2022

Fertility Fraud: The Child's Claims Essays

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FERTILITY FRAUD: THE CHILD'S CLAIMS

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Abstract: A shocking number of fertility doctors surreptitiously use their own sperm during insemination procedures. Courts and commentators have explained how medical malpractice and common-law tort claims can provide the mother with remedies. The children of fertility fraud have received less attention. This Essay is the first to systematically analyze the potential claims of these children, whose identities may be shattered by discovering the truth about their biological father. It concludes that creative use of existing common-law torts can provide remedies for children of fertility fraud.

In a recent lawsuit, a woman alleged that her mother's doctor secretly used his own sperm to impregnate her mother, not the sperm of a pre-selected or unknown donor—as is typical for implantation procedures.[1] This by itself is shocking misconduct—and shockingly common[2]—but what distinguishes this case is that the doctor treated his biological daughter as a gynecology patient for nearly ten years without disclosing their biological relationship, "performing numerous breast and pelvic exams and discussing her sex drive and other personal issues."[3]

Most "fertility fraud" cases don't result in such obvious physical harm to a child, but children should have a remedy for emotional distress even absent physical harm. Children who discover that they are the product of fertility fraud have said that they feel like they are "the product of rape" and that the discovery "profoundly undermines self and family identity."[4]

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[1] Carolyn Thompson, *Woman Accuses Fertility Doctor of Secretly Using Own Sperm*, ASSOCIATED PRESS (Sept. 14, 2021), https://apnews.com/article/lifestyle-technology-health-new-york-lawsuits-3c4280eb72f05f9b5f33238b0b608da6 [https://perma.cc/RQY2-WBDE]. In September 2021, a thirty-five-year-old woman in New York sued her mother's fertility doctor for "medical malpractice, battery, infliction of emotional distress, negligence, fraud and lack of informed consent," alleging that the doctor used his own sperm to inseminate patients. *Id.*

[2] *Id.* ("The case is one of more than 20 instances in recent years where fertility doctors have been accused of using their own sperm, rather than samples from anonymous donors, to treat patients.").

[3] *Id.*

[4] Jody Lyneé Madeira, *Baby Not on Board: Must Children Born Through Illicit Insemination Be Barred From Recovery?*, HARV. L. PETRIE-FLOM CTR.: BILL OF HEALTH (Jan. 22, 2019), https://blog.petrieflom.law.harvard.edu/2019/01/22/baby-not-on-board-must-children-born-through-illicit-insemination-be-barred-from-recovery/ [https://perma.cc/B2QF-9BHP].

Recognizing this serious injury, at least two states have adopted fertility fraud statutes that include a civil remedy for the child.[5] More states should follow suit, because the pathway for children to hold doctors accountable in other states is not always obvious.[6] This Essay, however, will show that existing tort law claims are more likely to succeed than previously recognized.

A fertility fraud case in Idaho illustrates both barriers and opportunities. In 2018, in *Rowlette v. Mortimer*, the United States District Court for the District of Idaho dismissed the plaintiff child's claims of fertility fraud against the defendant doctor for two primary reasons.[7] First, the child was not a patient of the defendant, so, the court reasoned, the doctor owed her no duties.[8] This reasoning was the weaker of the court's two justifications. A duty of care may, in fact, exist between a doctor and a non-patient whom is subject to foreseeable harm by the doctor's conduct.[9] The *Rowlette* court should have recognized the doctor's duty to the plaintiff child, as a person the doctor would foreseeably harm by his fraudulent insemination.

The court's second reason for dismissal was stronger: the plaintiff child's damages were unclear.[10] The wrongful act of illicit insemination was essential to the child's very existence, so her claim for physical harm resembled a wrongful life claim, which most states, including Idaho, do not recognize.[11] Wrongful life claims seek recovery for the harm of being born.[12] Of course, if the child suffers from a genetic disorder or other harmful physical condition traceable to the doctor's sperm, the child's injury is not from being born, but

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[5] IND. CODE § 34-24-5-2(4) (2021); COLO. REV. STAT. § 13-21-132(2) (2021).

[6] The pathways for the parents have been examined in Jody Lyneé Madeira, *Uncommon Misconceptions: Holding Physicians Accountable for Insemination Fraud*, 37 LAW & INEQ. 45, 60–66 (2019) (analyzing, inter alia, battery, intentional infliction of emotional distress, and fraud); Jody Lyneé Madeira, *Understanding Illicit Insemination and Fertility Fraud, from Patient Experience to Legal Reform*, 39 COLUM. J. GENDER & L. 110, 194–99 (2019) (same).

