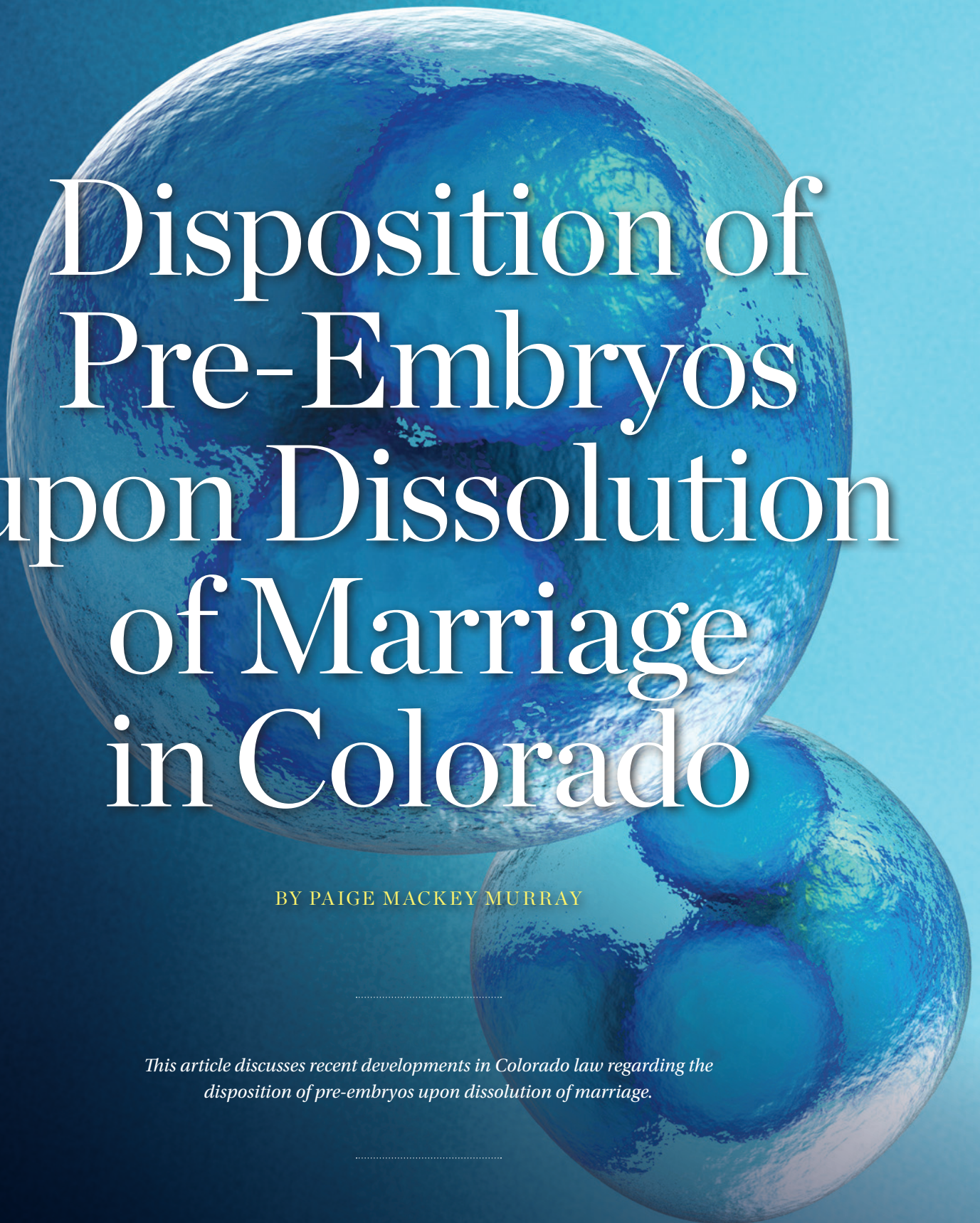

Disposition of Pre-Embryos upon Dissolution of Marriage in Colorado

BY PAIGE MACKEY MURRAY

This article discusses recent developments in Colorado law regarding the disposition of pre-embryos upon dissolution of marriage.

