Constitution by adding, in part, the following provision:

(1) Every individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including but not limited to prenatal care, childbirth, postpartum care,

⁷ This Court granted a stay pending appeal. *Markiewicz v Markiewicz*, unpublished order of the Court of Appeals, entered January 4, 2023 (Docket No. 363720).

⁸ Generally, a party must raise an issue in the lower court for it to be preserved for appellate review. *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227; 964 NW2d 809 (2020). There is no dispute that Sarah never raised this issue in the trial court because the Constitutional amendment at issue was not approved by the voters until November 2022, and did not become effective until December 2022, both of which occurred after the trial court rendered its initial decision and its decision denying Sarah's motion for reconsideration. Thus, the issue typically would be considered unpreserved, which would waive any review. *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 359090); slip op at 5.

However, because it was impossible for Sarah to have raised this issue before the trial court rendered its decision, we exercise our discretion to overlook the strict preservation requirements. "[T]his Court may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented[.]" *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006). Whether the Constitutional amendment, which was passed after the trial court made its decision, has any effect or bearing in this case is a question of law, and any facts necessary for that determination have been presented.

contraception, sterilization, abortion care, miscarriage management, and infertility care.

An individual's right to reproductive freedom shall not be denied, burdened, nor infringed upon unless justified by a compelling state interest achieved by the least restrictive means.

* * *

(2) The state shall not discriminate in the protection or enforcement of this fundamental right. [Const 1963, art 1, § 28.]

Although approved in the November 2022 general election, this Constitutional amendment was not effective until December 24, 2022.

The primary issue to resolve is whether § 28 has any effect on these proceedings. The first aspect to consider is the impact of the December 24, 2022 effective date. Although § 28 did not become effective until more than two months after the trial court decided this matter, Sarah, without citing any authority, asserts that because it became effective “during the life of the appeal,” it must be considered. Even in reply to David’s argument that § 28 is not applicable to this case because it did not exist when the trial court made its decision, Sarah cites no authority for essentially giving retroactive effect to § 28. Instead, she merely contends that § 28 vested the people of Michigan with these rights and the trial court should consider those rights. But see *People v Gornbein*, 407 Mich 330, 334; 285 NW2d 41 (1979) (“As a general rule, constitutional amendments operate prospectively and not retroactively.”). Given Sarah’s failure to cite any authority supporting her position that § 28 may be applied retroactively to this dispute, that issue may be considered abandoned. See *Johnson v Johnson*, 329 Mich App 110, 126; 940 NW2d 807 (2019).

In any event, we are not persuaded that § 28 has any effect on the outcome of these proceedings. Sarah claims that § 28 vested both her and David with fundamental rights, which must be considered by the trial court. Assuming such vested rights existed, it is manifestly clear that they would not lead to any different result. Significantly, the trial court did not disagree that either party had the right to make decisions relating to pregnancy or childbirth, and its decision did not infringe on how the parties could exercise any such rights. Rather, the dispute in this case involved the disposition of a frozen embryo, which was deemed marital property in which both parties had competing rights. Even if § 28 applied, the court still would be required to consider the competing views from Sarah and David, and decide whose “rights” to the disposition of the embryo were to be vindicated and whose “rights” were to be impaired.

Further, Sarah’s argument that strict scrutiny would apply to impair any rights is not applicable in this case. Strict scrutiny is only applicable when the *state* seeks to impair any constitutional rights. See *Barrow v City of Detroit Election Comm*, 301 Mich App 404, 420; 836 NW2d 498 (2013) (“Under a strict scrutiny analysis, the *government* may not infringe upon a fundamental liberty interest unless the infringement is narrowly tailored to serve a compelling state interest.”) (emphasis added). In this case, the state is not attempting to take or curtail any action, which involves a private dispute between Sarah and David. Because the parties divorced, the court

necessarily was required to decide, under equitable principles, how the marital property, including the frozen embryo, was to be divided between the two of them. Attributing “rights” to divorced parties would not change a court’s analysis.⁹ When faced with competing and diametrically opposed interests, a court necessarily will have to balance the parties’ competing interests, which is the process this Court outlined and ordered the trial court to follow. *Markiewicz*, unpub op at 9-11. Accordingly, even assuming that § 28 had any application in this case, we fail to see how remanding for the trial court to consider these rights would yield any different result.

