

Litigator of the Week: Case Involving Sperm Bank, Ex-Girlfriends and Rare Mental Anguish Damages

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Cade Bernsen, left, and David Bernsen of the Bernsen Law Firm, Beaumont.

After a two-week trial in Houston, a jury awarded \$875,000 in damages to a man and his ex-girlfriend against another ex-girlfriend and a sperm bank.

Layne Hardin and Katherine LeBlanc alleged that Tobie Devall retrieved vials of Hardin's sperm from a sperm bank, had herself inseminated and gave birth to his child—all without his permission. By giving her the sperm, the sperm bank violated its contractual obligations binding it to give possession to LeBlanc, triggering mental anguish for Hardin and LeBlanc, the jury concluded in an Aug. 24 verdict.

The jury also concluded that Devall converted property and intentionally inflicted severe emotional distress upon Hardin and LeBlanc, who previously had another child together.

Father-and-son team David Bernsen and Cade Bernsen, of the Bernsen Law Firm in Beaumont, represent the plaintiffs.

"I think the jury responded because they saw someone who goes and wrongfully take someone's semen, has herself inseminated deceitfully, keeps the child away from the man and does so very specifically and very intentionally," said David Bernsen, who served as lead counsel at the two-week trial.

In 2002, prior to Hardin undergoing a vasectomy, Hardin and LeBlanc together contracted with the sperm bank to have Hardin's sperm stored there, Bernsen said. In their contract, the then couple agreed with the sperm bank to have LeBlanc assume "decisional authority" about the sperm if they split.

Getting a jury to award mental anguish damages as a result of a contract breach—a rare outcome—presented a challenge, Bernsen said. "We had to thread the eye of the needle," he said. He believes only five or six other instances of juries issuing such damage awards have occurred in Texas.

In their answer and at trial, the defendants denied the allegations and alleged that Hardin committed fraud by misrepresenting his actions. The jury disagreed.

J. Lee Hoffoss of Lake Charles, Louisiana's Hoffoss Devall, who represents Devall, and James E. Edwards of Stafford's Edwards & Stephens, who represents the sperm bank, both did not return a call to each of their offices for comment. Bernsen, a former Texas state senator, hopes that the jury's verdict will lead Texas to reform its laws to provide better protection for sperm deposits.

"As science and technology goes forward, we have to have safeguards. It was easier to get the sperm than it was to buy a pack of cigarettes or to buy a pack of cold beer," Bernsen said.

Read more: <http://www.texaslawyer.com/id=1202735736763/Litigator-of-the-Week-Case-Involving-Sperm-Bank-ExGirlfriends-and-Rare-Mental-Anguish-Damages#ixzz3k291Gvqg>