In the most recent report on assisted reproductive technology (ART), the Centers for Disease Control (CDC) reported 284,385 ART cycles in the United States in 2017.[1] In general, in vitro fertilization (IVF) is the most common type of assisted reproductive technology.[2] IVF involves extracting a woman's eggs from her ovaries, fertilizing them with sperm in the laboratory, and then returning them to a female patient or gestational carrier or donating them to another patient.[3]

The IVF process often results in the creation of more pre-embryos than a couple can immediately use, and usually those excess pre-embryos are cryopreserved and stored for potential future use.[4] The exact number of pre-embryos in storage in the United States is unknown, but researchers estimate there are at least 400,000.[5]

Couples who divorce after the cryopreservation of excess pre-embryos may find themselves in disagreement over the future of those unused pre-embryos. The disposition of pre-embryos upon divorce is a developing area of law fraught with political and emotional consequences.[6]

In 2018 and 2019 the Colorado Supreme Court and Court of Appeals published their first opinions on the disposition of pre-embryos of divorced couples. The first case was the Supreme Court's October 2018 opinion in *In re Marriage of Rooks* (*Rooks II*).[7] While *Rooks II* was pending, the Court of Appeals was considering *In re Marriage of Fabos and Olsen*, released in May 2019.[8] To date, Colorado appellate courts have published no other cases addressing this issue.

The Legal Status of IVF Pre-Embryos

One of the foundational principles that guides courts in determining how to resolve disputes over pre-embryos is whether pre-embryos are considered "persons" under the law. In Colorado, a pre-embryo is not granted the same legal status as a person. CRS § 13-21-1204, involving damages for unlawful termination of pregnancy, and CRS § 18-3.5-110, regarding criminal offenses against pregnant women, both provide that "[n]othing in this [part 12/article] shall be construed to confer the status of 'person' upon a human embryo, fetus, or unborn child at any stage of development prior to live birth."[9] Recently, the Colorado Supreme Court concluded that a "person" for purposes of the child abuse statute, CRS § 18-6-401(1)(a), does not include a fetus that is later born alive.[10] This conclusion that a pre-embryo is not granted the same legal status as a person is shared by many courts throughout the country.[11]

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The Three Approaches to Disposition of Pre-Embryos

In *Rooks II* the Supreme Court analyzed cases from other jurisdictions and enumerated three main approaches courts have adopted or combined when resolving disputes over pre-embryos:

1. interpreting the parties' contract or agreement regarding disposition of the pre-embryos;
2. balancing the parties' respective interests in receiving the pre-embryos; and/or
3. requiring the parties' mutual contemporaneous consent regarding disposition of the pre-embryos.[12]

The *Rooks II* decision was split, with the four-justice majority adopting the contract approach and, where no express contract applies, the balancing of the interests approach. A three-justice dissent, written by Justice Hood and joined by Chief Justice Coats and Justice Samour, would have adopted the mutual contemporaneous consent approach.

The Contract Approach

The contract approach requires enforcement of any agreement entered into by spouses with respect to disposition of pre-embryos upon dissolution.[13] These agreements are usually required by a clinic performing IVF services and in some states are required by statute.[14] Commonly, clinic agreements ask spouses to choose from a number of options for disposition of the pre-embryos under a variety of situations, such as death, divorce, or abandonment of the pre-embryos.[15]

However, the contract terms do not always clearly determine the fate of the pre-embryos. For instance, in *Rooks II*, the written agreement with the fertility clinic did not specify what to do with the pre-embryos in the event of divorce and instead left the question to the courts.[16] The agreement provided that in the event of husband's death, the pre-embryos should be "[t]ransferred to the care of the female partner if she wishes," but if wife died, the pre-embryos should be "[t]hawed and discarded."[17] If both died, the couple agreed the pre-embryos should be discarded.[18] The agreement further stated that in the event of dissolution of marriage, "the disposition of our embryos will be part of the divorce/dissolution decree paperwork," and the fertility clinic "may deal exclusively with the person to whom all rights in the pre-embryos are awarded."[19] The agreement also provided that "'[i]n the event that the divorce/dissolution decree paperwork does not address the

disposition of the embryo(s),' the pre-embryos should be thawed and discarded."[20]

The district court had interpreted this language to mean that the couple intended the pre-embryos to be thawed and discarded in the event of divorce if they could not achieve "mutual resolution."[21] As a result, the court concluded that, under the contract approach, husband should receive the pre-embryos because he wished to discard them.[22]

