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No. 95743-6

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 49345-4

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Marriage of:

AIMEE GUARDADO,

Respondent,

and

OTTO GUARDADO,

Petitioner.

PETITION FOR REVIEW

Otto Guardado
6135 NE 14th Ct.
Vancouver, WA 98665
360-713-2448

Petitioner

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A. Identity of Petitioner and Court of Appeals Decision.

The Court of Appeals substantially affirmed the trial court's decision on alleged discovery misconduct, disposition of a cryopreserved human embryo, property, and a parenting plan, but reversed the trial court on its decision to reissue and change the birthplace on the birth certificate of the parties' child. Appendix A. The Court of Appeals denied petitioner Otto Guardado's timely motion for reconsideration on March 16, 2018. Appendix B.

B. Issues Presented for Review.

1. Is the trial court obligated to issue sanctions when a petitioner's repeated and willfully false discovery responses substantially prejudice the respondent's ability to prepare for trial where:
    - the trial court ordered the parties to submit their mental health records;
    - the withheld evidence was relevant to a central issue in the case – the petitioner's parental fitness, and;
    - the concealment made it impossible for the designated expert to weigh the relevance of the evidence. RAP 13.4 (b)(1)-(2), (4).
2. Can parties remain joint owners of a cryopreserved human embryo indefinitely after a dissolution, with no operative event to determine the parties' final ownership rights? RAP 13.4(b)(4).

3. Can the trial court, having contemplated and made decisions on relevant records, subsequently seal them post-trial from the parties without an *Ishikawa* analysis? *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 37-39, 640 P.2d 716 (1982); RAP 13.4(b)(1)-(4).

C. Statement of the Case.

1. While still married, the parties created embryos and preserved an unused embryo.

In 2012, Aimee and Otto Guardado underwent in vitro fertilization (IVF) to conceive a child. CP 722. The couple produced three viable embryos[1]. Two were transferred to Aimee's uterus, and the remaining embryo was cryogenically frozen[2]. CP 306. The parties' only child together, CG, was born in Portland, OR from one of the transferred embryos. CP 553. The second embryo did not result in a birth. The third embryo remains in cryogenic storage. *See* CP 724.

As part of their IVF treatment, the parties signed an agreement (CP 724-41) that states, "In the event of divorce or dissolution of the marriage

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[1] Case law differs on embryo terminology. *See Litowitz v. Litowitz*, 146 Wn. 2d 514, 48 P.3d 261 (2002) (preferring the term "preembryo").

[2] Cryogenic preservation maintains an embryo indefinitely. *See McQueen v. Gadberry*, 507 S.W.3d 127, 134 n.4 (Mo. Ct. App. 2016), *transfer to Mo. denied Dec. 15, 2016 and Jan. 31.*

or partnership, the ownership and/or other rights to the embryo(s) will be as directed by court decree and/or settlement agreement" (CP 736).

2. Aimee falsely responded to Otto's discovery requests and did not submit court-ordered records to her expert witness.

During the parties' dissolution proceedings, Otto sent discovery requests to Aimee. CP 754-835. Under oath, she was asked to state "the names and addresses of all health care providers you have consulted in the last ten (10) years". CP 807. In her answer, she did not disclose that she was currently consulting with Jeannette Dezsofi, a mental health therapist. CP 418-19.

In interrogatory 120, Otto asked if Aimee had "ever sought the professional services of a mental health care provider, counselor, social worker, psychologist, psychiatrist, religious or spiritual leader or been a patient in a mental institution or other institution in connection with any mental disorder?" CP 808. Aimee did not disclose her treatment with Dezsofi. CP 418-19. She did not object, claim privilege, or seek a protective order.

The parties agreed to allow Dr. Landon Poppleton, a psychologist, to conduct a custodial evaluation. CP 285-86. The evaluation involved a comparison of the parties' custodial fitness, psychological analyses, and family interviews. App. A at 3. On May 8, 2015, the trial court ordered the

parties to submit their health and mental health care records to the court. CP 233-35. After an in camera review of the records, the court made a determination of relevant records and forwarded them to Dr. Poppleton. CP 248-50. The court did not receive records from Dezsofi, nor did Aimee alert Otto or the court that they were absent. *See id.* Dr. Poppleton provided his report about two weeks before trial. App. A at 3.

Otto moved to compel the Dezsofi records. CP 267-70. During the hearing, Aimee claimed that besides August 1 and 15, 2015 (*See* CP 261), Aimee did not have any records from Dezsofi. 10/30/15 RP 26. The court denied the motion to compel, but ordered disclosures of counselors. CP 281-82.

On September 29, Otto again submitted interrogatories to Aimee asking again if she had "ever sought the professional services of a mental health provider" and a request for their names. CP 898. Aimee answered by referring back to her original, misleading answer from January 16. CP 838, 418-19.

Four days before the beginning of trial, Aimee's attorney received about 100 pages of mental health care records from Jeannette Dezsofi. CP 331-32. Counsel provided these to the court, apparently without reading them. *Id.*

3. Otto's attorney was forced to conduct an examination of Aimee's lengthy discovery records during Otto's case in chief, which caused confusion and irregularity.

During trial, Aimee said she did not want to "procreate another child" with Otto. Trial RP 14. She asked that the embryo "remain in preservation", "destroyed", or "whatever". *Id.* at 15. Otto acknowledged that the IVF contract was silent about an award of the embryo and that the nature of "case law throughout the United States is against forcing procreation," but asked for an award of the embryo. *Id.* at 17.

Aimee called Dr. Poppleton as her expert witness. *Id.* at 19. He testified on the first day, relying largely on his custodial evaluation. *Id.* at 19-162. He did not testify at all about the Dezsofi records, nor display any knowledge that Aimee was in mental therapy during the entire time of his nine-month evaluation. *Id.* His report shows that he neither received nor reviewed Aimee's mental health records. CP 916-19.

After Dr. Poppleton's testimony, the trial court announced that it had reviewed the Dezsofi records and held them relevant. Trial RP 168. The court issued them on the second day of a three-day trial under a protective order that the parties could only read them in their attorneys' offices. CP 334. Aimee rested her case on the second day. Trial RP 421.

At the beginning of the last trial day, Otto's attorney informed the court that she had begun to read the Dezsofi records, that she had not

finished, and asked the court not to read them. Trial RP 576-77. At about 100 pages, they were so lengthy that Otto's attorney declared that even after reading for hours, "I've not finished them." *Id.* at 576. The records showed that Aimee had biweekly sessions with Dezsofi from Dec. 24, 2014 until trial in January 2016 (CP 350), even while she had answered under oath that she was not visiting a mental health professional. CP 418-19, 838. Otto was under order to care for the parties' child after the second trial day, and could not read the records at his attorney's office that evening. Trial RP 576, 802, 816.

On the last trial day, the court held that it would exclude the Dezsofi records (Trial RP 657) and destroy them (Trial RP 660, 817). The court continued to allow Aimee to question Otto on the Dezsofi records, though he had not read them. Otto complained about this and the discovery misconduct, and objected continuously throughout the last trial day. Trial RP 576, 638, 639, 648, 650, 656, 802.

For the first time during all proceedings, Aimee introduced testimony during her rebuttal that Dezsofi had diagnosed her with post-traumatic stress disorder (PTSD), with the causation being Otto's alleged conduct (Trial RP 801, 804-06) (not conceded).

Although the trial court originally held it would "destroy" the Dezsofi records, it instead sealed them in camera and apparently sua sponte three

weeks after the close of trial. CP 380. The court did not give notice or hear argument on the records sealing. *Id.*

The trial court issued its findings and conclusions several months later. CP 589-611. Relying heavily on Dr. Poppleton's report, the court ordered that Aimee would be the primary residential parent, that the embryo would not be awarded to either party, and that Aimee was to receive all interest in the parties' community property. CP 612-27. The court also made determinations of property and attorney fees. *Id.*

Otto filed a motion for reconsideration (CP 511-86) asking for the relief of a new trial due to Aimee's discovery misconduct, which the court denied (CP 628-29).

4. The Court of Appeals held that the concealed records were "not relevant" to most issues at trial, and that an embryo may be jointly possessed by parties after dissolution.

The Court of Appeals issued a decision substantially affirming the trial court opinion on February 6, 2018. App. A.

It noted that Aimee submitted false answers to interrogatories twice during discovery. *Id.* at 3, 4, 8. Nonetheless, it opined that the "records were not relevant to most of the issues at trial" and were of "limited relevance" compared to Dr. Poppleton's report. *Id.* at 8.

The Court of Appeals affirmed the trial court's decision to not award the embryo to either party. *Id.* at 12. Because the trial court made no determination, it presumably renders Aimee and Otto as tenants in common of the embryo. *Shaffer v. Shaffer*, 43 Wn.2d 629, 630, 262 P.2d 763 (1953) (holding that property not distributed in a dissolution order is considered community property).

The decision recognized that joint possession of property may be appropriate by a "specific disposition of each asset which informs the parties of what is going to happen to the asset and upon what operative events." *Byrne v. Ackerlund*, 108 Wn.2d 445, 451, 739 P.2d 1138 (1987); App. A at 10.

The Court of Appeals held that the trial court did not err by sealing the Dezsofi records without an *Ishikawa* analysis. *Id.* at 9. It rested its opinion on the fact that "Otto did not argue this issue before the trial court". It did not account for the fact that the court made its sealing decision – in camera and without notice – well after trial.

D. Why This Court Should Grant Review.

1. When discovery misconduct substantially prejudices a litigant's ability to prepare for trial, the trial court is obligated to appropriately sanction the discovery misconduct. RAP 13.4 (b)(1)-(2), (4).

In making their decision, the Court of Appeals reinterprets facts, substitutes their judgment for the trial court's, and ignores the fairness principles underpinning *Fisons*, *Magaña,* and their progeny. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 858 P.2d 1054 (1993), *Magaña v. Hyundai Motor America*, 167 Wn.2d 570, 220 P.3d 191 (2009). This Court should grant review and hold that the elements of discovery rules are not meaningless formalities, as the Court of Appeals decision renders them, but critical protections that ensure the fairness of trials.

