

Alabama Supreme Court  
In Special Session at the University of South Alabama  
Tuesday, September 19, 2023

SC- 2022-0515 James LePage and Emily LePage, as parents and next friends of two deceased LePage embryos, Embryo A and Embryo B; William Tripp Fonde and Caroline Fonde, as parents and next friends of two deceased Fonde embryos, Embryo C and Embryo D v. Mobile Infirmary Association d/b/a Mobile Infirmary Medical Center and The Center for Reproductive Medicine, P.C.

SC-2022-0579 Felicia Burdick-Aysenne and Scott Aysenne, in their individual capacities and as parents and next friends of Baby Aysenne, deceased embryo/minor v. The Center for Reproductive Medicine, P.C., and Mobile Infirmary Association d/b/a Mobile Infirmary Medical Center

Attorneys for the LePages and the Fondes: J. Brian Duncan, Jr., David G. Wirtes, Jr., William E. Bonner, Steven L. Nichols, and Joseph D. Steadman

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Attorneys for The Center for Reproductive Medicine, P.C.: W. Austin Mulherin III, Michael E. Upchurch, Mary Margaret Bailey, and Blair G. Mattei

Attorneys for Mobile Infirmary Association d/b/a Mobile Infirmary Medical Center: Walter W. Bates, Sybil V. Newton, W. Christian Hines III, and Ann Chapman

Attorneys for Amicus Curiae the Medical Association of the State of Alabama, in support of The Center for Reproductive Medicine, P.C., and Mobile Infirmary Association d/b/a Mobile Infirmary Medical Center: Philip A. Sellers II and Virginia R. Bradley

## Summary<sup>1</sup>

Felicia Burdick-Aysenne and Scott Aysenne, James LePage and Emily LePage, and William Tripp Fonde and Caroline Fonde went to a fertility clinic operated by The Center for Reproductive Medicine, P.C. ("the Center"), to undergo in vitro fertilization ("IVF") treatments. As a result of their IVF treatments, they were able to successfully create several healthy embryos, some of which were later carried to term and born. Their remaining embryos were stored in the clinic's cryogenic nursery.

In December 2020, a person who is believed to have been a patient at the Mobile Infirmary Medical Center, a medical facility operated by the Mobile Infirmary Association ("Mobile Infirmary") and located in the same building as the Center's clinic, managed to gain access to the clinic through a shared doorway. Once inside of the clinic, that patient entered the cryogenic nursery and removed several embryos, including the embryos belonging to the Aysennes, the LePages, and the Fondes, from their containers. Because the embryos had been stored at an extremely cold temperature, they apparently burned the patient's hand, causing the patient to drop the embryos to the floor.

Following that incident, the Aysennes, the LePages, and the Fondes sued the Center and Mobile Infirmary in the Mobile Circuit Court. In their complaints, the Aysennes, the LePages, and the Fondes alleged, among other things, that the Center and Mobile Infirmary were responsible for the deaths of their embryos and that their failure to secure their respective facilities was both negligent and wanton.

The Center and Mobile Infirmary asked the circuit court to dismiss the lawsuits filed against them by the Aysennes, the LePages, and the Fondes. After holding a hearing on their request, the circuit court dismissed the above-mentioned claims based upon the text of Alabama's Wrongful Death Act and historical limits on damages for emotional harm. The Aysennes, the LePages, and the Fondes have appealed.

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<sup>1</sup>This summary is provided as a courtesy to members of the public who are attending this oral argument. It is in no way intended to reflect the thoughts or opinions of the members of the Court on the present cases.