The Court of Appeals and Supreme Court disagreed, finding that there was an "absence of enforceable contract terms on the issue,"[23] and thus the contract "does not resolve how the pre-embryos should be allocated in the event of divorce."[24]

Similarly, in *Fabos and Olsen*, the Court of Appeals determined there was no express agreement on the disposition of the pre-embryos in the event of a divorce.[25] In that case, the spouses' contract provided an option for the parties to elect a disposition for their pre-embryos in the event of death or incapacitation or when wife reached age 55.[26] For these scenarios, the parties initialed the option to donate the pre-embryos to another couple.[27] The contract further stated that in the event of divorce the ownership and/or rights to the pre-embryo(s) would be "as directed by court decree and/or settlement agreement."[28] On appeal, wife argued that because other contract provisions regarding death or reaching age 55 indicated a desire for donation, this informed the parties' intent upon divorce and indicated a general intent to donate.[29]

The Court in *Fabos and Olsen* rejected wife's arguments, concluding that the contract did not indicate what to do in the event of divorce.[30] The Court discussed wife's testimony that there was an oral agreement to donate the pre-embryos in the event of divorce but concluded there was insufficient evidence to find an oral agreement.[31] The Court also pointed out that *Rooks II* required an "express" agreement. But the Court did not decide conclusively whether a written agreement is required.[32]

The conclusion that can be derived from these cases is that absent an express agreement indicating the parties' chosen disposition in the event of divorce, application of the contract approach will not resolve the dispute, and an oral agreement, if adequately proven and express, might suffice.

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The Balancing of the Interests Approach

In *Rooks II*, the Supreme Court concluded that in the absence of an express agreement indicating the spouses' intent, a court should seek to balance the parties' respective interests.[33] The Court began by discussing the history of reproductive rights in the United States leading to the landmark decision *Roe v. Wade*, which established that the constitutionally derived right of privacy "encompass[es] a woman's decision whether or not to terminate her pregnancy."[34] The Court summarized *Roe v. Wade*'s progeny, which affirmed an individual's ability to make his or her own decisions regarding matters involving procreation and reproduction.[35]

In looking to other jurisdictions for guidance, the Court noted that all approaches generally seek to "(1) secure both parties' consent where possible and (2) avoid results that compel one party to become a genetic parent against his or her will except in rare circumstances."[36] The Court then outlined factors to be considered in balancing the parties' interests, which include:

- the intended use of the pre-embryos by the spouse who wants to preserve them. The Court noted that "[a] party who seeks to become a genetic parent through implantation of the pre-embryos, for example, has a weightier interest than one who seeks to donate the pre-embryos to another couple."[37]
- the demonstrated physical ability or inability of the party seeking to implant the disputed pre-embryos to have biological children through other means.[38]
- the parties' reasons for pursuing IVF, which may favor preservation over disposition. "For example, the couple may have turned to IVF to preserve a spouse's future ability to have biological children in the face of fertility-implicating medical treatment, such as chemotherapy."[39]
- the hardship for the person seeking to avoid becoming a genetic parent, "including emotional, financial, or logistical considerations."[40]
- either spouse's demonstrated bad faith or attempt to use the pre-embryos as unfair leverage in the divorce proceedings.[41] Although this factor does not appear to reflect the facts before the Supreme Court in *Rooks II*, it echoes concerns that had been raised by other courts over adoption of the contemporaneous mutual consent approach.[42]
- other considerations relevant to the parties' specific situation.[43]

The Court also discussed factors that should not be considered in the balancing of interests

test. In *In re Marriage of Rooks* (*Rooks I*), the Court of Appeals had determined that because wife already had three children, her opportunity to procreate was not being foreclosed.[44] The Court also approved of the district court's consideration of wife's ability to "'manage such a large family alone as a single parent,' given her lack of employment and financial resources, and the significant health issues faced by one of the children."[45]

In rejecting these considerations, the Supreme Court declined to "adopt a test that would allow courts to limit the size of a family based on financial and economic distinctions."[46] Thus, a court should not consider "whether the spouse seeking to use the pre-embryos to become a genetic parent can afford a child. Nor shall the sheer number of a party's existing children, standing alone, be a reason to preclude preservation of the pre-embryos."[47] The inclusion of the phrase "standing alone" means that a party's existing children should not be the sole factor but could be considered in the equation. And while not a consideration specifically raised in *Rooks II*, the Supreme Court concluded that a court should not consider "whether a spouse seeking to use the pre-embryos to become a genetic parent could instead adopt a child or otherwise parent non-biological children."[48]