III. TRIAL COURT’S FINDINGS AND DECISION TO AWARD EMBRYO TO DAVID

Sarah argues that the trial court erred in its application of this Court’s decision in *Markiewicz*, and by awarding the embryo to David. We disagree.

This Court reviews the trial court’s factual findings for clear error. *Sparks*, 440 Mich at 151. A reviewing court is to then decide if, in light of those facts, the trial court’s division of property was fair and equitable. *Id.* at 151-152. That dispositional ruling is to be affirmed unless this Court is left with a firm conviction that the property division was inequitable. *Id.* at 152. But the proper interpretation of a contract is a question of law that this Court reviews de novo. *Reed v Reed*, 265 Mich App 131, 141; 693 NW2d 825 (2005).

In *Markiewicz*, unpub op at 9, this Court held that

disputes that arise during a divorce regarding the disposition of a frozen embryo should be decided using a blend of the contractual approach and the balancing approach. This blended approach requires court to first look to see if there is a valid agreement between the parties addressing the disposition of the embryo. In the absence of such an agreement, the court must then “balance the interests of the parties to determine disposition of the frozen pre-embryos.” [Citations omitted.¹⁰]

Sarah first argues that the trial court erred by concluding that there “was no valid agreement.” Sarah implies that the court found that there was no contract at all (countering that

⁹ As an example, it is well established that parents have the constitutional right “to make decisions concerning the care, custody, and control of their children.” *In re Sanders*, 495 Mich 394, 409; 852 NW2d 524 (2014); see also *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993); *In re VanDalen*, 293 Mich App 120, 132; 809 NW2d 412 (2011). Despite these constitutional rights, courts regularly “impair” the parents’ rights by dividing the custody of the parties’ children between the parties after a divorce, without undertaking any constitutional analysis, let alone strict scrutiny. See, e.g., *Thames v Thames*, 191 Mich App 299, 305; 477 NW2d 496 (1991) (stating that custody disputes in a divorce are to be resolved in the child’s best interests).

¹⁰ See also *Markiewicz*, unpub op at 10 (“[T]he trial court should first consider whether the disposition of the embryo is governed by a valid contract between the parties. If such a contract exists, the matter should be concluded in accord with the contractual terms that the parties agreed upon in that contract. If there is no contact, then the court must balance the interests of the parties using the framework stated in this opinion.”)

“there was indeed a contract in the present case”), but that contention is not supported by the record. The trial court clearly acknowledged that the parties had entered into a contract with the storage facility. Additionally, the court reasoned:

Now, was there a valid agreement between the parties regarding the disposition of the embryo[?] Well, it depends on what you mean by that. They agree[d] to enter a process. They [chose] which of three embryos to prioritize, because the other two were a better bet. Does that mean this one is non-viable[?] It doesn't mean that but the profile was not as good as the other two. Still potentially viable. Again, at the time is there an agreement[?] Well, there's an agreement to keep it in the game so to speak, to keep it viable, to kick the can down the road. So there's not an agreement at the time that it should either be used or not used. It's just a punt at the time. I think it is significant that while married while they're going through the process, . . . no positive step can be taken without both of them signing on to it. So it certainly can't be said that they had agreed to go forward, that's clear. Now it's I guess just as clear, well, they hadn't agreed to get rid of it in the event of the divorce. The bottom line agreement is if a divorce, which neither were contemplating at the time, the court decides. So I guess the long and short of it has to be there's not a meaningful valid agreement as to disposition of the embryo.

Sarah primarily relies on the following language in a preamble section of the parties' agreement with the storage facility in support of her argument that the parties intended that the embryo would be returned to her:

I/we agree to elect to cryopreserve all viable embryo(s) not transferred that are created during an IVF cycle. The process of cryopreservation will be performed in the laboratory of Michigan Center IVF, PLLC. The cryopreserved embryo(s) will be transferred to the long term facility of Fertility Storage, Inc (FSI)[.] *It is my/our intention to have these embryos transferred back to my uterus in a later cycle.* [Emphasis added.]