A party cannot simply ignore an interrogatory or request for production. *Magaña* at 584. To avoid disclosure of a discovery request, a party must seek a protective order. *Id.* CR 26(c), CR 37(d).

The Court of Appeals held that "The [Dezsofi] records were not relevant to most of the issues at trial." App. A at 8. But the trial court explicitly said, "-- the Dezsofi records. They are relevant. I think they -- there's actually a -- sort of a write-up by Ms. Dezsofi, initially, that describes some of the incidents I heard about this morning from Dr. Poppleton. So I think they are relevant." Trial RP 168. It was this very determination of relevance that caused the trial court to release the records.

The Court of Appeals continued to misinterpret the facts when they criticized that, "[Otto] and his attorney had an opportunity to review the records." App. A at 8. This is unsupported by the record on review. The trial court issued the Dezsofi records on the second day. CP 334. Immediately upon convening the third day, Otto's counsel objected, stating that she did not have a chance to finish them and Otto did not read any of it. Trial RP 576. Because Otto was already under order to care for CG, he could not view the records "in counsel's office" as required by the protective order (CP 334).

The Court of Appeals' opinion that Aimee's records were of "limited relevance" to Aimee's parental fitness "compared with other sources of information such as Dr. Poppleton's report"[3] (App. A at 8) is not only unsupported by any facts, but represents an impermissible substitution of the appellate opinion for the trial court's opinion. *Teter v. Deck*, 174 Wn.2d 207, 223, 274 P.3d 336 (2012). Indeed, parental fitness was a central theme, especially since both parties were alleging factors under RCW 26.09.191. Trial RP 809; CP 609.

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[3] The Court of Appeals did not have access to Dr. Poppleton's report nor Dezsofi's records in its review. It is uncertain how it came to the conclusion that one was more relevant than the other, especially since the trial court never made any comparison.

The Court of Appeals readily noted that Aimee falsely responded to Otto's discovery requests on two separate occasions. App. A at 3, 4, 8. Because Aimee never submitted her records for Dr. Poppleton's analysis, it is impossible to determine how he would have viewed her considerable mental health history and especially her allegations that Otto caused her PTSD. Aimee's medical records are under her direct control. *See Sastrawidjaya v. Mughal*, 196 Wn. App. 415, 421 n.3, 384 P.3d 247 (2016). Dr. Poppleton is a trained psychologist and should have been given opportunity to consider the Dezsofi records.

The denial of evidence to designated experts was also a central theme in *Magaña*. This Court noted with strong disapproval that Hyundai's discovery misconduct deprived Magaña's experts from conducting an analysis of the evidence. *Magaña* at 590. Likewise, the absence of the Dezsofi records for Dr. Poppleton's review meant that he was never able to properly evaluate Otto's claims that Aimee was unfit. Likewise, Dr. Poppleton could not inform the trial court about her mental health history records, though he was in the best position to do so.

Because Otto claimed that RCW 26.09.191 factors inhibited Aimee's fitness as a parent, her mental health records and an independent psychologist's recommendation would go to the heart of Otto's claims. The Court of Appeals impermissibly substituted its own opinion of what

would be relevant to the trained psychologist tasked to evaluate the parties' fitness. *See Teter*, 174 Wn.2d 207 at 223.

The Court of Appeals also criticized Otto for not moving for a mistrial or a continuance. But, Otto did argue to the trial court in his motion for reconsideration for a new trial based on Aimee's discovery misconduct. CP 511-44. Sanctions should not be so minimal as to undermine the purpose of discovery, nor should the wrongdoer profit from their misconduct. *Fisons,* at 355–56. This Court ruled that a party need not move for mistrial to preserve a claim for error based on misconduct. *Teter*, at 226.

A new trial is appropriate when (1) the conduct complained of is misconduct, (2) the misconduct is prejudicial, (3) the moving party objected to the misconduct at trial, and (4) the misconduct was not cured by the court's instructions. *Aluminum Co. of Am. v. Aetna Cas. & Sur. Co.,* 140 Wn.2d 517, 539, 998 P.2d 856 (2000).

Otto complained about the discovery misconduct and objected vigorously during trial. Trial RP 576, 638, 639, 648, 650, 656. The court also noted prejudice (Trial RP 657). Aimee's willful misconduct was noted by the Court of Appeals' decision, but was deemed meaningless. App A at 8. This undermines the strong position that this Court took in

Magaña when it disagreed with Division II: "Trial courts need not tolerate deliberate and willful discovery abuse" (*Magaña* at 576).

This Court has not yet evaluated the principles of fairness of *Fisons* and *Magaña* in the family court setting. This Court should accept review of this case and confirm that these principles apply here as well. If allowed to stand, this opinion will encourage parties in family court to disregard their duty to comply with CR 26(e).

2. The perpetual joint possession of a human embryo does not satisfy the requirement that the parties' property interests are to be "definitely and finally determined" after dissolution. RAP 13.4(b)(4).

a. Longevity of cryopreserved human embryos

An analysis of over 11,700 cryopreserved human embryos found no significant impact of the duration of storage on pregnancies, miscarriages, or live birth rate. Fertil Steril 2010;93:109–15 (Appendix C). In 2017, a human embryo frozen 24 years ago resulted in the birth of a healthy girl. The mother was 25 years old at the time of implantation. Time Magazine, http://time.com/5073437/tina-benjamin-gibson-frozen-embryo/ (last visited Apr. 12, 2018).

b. Argument

The dissolution decree stated that "The Respondent's request for the remaining embryo stored at Oregon Reproductive medicine to be awarded to him is denied and *is not awarded to either party*." CP 615 (emphasis added). The Court of Appeals apparently interpreted that the trial court's failure to make a final disposition leaves the parties as joint owners. *See Shaffer,* Wn.2d 629 at 630. This violates the principles this Court has long observed about joint ownership after dissolution.

The Court of Appeals relied on the *Shaffer* requirement that property be "definitely and finally determined" after a dissolution. *Shaffer,* at 631; App. A at 10. The court has a duty to make a fair distribution of property following a dissolution. RCW 26.09.080.

In distinguishing *Shaffer*, the Court of Appeals relied on a trio of cases for their argument: *Byrne*, at 448-49; *In re Marriage of Sedlock*, 69 Wn. App. 484, 500, 849 P.2d 1243 (1993); and *In re Marriage of Irwin*, 64 Wn. App. 38, 53-54, 822 P.2d 797 (1992).

The *Byrne* court held that "the *Shaffer* requirement is satisfied by a specific disposition of each asset which informs the parties of what is going to happen to the asset *and upon what operative events*" (emphasis added). App A at 10.

Here, the trial court did not identify an operative event that would finally determine the parties' interest in the embryo. A cryopreserved

embryo's viability is theoretically indefinite. *McQueen v. Gadberry*, 507 S.W.3d 127, 134 n.4 (Mo. Ct. App. 2016).

The vice of the trial court opinion is that because the embryo will exist in perfect stasis forever, no "operative events" will ever transpire to finally resolve their interests in the embryo. Aimee and Otto must share joint ownership forever under what amounts to permanent stay, since neither party is able to use or enjoy the embryo for their own purposes. This is the very situation that the *Shaffer* court intended to avoid.

The Court of Appeals also tries to apply the unique facts of *Byrne*, *Sedlock*, and *Irwin* in the instant case, yet they are completely inapplicable. First, the *Byrne* decision rested on the fact that one party held property and the other a lien on the property. *Byrne* at 446. It didn't involve joint ownership at all. Second, the *Sedlock* trial court fixed a time limit when the parties' jointly-held house would be sold. At 498. That court specifically held that parties may be left as tenants-in-common "for a short duration." At 500. It did not envision perpetual and indefinite joint ownership. Third, the *Irwin* court contemplated joint ownership only as long as a pre-existing option to buy the parties' land was resolved. None of this trio of cases the Court of Appeals relied on contemplated the *perpetual* and *indefinite* ownership of property, and the Court of Appeals opinion impermissibly expands their holdings.

This Court should also clarify the *Shaffer* requirement in light of possession of a human embryo. The use of IVF to produce children is expanding, and the body of statutes to guide Washington courts on this subject is slim. This Court should decide whether the *Shaffer* requirement is appropriate in respect to human embryos or if a new standard should be applied to this special type of property.

The Court of Appeals looked to *Davis v. Davis,* 842 S.W.2d 588 (Tenn. 1992) when they reasoned that allowing Otto to use the embryo would "force Aimee to give birth to another child" (App. A at 12), ignoring state statute that the other party would not legally be a parent. RCW 26.26.725[4]. Only one Washington case implicates RCW 26.26.725. *In re Marriage of Nash*, No. 6253-5-I, 150 Wn. App. 1029, WL 1514842 (2009) (unpublished, see GR 14.1; Division I held that the trial court appropriately awarded embryos to a father in a dissolution case.) This court should examine this statute to see if the trial court and Division II rested their opinions on a misperception of this law.

New case law has emerged that challenges someone's so-called "right to not reproduce". *Szafranski v. Dunston,* 2015 IL App (1st) 122975-B, 34 N.E.3d 1132, 1164 ,393 Ill. Dec. 604, *appeal denied,* 39 N.E.3d 1012 (Ill.,

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[4] A new revision of this law goes into effect January 1, 2019.

Sep. 30, 2015) (No. 119428), *cert. denied,* 136 S.Ct. 1230 (U.S. Feb. 29, 2016) (No. 15-912). (Award of embryos to woman did not violate former boyfriend's constitutional right to not reproduce). *Szafranski* was being considered for review at the time of the parties' trial.

Similarly, *Reber v. Reiss*, 2012 PA Super 86, 42 A.3d 1131 (2012) disagreed with a former husband's argument that it is against public policy to "force him to procreate" (at 1142). The *Reber* court also reasoned that the husband implicitly agreed to procreate with his wife when he agreed to undergo IVF, sign a consent form, and provided sperm for the embryo (at 1140).

This Court last reached an opinion on embryo ownership sixteen years ago. *Litowitz v. Litowitz*, 146 Wn. 2d 514, 48 P.3d 261 (2002). The *Litowitz* court reversed the trial court and Division II on a different issue: whether or not a mother had the right to use an embryo where she did not actually contribute DNA to create it. Besides *Litowitz*, only one other case in Washington involves human embryos. *Nash*, 150 Wn. App. 1029. In *Nash*, Division I affirmed the trial court's award of embryos to the husband.