Rather than deciding the issue as to who should be awarded the pre-embryos, the Supreme Court in *Rooks II* remanded, leaving the district court to apply the factors and award the pre-embryos to one of the parties.[49] Because the factors to be included and excluded were tailored to the case before it, the end result of *Rooks II* is that cases will be decided on a case-by-case basis, likely resulting in further litigation and potential appeals to the higher courts.

In *Fabos and Olsen*, so far the only published decision to apply the new *Rooks II* analysis, the facts were critically different such that the specific analytical factors listed and excluded in *Rooks II* were only minimally applicable.[50] In *Fabos and Olsen*, husband wished to allow the pre-embryos that remained after IVF to be destroyed, while wife wished to donate the pre-embryos to another couple.[51] Wife's position was founded on her belief that the pre-embryos should be protected as "human lives."[52] The district court determined that this belief was a separate interest factor, and one that weighed more than any other, and awarded the pre-embryos to wife.[53] The court also attributed weight to wife's interest in donation as a "productive purpose."[54]

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The Court of Appeals applied the balancing of the interests approach as required by *Rooks II*.[55] Because wife sought to donate the pre-embryos, the Court only applied the first factor (the intended use of the pre-embryos by the spouse who wants to preserve them) and the fourth factor (the hardship for the person seeking to avoid becoming a genetic parent, including emotional, financial, or logistical considerations).[56]

Applying the first factor, the Court stated that wife's interest in donation had less weight than it would have if she wished to use the pre-embryos to become impregnated herself.[57] Husband argued for a bright line rule that where a party wished to donate pre-embryos to another couple, the party wishing to avoid procreation should necessarily prevail.[58] He argued that the constitutional rights of the parties in such circumstances were not equivalent.[59] The Court acknowledged that the cases cited by *Rooks II* addressing donation concluded that where only donation is sought, ordinarily the party wishing to avoid reproduction should prevail, but the Court declined to adopt a bright line rule.[60] The Court also seemed to suggest that the parties' constitutional rights might not be equivalent in such circumstances; there was a constitutional dimension to wife's interest in donation, and her interest derived from a right both parties had "to make decisions about the fate of the pre-embryos that were created using their genetic material."[61]

It is noteworthy that in *Fabos and Olsen* the Court rejected any significant consideration of wife's belief that the pre-embryos were "human lives," stating: "Nothing in *Rooks I* or *Rooks II* suggests that the weight to be attributed to a party's interest in donating should in any way turn on that party's personal views of the morality of donating."[62] The Court clarified that the district court erred by giving wife's personal beliefs "conclusive" or "dispositive" weight."[63] Further, her personal moral beliefs could not be considered an additional factor because "the relative strength or sincerity of the parties' respective personal or moral convictions, as a separate additional factor, does not advance the court's charge of giving primacy to one of 'the equivalently important, yet competing, right to procreate and right to avoid procreation.'"[64]

The Court remanded to the district court for reconsideration of the balancing of the interests.[65] And, because the district court and the parties did not have the guidance of *Rooks II* during the earlier hearing, the Court allowed the parties to present additional evidence.[66] Because wife's beliefs were weighted "too heavily" and could not be given "dispositive weight," the

Court may have left open the possibility that her beliefs could be considered on remand in some capacity in balancing the parties' interests. However, the Court specifically required the district court to balance the parties' interests "without weighting wife's subjective belief that the pre-embryos should be protected as human life more heavily than husband's interest in not procreating using the pre-embryos."[67] In so ruling, the Court agreed that although wife had a right to hold her subjective beliefs, such beliefs were "also contrary to established law regarding pre-embryos and, as such, were ultimately weighted too heavily by the district court vis-a-vis husband's constitutional right to avoid procreating using the pre-embryos."[68]