[7] 352 F. Supp. 3d 1012, 1021–23 (D. Idaho 2018).

[8] *Id.*

[9] Madeira, *supra* note 4 (citing Tarasoff v. Regents of the Univ. of Cal., 551 P.2d 334, 339 (Cal. 1976)); *see* Renslow v. Mennonite Hosp., 367 N.E.2d 1250, 1255 (Ill. 1977) (holding a fetus does not have to be viable to sustain legally-recognizable injuries); Reisner v. Regents of the Univ. of Cal., 37 Cal. Rptr. 2d 518, 519 (Ct. App. 1995) (permitting a non-patient plaintiff to sue a doctor when the doctor failed to warn the plaintiff's boyfriend about contracting a communicable disease); *see also* Kelly Morgan, Note, *Pathologizing "Radicalization" and the Erosion of Patient Privacy Rights*, 59 B.C. L. REV. 791, 805 (discussing broadly the *Tarasoff* decision and "duty to warn" doctrine).

[10] *Rowlette*, 352 F. Supp. 3d at 1021.

[11] 62A AM. JUR. 2D *Prenatal Injuries; Wrongful Life, Birth, or Conception* § 44, Westlaw (database updated Nov. 2021). *Cf.* Alberto B. Lopez & Fredrick E. Vars, *Wrongful Living*, 104 IOWA L. REV. 1921 (2019) (articulating novel damages theory for unwanted prolongation of life).

[12] *See* Barbara Pfeffer Billauer, *The Sperminator as a Public Nuisance: Redressing Wrongful Life and Birth Claims in New Ways (A.K.A. New Tricks for Old Torts)*, 42 U. ARK. LITTLE ROCK L. REV. 1, 24–25 (2019) (stating that a child in a wrongful birth context may not sue for emotional distress).

from being born with that condition.[13] In these cases, damages would be recoverable on a variety of theories.[14]

But what about the emotional distress experienced by a physically healthy child of fertility fraud? Because the misconduct is intentional, it is natural to consider intentional torts first. In *Rowlette*, the District Court ruled that such claims were "subsumed" into the Idaho medical malpractice statute and therefore could not be pursued independently.[15] In 2020, in *Eldridge v. West*, the Idaho Supreme Court corrected that misapprehension, stating that "[w]e do not read [Idaho's Medical Malpractice Act] as doing away with or affecting intentional causes of action."[16]

There are at least three intentional torts to consider: battery, fraud, and intentional infliction of emotional distress (IIED). Battery is an act of intentionally harmful or offensive contact with another.[17] Medical battery is an intentional tort where, for example, "a patient consents to operation A and a health care provider instead performs operation B," and "is not medical malpractice."[18] As with foreseeable non-patients in medical malpractice, liability for battery also runs to unintended victims.[19]

Additionally, no physical harm is required for a battery claim. "Personal indignity is the essence of an action for battery; and consequently the defendant is liable not only for contacts which do actual physical harm, but also for those which are offensive and insulting."[20] Hence, where doctors have commit-

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[13] *See* Mark Strasser, *Prenatal Tort Slippage*, 31 HEALTH MATRIX: J.L.-MED. 221, 250 (2021) (discussing a case in which parents claimed that "but for" the doctor's negligence of implanting the incorrect sperm, their child would not have been born with a genetic defect).

[14] *See* Norman v. Xytex Corp., 848 S.E.2d 835, 842 (Ga. 2020) ("[I]n both pre- and post-conception cases, Georgia law has recognized that a cognizable claim may exist for pre-birth injuries to a child without deeming the child's existence an injury." (footnote omitted)).

[15] *Rowlette*, 352 F. Supp. 3d at 1022 (noting that the plaintiff child lacked standing to pursue a medical malpractice claim against her doctor because she was not his patient).

[16] 458 P.3d 172, 179 (Idaho 2020).

[17] RESTATEMENT (SECOND) OF TORTS § 13 (AM. L. INST. 1965).

[18] Russ M. Herman & Joseph E. "Jed" Cain, *Medical battery*, 1 LOUISIANA PRACTICE SERIES PERSONAL INJURY § 4:114, Westlaw (database updated July 2021). *But cf.* Sarah Chicoine, *The Birth of Fertility Fraud: How to Protect Washingtonians*, 95 WASH. L. REV. ONLINE 168, 189 (2020), https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1050&context=wlro [https://perma.cc/3755-23VC] (describing an informed consent claim as a version of medical malpractice in Washington state).