The landscape of embryo law is protean and evolving. Current cases (*Szafranski, Reber*) are clashing and directly challenging the holdings of older embryo cases (*Davis*). Case law on human embryos is limited; only

about 12 published cases in the United States involve embryos. This Court should examine the applicability of the facts of this case in light of recent opinions and in the name of public interest.

3. The trial court must perform an *Ishikawa* analysis on records it contemplates and holds relevant before a sealing order. RAP 13.4 (b)(1)-(4).

When sealing restrictions on records are sought, the court must follow these steps: 1. The proponent of sealing must make a showing of the need; 2. Anyone present must be given the opportunity to object; 3. The court should analyze the least restrictive method for protecting the threatened interests; 4. The court must weigh competing interests; and 5. The order must be no broader than necessary to serve its purpose. *Ishikawa*, 97 Wn.2d 30 at 37-39. The *Ishikawa* analysis must also be applied to civil cases. *Dreiling v. Jain*, 151 Wn.2d 900, 915, 93 P.3d 861 (2004).

The court correctly recognized during trial that it had to perform an *Ishikawa* analysis to seal the Dezsofi records and that there was an openness presumption: "I don't think I can seal exhibits absent the *Ishikawa* factors analysis," and "I think the presumption is that records that I consider are open, unsealed, unless there's a reason to seal [them] under *Ishikawa*." Trial RP 504-05.

Nonetheless, the trial court sealed the Dezsofi records in camera without any notice calling the parties for argument. CP 380. The court did not rest its decision on any motion, pleading, or argument. *Id.* Nor did the court offer any reason for its sua sponte decision. *Id.*

The Court of Appeals held that because Otto did not "argue this issue before the trial court", he could not raise the issue during appeal, and did not make "any" argument to this effect. App. A at 9. However, it correctly recognized that errors impacting a constitutional right may be raised. *Id.* RAP 2.5(a)(3).

The Court of Appeals made three key errors here: first, this Court has consistently held that justice is to be administered openly. *Ishikawa* at 36; Const. art. 1, § 10. The Court of Appeals decision is in direct conflict with the holdings of this Court that constitutional issues may be argued at any time. *State v. WWJ Corp.,* 138 Wn.2d 595, 602, 980 P.2d 1257 (1999). Second, Otto did raise arguments in both his opening and reply briefs, along with proper references to authority and the record. *See* Appellant Brief at 32-33, Reply Brief at 4, 9-12. Third, The Court of Appeals did not explain how Otto could have argued the error of the trial court's decision when the sealing was conducted in camera. CP 380.

The Court of Appeals also relied on *Bennett v. Smith Bundy Berman Britton, PS*, 176 Wn.2d 303, 291 P.3d 886 (2013), arguing that the Dezsofi

records were not part of the trial court's "decision making process". App A at 9 n.5. Yet, this is unsupported by the record, since the court made numerous decisions and references to the records. CP 257, 281-82, 334; Trial RP 168, 502-06, 577, 648-58.

This Court should affirm its decision in *Ishikawa* that records must be presumed open, and undergo an analysis before sealing, even in the family law setting.

E. Conclusion.

The Court of Appeals made decisions that are in conflict with decisions established by this Court. The joint ownership of embryos has not yet been examined by this Court and involve substantial public interest. Discovery misconduct and an application of the *Ishikawa* factors has also not been addressed by this court in the family law setting. Accordingly, this Court should grant review, reverse the Court of Appeals, vacate appropriate sections of the trial court decisions, and remand for a new trial.

Respectfully submitted April 16, 2018,

Otto Guardado

Certificate of Service

I Certify under penalty of perjury in accordance with the laws of the State of Washington that I arranged for a copy of the preceding Petition for Review to be served on Respondent on the date below, through her attorneys, Marie Tilden and Dylan Trosper, by email at dylan@nwfamilyattorneys.com and marie@nwfamilyattorneys.com.

Dated April 16, 2018 at Vancouver, WA,

Otto Guardado
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Vancouver, WA 98665

INDEX TO APPENDIX

In re the Marriage of Guardado

Number	Description
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Filed
Washington State
Court of Appeals
Division Two

February 6, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Marriage of:	No. 49345-4-II
AIMEE DENEE GUARDADO, Respondent,	
and	UNPUBLISHED OPINION
OTTO MICHAEL GUARDADO, Appellant.	

MAXA, A.C.J. – Otto Guardado appeals the dissolution decree that dissolved his marriage to Aimee Guardado. We hold that (1) the trial court did not abuse its discretion in responding to Aimee's[1] failure to produce her counseling records by excluding those records from the trial; (2) Otto cannot contest the trial court's sealing of Aimee's counseling records on appeal because he did not object in the trial court; (3) the trial court did not err in ordering that the parties have joint possession of an unborn embryo; (4) the trial court did not err in distributing the parties' property; (5) the trial court erred in ordering that the birth certificate of CG, the parties' daughter, be amended, but did not abuse its discretion regarding other issues involving CG; (6) we decline to consider Otto's challenge to the trial court's findings of fact because he failed to make any

[1] For clarity, we refer to the parties by their first name. We intend no disrespect.

meaningful argument concerning those findings; (7) the trial court did not abuse its discretion in denying Otto's motion for reconsideration; and (8) the trial court did not err in awarding Aimee attorney fees based on Otto's intransigence.[2]

Accordingly, we affirm the trial court on all issues except for the portion of the dissolution decree requiring CG's birth certificate to be amended, which we vacate.

FACTS

Background

Aimee and Otto married in December 2011. Shortly after they were married, Otto moved into Aimee's house, which she had purchased before the marriage. Otto kept his previous home and eventually rented it out. During the marriage, Otto provided some assistance in paying the mortgage on Aimee's house.

In January 2012, Aimee and Otto began the process of having a child through in vitro fertilization (IVF). The process successfully created three embryos, two of which were implanted in Aimee. One of the implanted embryos resulted in CG's birth. The remaining embryo was placed in storage.[3]

As part of the IVF process, Aimee and Otto signed an informed consent agreement. The agreement stated that they could store the embryos created during the IVF process. If they did not want to keep the embryos, the parties could discard them, donate them to research, or donate

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[2] Otto assigns error to numerous issues that he does not support with any argument. We do not address these assignments of error. *See Shelcon Constr. Grp., LLC v. Haymond*, 187 Wn. App. 878, 889, 351 P.3d 895 (2015).

[3] Although the trial court found that two embryos remained, the record shows that both parties agreed that only one embryo remains.

them to another family. The agreement further noted that the embryos were the property of Aimee and Otto, with rights of survivorship, and that neither party could use them without consent of both partners. The agreement stated, "In the event of divorce or dissolution of the marriage or partnership, the ownership and/or other rights to the embryo(s) will be as directed by court decree and/or settlement agreement." Clerk's Papers (CP) at 736.

Dissolution Filing and Discovery

In March 2014, Aimee petitioned to dissolve the parties' marriage. She requested that the trial court award her possession of her separate property. She asserted that her house was her separate property.

As part of the dissolution, Aimee and Otto agreed to allow Dr. Landon Poppleton to conduct an evaluation regarding custody of CG. The trial court's order stated that Dr. Poppleton would evaluate the impact the parties' temporary parenting plan was having on CG's health and welfare, as well as the comparative custodial fitness of both parties.

On May 8, 2015, the trial court ordered the parties to disclose their health care and mental health records up to that date and provide them to the court. The court conducted an in-camera review, determined what records were relevant, and submitted them to Dr. Poppleton for his review. Dr. Poppleton reviewed the available records and talked to people who knew the parties, and provided a report with his recommendations approximately two weeks before trial.

During discovery, Otto submitted interrogatories requesting information about Aimee's medical history, including any occasions in which she had sought the services of a mental health care provider. Aimee did not disclose that she had received mental health counseling from Jeannette Dezsofi.

Otto submitted an additional interrogatory in September 2015, again requesting information on any services Aimee had received from a mental health provider. In her response, Aimee referenced her initial disclosure and stated that all information had been provided.

In October 2015, Otto moved to compel Aimee to produce records of visits she had with Dezsofi. He stated that Aimee had visited Dezsofi at least on August 1 and 15 and that Aimee had executed a records release, but the records had not been disclosed to the court. The trial court denied Otto's motion.

On January 7, 2016, four days before the beginning of trial, Aimee's attorney received records from Dezsofi. Without reviewing the records, counsel provided them to the court. Immediately before trial began, the court informed the parties that it had received the records but had not reviewed them. Each party received a copy of the records to review on the second day of the three-day trial.

Trial and Testimony

Both parties testified on a range of issues. Regarding the parties' living expenses, Otto testified that he paid for half but acknowledged that he did not present documented support at trial. Aimee testified that Otto had paid about $1,000 per month, which went toward bills and the mortgage on Aimee's house.

Regarding the parties' remaining embryo, Aimee testified that she and Otto had not agreed on what should happen. She stated that she would like for the embryo to remain in storage until it was no longer viable, or to have it be destroyed. She was also open to the embryo being donated to science, but she did not want to have another genetic child with Otto. Otto did not testify about the embryo, but Aimee stated that he wanted it to be implanted in a surrogate.

Aimee also testified about CG's birth certificate. She stated that CG's current birth certificate lists CG's ethnicity as Hispanic and Caucasian, but that Otto's true ethnicity is Thai even though he was adopted at a young age by a Hispanic father. Otto testified that although his birth father was Thai, he considers himself to be Hispanic.

On the final day of trial, the trial court again addressed Aimee's counseling records. The court informed the parties that it did not review the records in detail. Otto argued that the court should not consider the records because the late disclosure prevented him from preparing for trial, and that he had no opportunity to depose Dezsofi. He did not argue that the trial should be continued or that he was entitled to a new trial.

The court found that neither party had committed any discovery violations, stating that a third party had not provided the records in a timely manner. However, the court stated that Aimee had presented her case before the parties had the records. On that basis, the court ruled that it would "disallow admission of those records as a whole." Report of Proceedings (Jan. 13, 2016) at 657. After the trial was completed, the trial court sealed the counseling records.