On remand, wife made a new argument that the balancing of interests test violated her freedom of religion, and she requested in the alternative to receive the pre-embryos for her own impregnation.[69] In a 46-page remand decision, the district court again ruled in favor of wife.[70] The court found that if wife's own pregnancy were her primary objective, husband's "interest in discarding the pre-embryos to avoid becoming a genetic parent to a child he would not raise is greater than [wife's] interest in preserving the pre-embryos for self-implantation."[71] However, the court concluded that wife's primary objective was preservation of the pre-embryos based on her deeply rooted conviction that the pre-embryos are human lives and her willingness to donate or become impregnated was simply a practical means to accomplish her primary objective.[72]

The district court rejected wife's first amendment arguments but also indicated that "the subjective importance of this factor [her conviction that pre-embryos are human lives] cannot be ignored or discounted simply because it is bound up with her religious beliefs."[73] Ultimately, the court concluded that wife's interest in preserving the pre-embryos, based on her moral religious convictions, weighed more heavily than husband's interest in discarding the pre-embryos to avoid becoming a genetic parent to a child he would not raise.[74] A second appeal in the Court of Appeals is currently pending on the issue of whether the district court erred in awarding the pre-embryos to wife.[75]

> "Under the contemporaneous mutual consent approach, 'no transfer, release, disposition, or use of the [pre-] embryos can occur without the signed authorization of both donors.' The rationale for this approach is to remove the decision from unwarranted governmental intrusion and let the parties alone determine whether to have more children."

The Contemporaneous Mutual Consent Approach

Under the contemporaneous mutual consent approach, "no transfer, release, disposition, or use of the [pre-]embryos can occur without the signed authorization of both donors."[76] The rationale for this approach is to remove the decision from unwarranted governmental intrusion and let the parties alone determine whether to have more children.[77]

Only Iowa has explicitly adopted the contemporaneous mutual consent approach.[78] However, other states have issued rulings that support the underlying basis for this approach. For instance, a Texas appellate court stated that it was "an emerging majority view that written embryo agreements between embryo donors and fertility clinics to which all parties have consented are valid and enforceable so long as the parties have the opportunity to withdraw their consent to the terms of the agreement."[79] The New Jersey Supreme Court held that "the better rule, and the one we adopt, is to enforce agreements entered into at the time in vitro fertilization is begun, subject to the right of either party to change his or her mind about disposition up to the point of use or destruction of any stored pre-embryos."[80] The Massachusetts Supreme Court refused to enforce a contract that would have given the pre-embryos to the wife upon dissolution of marriage, holding that "[a]s a matter of public policy, we conclude that forced procreation is not an area amenable to judicial enforcement. It is well-established that courts will not enforce contracts that violate public policy."[81] And the Missouri Court of Appeals affirmed a district court judgment awarding pre-embryos to the parties jointly and ordering that no transfer, release, or use could occur without the signed authorization of both parties.[82]

The majority in *Rooks II* rejected the contemporaneous mutual consent approach because it would constitute a de facto veto for the party wishing not to procreate.[83] The Court referred to one scholar who discussed how the de facto veto could create incentives for one party to leverage his or her power unfairly.[84] The Court also found that the approach disregards the parties' preexisting agreements and injects legal uncertainty into the process by eliminating any incentive for the parties to avoid litigation by agreeing in advance.[85] Lastly, the Court concluded that the mutual contemporaneous consent approach essentially requires the court to abdicate its judicial responsibilities "by ignoring the legislature's directive to distribute

equitably the parties' marital property in a dissolution proceeding."[86]

The three-justice dissent in *Rooks II* would have adopted the contemporaneous mutual consent approach. Justice Hood wrote, "[b]ecause I believe a court should never infringe on a person's constitutional right to avoid procreation through IVF, I disagree with the majority's decision to entangle our courts in such deeply personal disputes by employing a multi-factor balancing test. Instead, I would embrace the contemporaneous mutual consent approach outlined by the majority."[87] According to Justice Hood, of all of the approaches outlined by the majority, only the contemporaneous mutual consent approach adequately shields citizens from unwarranted governmental intrusion.[88]

Colorado's Statutory Framework

The majority in *Rooks II* concluded that Colorado statutes addressing IVF do not resolve the issue of how to allocate pre-embryos upon divorce.[89] The dissent concluded otherwise.[90]

Colorado statutes protect a person who unwillingly becomes a parent through IVF from being the "legal" parent of the child.[91] CRS § 15-11-120(9) provides that:

> [i]f a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.

