

# HEALTHLINE

## HEALTH NEWS

# Embryos Face Their Own Legal Battles

Actress Sofia Vergara and her ex-fiancé are engaged in a legal battle over embryos they conceived. Other couples are facing similar legal issues.



Actress [Sofia Vergara's legal battles](#) over the fate of embryos conceived with her ex-fiance have played out in the national media.

With fertility treatments common across the country, other couples have to consider what happens to embryos in the event that they split up.

Vergara's ex-fiance, Nick Loeb, filed a lawsuit on behalf of two embryos the couple conceived in 2013.

He states the embryos have been neglected and wants custody of them. He says the embryos are entitled to a trust fund the couple established for them, he says.

**Martha Cohen Stine**, a New York-based family law attorney, said fertility clinics typically require that couples sign paperwork before they begin in vitro fertilization (IVF).

The parties must check off options regarding the future of any embryos conceived, including the potential parents' wishes to freeze, store, implant, or destroy them. It also covers what happens in the event of a separation or divorce.

"Typically, the contracts provide that there will be no future implantation without the consent of both parties," Stine told Healthline.

Most of the time, neither party consults with a family lawyer before signing the agreement nor do they get legal advice about their options in the event of a split-up or other change of circumstances.

"Really, prior to commencing IVF, each member of the couple should take the clinic contract privately to a family law attorney for review," Stine said. "All of the twists and turns that the future may hold need to be privately explored, as parties may have different needs and agendas in the event of a break-up."

Ideally, she said, both parties would have advice from their attorneys and a separate pre-embryo agreement similar to a prenuptial agreement.

# The legalities of reproductive issues

Melissa B. Brisman, a lawyer from New Jersey who handles reproductive issues, said most U.S. states specify that embryos are not people.

However, the state of Louisiana — where Loeb filed his case — treats embryos as people, so they cannot be destroyed.

“One of the main questions regarding embryos is whether or not embryos are considered persons or property or maybe something more in between, and few states have taken a position on this,” Yifat Shaltiel, an attorney from New York, told Healthline.

She believes that Loeb is not after money but wants to have the embryos implanted in a surrogate.

If the law challenged, Brisman does not think it will be found constitutional.

“For instance, what if you accidentally destroyed the embryos. Is this negligent homicide? If you abandon the embryos, is that child abandonment?” she told Healthline. “Generally embryos belong to the individual or couple who created them, but of course this is dependent on state law and case law in this area.”

Brisman thinks more litigation similar to Vergara’s case could come up, but she noted that Vergara’s case is more complicated and extreme because it is happening in multiple states and is probably quite costly.

Most people would not go to the extremes that Loeb is since he still has viable sperm and could certainly procreate with someone else, Brisman said.

“The more interesting cases, in my opinion, are where the partner who wants to use the embryos has no other way to create embryos with their genetic material,” Brisman added. “This is a tougher call for the courts.”

## **Battles on the horizon**

Stephanie Sgambati, a lawyer, and director of Pearl Surrogacy in New Jersey, said that jurisdiction is an important issue in reproductive law.

Jurisdiction has not been an issue in frozen embryo cases of the past because the case is typically filed where the individuals currently live and/or where the embryos were created, she said.

In Vergara’s case, though, the embryos were created in California and the suit was filed in Louisiana. This poses an “interesting jurisdictional question of whether a Louisiana court can hear the case or if the case belongs in California.”

“The court will likely consider whether it has jurisdiction before considering the merits of the case,” she said.

Although disputes over frozen embryos have occurred for more than 25 years, Sgambati believes they will continue.

“The law on the question remains limited and it is likely to remain unsettled in the near future,” she added.

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