[19] *See* Thomas C. Galligan, Jr., *The Structure of Torts*, 46 FLA. ST. U. L. REV. 485, 524 (2019) (qualifying that so long as the tort involved an intended victim, liability also attaches to subsequent unintended victims arising from the tortfeasor's conduct).

[20] Fisher v. Carrousel Motor Hotel, Inc., 424 S.W.2d 627, 630 (Tex. 1967); *accord* Andrew L. Merritt, *Damages for Emotional Distress in Fraud Litigation: Dignitary Torts in a Commercial Society*, 42 VAND. L. REV. 1, 15 (1989) ("The law also has permitted plaintiffs to recover emotional distress damages for certain intentional invasions of their dignity—notably assault, battery, or false imprisonment—even in the absence of any physical harm.").

ted fertility fraud, the child should be able to pursue a battery claim to recover for the emotional distress that flowed from the doctor's offensive and insulting contact with the mother and the nascent child.[21]

A second intentional tort to consider is fraud. In a fertility fraud case, the doctor intentionally misrepresented the source of the sperm, either expressly or implicitly, inducing detrimental reliance by the mother and, in many cases, the child. It is well established that a fraud claim can be based on a misrepresentation to a third party, the mother, if made with the intent to induce reliance by the plaintiff, the child.[22]

One potential problem with the fraud theory is that emotional distress damages are not available for fraud victims in some jurisdictions.[23] There are compelling arguments to abandon this traditional limitation on fraud actions,[24] and many states have done so.[25] Most of these states, however, impose additional requirements to recover emotional distress damages for fraud, including "limiting recovery to severe emotional distress, requiring that the tortious conduct be committed in a wanton or malicious manner, requiring that bodily illness or injury be highly foreseeable, and allowing emotional distress damages as part of exemplary or punitive damages."[26] The fate of a child's fertility fraud claim for emotional distress captioned as fraud may therefore turn on the jurisdiction and the specific facts of the case.[27]

The third intentional tort claim to consider is intentional infliction of emotional distress (IIED) (sometimes called "outrage"). As the *Restatement (Second) of Torts* explains, "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress."[28] IIED, on its face, appears to be a

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[21] *See* Renslow v. Mennonite Hosp., 367 N.E.2d 1250, 1255 (Ill. 1977) (recognizing potential liability for "reasonably foreseeable injury from preconception torts").

[22] *In re* Nat'l Prescription Opiate Litig., 458 F. Supp. 3d 665, 698 n.50 (N.D. Ohio 2020), *motion to certify appeal denied*, No. 1:18-op-45158, 2020 WL 3547011 (N.D. Ohio June 30, 2020); *Application of Principle That False Representations Made to One Person with Intention That Another May Act Thereon Are Actionable in Favor of Latter*, 91 A.L.R. 1363 (1934).

[23] *See, e.g.*, Williams v. Stewart, 2005-NMCA-061, ¶¶ 28–41, 137 N.M. 420, 112 P.3d 281.

[24] Merritt, *supra* note 20, at 15–21.

[25] *See, e.g.*, Nelson v. Progressive Corp., 976 P.2d 859, 868 (Alaska 1999); Steven J. Gaynor, *Fraud Actions: Right to Recover for Mental or Emotional Distress*, 11 A.L.R.5th 88 (1993).

[26] *Nelson*, 976 P.2d at 868 (footnotes omitted) (first citing McGregor v. Mommer, 714 P.2d 536, 545 (Mont. 1986); then citing Roberts v. U.S. Home Corp., 694 S.W.2d 129, 136 (Tex. App. 1985); then citing Umphrey v. Sprinkel, 682 P.2d 1247, 1259 (Idaho 1983); then citing Crowley v. Global Realty, Inc., 474 A.2d 1056, 1058 (N.H. 1984); then citing Kilduff v. Adams, Inc., 593 A.2d 478, 484–85 (1991); and then citing Kerwin v. Mass. Mut. Life Ins. Co., 295 N.W.2d 50, 55 (1980)).