CRS § 15-11-120(10) further provides that "[i]f, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual."

Colorado's version of the Uniform Parentage Act (UPA) also addresses consent to legal parenthood in the context of assisted reproduction. CRS § 19-4-106(7) states in full:

> (7)(a) If a marriage is dissolved before placement of eggs, sperm, or embryos, the former spouse is not a parent of the resulting child unless the former spouse consented in a record that if assisted reproduction were to occur after a dissolution of marriage, the former spouse would be a parent of the child.
>
> (b) The consent of a former spouse to assisted reproduction may be withdrawn by that individual in a record at any time before placement of eggs, sperm, or embryos.

In *Rooks II* the majority ruled that the language in subsection 7(b), "consent of a former spouse to assisted reproduction," referred back to the consent language in subsection 7(a) regarding legal parentage.[92] The Court opined that because paragraph (b) is not a freestanding subsection, it must be read in conjunction with subsection (7)(a) and thus the "'consent' in subsection (7)(b) logically refers to the former spouse's consent to legal parenthood of a 'resulting child' conceived by assisted reproduction."[93]

The dissent in *Rooks II* disagreed and interpreted subsection (7)(b) to allow withdrawal of consent to assisted reproduction, not just legal parenthood.[94] It found that subsection (7)(a) frames the consent in more narrow language regarding whether the former spouse would be the "parent of the child," whereas subsection (7)(b) refers to "assisted reproduction."[95]

The dissent also considered the language of CRS § 19-4-106 (8) (regarding death of a spouse), which is nearly identical to subsection 7(a).[96] The dissent reasoned that because subsection (8) does not include a corollary to subsection 7(b) for withdrawal of consent, the ability to withdraw consent before death is assumed.[97] Because subsection 7(a) mimicked subsection 8(a), and "'identical words used in different parts of the same act are intended to have the same meaning,'" withdrawal of consent should also be assumed in subsection (7)(a).[98] As a result, subsection (7)(b) must do something different to avoid becoming "mere surplusage."[99] According

to Justice Hood, "[w]hat subsection (7)(b) does differently is clear from its plain text: It empowers a former spouse to withdraw consent to assisted reproduction."[100]

As the *Rooks II* majority pointed out, the most recent version of the UPA promulgated by the National Conference of Commissioners on Uniform State Laws, from which CRS § 19-4-106 (7) is derived, contained a similar provision addressing the effect of dissolution or withdrawal of consent on the legal parenthood of a resulting child, stating: "The consent of a woman or a man to assisted reproduction may be withdrawn by that individual in a record at any time before placement of eggs, sperm, or embryos. An individual who withdraws consent under this section is not a parent of the resulting child."[101] While the *Rooks II* majority cited this UPA section in support of its interpretation of the meaning of subsection 7(b) as reflective of the purpose of the section as a whole, it is not clear why the Colorado Legislature left out the second sentence of subsection 7(b) when it adopted this statute in 2003.[102]

The dissent's statutory interpretation would also support its embrace of the contemporaneous mutual consent approach. According to the dissent, subsection 7(b) "arguably codifies the contemporaneous mutual consent approach," or "[a]t the very least . . . sheds light on the policy preference of the Colorado General Assembly."[103]

The majority's interpretation of the Colorado statutory scheme regarding IVF and its adoption of the balancing of the interests approach leaves parties in murky legal waters. The factors outlined in *Rooks II* were only minimally relevant to the analysis in *Fabos and Olsen*, and each case involving disposition of pre-embryos may present new factual considerations not raised in published cases. Therefore, issues involving disposition of pre-embryos upon divorce will necessarily be determined on a case-by-case basis and likely subject to ongoing appellate involvement. As such, this area may be ripe for clarifying legislation.

Conclusion

Only two Colorado cases provide guidance to lower courts in resolving disputes over cryopreserved pre-embryos upon divorce. The Colorado Supreme Court has adopted the contract approach, and if no express contract exists, the balancing of the interests approach. But cases involving the disposition of pre-embryos are fact-specific, so the result of these opinions is that issues over disposition will be decided on a case-by-case basis based on factors that may not have been considered in a published opinion. Absent additional legislative guidance, the result will likely be continued court involvement over a highly personal, emotional, and contentious issue affecting some divorced couples. CL

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NOTES

1. CDC, 2017 Assisted Reproductive Technology Fertility Clinic Success Rates Report at 23, https://www.cdc.gov/art/reports/2017/fertility-clinic.html. "Because ART consists of several steps over an interval of approximately 2 weeks, an ART procedure is typically referred to as a cycle of treatment rather than a procedure at a single point in time." *Id.* at 4.

