World & Nation

Court allows suit claiming 'wrongful birth' of Downs baby

of the District of Columbia Court of Appeals has reinstated a "wrongful birth" suit brought against an obstetrician by the mother of a child with Down's syndrome.

A Catholic pro-life official said January 6 that by upholding such suits courts become "tools" of those who advocate abortion and also could make it "legally and financially impossible" for pro-life physicians to practice obstetrics.

In a unanimous decision released December 31, the court reinstated a suit brought by Carolyn B. Haymon against her obstetrician, Dr. Marciana W. Wilkerson.

The mother has claimed her doctor deprived her of the right to decide whether to have an abortion and thus avoid the birth of her daughter.

Judge Judith W. Rogers wrote for the court that if Haymon could prove at a trial that Dr. Wilkerson "deprived her of the

parental right to choose whether to avoid the birth of a child afflicted with Down's syndrome, Dr. Wilkerson can be held liable for the extraordinary medical and other expenses attributable to the care of that child."

Richard Doerflinger, assistant director of the National Conference of Catholic Bishops' Office for Pro-Life Activities, said courts "unintentionally make themselves into tools of pro-abortion advocacy" by upholding such suits against physicians "who fail to facilitate the abortion of a mentally disabled child.

These suits could make it legally and financially impossible for pro-life physicians to practice obstetrics," Doerflinger said.

He urged state legislatures that have not already done so act to invalidate such suits.

The state Supreme Court of North Carolina and the legislatures of some states, including Minnesota and Idaho, have refused to allow "wrongful birth" suits.

"Wrongful birth" and "wrongful life" suits "classify the lives of human beings with disabilities as 'wrong' and ... they tend to coerce physicians against their better judgment to promote prenatal diagnosis and selective abortion," Doerflinger said.

A "wrongful life" suit involves parents who claim a physician should pay for the suffering of an unhealthy child whose life might have been avoided through abortion.

In the Haymon case, Haymon, who was 34, claimed she was worried about becoming pregnant at that age and asked her obstetrician about amniocentesis, which can detect genetic defects in fetuses. She claims the doctor recommended against it.

Citing the 1973 Supreme Court abortion decision Roe vs. Wade, the appeals court judges in their decision said Haymon had a valid suit in claiming her physician negligently deprived her of her constitutional

right "to decide whether to terminate her pregnancy.' But Doerflinger said the case "involved no

particular advocacy on the physician's part.' He said Dr. Wilkerson "simply used good medical judgment in recommending against amniocentesis for a 34-year-old woman, since at this maternal age the chance that the amniocentesis will accidently cause a miscarriage of a healthy child is higher than the chance that it will detect a genetic defect.

"Freedom of choice' is a meaningless slogan if the only 'choice' to be legally protected is the one most likely to produce more abortions," he added.

Douglas Johnson, legislative director for the National Right to Life Committee said January 7 that the appeals court decision was "ominous and appalling for doctors who don't want to be accomplices in killing unborn children. It violates the conscience rights of a lot of doctors."



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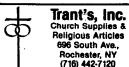
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