Trial Court Decision and Dissolution Decree

The trial court entered a written decision that included findings of fact and conclusions of law. The court also entered a dissolution decree.

Regarding the embryo, the court ruled that the embryo could not be used for reproduction because the court could not force Aimee to reproduce. The court ordered that, given the interests expressed by the parties, the embryo would be preserved, with the preservation paid for by Otto. The court added that the parties could petition the court for alternative relief or agree to an alternative disposition at a future date.

Regarding Aimee's house, the trial court found that she had purchased the house before she married Otto and that Otto admitted that the house was Aimee's separate property. The court ruled that Otto had failed to overcome the presumption that the property was separate and awarded Aimee the house and any proceeds from its sale.

Regarding CG, the court ruled that CG's birth certificate should be amended to list Otto's ethnic heritage as Thai. The court stated that it based this conclusion on a concern for CG's knowledge of her biology for purposes of disease diagnosis and a concern for her notions of identity. The court also requested that the State of Washington issue a new birth certificate stating that CG's birth place was Vancouver.

The trial court made specific findings that Otto had filed repetitive motions, had failed to cooperate in changing CG's pickup location, and had filed materials after trial that departed from his previous positions. The court concluded that this conduct amounted to intransigence and supported an award of attorney fees. As a result, the court awarded Aimee $25,000 in attorney fees.

Motion for Reconsideration

Otto moved for the trial court to reconsider its final orders and requested a new trial or evidentiary hearing. His motion asserted a number of arguments, including that the trial court erred in resolving issues of fact at trial. The trial court denied the motion and stated that its determinations on issues of credibility at trial were not grounds for ordering a new trial.

Otto appeals the trial court's judgment and denial of his motion for reconsideration.

ANALYSIS

A. Failure to Produce Counseling Records in Discovery

Otto argues that, because of alleged discovery violations by Aimee in failing to produce her counseling records, he did not receive a fair trial. As a result, he argues that he should receive a new trial.[4] We disagree.

1. Legal Principles

CR 26(b)(1) authorizes broad discovery on "any matter, not privileged, which is relevant to the subject matter involved in the pending action," even if the information will not be admissible at trial. When responding to discovery, a party cannot simply ignore an interrogatory or request for production. *Magaña v. Hyundai Motor Am.*, 167 Wn.2d 570, 584, 220 P.3d 191 (2009). To avoid making an unwanted disclosure, a party must seek a protective order under CR 26(c). An answer that is evasive or misleading is equivalent to a failure to answer. CR 37(d).

For violations of the rules of discovery, CR 26(g) and CR 37(b) allow trial courts to impose sanctions, including excluding evidence, continuing the proceedings, or granting a default judgment. *See* CR 37(b)(2). The sanction imposed should be tailored to advance the purposes of discovery, and therefore should be proportional to the violation and the circumstances of the particular case. *Magaña*, 167 Wn.2d at 590. The remedy should be the least severe sanction that will be adequate to serve its purpose, but not so minimal as to undermine the purpose of discovery. *Id.* When balancing these concerns, the trial court is in the best position to decide how to respond to allegations of discovery abuse. *Id.* at 583.

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[4] Otto also argues that the trial court erred by not making any findings of fact about the counseling records. But it is unclear what findings Otto is proposing that the trial court should have made. The court ruled that the records would not be admitted at tri

The trial court has broad discretion in imposing the proper discovery sanction. *Id.* at 582. We review a trial court's decision for abuse of discretion. *Id.* A trial court abuses its discretion when its decision is based on untenable grounds or is manifestly unreasonable. *Id.*

2. Analysis

Here, the trial court did not abuse its discretion in excluding Aimee's counseling records instead of imposing a more significant sanction. First, the trial court found that neither party was at fault in failing to produce the records in a timely manner. Aimee did fail to properly disclose her treatment with Dezsofi, but she had signed a release to allow Dezsofi to provide the counseling records.

Second, there is no evidence that the late disclosure impaired Otto's ability to prepare for trial. The records were not relevant to most of the issues at trial. And although Aimee's health records arguably were relevant to Aimee's fitness as a parent, they were of limited relevance on that issue compared with other sources of information such as Dr. Poppleton's report.

Third, exclusion was the remedy Otto requested at the time. He and his attorney had an opportunity to review the records and did not move for a mistrial or argue that the trial should be continued. He apparently did not consider them to be important enough to ask for a more significant remedy.

Accordingly, we hold that the trial court did not err in excluding the records as a sanction and that Otto has not shown that he is entitled to a new trial.

B. SEALING OF COUNSELING RECORDS

Otto argues that the trial court erred in sealing Aimee's counseling records without undertaking the analysis required under *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d

716 (1982). But Otto did not argue this issue before the trial court and a party generally cannot raise an issue for the first time on appeal. *See* RAP 2.5(a). One exception is for "manifest error affecting a constitutional right." RAP 2.5(a)(3). However, Otto does not make any argument for why he should be able to raise this issue for the first time on appeal. We do not make arguments for the parties that they have not made themselves. *Cave Props. v. City of Bainbridge Island*, 199 Wn. App. 651, 663, 401 P.3d 327 (2017).

Accordingly, we hold that Otto has failed to preserve any objection to the trial court's sealing of Aimee's counseling records.[5]

C. DISTRIBUTION OF EMBRYO

Otto argues that the trial court erred in not awarding ownership of the parties' unborn embryo to either party. We disagree.

1. Legal Background

a. Distribution of Property

RCW 26.09.080 states that the trial court must "make such disposition of the property and the liabilities of the parties . . . as shall appear just and equitable," based on relevant factors. This decision " 'does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage, both past and present, and an evaluation

[5] Even if Otto had argued that the RAP 2.5(a)(3) exception applies, that argument would have been unsuccessful. The constitutional right of access to court proceedings under article 1, section 10 of the Washington Constitution applies to court documents only if the documents were part of the court's decision making process. *Bennett v. Smith Bundy Berman Britton, PS*, 176 Wn.2d 303, 310-11, 291 P.3d 886 (2013). Documents that were irrelevant to the court's decision making process do not receive constitutional protection. *Id.* at 311. Here, the trial court expressly stated that it did not review Aimee's counseling records, instead only skimming them to identify what they were. Because the court excluded and did not consider the records, they were irrelevant to its decision and do not receive constitutional protectio

of the future needs of parties.' " *In re Marriage of Larson*, 178 Wn. App. 133, 138, 313 P.3d 1228 (2013) (quoting *In re Marriage of Crosetto*, 82 Wn. App. 545, 556, 918 P.2d 954 (1996)).

When distributing property, the trial court is in the best position to determine what is fair, just, and equitable under the circumstances. *In re Marriage of Doneen*, 197 Wn. App. 941, 949, 391 P.3d 594, *review denied*, 188 Wn.2d 1018 (2017). Therefore, we will not reverse the trial court unless the court manifestly abused its discretion. *Id.*

b. Joint Possession

Here, the trial court ordered joint ownership of the parties' embryo. The parties generally have a right to have their interests in property definitely and finally determined once the dissolution is complete. *Byrne v. Ackerlund*, 108 Wn.2d 445, 448-49, 739 P.2d 1138 (1987). For that reason, the court in *Shaffer v. Shaffer* held that the trial court had erred in making the parties tenants in common of their apartment and its furnishings. 43 Wn.2d 629, 629-31, 262 P.2d 763 (1953). The court reasoned that the effect, which was as if the trial court had not disposed of the property at all, "was not a performance of the court's statutory duty." *Id.* at 630.

However, the court in *Byrne* distinguished *Shaffer* while approving an agreed disposition awarding a parcel of real property to one spouse and liens on the property to the other spouse. 108 Wn.2d at 449-51. The court concluded that "the *Shaffer* requirement is satisfied by a specific disposition of each asset which informs the parties of what is going to happen to the asset and upon what operative events." *Id.* at 451. Subsequent decisions have applied the same rule, allowing trial courts to order joint ownership of property when supported by fairness and equity. *See In re Marriage of Sedlock*, 69 Wn. App. 484, 500, 849 P.2d 1243 (1993); *In re Marriage of Irwin*, 64 Wn. App. 38, 53-54, 822 P.2d 797 (1992).

c. Ownership of Embryos

Only one Washington case has addressed assigning possession of an embryo, and the court resolved that case based solely on the parties' express agreement. *See In re Marriage of Litowitz*, 146 Wn.2d 514, 527-28, 48 P.3d 261 (2002). The court in *Litowitz* did not identify the relevant concerns in the absence of an express agreement, but other courts have generally adopted a balancing-of-rights approach.

For example, *Litowitz* cited favorably an opinion by the Tennessee Supreme Court, *Davis v. Davis*, 842 S.W.2d 588 (Tenn. 1992). The court in *Davis* stated,

> [D]isputes involving the disposition of preembryos produced by *in vitro fertilization* should be resolved, first, by looking to the preferences of the progenitors. If their wishes cannot be ascertained, or if there is dispute, then their prior agreement concerning disposition should be carried out. If no prior agreement exists, then the relative interests of the parties in using or not using the preembryos must be weighed.

842 S.W.2d at 604. This analysis is consistent with the approach used by other courts. *See Szafranski v. Dunston*, 2015 IL App (1st) 122975-B, ¶ 124, 34 N.E.3d 1132, 1161, 393 Ill. Dec. 604; *In re Marriage of Dahl*, 222 Or. App. 572, 194 P.3d 834, 840-41 (2008); *Reber v. Reiss*, 42 A.3d 1131, 1136 (Pa. Super. Ct. 2012).

When weighing the parties' relative interests, courts have considered a variety of factors. These have included the parties' preferred disposition, *Davis*, 842 S.W.2d at 604; whether one or both parties are the progenitors, *Litowitz*, 146 Wn.2d at 527; any current or likely future inability of a party to procreate, *Szafranski*, 34 N.E.3d at 1162-63; the constitutional rights of the parties, including the right to avoid governmental intrusion, the right to procreate, and the right to avoid procreation, *McQueen v. Gadberry*, 507 S.W.3d 127, 143 (Mo. Ct. App. 2016); and any legally established interests of the embryo. *Id.* at 141-42.

