



The Wrong-Headedness of “Wrongful Birth” Lawsuits

“At its core, the idea of a ‘wrongful birth’ claim is unreasonable and ethically incoherent.”



At its core, the idea of a “wrongful birth” claim is unreasonable and ethically incoherent. Parents who bring these lawsuits against obstetricians and hospitals claim that medical professionals should have detected a particular disease or defect in their unborn baby through prenatal testing and informed them about it. Had they been given this information, their argument continues, they would have chosen to abort their baby, rather than spending years of their lives caring for a less-than-perfect, possibly infirm child. Wrongful birth lawsuits enable the parents to seek legal redress, often in the form of multi-million dollar settlements.

In 2013, for example, a jury in Washington state awarded a \$50 million payout to a couple who claimed they would have aborted their five-year-old son Oliver if they had known he had an “unbalanced chromosomal translocation.” Because of the mismatched chromosomes he received from his parents, he has an IQ of less than 70 and is unable to walk.

Rachelle Harz, a malpractice lawyer who spearheaded one of these lawsuits in New Jersey in 1999, expressed some of the tortuous thinking that goes into these cases during an interview for 60 Minutes. She noted that although

the physician in this case, “didn’t cause the child’s retardation, what he caused was not giving the proper information to the parents to allow them the choice to abort the child.” She concluded that the doctor “caused the birth of this very, very neurologically impaired child.”

The fundamental flaw in her argument, of course, is the claim that the doctor “caused the birth” of the baby, when, in fact, the birth was caused by an activity that took place nine months prior between the husband and wife. That action of the mom and dad, not an action by the doctor, resulted in the birth.

What the doctor actually “caused” by not discovering and sharing specific medical information with the parents was the *preservation of the child’s life*. These lawsuits rely on fundamentally flawed logic: first, that it is wrong and illegal for a doctor not to know or to withhold medical information such that a life that would have been ended is saved; second, that a doctor is somehow obligated to facilitate or cooperate in harmful or lethal actions that parents intend to carry out against their own offspring. The medical profession, however, has long professed allegiance to the

Making Sense of Bioethics

The Wrong-Headedness of “Wrongful Birth” Lawsuits

creed of “do no harm,” so that doctors can serve uniquely as healers, not killers. For obstetricians in particular, the unborn children they track and follow during pregnancy count as that doctor’s patients in the same way that the mothers do.

Whenever a couple sets out with the intention of aborting an imperfect child and requests that prenatal testing be performed for this purpose, the process of testing itself becomes immoral. In the same way, any physician or health care professional who arranges for such tests, if they have prudential certainty that a couple intends to abort an imperfect child, would be guilty of cooperating in evil when that abortion takes place.

To consider a parallel example, if a physician believed that a child arriving to the hospital emergency room had been physically abused or severely beaten by his parents, he would be duty-bound, not to mention legally obligated, to report that abuse to authorities. He would not be permitted to turn a blind eye, or otherwise cooperate in the ongoing harm to that child by his or her parents. Similarly, obstetricians who work with pregnant couples should not be expected to turn a blind eye and provide diagnostic information to

parents that will encourage them fatally to assault their unborn child.

None of us is perfect. None of us is born into this world completely free of defects, whether physical or psychological. Those limitations, however, never entitle others to place our lives in the crosshairs and pull the trigger — especially our own parents! In sum, these wrongful birth cases promote catastrophic misunderstandings about parental duties and about the physician’s obligations towards mothers and their children in prenatal care settings.

Recognizing that some parents will face considerable expense, labor and difficulty in raising a child who requires special care and attention due to disabilities, it seems reasonable to promote a pro-life and supportive response on behalf of these families, rather than encouraging the corrosive practice of wrongful birth lawsuits. That supportive response should include the expectation of everyone chipping in and helping out, whether through insurance, taxes or crowd-funding, or through other forms of civic, societal or ecclesial outreach.

Rev. Tadeusz Pacholczyk, Ph.D. earned his doctorate in neuroscience from Yale and did post-doctoral work at Harvard. He is a priest of the diocese of Fall River, MA, and serves as the Director of Education at The National Catholic Bioethics Center in Philadelphia. Father Tad writes a monthly column on timely life issues. From stem cell research to organ donation, abortion to euthanasia, he offers a clear and compelling analysis of modern bioethical questions, addressing issues we may confront at one time or another in our daily living. His column, entitled “Making Sense of Bioethics” is nationally syndicated in the U.S. to numerous diocesan newspapers, and has been reprinted by newspapers in England, Canada, Poland and Australia.