Clearly, it was the parties' intent at the time of the IVF process to implant embryos in Sarah's uterus. They were married and trying to start or build a family. But that is not the controlling intent at issue here, and that expressed intent does not manifest what the parties intended to do with the embryos in the event of a divorce. The very next section of the agreement is entitled “Embryo Disposition” and provides the answer. That section lists several scenarios: (1) “[i]n the event of the death of 1 partner,” the parties agreed to “[t]ransfer [the] embryos to the surviving partner as sole owner[;]” (2) “[i]n the event of the death of both partners,” the parties agreed to appoint Sarah's sister “to be the sole owner of [the] embryos[;]” and, (3) “[i]n the event of a divorce,” the parties agreed that disposition of the embryos would be “[d]etermined by the applicable Judgment of Divorce or other court order.”

The agreement clearly contemplates that in the event of a divorce, a court, either through a judgment of divorce or through some other order, is to decide the proper disposition of any remaining, viable embryos. To the extent there is tension or conflict in the overriding intention to use and implant the embryos and this intention to have a court decide the disposition of any embryo

in the event of a divorce, specific clauses in contracts prevail over more general terms. *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 367 n 22; 817 NW2d 504 (2012); see also 11 Williston, Contracts (4th ed), § 32:10, pp 739-740. Accordingly, the only pertinent portion of the contract is the portion providing what the parties agreed would happen in the specific event of a divorce. To somehow give effect to the parties' overarching intent that was contemplated while they were married and trying to build a family would render nugatory the section on embryo disposition in the event of a divorce. Courts are to "give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003).

We find that the trial court did not err by concluding that the contract, aside from allowing a court to decide what would happen to any embryos in the event of a divorce, did not specify how the court is to make that determination. And without any agreement regarding how a court should decide the disposition of an embryo in the event of a divorce, the trial court properly proceeded to address the various factors described in *Markiewicz*. To the extent Sarah claims that the existence of the agreement precludes going forward with the balancing test, that position is without merit. This Court directed: "This blended approach requires courts to first look to see if there is a valid agreement between the parties *addressing the disposition of the embryo*. In the absence of such an agreement, the court must then 'balance the interests of the parties to determine disposition of the frozen pre-embryos.' " *Markiewicz*, unpub op at 9 (citations omitted). The fact that there was a general agreement between the parties is not the question; the question is whether there was an agreement "addressing the disposition of the embryo" under the present circumstances, i.e., in the event of a divorce. And in this instance, because the agreement merely deferred to a court's determination, it cannot be considered an actual agreement regarding the embryo's disposition. The trial court rightfully recognized that "there's not a meaningful valid agreement as to disposition of the embryo."

Thus, with no meaningful agreement pertaining to the disposition of the embryo, the trial court properly proceeded to perform the balancing test as prescribed by this Court in *Markiewicz*.

Sarah next argues that the trial court erred by determining that to undertake any type of action with regard to the embryos while the parties were married, they would have to agree on that action. The trial court relied on parties' testimony in making its determination. The court questioned Sarah on this topic:

THE COURT: Is it your understanding or assumption that to go forward assuming you're still married, you both have to be on board?

THE WITNESS: Yes.

THE COURT: Okay. Otherwise, they would not assist you if both were not on board? If you don't know, that's fine.

THE WITNESS: I've never, I've never been presented so I can't hundred percent --

THE COURT: Okay. That's fine.

Thus, while not 100% certain, Sarah was under the impression that both she and David generally needed to mutually agree on actions related to any embryos. David testified that he had a similar understanding.