2. Embryo Distribution Analysis

Here, although the parties had entered into a written contract, the contract stated only that, in the event of dissolution, ownership or rights to any embryo would be "as directed by court decree and/or settlement agreement." CP at 736. Therefore, the trial court properly resolved the issue by balancing the parties' interests.

The court noted the relevant concerns: both Aimee and Otto were progenitors, Otto had undergone a vasectomy before the parties' marriage, Aimee did not want another child with Otto, and Aimee wanted the embryo either destroyed or stored until it was no longer viable at Otto's expense. The court ruled that the embryo would be preserved at Otto's expense, but allowed the parties to agree to an alternative disposition at a future date.

The trial court's ruling was consistent with the relevant case law. First, as required in *Byrne*, the disposition clarified the parties' rights with respect to the embryo. 108 Wn.2d at 449-51. Second, the court concluded that it could not properly force Aimee to give birth to another child. *See Davis*, 842 S.W.2d at 604 ("Ordinarily, the party wishing to avoid procreation should prevail."). Third, if Otto did not agree to destroy the embryo, the court properly allowed him to protect his interests at his own expense. *See McQueen*, 507 S.W.3d at 149 (upholding award of joint ownership, with embryos to be stored until parties reach agreement); *In re Marriage of Witten*, 672 N.W.2d 768, 782-83 (Iowa 2003) (reaching same result, with party opposing destruction to bear the expense of storage).

Allowing the parties to store the embryo while specifically stating the parties' rights and obligations was appropriate under RCW 26.09.080 and was not otherwise an abuse of discretion. Accordingly, we hold that the trial court did not err in ordering joint ownership of the embryo.

D. PROPERTY DISTRIBUTION

Otto argues that the trial court erred in making property distributions by mischaracterizing Aimee's house as separate property and by making or failing to make several other distributions. We reject Otto's arguments.

1. Legal Principles

In a dissolution action, all of the parties' property, both community and separate, is before the court. *In re Marriage of Schwarz*, 192 Wn. App. 180, 188, 368 P.3d 173 (2016). Whether property is characterized as community or separate is determined by the time at which it was acquired. *Id.* at 189. Property acquired during marriage is presumed to be community property. *Id.* Property acquired before marriage is separate. *Id.* at 188.

Once property is established as separate, there is a presumption that it remains separate absent sufficient evidence that the owner intended to convert the property from separate to community property. *Id.* at 190. In the case of real property, this conversion generally requires an acknowledged writing. *In re Estate of Borghi*, 167 Wn.2d 480, 484-85, 219 P.3d 932 (2009).

A trial court's characterization of property is a mixed question of law and fact. *Schwarz*, 192 Wn. App. at 191-92. Issues of fact include, for example, the time at which property was acquired and the method of acquisition. *Id.* at 192. We review the trial court's factual findings for substantial evidence. *Id.* But the ultimate characterization of property as community or separate is a question of law, which we review de novo. *Id.*

2. Characterization of Aimee's House

Otto argues that Aimee's house should have been treated as community property to which he is entitled half the value. However, the record clearly shows that Aimee acquired the

house before the parties were married, making the house her separate property. *Schwarz*, 192 Wn. App. at 188. Otto does not point to any evidence that Aimee attempted to convert the house into community property.

Otto emphasizes that he assisted with mortgage payments while the parties lived together. When parties to a dissolution have used community assets to make loan payments, one party may have a right to an equitable lien over the other party's separate property. *See In re Marriage of Kile*, 186 Wn. App. 864, 884, 347 P.3d 894 (2015) ("Community property contributions that retire a purchase obligation on separate property will give rise to a community right of reimbursement protected by an equitable lien.").

Here, the trial court did not appear to consider Otto and Aimee's community mortgage payments when distributing the parties' property. However, even when a trial court errs, remand is limited to situations where (1) the trial court's reasoning shows that its division was significantly influenced by its characterization of property and (2) it is unclear whether the court would have divided the property in the same way had it applied a proper characterization. *Schwarz*, 192 Wn. App. at 192.

The court made several statements suggesting that it would have reached the same distribution even had it properly characterized the property: that Otto saved money he would have otherwise spent renting another house, that Otto's use and enjoyment of the house more than offset his monthly contributions, and that Otto's contribution to the household was offset by the fact that he kept the rental income from his own house.

Accordingly, we hold that even if the trial court mischaracterized Aimee's house, that error would not warrant reversal.

3. Other Issues

The trial court allowed Aimee to liquidate the contents of a retirement account with her employer in the amount of $9,800. Otto argues that the account should have been treated as community property. But Otto has not pointed to any evidence that community funds were deposited into the account. And there is support in the record for the trial court's conclusion that the retirement account was opened before the parties were married. Accordingly, we hold that the trial court did not abuse its discretion in not awarding Otto a portion of the account.

The trial court did not distribute a debt with the Vancouver Clinic to either party. Otto argues that this was an error, but the parties presented almost no evidence at trial regarding whether the debt existed, the amount due on the debt, or whether a portion of the debt had previously been paid. Accordingly, we hold that the trial court did not abuse its discretion in implicitly ruling that the debt did not exist.

Otto argues that the trial court failed to account for personal property that he paid for but was no longer in his possession. The trial court ruled that the parties did not present sufficient credible evidence of value to allow for a ruling. Otto cites only a spreadsheet containing a list of items and estimated values of his interest. The court admitted the spreadsheet at trial, but noted that without foundation for each value, it could be used for demonstrative purposes only. Because Otto did not lay foundation for any of the line items, the spreadsheet was not evidence of value. Accordingly, we hold that the trial court did not abuse its discretion in not awarding to Otto his asserted value of the items.

Otto argues that the trial court erred in awarding each party their own car when Aimee's car was worth more and he assisted in paying the car loan during marriage. However, Aimee

testified, and the trial court found, that Aimee and Otto paid for approximately half the value of the other's car. Regardless of the value of the cars, the trial court's award " 'does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage.' " *Larson*, 178 Wn. App. at 138 (quoting *Crosetto*, 82 Wn. App. at 556). Otto has not demonstrated that the award was unfair. Accordingly, we hold that the trial court did not abuse its discretion in awarding the parties their own cars.

E. ISSUES INVOLVING CG

1. CG's Birth Certificate

Otto argues that the trial court erred in ordering that CG's birth certificate must be amended to list her ethnic heritage as Thai and in requesting that a Washington birth certificate be issued showing CG's place of birth as Vancouver, Washington rather than Oregon.

Trial courts exercise broad authority when entering a dissolution decree, and the decree may address a variety of issues. *See* RCW 26.09.050. However, the trial court's authority is not without limits. For instance, in *In re Marriage of Hurta*, the court held that a trial court could not require the parties to change their child's name. 25 Wn. App. 95, 96, 605 P.2d 1278 (1979). The court reasoned that the dissolution statutes did not include any relevant provision, and a specific statute allowed the parties to apply for a name change for their child. *Id.*; *see* RCW 4.24.130.

Here, the trial court stated that it based its ruling on a concern that CG know of her biology for purposes of disease diagnosis and concern for her notions of identity. But an order to amend a child's birth certificate is not among the categories listed by statute that a dissolution decree may contain, and is not related to an included category. If a person born in Washington

wishes to change his or her birth certificate, there is a process for requesting a new certificate from the state registrar. *See* RCW 70.58.095.

Accordingly, we vacate the trial court's order that CG's birth certificate be amended and the order requesting the State of Washington to issue a new birth certificate.

2. CG's Allergy Testing

Otto argues that the trial court abused its discretion in requiring CG to undergo testing for a milk protein allergy.

The statutory objectives of a parenting plan include providing for the child's physical care, maintaining the child's emotional stability, and "[t]o otherwise protect the best interests of the child." RCW 26.09.184(1)(a), (b), (g). We review a parenting plan for abuse of discretion. *In re Marriage of Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2012).

Here, the parties disagree about whether CG displayed symptoms of a milk allergy and therefore disagreed about whether she should be tested.[6] Part of this disagreement is based on inconsistent statements by CG's primary care provider. Despite this inconsistency, Dr. Poppleton testified that regardless of whether CG was in fact suffering from a milk protein allergy, it would be in CG's best interests to resolve the issue. This evidence supports the trial court's conclusion that CG should be tested.

[6] The parties apparently also disagree about whether CG has in fact been tested. Aimee argues that this issue is moot, suggesting that CG has already received the allergy test. Otto argues that CG has not yet been tested. Because Aimee has not pointed to any evidence that the issue is moot, we address it.

The trial court's conclusion that CG should be tested is consistent with the statutory goals for a parenting plan and consistent with the evidence. Accordingly, we hold that the trial court did not abuse its discretion in ordering that CG be tested for a milk allergy.

3. Child Support Condition

Otto argues that the trial court abused its discretion in requiring that he be current on all support obligations before he may claim a tax exemption for CG.

RCW 26.09.050(1) expressly directs the trial court to "make provision for the allocation of the children as federal tax exemptions." That language does not suggest that the court is restricted in the way Otto suggests, and at least one court has upheld the same type of condition on taking the exemption that the trial court imposed here. *See In re Marriage of Peacock*, 54 Wn. App. 12, 13, 17-18, 771 P.2d 767 (1989). We hold that the trial court did not err by requiring Otto to be current on his child support before he can claim the exemption.[7]

F. CONTESTED FINDINGS OF FACT

Otto assigns error to a significant number of the trial court's findings of fact and conclusions of law. He addresses many of these alleged errors with a single sentence, and the ones addressed in more depth contain little actual argument. Further, Otto does not indicate how his claims, if accepted, would change the result below.

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[7] Otto also makes two statements, which he categorizes as "other errors": that the trial court did not explain why it was in CG's best interest for Otto not to pick her up from daycare early and that the trial court did not explain why it ordered a restricted parenting plan without limiting factors under RCW 26.09.191. Because these are statements that are otherwise unsupported by argument, we do not address them. *Shelcon Constr.*, 187 Wn. App. at 88

We generally do not consider assignments of error that are not supported by meaningful argument and citation to the record. *Shelcon Constr. Grp., LLC v. Haymond*, 187 Wn. App. 878, 889, 351 P.3d 895 (2015). Accordingly, we decline to consider these assignments of error.