[27] *See id.* (noting that fraud claims can be fact intensive). Even if an independent fraud claim fails, the underlying facts can amount to fraudulent concealment, which tolls the statute of limitations. *See id.*

[28] RESTATEMENT (SECOND) OF TORTS § 46 (AM. L. INST. 1965).

good fit for a fertility fraud claim.[29] Illicit insemination is certainly extreme and outrageous conduct, and most, but not all, jurisdictions recognize IIED.[30]

There is, however, a significant hurdle: intent. Unlike battery and fraud, which require only an intent to touch or to lie, respectively, a plaintiff suing under an IIED claim must show that the defendant intended to cause emotional harm. At the time of insemination, the doctor probably did not expect that his misdeed would ever be uncovered, so the doctor likely did not intend to inflict emotional distress.[31] "Secretive conduct is, by definition, not intended to inflict distress because it is intended to remain hidden."[32]

But intent is not essential; reckless conduct can also give rise to an IIED claim. Illicit insemination can rise to the level of reckless behavior when there is a high enough chance of discovery. "It is enough that [the defendant] realizes or, from facts which he knows, should realize that there is a strong probability that harm may result, even though he hopes or even expects that his conduct will prove harmless."[33]

A doctor who engages in fertility fraud today should realize that there is a strong probability of discovery and accompanying distress.[34] In recent years, several doctors across the country have been accused of fertility fraud, with dozens of victims coming forward possessing proof of their false parentage.[35] Millions of people have used over-the-counter genetic testing for genealogy purposes.[36] Presumably, such tests would be especially popular for children

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[29] *See* K.G. v. R.T.R., 918 S.W.2d 795, 800 (Mo. 1996) (en banc) ("While recovery for emotional distress caused by battery may be allowable as an element of damages in a battery action, there is no independent action for intentional infliction of emotional distress where the existence of the claim is dependent upon a battery."). Some jurisdictions, however, may require a choice between battery and IIED. *Id.*

[30] *Modern Status of Intentional Infliction of Mental Distress as Independent Tort; "Outrage,"* 38 A.L.R.4th 998 (1985).

[31] 2 JACOB A. STEIN, STEIN ON PERSONAL INJURY DAMAGES § 10:11 (3d ed. 1997).

[32] Golub v. United States, 593 F. App'x 546, 550 (7th Cir. 2014) (emphasis omitted); *see also* Kautzman v. McDonald, 2001 ND 20, ¶ 22, 621 N.W.2d 871, 877 (holding that police did not intend to harm plaintiff when they shot and killed five dogs without knowing who the owner was).

[33] RESTATEMENT (SECOND) OF TORTS § 500 (AM. L. INST. 1965).

[34] *See* Jody Lyneé Madeira, *Understanding Illicit Insemination and Fertility Fraud, from Patient Experience to Legal Reform*, 39 COLUM. J. GENDER & L. 110, 199 (2019) ("Doctor-conceived children could also bring extremely convincing intentional infliction of emotional distress claims.").

[35] Thompson, *supra* note 1.

[36] *See* Jake Holland & Daniel R. Stoller, *With Congress Quiet, States Step in to Safeguard Genetic Privacy*, BLOOMBERG LAW (Sept. 1, 2020), https://news.bloomberglaw.com/privacy-and-data-security/with-congress-quiet-states-step-in-to-safeguard-genetic-privacy [https://perma.cc/VQZ5-TFDL] ("23andMe sold 12 million kits through 2019 and Ancestry has over 18 million people in its DNA network, according to a company spokeswoman."); Adam Liptak, *When Dad Turns Out to Be the Fertility Doctor*, N.Y. TIMES (Dec. 11, 2019), https://www.nytimes.com/2019/12/11/magazine/fertility-fraud-sperm.html [https://perma.cc/7T7W-8D6A] ("After using commercial DNA testing kits, at least 65 people concluded that [a doctor charged in Indiana] was their biological father.").

who may not be sure about the identity of their fathers. The chance of a doctor getting caught is high enough now that fertility fraud is reckless and therefore actionable under an IIED theory.

One difficulty in proving reckless conduct in an IIED claim is that most cases of illicit insemination spring from events that took place many years ago. The question for recklessness thus becomes whether a fertility doctor—in, say, the 1980s or 1990s—should have realized that eventual detection was likely. The child may have difficulty proving this element given that genetic testing has only recently exploded in popularity and availability.[37]

That brings us back to negligence. "Negligence may consist of an intentional act done with knowledge that it creates a risk of danger to others."[38] Fertility fraud created a foreseeable risk of danger even before widespread genetic testing made discovery likely. A child's blood type or appearance might not match the putative father. The doctor or an associate might slip and accidentally reveal the misconduct.