Sarah on appeal argues that her (and necessarily David's) opinions are irrelevant because the answer to the court's question is a matter of contract interpretation, which is a question of law. Although it seems clear from the agreement that the parties needed to mutually agree to start the IVF process,¹¹ it is not clear from the language used in the various documents if one of the parties could unilaterally make decisions affecting the embryo. The document shows that the parties agreed to store all viable embryos. But immediately after that section, the agreement states:

1. At any time you may change your decision in regards to keeping the cryopreserved embryos, you have the following options:
 - a. Anonymously donate embryos for a recipient couple to achieve pregnancy.
 - b. Cell culture and degeneration: embryos will be thawed and kept under cell culture conditions until growth cease and the embryo degenerates. Embryos will then be disposed of according to professional ethical standards.
 - c. Transfer embryos to another IVF program that I/we have designated and requested.
 - d. Donate embryos to an embryo donation center which I/we select.
 - e. Donate embryos for training of laboratory personnel[.]

Notably, the agreement does not clarify who the "you" is in the phrase "[a]t any time *you* may change your decision." (Emphasis added.) More specifically, the agreement does not directly address whether the term "you" is to be read as singular or plural, such that the mutual consent of both parties is required or whether only one of the parties can effectuate a change. But viewed as a whole, the only reasonable interpretation is that it requires mutual consent, especially where Sarah and David were both parties to the agreement. For instance, if one of the parties wanted to keep the embryo in storage and the other party wanted it disposed, it would be *impossible* for the storage facility to satisfy both requests. Therefore, although the contract says that "you may change your decision in regards to keeping the cryopreserved embryos," because Sarah and David were both parties to the agreement and because of the impossibility in satisfying disparate requests, the "you" should be understood as meaning the plural "you," meaning Sarah and David

¹¹ The admitted exhibit has many different documents that for the most part contain the approvals of both Sarah and David. The notable exceptions include the storage facility only requiring David's authorization to have his cryopreserved semen thawed and disposed of, the Michigan Department of Community Health only requiring Sarah's consent for her to be tested for HIV, and the IVF facility only requiring Sarah's consent for the use of fertility drugs.

collectively. Therefore, the trial court did not err by concluding that one party could not unilaterally make certain decisions regarding the frozen embryos.

Sarah further generally avers that the trial court erred when it found that most of the *Sparks* factors were either irrelevant or neutral. The *Sparks* factors that are to be considered when dividing marital property “whenever they are relevant” include:

- (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. [*Sparks*, 440 Mich at 159-160.]

However, these factors are not exclusive; “[t]here may even be additional factors that are relevant to a particular case.” *Id.* at 160.

Sarah contends that, within these *Sparks* factors, the court failed to properly weigh that she has been paying for the storage of the embryo since the divorce and that she was “the overwhelming primary contributor” to the embryo, “putting herself through the several different medical procedures.” We disagree. First, the court never found that Sarah paid for the storage of the embryo. The only evidence on this topic was David’s testimony in which he said that the storage costs were approximately \$600 or \$700 a year, which he denied paying since the divorce. He therefore “assumed” that Sarah had been making the payments. While that may be a logical conclusion, it cannot be discounted that someone else, like Sarah’s sister who contributed the egg, was paying for it. Even if Sarah had been paying for the storage of the embryo, however, that would not be particularly significant in light of other factors such as the potential birth of a child and the significant ramifications arising from that birth.

Sarah also contends that the trial court failed to give weight to the fact that she “was the primary contributor” to the embryo, “putting herself through the several different medical procedures.” Although Sarah undoubtedly underwent many medical procedures, the embryo at issue was not created as a result of any of those procedures. The embryo was created by taking an egg from Sarah’s sister, which was then fertilized by sperm from David. Although Sarah nobly went through various procedures during the entire IVF processes, those resulted in three children being born and were not directly related to the creation of the embryo at issue in this case.

We find that the trial court did not clearly err by finding that the *Sparks* factors generally, and specifically Factor (2), were neutral.