G. DENIAL OF MOTION FOR RECONSIDERATION

Otto argues that the trial court erred in denying his motion for reconsideration. We disagree.

CR 59 allows parties to file a motion for reconsideration with the trial court. The rule states that the trial court may grant the motion for "causes materially affecting the substantial rights of [the] parties," based on nine listed grounds. CR 59(a). We review for abuse of discretion the trial court's denial of a motion for reconsideration. *West v. Dep't of Licensing*, 182 Wn. App. 500, 516, 331 P.3d 72 (2014).

Here, Otto submitted a motion for reconsideration that did not state the particular ground in CR 59(a) on which he relied, although he asserted a number of arguments. There is no indication in the record that the trial court abused its discretion in declining to reconsider its rulings based on these arguments. Accordingly, we hold that the trial court did not err in denying Otto's motion for reconsideration.

H. ATTORNEY FEES AT TRIAL

Otto argues that the trial court erred in finding him intransigent and on that basis awarding Aimee attorney fees. We disagree.

A trial court may award reasonable attorney fees if one party's intransigence increased the other party's legal fees. *In re Marriage of Burrill*, 113 Wn. App. 863, 873, 56 P.3d 993 (2002). Determining intransigence is a factual issue, but it typically involves delaying,

obstructing, filing unnecessary or frivolous motions, refusing to cooperate, noncompliance with discovery requests, and any other conduct that makes a proceeding unnecessarily difficult or costly. *In re Marriage of Wixom*, 190 Wn. App. 719, 725, 360 P.3d 960 (2015), *review denied*, 185 Wn.2d 1028 (2016). We review a trial court's decision regarding the award of attorney fees for abuse of discretion. *In re Marriage of Obaidi*, 154 Wn. App. 609, 617, 226 P.3d 787 (2010).

Here, the trial court made three sets of findings relevant to intransigence. First, the court found that Otto filed repetitive motions, including 13 motions from June 2015 through the trial in January 2016, which often requested the same relief after being previously denied. Second, Otto required Aimee to file a motion to change the pickup location of CG between each party's assigned residential time. Third, Otto filed new materials after trial, specifically a new parenting plan.

The court concluded that these findings supported an award of attorney fees. Otto does not specifically contest the substance of these findings, but argues that they did not amount to intransigence. Taken together these findings support a conclusion that Otto's actions, including filing unnecessary motions and refusing to cooperate, delayed and obstructed the litigation. Accordingly, we hold that the trial court did not abuse its discretion in awarding Aimee attorney fees.

I. ATTORNEY FEES ON APPEAL

Aimee requests that we award her reasonable attorney fees and costs on appeal. She argues that an award is warranted because Otto's appeal is further evidence of his intransigence.

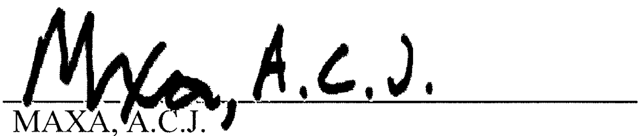
We may award a party reasonable attorney fees or expenses under RAP 18.1(a) if allowed by applicable law. In dissolution actions, we may award attorney fees on appeal if one party is shown to be intransigent. *Larson*, 178 Wn. App. at 146.

Although the trial court found that Otto had acted intransigently, he has not done so with respect to this appeal. He raised some debatable issues and the appeal as a whole does not show that he has acted intransigently. Accordingly, we deny Aimee's request for attorney fees on appeal.

CONCLUSION

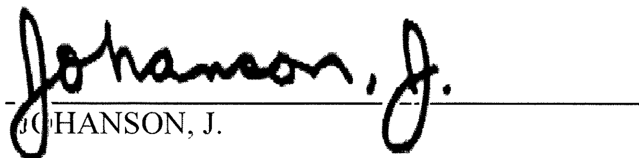
We affirm the trial court on all issues except for the portion of the dissolution decree requiring CG's birth certificate to be amended and requesting that a new birth certificate be issued, which we vacate.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



MAXA, A.C.J.

We concur:



JOHANSON, J.

SUTTON, J.

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Filed
Washington State
Court of Appeals
Division Two

March 16, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Marriage of: AIMEE DENEE GUARDADO, Respondent, and OTTO MICHAEL GUARDADO, Appellant.	No. 49345-4-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant moves for reconsideration of the court's February 6, 2018 opinion. Upon consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Johanson, Maxa, Sutton

FOR THE COURT:

MAXA, A.C.J.

APPENDIX B
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Does storage time influence postthaw survival and pregnancy outcome? An analysis of 11,768 cryopreserved human embryos

Ryan Riggs, M.D., Jacob Mayer, Ph.D., Donna Dowling-Lacey, M.S., Ting-Fing Chi, Ph.D., Estella Jones, M.S., and Sergio Oehninger, M.D., Ph.D.

The Jones Institute for Reproductive Medicine, Department of Obstetrics and Gynecology, Eastern Virginia Medical School, Norfolk, Virginia

Objective: To evaluate the impact of cryopreservation storage duration on embryo survival, implantation competence, and pregnancy outcome.
Design: Retrospective study.
Setting: Academic tertiary-referral infertility center.
Patient(s): In vitro fertilization patients and recipients of oocyte donation cycles who had cryopreserved embryos and underwent at least one thaw cycle from 1986 to 2007.
Intervention(s): None.
Main Outcome Measure(s): Postthaw survival proportion and implantation, clinical pregnancy, miscarriage, and live birth rates.
Result(s): Length of storage time did not have a significant effect on postthaw survival for IVF or oocyte donation cycles, or for embryos frozen at the pronuclear or cleavage stages. There was no significant impact of the duration of storage on clinical pregnancy, miscarriage, implantation, or live birth rate, whether from IVF or oocyte donation cycles. Logistic regression analysis demonstrated that the length of storage time or developmental stage at freezing were not predictive of embryo survival or pregnancy outcome. Only oocyte age, survival proportion, and number of transferred embryos were positive predictors of pregnancy outcome.
Conclusion(s): Cryostorage duration did not adversely affect postthaw survival or pregnancy outcome in IVF or oocyte donation patients. (Fertil Steril® 2010;93:109–15. ©2010 by American Society for Reproductive Medicine.)

Key Words: Embryo cryopreservation, implantation, live birth, postthaw survival, storage time

Since the announcement of the first successful pregnancy from a cryopreserved human embryo in 1983, most fertility centers have embraced cryobiology (1). Patients and their treating physicians can decrease treatment costs with the performance of multiple embryo transfers (ETs) from a single stimulation cycle, eliminate or decrease the effects of ovarian hyperstimulation syndrome, and minimize high-order gestations by limiting the number of transferred embryos (2–5). Unsurprisingly, because cryopreservation increases the total reproductive potential of assisted reproductive technology (ART) (6), expands therapeutic options, and improves treatment safety in patients undergoing ART, its use has increased dramatically (7).

Consequently, the number of cyropreserved embryos in storage has gradually increased since the mid 1980s. Widespread acceptance and access to ART, improvements in oocyte stimulation protocols and laboratory methodologies, and an emphasis on fertility preservation have all contributed to a rising number of cryopreserved embryos. Larger numbers of cryopreserved embryos stored for longer lengths of time justify clinical investigation of the possible influence of length of storage time on embryo viability and subsequent implantation competence.

Animal studies and theoretical modeling speculate that a frozen mammalian embryo should not be influenced by storage time for several thousand years (5). In contrast, human studies are limited and contradictory. Testart et al. (8) found increased rates of human embryonic cell death with cryostorage of only several months. In contrast, Cohen et al. (9) demonstrated no deleterious effects from cryostorage. Surprisingly, few clinical data are available to address this clinically relevant question.

Since the initiation of our cryopreservation program in 1986, more than 19,571 embryos have been cryopreserved. Embryo cryopreservation has been accomplished primarily at the pronuclear and cleavage stages, with ETs taking place in natural and estrogen/P hormonally supplemented cycles (10). Here, we retrospectively analyzed 21 years of experience to evaluate the impact of the length of embryo cryopreservation storage on postthaw embryo survival and implantation competence through the analysis of implantation, miscarriage, and live birth rates.

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R.R. has nothing to disclose. J.M. has nothing to disclose. D.D.-L. has nothing to disclose. T.C. has nothing to disclose. E.J. has nothing to disclose. S.O. has nothing to disclose.
Reprint requests: Sergio Oehninger, M.D., Ph.D., The Jones Institute for Reproductive Medicine, Department of Obstetrics and Gynecology, Eastern Virginia Medical School 601 Colley Avenue, Norfolk, VA 23507 (FAX: 757-446-5905; E-mail: OehninsSC@evms.edu).

APPENDIX C
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MATERIALS AND METHODS

Patient Population, Ovarian Stimulation Protocols, and Policies for ET

Computerized data from all patients who underwent thaw cycles of cryopreserved embryos between November 1986 and February 2007 were analyzed. Patient demographics, infertility diagnosis and evaluation, infertility and ovarian stimulation protocols used in our center through the last 2 decades have been summarized elsewhere (11).

From 1986 to 1995, embryo cryopreservation was performed at the zygote (two pronuclei or ZG) stage. Freezing of cycle-day-3 cleavage-stage embryos (cleaving embryos or CLE) was introduced in 1995, when the fresh cycle day of transfer changed from day 2 to day 3. Since that time there has been a gradual shift toward the cryopreservation and subsequent transfer of cleaving embryos. Policies for embryo cryopreservation have also changed over time. Early protocols at our center directed all surplus embryos to be cryopreserved at the ZG stage. Since 2001 the policy has changed, and day-3 cleavage embryos of only intermediate or high quality were cryopreserved (embryos that developed to the four to six-cell stage or higher with a morphology grade [score] of $\leq$3). Embryo grading followed the criteria introduced by Veeck (12).

