

Trial Over Misappropriated Sperm Begins in Texas

A trial began in Texas Tuesday in which a former couple alleged that a sperm bank illegally gave the man's sperm to another woman who then had a baby with the sperm.

Louisiana residents Layne Hardin and Katherine LeBlanc, then domestic partners, decided to store Hardin's sperm in 2002 before he had a vasectomy. The couple visited a fertility center and had eight vials of sperm stored, according to their lawsuit, which was filed in Harris County District Court in Texas, where the facility is located.

In the event that the couple separated, LeBlanc was to decide what to do with the samples, according to the lawsuit, originally filed in 2013.

The couple did separate, and Hardin began dating another woman, Tobie Devall.

Hardin and Devall visited the clinic in 2008 before breaking up in 2009, according to Devall's March 2013 counterclaim.

According to the couple's lawsuit, Devall was given two samples of Hardin's sperm – without LeBlanc's consent, despite the agreement – and became pregnant, having a son in 2010.

LeBlanc said she was devastated that the samples were used without her consent.

"There was a reason for having his sperm preserved, and it was for me to have a biological sibling for my son," LeBlanc, who already had a child with Hardin, said. "That was for me to decide how to use."

In opening statements in court Tuesday, Lee Hoffoss, Devall's attorney, told jurors that his client and Hardin went to visit a fertility doctor in Houston and told the doctor he had eight vials of sperm which he wanted to be used to inseminate Devall.

Devall and Layne were in a relationship on Oct. 26, 2009, the day Devall was inseminated. On that day, there were 77 text messages between the two, before and after the procedure, Hoffoss said.

Hoffoss added that Layne told friends he was "going to be a daddy and he was happy about it. He bragged to others for weeks after."

Hoffoss called the lawsuit frivolous, saying when LeBlanc visited a fertility doctor shortly after filing this suit, she was told she was infertile and there was only a five percent chance of her getting pregnant.

He told the jury to ask themselves: "Is this case about Kathy being angry because Layne left her for a much younger woman? You must question if this case is about the plaintiffs wanting to profit from the birth of a child."

In their lawsuit, Hardin and LeBlanc are seeking judgment against Devall, as well as the clinic where the sperm was stored, now known as Texas Andrology Services.

Devall's attorney did not respond to ABC News' request for comment. In her 2013 countersuit, Devall alleged that Hardin gave his permission for her to use the sample and that he attended a March 2008 doctor's appointment with her during which he told the doctor, Leah Schenk, that he wanted Devall inseminated with his sperm. The document said that Hardin did not reveal at any time that he didn't have decisional authority over the sperm.

Duvall asked for a trial by jury to recover unspecified costs and "other further relief to which she may show herself justly entitled."

Jim Edwards, an attorney for Texas Andrology Services, says Hardin never notified the clinic that he didn't want Devall to have his sperm. He said he only knew of Devall and Hardin coming into the clinic when they were in a relationship because they wanted to have a baby.

"Mr. Hardin has got some obligation to let people know he's changed his mind," Edwards said.

Cade Bernsen, an attorney for the plaintiffs, said the case reflects the need for better checks and balances at sperm banks.

"There are more security checks in place for me going and buying alcohol at a gas station than there were for her to receive a man's DNA and the building blocks of life," Bernsen said.

Hardin and Devall's son is now 5 years old. Hardin says he has never met the boy, and says he has spent more than \$50,000 in court and attorney fees fighting the termination of his parental rights.

"One day we are going to run into each other, and what do we say?" Hardin said. "Do I recognize him? Will he recognize me?"

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