Sarah next argues that the trial court made other errors when considering the other balancing factors identified by this Court in *Markiewicz*. Specifically, Sarah contends that while it was proper for the court to consider that only David contributed genetically to the embryo, the court failed to consider that Sarah contributed to the embryo in terms of procedures, costs, and family lineage (with the egg being from her sister). We disagree. The court implicitly recognized this when it noted that Sarah’s sister contributed the egg, which became the embryo. However, the court also recognized that between the two parties, only David contributed genetically to the embryo. The court further noted that Sarah was not foreclosed from having more children through

other egg donors. Although the court did not opine on whether she could still utilize eggs from her sister, the record does not indicate that would not be possible.

Sarah also claims that the trial court “dismissed” the fact that she offered to absolve David from any financial obligations related to a child born from the embryo. Contrary to Sarah’s assertion, the court plainly recognized that Sarah offered to do so, but the court sided with David in the overall balancing.

The trial court appreciated the special characteristic of the embryo to produce a human life, but ultimately sided with David because it would be more inequitable to have Sarah birth a child with David’s DNA against his wishes, as opposed to the inequity Sarah would suffer by being precluded from birthing a child that does not share her DNA. Simply put, given the circumstances of this case, the outcome derived by the trial court was a principled decision, and we are not left with a firm conviction that awarding the embryo to David was inequitable. *Sparks*, 440 Mich at 152.

Sarah also argues that the trial court erred by failing to consider her religious beliefs that the embryo is a human life. We disagree. Sarah did not present her religious beliefs during the evidentiary hearing. The trial court necessarily did not err by failing to consider evidence that was never presented. In fact, Sarah acknowledges on appeal that she only presented her religious views in her motion for reconsideration. Because she raised this issue for the first time in a motion for reconsideration, the argument is not preserved. See *Dep’t of Environmental Quality v Morley*, 314 Mich App 306, 316; 885 NW2d 892 (2015) (citation omitted), where this Court concluded that “[b]ecause [this issue was raised] for the first time in a motion for reconsideration, the argument is not preserved.” We will generally decline to address an unpreserved issue unless the failure to do so would result in manifest injustice, if the issue involves a question of law and the facts necessary for its resolution have been presented, or resolving the issue is necessary to properly determine the case. *Miller v Mich Dep’t of Corrections*, __ Mich App __, __; __ NW2d __, (2022) (Docket No. 356430); slip op at 7. Our Supreme Court has cautioned that this discretion should be exercised sparingly and only in exceptional circumstances. *Napier v Jacobs*, 429 Mich 222, 233-234, 414 NW2d 862 (1987). No such exceptional circumstances exist here. Sarah had an opportunity to present evidence of her religious beliefs at the evidentiary hearing, yet failed to do so. We therefore consider this issue waived.

IV. CHALLENGE TO THE JANUARY 2023 ORDER

Sarah further argues that the trial court erred by entering the January 2023 order in two respects. She first claims that, pursuant to MCR 7.208(A),¹² the order is void because it

¹² MCR 7.208(A) provides, in pertinent part:

After a claim of appeal is filed or leave to appeal is granted, the trial court or tribunal may not set aside or amend the judgment or order appealed from except

(1) by order of the Court of Appeals,

impermissibly modified the October 2022 order that already had been appealed to this Court. She also asserts that the trial court erred by not considering the parties' rights to reproductive freedom under the recently adopted Constitutional amendment, Const 1963, art 1, § 28, which was in effect at the time that the January 2023 order was entered.

"A court is, at all times, required to question sua sponte its own jurisdiction." *Tyrell v Univ of Mich*, 335 Mich App 254, 260; 966 NW2d 219 (2020), overruled on other grounds *Christie v Wayne State Univ*, ___ Mich ___; ___ NW2d ___ (2023) (Docket No. 162706); see also *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 709; 742 NW2d 399 (2007).