2. *Id.* at 3.

3. *In re Marriage of Rooks* (*Rooks II*), 429 P.3d 579, 582 (Colo. 2018) (describing IVF process), *cert. denied sub nom.*, *Rooks v. Rooks*, 139 S.Ct. 1447 (2019).

4. *Id.* Where an embryo has not yet implanted in a uterus, the accurate medical term is "pre-embryo." *Id.*

5. Hoffman et al., How Many Frozen Human Embryos are Available for Research? (RAND Corp.), https://www.rand.org/pubs/research_briefs/RB9038.html ("as of April 11, 2002, a total of 396,526 embryos have been placed in storage in the United States"); Forman, "Embryo Disposition and Divorce: Why Clinic Consent Forms Are Not the Answer," 24 *J. Am. Acad. Matrim. Law.* 57, 58 (2011).

6. *See generally* Nachtigall et al., "Parents' conceptualization of their frozen embryos complicates the disposition decision," *Fertil Steril.* 2005 Aug; 84(2): 431-434; doi: 10.1016/s0015-0282(03)00172-9, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2811165/#R2 (discussing findings regarding how an individual's ideas about pre-embryos impact dispositional decisions).

7. *Rooks II*, 429 P.3d 579.

8. *In re Marriage of Fabos and Olsen*, 451 P.3d 1218 (Colo.App. 2019).

9. CRS § 13-21-1204; CRS § 18-3.5-110.

10. *People v. Jones*, 464 P.3d 735, 748 (Colo. 2020) (overruling *People v. Lage*, 232 P.3d 138 (Colo. App. 2009) and applying "rule of lenity" as a last resort doctrine).

11. *See, e.g.*, *Cwik v. Cwik*, No. C-090843, 2011 WL 346173 (Ohio Ct.App. Feb. 4, 2011) ("Courts have not afforded frozen embryos legally protected interests akin to persons, and such frozen embryos would not be considered persons under the Thirteenth Amendment."); *Davis v. Davis*, 842 S.W.2d 588, 595 (Tenn. 1992) (tracing the history of legal protection of pre-embryos under federal law and finding that the US Supreme Court has repeatedly concluded viability is the "critical point" for determining when a fetus may possess independent rights, and "[t]hat stage of fetal development is far removed, both qualitatively and quantitatively, from that of the four- to eight-cell preembryos" at issue in the case); *J.B. v. M.B.*, 783 A.2d 707 (N.J. 2001) (resolving issue in favor of party seeking to destroy pre-embryos to avoid procreating despite other party's desire to donate the pre-embryos consistent with his religious convictions that the pre-embryos must be protected as human life); *In re Marriage of Dahl and Angle*, 194 P.3d 834, 841 (Or.App. 2008) (rejecting husband's argument that "his belief that the embryos are life and his desire to donate the embryos in a way that would allow 'his offspring to develop their full potential as human beings' should outweigh wife's interest in avoiding genetic parenthood."); *Doe v. Obama*, 670 F.Supp.2d 435, 440 (S.D.Md. 2009) (rejecting argument, in the context of stem cell research, that cryopreserved embryos can show an "invasion of a legally protected interest" for purposes of standing because embryos "do not possess" any such protected interest "as they are not considered to be persons under the law"); *McQueen v. Gadberry*, 507 S.W.3d 127, 149 (Mo.Ct.App. 2016) (categorizing frozen pre-embryos as marital property of "special character" because they have the potential to become born children, but declining to classify pre-embryos as children with independent statutory or constitutional rights, including protection of the Thirteenth Amendment from being classified as "property"); *In re Marriage of Witten*, 672 N.W.2d 768 (Iowa 2003) (best interests standard does not apply to pre-embryos because legislature did not intend to include them within the scope of the best interests statute); *Jeter v. Mayo Clinic Ariz.*, 121 P.3d 1256, 1262 (Ariz.App. 2005) (wrongful