

Gardiner couple sues medical providers in wrongful birth case

By JODI HAUSEN Chronicle Staff Writer

A Gardiner couple have filed a lawsuit in Gallatin County District Court against several healthcare providers, claiming they would have terminated a pregnancy if they had known their child would be born with cystic fibrosis.

In the suit filed in October, Kerrie and Joe Evans claim they have suffered emotional distress and will be burdened with healthcare costs associated with caring for their child who was born with the fatal disease.

"This is a case about how several healthcare providers failed to deliver the most basic care and test for cystic fibrosis, resulting in the Evans' child being born with this incurable, painful, costly and fatal disease," attorneys Casey Magan and Russ Waddell wrote in the complaint.

But healthcare providers claim there is no precedent for a "wrongful birth" lawsuit in Montana and that the issue raises complex political and moral questions that lawmakers should address, not the court system. They want the lawsuit dismissed.

If the court accepts the case, parents could make several claims in hindsight that they would have aborted their child had they known of genetic defects, defense attorney Julie Lichte wrote in court documents.

"In an age where prenatal testing can identify genetic indicators for traits ranging from Down Syndrome to eye color, will the court allow parents to sue for a lost right to abort any child the parent subjectively considers 'imperfect' ... Where do we draw the line?" Lichte wrote.

The couple are suing Livingston nurse Peggy HealthCare Scanson, , Bozeman OB/GYN, Dr. William Peters, Bozeman Deaconess Health Services and Shodair Children's Hospital Department of Medical Genetics for an amount to be determined by a jury.

They claim Scanson failed to properly inform the couple of simple blood tests they could have taken to determine if they are carriers of the recessive gene that, if positive, would give their child a 25 percent chance of having cystic fibrosis.

Also, risky genetic testing that Kerrie Evans underwent in the first trimester of pregnancy determined the baby did not have chromosomal abnormalities, the suit states. But that same test could also have told the couple if the fetus would have the debilitating disease, and that analysis was never done.

Evans, who was 38 when she became pregnant, told Scanson "that she and her husband, Joe, had already had the most private of discussions about terminating the pregnancy in the event the fetus tested positive for serious fetal abnormalities," the lawsuit states.

The couple received a report indicating their baby was normal, the suit claims. But had the tissue been tested for cystic fibrosis, it would have tested positive for the disorder.

"In fact, the Evans' fetus was not 'normal,' but had cystic fibrosis," the lawsuit states. "The Evans, previously excited about the prospects of raising a normal, healthy child, were prepared neither emotionally nor financially to raise and care for a child with cystic fibrosis."

But Scanson contends she educated Kerrie Evans about available tests and that the couple did not request them.

"Apparently, Mrs. Evans did not read the ... brochures provided to her," Lichte argued. The genetic testing procedure "was ordered because of Mrs. Evans' 'maternal age,' not a finding of cystic fibrosis-carrier status in the parents."

Despite her medical issues, Baby Evans, as she is referred to in court documents, suffers no other impairment, defendants argue.

"In all likelihood, she will walk, talk, think independently, attend school, make friends and share a bond with her parents," they say. "Nonetheless, plaintiffs now claim, that had they discovered during their pregnancy that Baby Evans would be born with cystic fibrosis, they would have aborted her."

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