

are binding in divorce court proceedings. Despite all of these precautions, it appears that consent agreements awarding the frozen pre-embryos to one party upon separation will not be enforced in Massachusetts courts.

The Massachusetts decision will require a case-by-case approach to these disputes in the future. The terms of an agreement will be one factor, as will public policy concerns. This individualized approach may be superior to a simply applied rule of law, because each case is unique and often heated. However, the ultimate result of this decision may be that many more pre-embryos are left indefinitely in frozen storage, while disputing couples are unable to agree on donation, implantation, or destruction.

Avery W. Gardiner

## References

1. The court defined "pre-embryo" as the four-to-eight cell stage of a developing fertilized egg. Other courts have used the terms "embryo" and "pre-zygote." These

terms are legally indistinguishable.

2. The court used initials to protect the anonymity of the ex-husband and ex-wife.

3. See J.M. Dehmel "To Have or Not to Have: Whose Procreative Rights Prevail in Disputes over Dispositions of Frozen Embryos?" *Connecticut Law Review* 27 (1995) 1377-1405, and C. Coleman, "Procreative Liberty and Contemporaneous Choice: An Inalienable Rights Approach to Frozen Embryo Disputes," *Minnesota Law Review* 84 (1999) at 55.

4. *A.Z.*, 431 Mass. at 156. The court did not need to reach beyond contractual grounds to decide this case. That the court chose to decide the case more broadly suggests its readiness to weigh in on the pre-embryo debate. The court chose to not defer to the 5-prong test, writing a much broader decision instead. However, it is likely that later courts will examine the 5 prongs set forth in this case as a starting point for evaluating this class of contracts.

5. *Id.* at 157

6. See P. Walter, "His, Hers, or Theirs—Custody, Control, and Contracts: Allocating Decisional Authority over Frozen Embryos," *Seton Hall Law Review* 29 (1999) 937-969.

7. See Coleman, *supra* note 3.

8. See *Id.*

9. *Kass*, 696 N.E.2d. at 182.

10. *Davis*, 842 S.W.2d at 598.

11. See Coleman, *supra* note 3.

12. See Dehmel, *supra* note 3.

13. See *Id.*

14. *Davis*, 842 S.W.2d at 597.

15. See Dehmel, *supra* note 3.

16. *Davis*, 842 S.W.2d at 603.

17. See Coleman, *supra* note 3

18. *A.Z.*, 431 Mass. at 158

19. *Davis*, 842 S.W.2d at 606

## Erratum

In the previous issue of the Journal (28:1, Spring 2000), a typesetting error failed to reproduce a symbol for the arithmetic mean in an article entitled: "Are Ethics Committee Members Competent to Consult?" The symbol—which the authors used in several places on pages 33–35 of the article—appears incorrectly as a "0" (for example,  $0=4.32$ ). We regret this error, and will provide corrected replacement copies of the article on request. Please contact David Clarke at <dclarke@aslme.org> or 617-262-4990, ext. 13.

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