Unlike with IIED, the foreseeability of harm, not its likelihood per se, is the prerequisite for a negligence claim.[39] In 2020, in *Ashby v. Mortimer*, the mother of the plaintiff child in *Rowlette* sued the same doctor claiming, among other charges, negligent infliction of emotional distress (NIED).[40] The defendant doctor argued that, at the time of insemination in 1980, he may have reasonably believed that he would never get caught.[41] The court expressly rejected this assertion, and held that the foreseeable risk of harm was sufficient enough to support the plaintiff's claim.[42]

Nearly all states recognize NIED.[43] There are, however, limitations on NIED claims in every state.[44] The three different limiting tests have been de-

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[37] *See* Chicoine, *supra* note 18, at 170 ("A decade ago, the general public could not have envisioned the popularity and accessibility of commercial DNA websites. In 2013, only about 300,000 people had tested their DNA with at-home DNA kits. Six years later, a January 2019 study found that more than twenty-six million people had shared their DNA with one of the four leading ancestry and health databases." (footnote omitted) (citing Antonio Regalado, *More Than 26 Million People Have Taken an At-Home Ancestry Test*, MIT TECH. REV. (Feb. 11, 2019), https://www.technologyreview.com/2019/02/11/103446/more-than-26-million-people-have-taken-an-at-home-ancestry-test/ [https://perma.cc/9R6Y-LNDU])).

[38] Schick v. Ferolito, 767 A.2d 962, 969 (N.J. 2001).

[39] At least above a very, very low threshold. Fredrick E. Vars, *Ode to* Adams v. Bullock*: Cardozo Was a Behavioral Economist*, 19 GREEN BAG 2D 331 (2016).

[40] No. 18-cv-00143, 2020 WL 572718, at *2 (D. Idaho Feb. 5, 2020); *see* Rowlette v. Mortimer, 352 F. Supp. 3d 1012, 1018 (D. Idaho 2018).

[41] *Ashby*, 2020 WL 572718, at *9 ("There is obviously a distinction between understanding your conduct is negligent and could cause a patient emotional distress and foreseeing you will be caught for taking such actions. While, by Dr. Mortimer's own admission, the former was foreseeable, the foreseeability of the latter is irrelevant.").

[42] *Id.*

[43] Consol. Rail Corp. v. Gottshall, 512 U.S. 532, 544–45 (1994).

scribed as: (1) physical impact; (2) zone of danger; and (3) relative bystander.[45] Without these limits, the argument goes, NIED claims would impose "nearly infinite and unpredictable liability."[46] This policy argument is obviously not applicable to fertility fraud, where the victims—both parents and child—are defined and the emotional distress is plainly foreseeable.[47]

Many courts, and the *Restatement*, also require "serious" emotional distress for a NIED claim.[48] Feeling like the product of rape meets this standard.[49] One court rejected a NIED claim on the ground that negligent insemination with the wrong sperm resulting in healthy triplets did not create circumstances with which "a reasonable [person,] normally constituted, would be unable to adequately cope."[50] Significantly, that case involved switching one anonymous sperm donor with another, not with the doctor's sperm.[51] The doctor's abuse of his position of power and trust foreseeably generates greater emotional distress.[52]

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[44] *Id.* at 546–49.

[45] *Id.* The physical impact of the doctor's sperm on the mother's egg meets the first two tests. *Id.* at 547–48. Recovery under the relative bystander test is uncertain. *See id.* at 548 (describing certain key factors to determine "reasonable foreseeability" and whether the alleged distress was caused by "the sensory and *contemporaneous* observance" of the misconduct) (emphasis added)).

[46] *Id.* at 546.

[47] *See* Perry-Rogers v. Obasaju, 723 N.Y.S.2d 28, 29–30 (App. Div. 2001) (recognizing parents' NIED claims based on negligent implantation of plaintiffs' embryo in another woman); Ingrid H. Heide, *Negligence in the Creation of Healthy Babies: Negligent Infliction of Emotional Distress in Cases of Alternative Reproductive Technology Malpractice Without Physical Injury*, 9 J. MED. & L. 55, 60 (2005); *see also* Naccash v. Burger, 290 S.E.2d 825, 831 (Va. 1982) (allowing an emotional distress damage claim in part because "no one suggests that the [plaintiffs'] emotional distress was feigned or that their claim was fraudulent").