Policies directing the number of embryos transferred have also evolved over time. Before 2000 typically three embryos were transferred to patients aged $\leq$35 years, and three to four embryos to women older than 35 years (10). Subsequent to 2000 the transfer of fewer embryos was emphasized. In the last few years the policy has been to recommend the transfer of two cryopreserved/thawed embryos to patients younger than 35 years and two to three embryos to patients aged $\geq$35 years, with a maximum of three embryos transferred to any patient regardless of prognosis or circumstance. This change in policy was critical in successfully lowering the incidence of multiple pregnancies in good-prognosis patients while still establishing pregnancies in older patients (13).

Embryo Cryopreservation Techniques and Transfer Protocols

All frozen embryos were developed from oocytes that were at the metaphase II stage at the time of follicular aspiration. Pronuclear embryos were cryopreserved and thawed with a slow-freeze method with a programmed biological freezer (Planer Kryo 10-7; T.S. Scientific, Perkasie, PA). The cryoprotective supplement added to the freezing medium (Dulbecco's phosphate-buffered saline [dPBS]; GIBCO Laboratories, Grand Island, NY) was 1.5 M propanediol (1, 2 propanediol; Fisher Scientific, Pittsburgh, PA) (14). Survival of the ZG-stage frozen embryo was defined as the ability of the zygote to enter syngamy and proceed to at least the first cleavage division.

Intact blastomere survival of 50% or greater (with clear cellular boundaries and no fragmentation) identified a successful thaw in cleavage-stage frozen embryos. Cleavage-stage embryos were also cryopreserved with the slow-freeze method on a Planer freezer. For these embryos, propanediol (1.5 M) with dPBS and 0.2 M of sucrose were used as the cryoprotective agent.

Embryos were transferred in either natural cycles or estrogen-progesterone hormonally-supplemented cycles (2, 15, 16). Pronuclear embryos were thawed on cycle day 16 and transferred on day 17. Cleaving embryos were thawed on day 17 and transferred on day 18. Transfers were routinely performed with transabdominal ultrasound guidance after 2001 (17).

Definition of Outcomes

When applicable, the definitions of the International Committee Monitoring Assisted Reproductive Technology were used (18). Developmental stage at the time of freezing was divided into the following groups: ZG-stage-only embryos, CLE-stage-only embryos, and a combination of ZG- and CLE-stage embryos (ZG/CLE). Thaw survival proportions were calculated as number of surviving embryos divided by the number of embryos recovered after embryo thaw per cycle. For the evaluation of clinical outcomes, data were categorized into five CLE- and ZG-only storage duration categories: 30–100 days, 101 days to 1 year, 1 to 2 years, 2 to 3 years, and >3 years.

Clinical pregnancy rate was defined as the number of patients with one or more gestational sac(s) visualized on ultrasound at 6 to 7 weeks' gestational age divided by the total number of transfer cycles. Miscarriage rate was defined as the number of clinical pregnancies lost divided by the number of transfers in patients with clinical pregnancies. Live birth rates were computed by dividing the total number of live births by the total number of ET cycles. Implantation rates were calculated as the number of gestational sac(s) visualized on ultrasound at 6 to 7 weeks' gestational age divided by the total number of embryos transferred.

Statistical Analysis

Descriptive data are presented as mean with 1 SD. Normality was assessed using the Kolmogorov-Smirnov test (with Lillefor's significance correction) for all variables. Correlations were evaluated by calculating Spearman's ρ correlations. Analysis of data was performed using Student's t test, analysis of variance, Mann-Whitney, or Kruskall-Wallis tests as indicated. Chi-square or Fisher's exact test analysis of contingency tables was completed to assess categoric and ordinal variables. When appropriate, the Cochran Mantel-Haenszel common odds ratio test was applied to test the homogeneity of relevant odds ratios. Logistic regression analysis was completed to assess the predictive value of multiple variables. A P value of $<.05$ was considered significant. Statistical analyses were performed using SPSS software (version 12.0; SPSS, Chicago, IL). This study was approved by the Eastern Virginia Medical School Institutional Review Board.

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RESULTS

In total, we analyzed 11,768 cryopreserved embryos (9,395 IVF-derived and 2,373 oocyte donation–derived embryos). There were 1,927 IVF and 490 oocyte donation thaw cycles. A total of 6,585 embryos were frozen in ZG-only cycles (5,830 IVF and 755 oocyte donation). There were 3,631 embryos frozen in CLE-only cycles (2,559 IVF and 1,072 oocyte donation). A total of 1,552 embryos were frozen in cycles in which both ZG- and CLE-stage freezing was performed (ZG/CLE) (1,006 IVF and 546 oocyte donation). There was a greater percentage of patients having cycles with cryopreservation over time ($r = 0.739$, P=.001; data not shown). The "oldest" embryos to result in live birth (twin pregnancy) were stored at the ZG stage for 3,354 days (9.2 years). The "oldest" CLE-stage embryo resulting in a live birth (singleton) was stored for 1,835 days (5 years). There were no pregnancies in cycles with embryos cryopreserved for more than 10 years, but this may reflect the relatively small number of embryos stored for >10 years (n = 5).

The IVF patients' demographics and cycle characteristics for all embryos, as well as ZG- and CLE-only stage cycles are presented in Table 1. The age range of IVF patients at the time of embryo freezing was 22–44 years. Embryo storage time ranged from 30 to 5,665 days for all embryos, 30 to 5,110 days for ZG-stage, 30 to 5,665 days for CLE-stage embryos, and 30 to 3,329 days for ZG/CLE thaw cycles. The IVF patients with only ZG-stage embryos had an average storage time of 372 ± 440 days, compared with CLE-stage-only embryos with an average storage time of 346 ± 492 days (P=.0001). Pronuclear-only thaw cycles had an average thaw survival rate of 68.5% ± 0.31%, compared with a cleavage-stage thaw survival rate of 73.4% ± 0.28% (P=.006). The overall transfer rate was 89% and was similar for ZG- or CLE-only embryos. Analysis of the IVF data yielded the following pregnancy outcomes: implantation rate of 10.1%, clinical pregnancy rate per transfer of 21.6%, live birth rate per transfer of 16.4%, and a miscarriage rate of 24.6%.

For the oocyte donation group, demographics and cycle characteristics for all embryos, as well as for ZG- and CLE-only-stage cycles, are presented in Table 2. The age range was 20–32 years for oocyte donors and 21–55 years for recipients. Embryo storage time ranged from 30 to 5,700 days for all embryos, 30 to 5,700 days for ZG-stage embryos, 30 to 2,716 days for CLE-stage embryos, and 33 to 2,542 days for ZG/CLE thaw cycles. Oocyte donation cycles with only ZG-stage embryos had an average storage time of 283 ± 414 days, compared with CLE-stage-only embryos with an average storage time of 289 ± 361 days (P=.06). Pronuclear-only thaw cycles had an average thaw survival rate of 72.8% ± 0.3%, compared with the CLE-only thaw survival rate of 75.6% ± 0.3% (P=.3). The overall transfer rate was 96% and was very similar for ZG- or CLE-only embryos Analysis of the oocyte donation data yielded the following pregnancy outcomes: implantation rate of 13.7%, clinical pregnancy rate per transfer of 28.9%, live birth rate per transfer of 21.7%, and a miscarriage rate of 27.0%.

TABLE 1

Mean cycle characteristics for IVF patients.[a]

Variable	All cycles	ZG-only stage	CLE-only stage
Freeze cycles			
n	1,533	968	435
Patient age (y)	34.0 ± 4.0	34.1 ± 3.8	34.0 ± 4.5
Embryos frozen	6.2 ± 4.5	6.0 ± 5.0	5.9 ± 3.1
Thaw cycles			
n	1,927	1,236	537
Patient age (y)	34.8 ± 4.1	34.8 ± 3.9	34.7 ± 4.4
Storage time (d)	420.2 ± 497.9	419.4 ± 496.2	400.5 ± 495.0
Viable embryos	2.97 ± 1.6	2.9 ± 1.6	3.1 ± 1.5
Survival proportion	0.71 ± 0.29	0.71 ± .29	0.73 ± 0.28
Transfer cycles			
n	1,709	1,090	474
Embryos transferred	2.92 ± 1.1	2.9 ± 1.2	2.9 ± 1.0
Live birth rate (%)	16.9	16.9%	15.4%
Clinical pregnancy rate (%)	21.8	22.6%	18.9%
Other clinical outcomes			
Miscarriage rate (%)	23.9 (n = 373)	25.5 (n = 247)	22.2 (n = 90)
Implantation rate (%)	10.2 (n = 5,217)	10.1 (n = 3,305)	10.0 (n = 1,459)

Note: Values are mean ± SD, unless otherwise noted.
[a] The ZG/CLE cycles are included in the "All cycles" category; therefore, addition of the ZG and CLE categories will not equal the "All cycles" total.

Riggs. Embryo cryopreservation and storage time. Fertil Steril 2010.

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TABLE 2

Mean cycle characteristics for oocyte donation patients.[a]

Variable	All cycles	ZG-only stage	CLE-only stage
Freeze cycles			
n	357	111	173
Donor age (y)	27.2 ± 3.4	27.6 ± 3.4	27.1 ± 3.3
Embryos frozen	6.8±3.7	6.8±3.4	6.2±3.4
Thaw cycles			
n	490	167	236
Recipient age (y)	41.5 ± 5.1	41.3 ± 4.9	41.5 ± 5.3
Storage time (d)	448.3 ± 629.7	546.1 ± 837.1	394.2 ± 480.1
Viable embryos	3.2 ± 1.3	3.5 ± 1.4	3.0 ± 1.3
Survival proportion	0.75 ± 0.3	0.76 ± 0.24	0.76 ± 0.26
Transfer cycles			
n	469	160	227
Embryos transferred	2.97 ± 0.9	3.1 ± 0.8	2.8 ± 0.9
Live birth rate (%)	22.4	17.5	24.7
Clinical pregnancy rate (%)	28.3	26.3	30.7
Other clinical outcomes			
Miscarriage rate (%)	25.8 (n = 132)	33.3 (n = 42)	17.9 (n = 89)
Implantation rate (%)	13.8 (n = 1,390)	15.3 (n = 512)	16.3 (n = 644)

Note: Values are mean ± SD, unless otherwise noted.
[a] The ZG/CLE cycles are included in the "All cycles" category; therefore, addition of the ZG and CLE categories will not equal the "All cycles" total.

