IVF MIX-UP

Legal rights of biological dad unclear

Does man whose sperm was wrongly used have any claims to the baby? Experts not sure

By K.C. Vijayan
LAW CORRESPONDENT

The rights of the man whose sperm was used in the in-vitro fertilisation (IVF) mix-up are unclear as this is an undeveloped area, said specialists in the law.

Pointing to the Women’s Charter and the Evidence Act, they noted that the provisions in these areas of the law have been outpaced by science and will need to be reinterpreted or updated, in the light of advancements that have raised fresh questions on what it means in law to be a parent.

Their views were sought in the wake of a mix-up of sperm samples at Thomson Fertility Centre.

It has emerged that the sperm used to fertilise a Chinese Singaporean woman’s egg did not belong to her Caucasian permanent resident husband.

She gave birth last month and a DNA test showed that the baby has no biological link with her husband.

It is believed the sperm that was used can be traced to a man who submitted a sample at Thomson Fertility Centre in the third week of January, the same week the woman’s husband also gave a sample.

Senior Counsel Deborah Barker of KhattarWong law firm said yesterday that the law as it stands does not give the man whose sperm was mistakenly used any rights to the child; he is in the same position as the father of an illegitimate child.

“There’s a presumption in the law that the husband is the father of the child, unless he had no access to his wife (at the time of conception) and unless he goes to court to overturn the presumption,” she said.

Given that scientific advancements in assisted reproduction and human error have come together to create a novel precedent, the courts will have to interpret the law on this one.

Ms Barker said: “This is a case where the law has not kept up with scientific development. The legal answer may not give the best answer. It is better for the parties to work out a common-sense solution based on reasonableness, humanitarianity and the interests of the child.”

In a 2003 court case in England, a court ruled that a man whose sperm was mistakenly used in an IVF cycle was the legal father of the twins conceived.

But he was not granted custody of the children. The judge in that case directed that the twins continue to live with the married couple as it was in their best interests.

National University of Singapore Associate Professor Debbie Ong said the Evidence Act, which presumes the husband to be the father, was enacted before paternity could be established in a laboratory.

“This provision is outdated and reform is due, because DNA tests can now accurately determine paternity,” she said.

She added that if the Evidence Act is to be reformed, the law has to decide whether it should treat a child as the offspring of its biological father, or as a child of its mother’s husband.

Singapore Management University law dean Jack Lee Teen-Ta noted that the Women’s Charter clearly makes an adult’s duty to be responsible for the child.

Since neither “parent” nor “child” is defined, “parent” could be taken as biological parent — in this case, the man whose sperm was mistakenly used.

However, going with this definition opens up the thorny issue of whether the child or its mother can file a maintenance claim if they know who the biological father is.

It also opens up the question of whether Thomson Fertility Centre can be compelled by a court order to disclose the identity of the sperm donor.

This, in turn, impinges on considerations of confidentiality and privacy.

Assistant Professor Lee added: “One can imagine that some men would be put off donating sperm... if it turns out that the fertility clinic can be compelled to disclose their identities in order that claims for maintenance can be made against them.

“The law may need to be revised to provide that maintenance claims cannot be brought against anonymous donors or against biological fathers in situations where an IVF mix-up has occurred.”

In England, the Human Fertilisation and Embryology Act was passed 20 years ago to regulate assisted reproduction and create a supervising agency.

In 2005, the law there changed to remove donor anonymity and allow children born after that date to find out identifying information about the donor when they reach the age of 18.

vijayan@spth.com.sg

Thomson Medical’s FY results ‘unlikely to be affected’

THOMSON Medical Centre (TMC) has moved to assure its shareholders that the suspension of its wholly owned subsidiary, Thomson Fertility Centre (TFC), is unlikely to affect the company’s financial year results.

TFC was directed by the Ministry of Health (MOH) last Thursday to suspend fresh cycles of assisted reproduction (AR) treatment, in the wake of a couple who had in-vitro fertilisation there having received sperm that did not belong to the husband. The woman, a Chinese Singaporean, gave birth to a baby with a darker skin tone. DNA tests later proved that the baby belonged to her but not to her Caucasian husband.

“TMC’s statement, released yesterday, said revenues from TFC formed 4.4 per cent of the TMC Group’s revenue for the full year ended Aug 31, and that its profit after taxation was 5.9 per cent of the group’s profit after taxation. TFC’s total net asset value as at Aug 31 this year made up 2.8 per cent of the TMC Group’s net tangible asset value.

“The statement from the TMC’s board read: “As the directive requires the suspension only of new AR procedures... the board, to the best of its knowledge, is of the opinion that this suspension is unlikely to have a material impact on the results of the TMC Group for the current financial year ending Aug 31, 2011, nor on its net tangible asset value as at Aug 31, 2011.”

It added that the MOH had not said when the suspension would end, and that TMC would apply for it to be lifted as soon as possible.

MELISSA PANG