This Court lacks jurisdiction to address this particular issue. The order was entered in January 2023, which was after she filed her December 7, 2022 claim of appeal from the October 2022 final order awarding the embryo to David. " '[A] party claiming an appeal of right from a final order is free to raise issues on appeal related to *prior* orders.' " *Green v Ziegelman*, 282 Mich App 292, 301 n 6; 767 NW2d 660 (2009) (citation omitted; emphasis added; alteration in original). But an appeal of a final order "does not bring before the reviewing court any subsequent orders." *Gracey v Grosse Pointe Farms Clerk*, 182 Mich App 193, 197; 452 NW2d 471 (1989). Therefore, we are without jurisdiction to consider Sarah's claims of error pertaining to the January 2023 order and decline to address her arguments.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Sima G. Patel

(2) by stipulation of the parties,

(3) after a decision on the merits in an action in which a preliminary injunction was granted, or

(4) as otherwise provided by law.

STATE OF MICHIGAN
COURT OF APPEALS

SARAH MARIE MARKIEWICZ,

Plaintiff-Appellant,

v

DAVID RANDAL MARKIEWICZ,

Defendant-Appellee.

UNPUBLISHED
December 7, 2023

No. 363720
Macomb Circuit Court
LC No. 2019-003236-DM

Before: CAVANAGH, P.J., and RIORDAN and PATEL, JJ.

RIORDAN, J. (*dissenting*).

I respectfully dissent. For the reasons set forth, I would reverse and remand to the trial court for entry of an order awarding the embryo at issue to plaintiff.

This Court previously ruled that “the trial court should first consider whether the disposition of the embryo is governed by a valid contract between the parties. If such a contract exists, the matter should be concluded in accord with the contractual terms that the parties agreed upon in that contract.” *Markiewicz v Markiewicz*, unpublished per curiam opinion of the Court of Appeals, issued March 24, 2022 (Docket No. 355774), p 10. This, the trial court failed to do. The parties’ contract with the storage facility provided, in relevant part:

I/we agree to elect to cryopreserve all viable embryo(s) not transferred that are created during an IVF cycle. The process of cryopreservation will be performed in the laboratory of Michigan Center IVF, PLLC. The cryopreserved embryo(s) will be transferred to the long term facility of Fertility Storage, Inc (FSI)[.] *It is my/our intention to have these embryos transferred back to my uterus in a later cycle.* [Emphasis added.]

The italicized language controls the outcome of this case, yet the trial court failed to consider it as directed by an earlier panel of this Court and, now, the majority chooses to simply ignore the parties’ contractual agreement and our Court’s earlier remand instructions. The contractual language between the parties clearly provides that plaintiff’s and defendant’s intention is to have the embryo at issue, as well as any other embryos, transferred to plaintiff’s uterus at some point in the future. The only manner by which this intention may be effectuated is an order

in favor of plaintiff, who has expressed a desire to act in accordance with it and have the embryo placed in her uterus. See *Mathews v Phelps*, 61 Mich 327, 332; 28 NW 108 (1886) (“In all cases the contract should be so construed as to carry into effect the intention of the parties; and such intent must be ascertained from the language of the instrument . . .”). Because plaintiff has testified that she would have the embryo implanted in her if it was awarded to her, and defendant testified that he would either donate it to science or have it destroyed, the trial court should have ruled in favor of plaintiff because only her intent is consistent with the contractual language that the embryo be placed in her uterus.

In ruling otherwise, the trial court relied upon a separate contractual provision, which states that “[i]n the event of a divorce,” the disposition of the embryos would be “[d]etermined by the applicable Judgment of Divorce or other court order.” According to the trial court, this provision means that “there’s not a meaningful valid agreement as to disposition of the embryo,” so “the court decides.” This is incorrect.

The divorce provision is not inconsistent with the above-quoted italicized language, nor does it supersede this language in any respect. The divorce provision simply indicates that the disposition of the embryos will be controlled by the judgment of divorce or other related court order. It does not, expressly or impliedly, give the court permission to disregard the controlling contractual language as agreed to between plaintiff and defendant. Because the controlling contractual language provides that the parties’ intention is to have the embryo transferred to plaintiff’s uterus at some point in the future, the trial court was required to effectuate that intent by interpreting the contract accordingly.