Riggs. Embryo cryopreservation and storage time. Fertil Steril 2010.

Scatter plots displaying the relationship between length of storage time and survival proportions for IVF and oocyte donation are shown in Figure 1 (upper and lower panels, respectively). Length of storage time did not correlate with postthaw survival for IVF ($r = -0.009$, P=.6891), oocyte donation ($r = 0.052$, P=.263), ZG stage (IVF $r = 0.019$, P=.498; oocyte donation $r = -0.138$, P=.075), or CLE (IVF $r = 0.022$, P=.611; oocyte donation $r = 0.05$, P=.755).

Chi-square analysis with Cochran Mantel-Haenszel common odds ratio estimates revealed no significant differences for live birth rates in the IVF or oocyte donation groups when CLE- and ZG-only groups were stratified for length of storage time (Table 3). Similar results were observed for implantation and miscarriage rates (data not shown).

Logistic regression analysis was performed incorporating the following variables: oocyte age, freeze stage group (ZG, CLE, or combination stages), duration of storage, survival proportion, and number of embryos transferred. Results demonstrated that only oocyte age, ($P<.0001$), survival proportion (P=.01), and number of embryos transferred (P=.03) contributed significantly to the model as positive predictors of live birth.

DISCUSSION

In this analysis of 11,768 cryopreserved embryos in 2,417 thaw cycles, storage time had no significant effect on thaw survival or pregnancy outcomes. This was the case for embryos frozen at the pronuclear and cleavage stages. We also present data on ZG embryos stored for up to 9.2 years resulting in the live birth of twins, which to our knowledge may represent the "oldest" cryopreserved embryos at the zygote stage resulting in a live birth to date (19–21, 25).

Earlier studies yielded contradictory results. Testart et al. (8) found detrimental effects of storage time on cell survival, but they did not control for prefreeze morphology. These investigators reported a decrease in embryonic survival with increasing storage time (71% survival at 1 month and 53% survival after 6–15 months). When individual cells were analyzed the survival rate decreased from 68% to 44%, which reached statistical significance. It is difficult to evaluate the significance of this potential effect because limited clinical outcomes were provided. In contrast, Cohen et al. (9) found no significant influence of storage time on blastomere survival or clinical pregnancy, but they did not provide live birth data. These investigators found no difference in blastomere survival or pregnancy outcome in cryopreserved embryos stored from 8 to 70 weeks. However, pregnancy outcomes in that study may have been confounded because the transfers occurred during natural and clomiphene citrate cycles. In both reports, embryos were frozen for a relatively short period (8, 9).

Theoretical models have speculated that significant cryostability exists at −196°C, with the exception of photophysical

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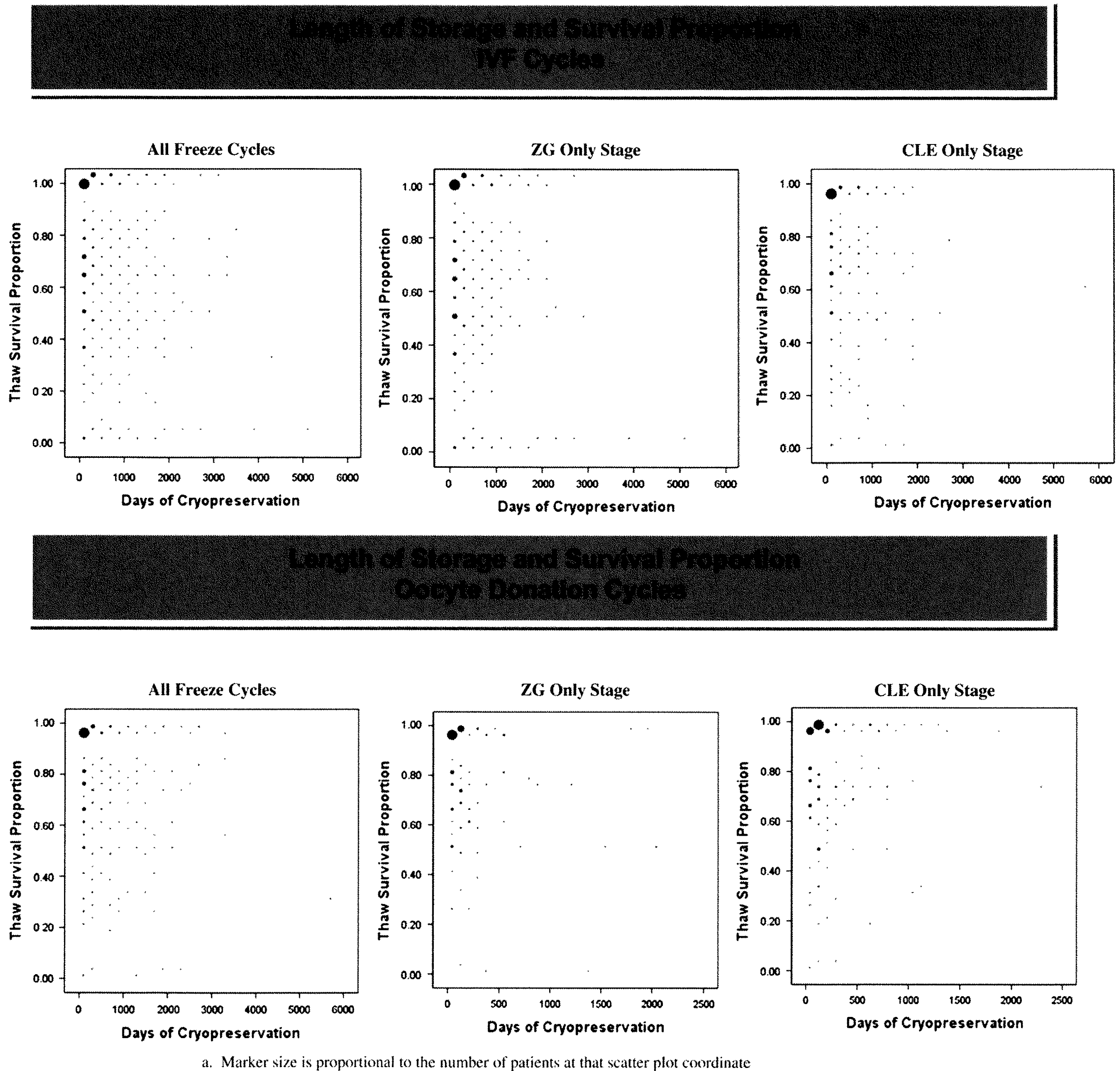
FIGURE 1

Scatter plots demonstrating the relationship between thaw survival proportion and cryostorage duration in IVF (upper panel) and oocyte donation (lower panel).



a. Marker size is proportional to the number of patients at that scatter plot coordinate

Riggs. Embryo cryopreservation and storage time. Fertil Steril 2010.

events, such as free radical and macromolecule formation due to background ionizing radiation and cosmic rays. Given that background radiation is 0.1 rad/y, frozen embryos should be stable for thousands of years (19). Furthermore, murine models simulating 2,000 years of cryostorage by increasing background radiation failed to demonstrate a deleterious effect on embryo survival (22). Evaluation of long-term cryopreservation in sheep embryos found decreased pregnancy rates but no difference in live birth rates in embryos cryopreserved for 13 years (23).

Although reassuring, these models are limited due to significant differences between animal and human physiology. Additionally, they assume optimized storage conditions and do not give consideration to practical concerns that may influence storage conditions such as repeated tank access to retrieve embryos and appropriate maintenance of storage tanks with liquid nitrogen.

Our study revealed no significant influence of length of storage time on thaw survival or pregnancy outcomes.

TABLE 3

Live birth rates in ZG-only and CLE-only groups, stratified by length of storage time.[a]

Length of storage time (d)	IVF[b]			Oocyte donation[c]		
	CLE only	ZG only	*P* value	CLE only	ZG only	*P* value
30–100	14.2 (21/148)	18.8 (57/304)	.229	22.8 (13/57)	10.5 (6/57)	.079
101–365	16.3 (29/178)	13.9 (60/432)	.445	26.8 (26/97)	21.6 (11/51)	.485
366–730	16.4 (9/55)	15.9 (24/151)	.935	24.3 (9/37)	25.0 (5/20)	.955
731–1,095	15.3 (9/59)	18.8 (22/117)	.560	31.6 (6/19)	25.0 (2/8)	.732
>1,095	24.4 (21/86)	24.4 (21/86)	.245	16.7 (4/24)	11.8 (2/17)	.662

Note: Values are percentage (number).
[a] Cochran Mantel-Haenszel common odds ratio estimate for length of storage time.
[b] IVF $P=.45$.
[c] Donor $P=.196$.

Riggs. Embryo cryopreservation and storage time. Fertil Steril 2010.

Implantation, clinical pregnancy, miscarriage, and live birth rates were similar between groups when stratified according to duration of storage, and there were no significant differences according to embryo stage at freezing. Logistic regression analysis identified only oocyte age, thaw survival rates, and number of embryos transferred as significant predictive factors associated with live birth rate outcome.

To our knowledge, we present the largest published analysis of the potential impact of the length of storage time on embryo thaw survival and clinically relevant ART outcomes. Human cryopreserved embryos seem to be relatively stable with no obvious deleterious time effects on pregnancy outcomes. Limited studies on obstetric outcome, as well as further follow-up of the children born, indicate that cryopreservation of embryos is a safe procedure; nevertheless, long-term follow-up of the children born is still warranted (24). Finally, no published data are available for pregnancy outcomes and long-term follow-up of embryos cryopreserved with vitrification, a promising emerging technique. As use of this technique increases, studies to investigate the influence of storage time on vitrified embryos will be important.

Although retrospective, our analysis benefits from a large sample size and incorporated patients from more than 20 years of cryopreservation experience at a tertiary-referral infertility center. We conclude that these findings provide reassurance about the prolonged storage of pronuclear- and cleavage-stage embryos under strictly controlled laboratory conditions.

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