[48] RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL & EMOTIONAL HARM § 47 (AM. L. INST. 2012) (requiring that the "harm be serious, [and] that the circumstances . . . be such that a reasonable person would suffer serious harm").

[49] *See also* Madeira, *supra* note 34, at 183 ("At a minimum, potential harms include unexpected and traumatic disclosures of doctor-conceived status, disrupted personal identities, severely damaged trust in medical professionals, destabilized family relationships, and increased possibilities of consanguineous relationships within a particular geographic area.").

[50] Harnicher v. Univ. of Utah Med. Ctr., 962 P.2d 67, 72 (Utah 1998) (alteration in original) (quoting Hansen v. Mountain Fuel Supply Co., 858 P.2d 970, 975 (Utah 1993) (citation omitted)). Other jurisdictions apply this (ridiculously) high threshold for seriousness. *E.g.*, Rodrigues v. State, 472 P.2d 509, 520 (Haw. 1970); Betsy J. Grey, *The Future of Emotional Harm*, 83 FORDHAM L. REV. 2605, 2642 n.263 (2015).

[51] *Harnicher*, 962 P.2d at 68.

[52] RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL & EMOTIONAL HARM § 47(b) ("An actor whose negligent conduct causes serious emotional harm to another is subject to liability to the other if the conduct: . . . occurs in the course of specified categories of activities, undertakings, or relationships in which negligent conduct is especially likely to cause serious emotional harm."); *id.* § 47 cmt. f (giving examples including "a physician negligently causes the loss of a fetus; a hospital loses a newborn infant; a person injures a fetus"); Joseph M. Hnylka, *Restatement (Third) of Torts Section 47(b) Bypasses Traditional Barriers and Offers Aspiring Parents a Clear Path to Recover Stand-Alone NIED When Their Cryopreserved Reproductive Material Is Lost or Destroyed*, 46 AM.

When fertility fraud is discovered many years after insemination—as it usually is—one might worry about statutes of limitations or repose.[53] This concern may be valid in some states for some claims,[54] but it is largely misplaced. The emotional distress to the child does not occur until discovery. That's when the cause of action accrues. If someone hides a bomb with a very long fuse, the claim does not accrue when the person lights the fuse, but rather when the bomb explodes. Furthermore, limitation periods are often tolled until a potential plaintiff turns eighteen.[55] Even beyond that, the cause of action may not accrue until discovery, depending on the state.[56] Concealment by the defendant, like a doctor hiding fertility fraud, generally triggers this discovery rule.[57]

Fitting a distinctly modern variety of wrongdoing, like fertility fraud, into old tort boxes is challenging. Existing law does, however, provide underappreciated ways to hold doctors accountable. Perhaps the strongest claim among traditional tort remedies is battery, but there are other causes of action available to help victims of this uniquely invasive crime. Importantly, even otherwise healthy children of fertility fraud do not need to wait for new statutory remedies to seek justice.

Preferred citation: Fredrick E. Vars, *Fertility Fraud: The Child's Claims*, 63 B.C. L. REV. E. SUPP. I.-29 (2022), http://lawdigitalcommons.bc.edu/bclr/vol63/iss9/3/.

J.L. & MED. 337, 338 (2020) (arguing that aspiring parents should have NIED claim for lost reproductive material).

[53] Madeira, *supra* note 6, at 56.

[54] *See* Ashby v. Mortimer, No. 18-cv-00143, 2020 WL 572718, at *13 (D. Idaho Feb. 5, 2020) (suggesting that battery claim, unlike negligence claim, based on fertility fraud "accrues when the wrongdoing occurs, not when it is discovered").

[55] Colosimo v. Roman Cath. Bishop of Salt Lake City, 2004 UT App 436, ¶ 18, 104 P.3d 646, *aff'd*, 2007 UT 25, 156 P.3d 806 ("Causes of action that accrue during minority, however, are tolled until the plaintiff reaches the age of eighteen.").

[56] Daley v. Regents of Univ. of Cal., 252 Cal. Rptr. 3d 273, 279–81 (Ct. App. 2019).

[57] Olsen v. Hooley, 865 P.2d 1345, 1348 (Utah 1993). Some states also apply the discovery rule "when application of the statute of limitations would be irrational or unjust where, because of exceptional circumstances, a plaintiff has no knowledge of the cause of action until after it is barred by the limitations period." *Id.* That reasoning plainly applies in many fertility fraud cases.