The mistaken reasoning of the trial court, now adopted by the majority here, is illustrated by the following simple example. Suppose that our Legislature enacted a statute essentially providing that, whenever the biological mother and father disagree regarding the disposition of an embryo, the intent of the mother controls regardless of any contractual language to the contrary. Would a trial court be required to issue a judgment of divorce in accordance with this statute, notwithstanding that a contract provides that disposition of the embryo is to be “[d]etermined by the applicable Judgment of Divorce or other court order”? Of course it would. It cannot be reasonably disputed that the language, “[d]etermined by the applicable Judgment of Divorce or other court order,” is subject to statute. See generally, *In re Koch Estate*, 322 Mich App 383, 394-397; 912 NW2d 205 (2017) (recognizing that the Legislature may enact statutes superseding contractual language). Thus, in this hypothetical case, the trial court would not be able to apply ordinary “equitable” principles common in divorce cases.

So too here. Trial courts are not only bound by statute, but also by judicial precedent. See *In re Hague*, 412 Mich 532, 552; 315 NW2d 524 (1982). Therefore, the trial court in this case was bound to follow and apply our previous *Markiewicz* decision holding that disposition of the embryo is to be determined by the contract entered into by plaintiff and defendant. As explained, the contract compels an outcome in favor of plaintiff. Simply put, the language “[d]etermined by the applicable Judgment of Divorce or other court order” does not give the trial court free reign to apply ordinary “equitable” principles common in divorce cases when there is both contractual

language and judicial precedent to the contrary. Consequently, because the trial court ruled otherwise, we should reverse.¹

Alternatively, even if the trial court did not err in its contractual interpretation, I would, at a minimum, vacate its order and remand to that court for further proceedings. In her motion for reconsideration, plaintiff argued that she is a Roman Catholic, that “[t]he official teachings of the *Catechism of the Catholic Church*, as promulgated by Pope John Paul II in 1992, oppose all procedures whose direct purpose is to destroy an embryo or fetus,” and that as a result, she has a religious belief against destruction of the embryo. Moreover, in our previous decision, we noted that “[a] party’s stated belief that an embryo is a human being, as opposed to mere property, is . . . relevant to this inquiry” as to proper disposition of the embryo. *Markiewicz*, unpub op at 9-10. Because the trial court was specifically directed by this Court to consider plaintiff’s religious beliefs but failed to do so, its order should be vacated and the case remanded to that court for further proceedings consistent with this Court’s previous *Markiewicz* decision. This is especially true where the trial court apparently failed to do as directed because it misunderstood our previous decision in this regard.²

This case also should be vacated and remanded to the trial court to address plaintiff’s rights under Const 1963, art 1, § 28(1), which provides that “[e]very individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including but not limited to prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.” As the trial court interpreted the contract as giving it the authority to award the embryo to defendant for donation or destruction notwithstanding plaintiff’s wishes to use the embryo for reproductive purposes, that ruling infringes upon her constitutional right to “effectuate decisions about all matters relating to pregnancy . . . and infertility care.” *Id.* In other words, as the majority suggests,

¹ Respectfully, the trial court’s ruling is the most erroneous application of the contractual language possible under the facts of this case. The divorce provision lists four options in the event of a divorce: (1) “Discarded by the program,” (2) “Donate embryos for training of laboratory personnel,” (3) “Determined by the applicable Judgment of Divorce or other court order,” and (4) “Donate embryos to an embryo donation center.” The parties in this case, as noted, selected the third option, which implies a rejection of the remaining three options. Yet, by ruling in favor of defendant, the trial court necessarily embraced one of those three remaining options.

² The majority considers this issue waived “[b]ecause [plaintiff] raised this issue for the first time in a motion for reconsideration” Ordinarily, I would agree with the majority. See *Dep’t of Environmental Quality v Morley*, 314 Mich App 306, 316; 885 NW2d 892 (2015). However, the trial court stated in its opinion from the bench on remand that “[t]his is not a referendum on Right to Life or any, there was to none of that in this case and *it’s not relevant to anything in this case.*” (Emphasis added.) Thus, it appears that even if plaintiff had attempted to present evidence of her religious beliefs at the hearing, the trial court would have refused to consider it. Therefore, I believe that the ordinary rule concerning preservation of issues in motions for reconsideration is inapplicable here. This case should be remanded to the trial court with more explicit instructions to consider the parties’ respective beliefs about human life, including plaintiff’s religious beliefs.

