

Warshaw Burstein Sues CNY Fertility For Negligent Handling of Same-Sex Couple's Embryos

New York – March 28, 2022 -- Warshaw Burstein, LLP, a full-service law firm in New York City, announced that Eric Wrubel, a partner in and Chairman of the firm's Matrimonial Group and Co-Chair of its Fertility Law Group, and Alan Pollack, a partner in the firm's Litigation Group, filed a complaint on behalf of its clients in Albany State Supreme Court against the CNY Fertility Center (CNY) and several of its physicians.

The lawsuit sets forth multiple claims including negligence and medical malpractice against CNY and its physicians for failing to provide the services requested and agreed to in forming their patients' family through in-vitro fertilization. The plaintiffs, Heather Wilhelm-Routenberg and Robin Routenberg-Wilhelm, brought this action as a warning to intended parents to do their research and use IVF clinics with the highest standards in place to protect their embryos.

BRIEF OVERVIEW OF THE CASE

Plaintiffs are a married, same sex couple, who made the joint decision to start a family. However, due to prior traumas experienced by Heather, the couple would only give birth to and raise daughters. This was not a preference, but a pre-requisite in the building of their family. CNY, a fertility clinic with locations in New York and across the country, assured Plaintiffs that they could select the sex of the embryo, which would be transferred to one of their uteruses.

When Heather was 15 weeks pregnant, the couple learned that a male embryo had been mistakenly transferred to Heather's uterus despite their clear and repeated instructions that only a female embryo should be transferred. Mr. Pollack noted that "decisions concerning family planning involve some of the most intimate and personal choices a person will make in their lifetime. Our clients, like other couples, made their decision to start a family based on their fertility physicians' assurances that they would have a daughter. This case involves the doctors' admitted negligence which deprived our clients of their right to have the family that they planned."

The failure of the doctors at CNY to comply with their patients' explicit instructions has caused Heather and Robin to now experience a life altering and irreversible mistake. CNY's admitted mistake has also deprived the couple's son of the parental bonding which every child deserves and is entitled to receive. In addition to being deprived of their basic reproductive liberties, the couple has suffered significant mental anguish and physical pain during Heather's pregnancy and after the birth of their son.

Mr. Wrubel contends that "the science now exists and is being employed by IVF clinics where parties can determine the sex of an embryo with practically 100% certainty prior to its transfer to the uterus. Doctors have the ability to test embryos for genetic defects and advise intended parents of the risks of proceeding with a pregnancy using such embryos." Had CNY employed the highest safety protocols in its labs, the mistakes committed here would not have occurred.

Mr. Wrubel anticipates that the doctors will fight the suit by arguing that New York State prohibits individuals from bringing a “wrongful life claim.” Mr. Wrubel contends that this is not a wrongful life claim. Rather, “it is a negligence and malpractice claim that involves a failure to comply with the standard of care in the IVF medical community, including, having two embryologists in the lab during testing procedures, using unique, one of a kind UPC codes to identify genetic material as well as other safety protocols which are already in place by many clinics in order to avoid the exact errors that were committed in this case.” Mr. Wrubel further believes that this case will provide New York State courts with an opportunity to re-examine its laws as they apply to new advancements in the area of invitro fertilization.

The Fertility Law Group at Warshaw Burstein is uniquely positioned to support clients through the intricacies of becoming parents using assisted reproduction. Practice leaders, Alexis L. Cirel and Eric Wrubel helped shape modern parentage laws in New York for children conceived using assisted reproduction and third-party arrangements. Eric successfully argued the landmark case that afforded LGBTQ+ families created with the assistance of donors the same rights as heterosexual families; Alexis championed and helped craft the Child-Parent Security Act, the law that now allows New Yorkers to become parents through paid gestational surrogacy. Find more information on Warshaw Burstein's Fertility Law Group here. In addition, you can visit us on [LinkedIn](#), [Instagram](#), or [Facebook](#).

Warshaw Burstein, LLP is a full-service law firm in New York City which has distinguished itself through superior and cost-effective legal service and personalized client care and attention. For more information, please visit www.wbny.com, or visit us on LinkedIn, and on Twitter [@warshawburstein](#).

###