

IVF mix-up case now before Court of Appeal

Woman who had baby girl with stranger's sperm appealing to be awarded upkeep costs

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The "difficult" issue of whether the mother of a baby conceived in an in-vitro fertilisation (IVF) sperm mix-up can claim damages for the upkeep of the child was debated before a five-judge Court of Appeal yesterday.

The case, the first of its kind – and "hopefully... the last", in the words of Judge of Appeal Andrew Phang – was adjourned to a later date for further arguments.

It arose from a lawsuit filed in 2012 by a woman, now 39, against Thomson Medical, its fertility centre and two embryologists over a mix-up in sperm samples.

The mistake resulted in her hav-

ing a baby girl, now four years old, with a stranger's sperm instead of her husband's.

She sought damages for various categories of claims, including for the upkeep of the child, known as Baby P in court proceedings.

They included expenses for basic necessities, education up to the tertiary level and holidays.

Last year, the defendants admitted liability for the 2010 incident.

However, ahead of the assessment of damages, the defendants asked the High Court to give a ruling on the preliminary question of whether Singapore law allows damages to be awarded for the upkeep of a healthy child.

Earlier this year, Justice Choo Han Teck disallowed the claim, not-

ing that there were "cogent policy considerations" against finding liability for upkeep.

"Baby P should not ever have to grow up thinking that her very existence was a mistake," he said.

The woman appealed.

At the appeal yesterday, Chief Justice Sundaresh Menon emphasised that the case had nothing to do with the value of the child, but the "unanticipated consequence that the parents have to deal with, without choice".

Senior Counsel N. Sreenivasan, representing the woman, argued that her loss was the unwanted pregnancy in which she gave birth to a child with a stranger's DNA, when she and her husband had contemplated raising only a child who was biologically their own.

Senior Counsel Lok Vi Ming, representing the defendants, argued that the cost of raising the child was not a loss arising from the

defendants' conduct; the woman had wanted a child and contemplated incurring expenses to raise one.

Mr Lok noted that the courts do not recognise damages for the ordinary upkeep of a child, on the basis that the birth of a healthy child was "a blessing".

CJ Menon, however, noted that, at the outset, if the woman was asked if she wanted to raise a child without her husband's genes, she could say "no". But by the time the child was born, she had no choice.

Associate Professor Goh Yihan from the Singapore Management University, who was appointed to give an independent view, said upkeep costs should be awarded in the present case.

He said the defendants owed the woman a duty of care in performing the IVF procedure to fertilise her eggs with her husband's sperm.

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