

Wrongful birth: Court upholds parental rights when hospital and lab screw up genetic testing

It was New Years Eve. The hospital was short staffed. The lab was, too. But the [Wuths](#) needed to get the test done fast, within the next few days. If the family waited longer it would be at least another month before they could find out if the fetus Rhea Wuth was carrying was genetically healthy.

Brock Wuth and his side of the family had a history of severe genetic impairment. The Wuths knew they did not want to raise a child with the same debilitating health conditions as Brock's cousin. They knew they would choose to end the pregnancy.

But the genetic counselor was off that day. And the medical technician who filled out the laboratory request form didn't send in supplemental paperwork detailing Brock's genetics. The doctor didn't order an extra, more specific test because he thought the lab would follow up when it received Brock's paperwork.

In the end, however, the laboratory failed to run the appropriate testing. The Wuths were told that their pregnancy was healthy. but six months later, their son Oliver was born, extremely affected by the same chromosome translocations that LabCorp, the genetic testing company, said he didn't have.

Late last month, a federal [appeals court upheld](#) a ruling that awarded the Wuths \$25 million for Oliver and another \$25 million to the family. It's been called the 'wrongful birth' suit by the media. The funds will help support Oliver with round-the-clock care for the rest of his life and allow his family to move into a home that is accessible to him, according to the family.

Although the case and [court ruling](#) have nothing to do with abortion, it is the reason the Wuths sought out testing in the first place. In this case, the family is being compensated for not having the correct information they would have used to potentially end a pregnancy.

Unsurprisingly, social conservatives did not applaud this. It paid funds to people who, if they were given the correct information, likely would have ended a pregnancy with abortion. "What parent goes to court to contend that justice requires that their baby, however damaged, should be dead?" [Rod Dreher wrote](#) at the American Conservative.

At its heart, the wrongful birth case was not about the Wuths' decision one way or the other; it was about damages from medical malpractice that left the family with considerable medical expenses and a child who will need constant, expensive care for the rest of his life. The Wuths did not want that situation for their child or themselves and they had the options to prevent it via legal abortion.

How to handle prospective births of children with potential developmental defects is a challenging, and often heart wrenching, issue. Consider the [Ohio bill](#) that aims to make it illegal to terminate a pregnancy if the reason is Down syndrome. Down syndrome is also known as trisomy 21 because a person has three copies of chromosome 21 instead of two. This bill mirrors one passed in [North Dakota](#) in 2013. No one has been prosecuted under it. For many geneticists, these bills are ill considered because they focus on

one specific genetic condition in the name of protecting against eugenics.

For example, if the Wuths lived in North Dakota, that would not have stopped them from accessing pregnancy termination services. The Wuths' fetus had a [chromosomal translocation](#): part of chromosome 2 and 9 got switched around during cell division and passed down through Brock's family. But if their child had an extra copy of chromosome 21 aka Down syndrome, they couldn't have an abortion procedure. That draws a rather bizarre line in determining which genetic maladies should be protected and which should not. Under these laws, trisomy 21 is protected but [trisomy 18](#) (an extra copy of chromosome 18) is not, even though it's the second most common trisomy.

The right-to-life movement is very candid about its [incremental plans](#) to advance pro-life legislation, but this particular line of thinking is dangerous. Drawing distinctions on the legislative level about what genetic conditions should be protected and which shouldn't is extremely dangerous. Implications would create a cultural and legal ranking of genetic conditions. That would undermine the rights of individuals based on their genome. The government shouldn't have a stake in saying what genes are preferred. To be clear, I'm not accusing advocates of this legislation of enthusiastically promoting eugenics, but it is an inherent implication of their policy.

Many futuristic, worst case scenarios of genetics in society are that people will choose to have only blue-eyed intelligent children. The rest of the world's genetic diversity will be lost. But if anything, Down syndrome in particular shows that some people, albeit a minority, take on the challenge of having a kid with extra needs. After in utero diagnosis, some [10 to 40 percent](#) of parents decide to continue the pregnancy to term. The point is choice. The government does not force them to carry or terminate the pregnancy.

Legislating that a fetus with Down syndrome or any other genetic disorder has more or fewer rights than another fetus may be both unethical and illegal. It's eugenics. Do we want legislatures making decisions that rank human worth using genetics as an excuse?

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