

When the Child “Ordered” Is Not the Child Received

by Denise J. Hunnell, MD (Originally published on ZENIT.org, December 21, 2011)

Imagine gazing at your child and coldly declaring, “You should never have been born.” Yet parents are doing exactly that in courts around the world as they bring “wrongful life” or “wrongful birth” lawsuits against doctors and fertility clinics.

These very sad cases are variations on the classic “wrongful death” medical malpractice suit. The twist is that the plaintiffs are dissatisfied because the patient—in this case a child—lived instead of died. Usually these children suffer from a serious disability or genetic disease. In a “wrongful birth” suit the parents allege that if they had been given a prenatal diagnosis of the child’s condition they would have aborted their child. They seek compensation for the care of their child and punitive damages for having to live with a disabled child.

“Wrongful life” cases are filed on behalf of the child, claiming that non-existence is preferable to living in a diseased state. In 1998, Amos Shapira argued in the *Journal of Medical Ethics*:

...it would be both feasible and desirable to endorse “wrongful life” compensation actions. The genetic counsellor owed a duty of due professional care to the impaired newborn who now claims that but for the counsellor’s negligence, he or she would not have been born at all. The plaintiff’s defective

life (where healthy life was never an option) constitutes a compensable injury.¹

Professor Shapira of Tel Aviv University wrote this over a decade ago. Since then, such lawsuits on “behalf” of children with genetic defects have become commonplace in Israel. The October 26, 2011 issue of *New Scientist* magazine reports that the rising trend of these “wrongful birth” cases has prompted an investigation by the Israeli government. Israel, like much of the Middle East, India, and North Africa has a high rate of consanguineous marriages, thus increasing the incidence of genetic diseases.² Carmel Shalev, a human rights lawyer and bioethicist at Israel’s University of Haifa asserts the Israeli culture is geared to do prenatal testing and abort children with genetic defects. She states in *New Scientist*:

There is an entire system fuelled by money and the quest for the perfect baby. Everyone buys in to it—parents, doctors and labs. Parents want healthy babies, doctors encourage them to get tested, and some genetic tests are marketed too early.

In other countries “wrongful birth” lawsuits focus more on the hardships of the parents than the children. A 2009 case

in England sought £ 1.5 million as a down payment on the care of Rupert, a five-year-boy who was born with congenital heart defects, a cleft palate, a vertebral abnormality and a single kidney.³ Rupert is also wheelchair bound, requires mechanical ventilation via a tracheotomy and has a feeding tube. The lawyers for his family argued that because these abnormalities were not detected on the pre-natal ultrasound, his mother was never offered the opportunity to abort Rupert. She was burdened with his care and therefore deserved compensation.

A 2003 lawsuit sought damages because Down syndrome was not diagnosed prenatally.⁴ The Vancouver mother complained that having a child with a mental disability “totally disrupted our plans.” She was awarded \$10,000 in damages for her suffering. In a similarly disturbing case, an Australian lesbian couple attempted to sue an IVF clinic because the birth mother became pregnant with twins when she only wanted one child.⁵ Their suit claimed the couple was “overwhelmed” with two children. The birth mother was beside herself because she had to buy an expensive stroller for twins and suffered nausea during her pregnancy. While this lawsuit was rejected by the Australian courts, the thinking that prompted such a claim is part and parcel of this

increasingly prevalent view of parenting.

Throughout the world, children are dehumanized and treated as accessories in the lives of adults. With contraception, children are conceived when it is convenient for their parents. Abortion allows for “defective” children to be destroyed so that their parents do not have to deal with sickness and disabilities. In fact, a Danish newspaper headline announced earlier this year that a medical breakthrough would cure Down syndrome.⁶ In actuality, the proclamation was simply saying that prenatal testing and the subsequent abortion of unborn children affected by Down syndrome would be so thorough as to eliminate all live births of such children.

The advent of assisted reproductive technologies has allowed selecting a child to become even more precise. Embryos are screened before they are implanted. Those not of the desired gender or those with less than optimal genetics are discarded. In 2009 British doctors enthusiastically announced the birth of the first baby girl who had been screened as an embryo to ensure she did not carry the BRCA1 gene for breast cancer.⁷ In doing so, they implicitly denounced the lives of all women who do carry the BRCA1 gene. To these physicians, it would have been better had these women never been born.

When having a baby becomes an exercise in consumerism, it is not surprising that parents want some sort of money-back guarantee. When a purchased product does

not meet the specifications that were ordered, we send it back and ask for a refund. “Wrongful birth” lawsuits are compensation for a “defective” purchase. “Wrongful life” lawsuits claim that disabled children are manufacturing mistakes. They should never have happened in the first place. Such thinking strips children of their human dignity and debases their parents.

Secular culture judges children by their usefulness to their parents. Such conditional love breeds distrust and insecurity. This socially destructive view must be countered with a culture of life that accepts the vocational nature of parenthood. Parents are called by God to be stewards of the specific human life given to them. Every child, no matter the state of his health, is conceived in the image of God. Every child also comes with his own set of challenges. There is no denying that some of these challenges are daunting. However, if God calls us to a task He will not abandon us. His Grace will see us through if we have faith enough to trust.

(Endnotes)

- 1 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC479134/>
- 2 <http://www.newscientist.com/article/dn21094-the-israeli-children-who-are-suing-for-being-born.html>
- 3 <http://www.telegraph.co.uk/news/uknews/law-and-order/5834202/Family-of-disabled-sue-NHS-for-wrongful-birth.html>
- 4 <http://www.inclusiondaily.com/news/advocacy/wrongfulbirths.htm#013103>

htm#013103

5 <http://www.inclusiondaily.com/news/advocacy/wrongfulbirths.htm#013103>

htm#013103

6 <http://www.theglobeandmail.com/news/opinions/opinion/deselecting-our-children/article2136096/print/>

7 <http://www.guardian.co.uk/science/2009/jan/09/breast-cancer-gene-baby>

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