this issue involves “competing views from [plaintiff] and [defendant], and . . . whose ‘rights’ to the disposition of the embryo were to be vindicated and whose ‘rights’ were to be impaired.” It is far from clear to me that the outcome in this case correctly balances those rights consistent with Const 1963, art 1, § 28(1).³

To summarize, because the parties’ contract compels an outcome in favor of plaintiff, I would reverse the trial court’s order to the contrary and remand to that court for entry of an order in favor of plaintiff. Alternatively, I would vacate the trial court’s order and remand to that court for further proceedings to address plaintiff’s religious beliefs and the impact of Const 1963, art 1, § 28(1) on this case.

Thus, I respectfully dissent.

/s/ Michael J. Riordan

³ The majority reasons that Const 1963, art 1, § 28 cannot apply here because that provision only applies to state action, and “[i]n this case, the state is not attempting to take or curtail any action, which involves a private dispute between [plaintiff] and [defendant].” However, “judicial action is not immunized” from constitutional protections simply because it is in accordance with “the state’s common-law policy” or “the terms of a private agreement.” *Shelley v Kraemer*, 334 US 1, 20; 68 S Ct 836; 92 L Ed 1161 (1948). For example, judicial enforcement of a private, racially restrictive contract constitutes state action that violates the Fourteenth Amendment. *Id.* Thus, to the extent that the trial court’s ruling in this case was compelled by state divorce law or the terms of the contract, or both, it is plausible that Const 1963, art 1, § 28(1) was nonetheless violated.

The majority’s suggestion that Const 1963, art 1, § 28 might not be applicable here because constitutional provisions are presumptively not retroactive misses the mark. The *Shelley* framework applies here because Const 1963, art 1, § 28 now is effective. Therefore, at a minimum, the majority’s decision may be unconstitutional. This is especially so in light of the fact that the trial court and, now the majority, is depriving plaintiff, a woman, her fundamental right to reproductive freedom as now enshrined in our Constitution.

Court of Appeals, State of Michigan

ORDER

Sarah Marie Markiewicz v David Randal Markiewicz

Docket No. 363720

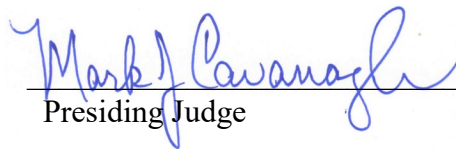
LC No. 2019-003236-DM

Mark J. Cavanagh
Presiding Judge

Michael J. Riordan

Sima G. Patel
Judges

The motion for reconsideration is DENIED.


Presiding Judge

Riordan, J., would grant the motion for reconsideration.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

January 23, 2024

Date


Chief Clerk

Order

Michigan Supreme Court
Lansing, Michigan

September 27, 2024

166782

SARAH MARIE MARKIEWICZ,
Plaintiff-Appellant,

v

DAVID RANDAL MARKIEWICZ,
Defendant-Appellee.

SC: 166782
COA: 363720
Macomb CC: 2019-003236-DM

Elizabeth T. Clement
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden
Justices

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On order of the Court, the application for leave to appeal the December 7, 2023 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1). The parties shall include among the issues to be briefed: (1) whether the lower courts properly construed the parties' agreement with the storage facility; (2) whether the lower courts properly balanced the equities in their application of the factors from *Sparks v Sparks*, 440 Mich 141 (1992), see *Karungi v Ejalu*, 501 Mich 1051 (2018) (MCCORMACK, J., concurring); *Jocelyn P v Joshua P*, 250 A3d 373 (Md App, 2021); *In re Marriage of Rooks*, 429 P3d 579 (Colo, 2018); (3) whether Const 1963, art 1, § 28 applies retroactively; and (4), if so, its effect on the instant case.

The State Bar of Michigan Family Law Section is invited to file a brief amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 27, 2024

Clerk

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