

Plowman v. Fort Madison Community Hospital (2017)

In June 2017, the Iowa Supreme Court decided the case *Plowman v. Fort Madison Community Hospital*, or *Plowman v. FMCH*, and ruled that women who gave birth to children with severe disabilities could sue for wrongful birth in Iowa. Specifically, after *Plowman v. FMCH*, a woman could sue for wrongful birth if she believed that her physicians failed to disclose evidence of fetal abnormalities that may have prompted her to terminate the pregnancy. Pamela and Jeremy Plowman filed the suit against the Fort Madison Community Hospital in Fort Madison, Iowa, alleging that hospital physicians failed to inform them that a prenatal test showed fetal abnormalities. *Plowman v. FMCH* gave women in Iowa the legal right to sue if physicians failed to tell them about fetal defects.

In 2010, Plowman became pregnant and sought prenatal care from Leah Steffensmeier, an obstetrician at Fort Madison Community Hospital, or FMCH. When she was twenty-two weeks pregnant, Plowman received an ultrasound, a test that assesses fetal growth. Pil Kang and John Paiva, radiologists at FMCH, examined the ultrasound results. Kang and Paiva determined that the ultrasound showed abnormalities in the head of the fetus and recommended follow up testing. When Steffensmeier met with Plowman to discuss the ultrasound results, Steffensmeier told Plowman that the fetus was developing normally. Steffensmeier did not report the abnormalities to Plowman and did not schedule further testing. In August 2011, Plowman gave birth to a boy, who was diagnosed with a number of physical and mental disorders, including cerebral palsy, visual impairment, intellectual disabilities, and a seizure disorder.

Plowman filed a medical negligence lawsuit against FMCH, Steffensmeier, Paiva, and Kang on 31 July 2013. Plowman sued for damages, or compensation, for the extra costs of raising a child born with disabilities. Plowman first filed her case with the district court in Lee County, Iowa. Wayne Willoughby acted as her attorney. Nancy Penner and Jennifer Rinden represented FMCH. In the district court, Penner and Rinden denied Plowman's claims of medical negligence, arguing that Plowman could not prove that the doctors could see or predict the child's disabilities based on the ultrasound. Penner and Rinden argued that the case was one of wrongful birth and not medical negligence because the doctors who treated Plowman did not cause the defects in the fetus. At the time, courts in the state of Iowa did not recognize claims of wrongful birth. The lawyers for FMCH requested a summary judgment, or a judgment given without a full trial. On 27 May 2015, the judge granted the summary judgment in favor of FMCH, agreeing that the case was one of wrongful birth. Plowman appealed the district court's decision to the Supreme Court of Iowa in Des Moines, Iowa.

During the trial in the Supreme Court of Iowa, Willoughby argued on behalf of Plowman. He asserted that the abnormalities in the fetal ultrasound showed that Plowman would give birth to a child with disabilities. Willoughby claimed that the doctors' failure to inform Plowman of the abnormalities in the fetal ultrasound and the potential disabilities it indicated constituted medical negligence. Willoughby stated that if Plowman had been in possession of all the facts, she would have chosen to terminate the pregnancy, thus avoiding the emotional, physical, and financial problems that Plowman claimed to endure while raising a child with disabilities. In the appealed Iowa Supreme Court Case, Willoughby argued that the idea of wrongful birth fell within the regular limits of medical negligence, since medical negligence is usually acceptably applied when a physician fails to disclose information, and by withholding facts, causes harm to the patient. Both sides agreed on the term wrongful birth, but argued over its legality. Plowman's lawyer argued that many other states had already recognized the legal concept of wrongful birth and that the state of Iowa should as well. Penner and Rinden, representing FMCH, argued that wrongful birth was a new idea not supported by Iowa law. Penner and Rinden based their arguments on the previous ruling from the

1984 case, *Nanke v. Napier*. In *Nanke v. Napier*, the Iowa Supreme Court ruled that parents did not have the right to sue for wrongful pregnancy. In that case, wrongful pregnancy was defined as the birth of a healthy but unplanned child because a physician performed an abortion or sterilization negligently. The FMCH lawyers also argued that recognizing wrongful birth would stigmatize the disabled community and encourage abortions.

The Supreme Court of Iowa issued their opinion on 2 June 2017. Seven justices heard the case, Mark Cady, David Wiggins, Daryl Hecht, Brent Appel, Thomas Waterman, Edward Mansfield, and Bruce Zager. Justice Waterman wrote the Court's majority opinion. In the opinion, the Court reversed the district court decision, giving parents the right sue for wrongful birth in the state of Iowa. The Court refuted Penner and Rinden's claims about the precedent set by *Nanke v. Napier*. The Court responded that *Nanke v. Napier* was not a case of wrongful birth, but rather a case of wrongful pregnancy. In their opinion, the Court defined three types of claims for the clarity of future Iowa court cases. The Court defined wrongful pregnancy as the legal course of action when a physician performs an abortion or sterilization negligently and an unplanned child is born. The Court defined wrongful birth as the legal action for parents of a child born with detectable birth defects who would have avoided conception or terminated pregnancy if physicians had informed them about the defects. The Court defined wrongful life as the legal course of action taken by a person living with birth defects. The Court held that the term wrongful did not refer to the conception, pregnancy, or person in cases of wrongful pregnancy, birth, or life. Rather the wrongful harm resulted from physician negligence. The Court stated that recognizing wrongful birth did not stigmatize the disabled community because wrongful birth was not based on the notion that a disabled child's birth constituted legal injury. Rather, the Court stated that the negligent withholding of information was harmful to a pregnant woman's informed decision about whether or not to terminate a pregnancy. Wiggins, Hecht, Appel, and Waterman concurred with the court's majority opinion. Cady concurred specially and Mansfield dissented.

Chief Justice Cady concurred specially with the Court's opinion, meaning he agreed with their decision but added his own caution. He agreed with the final decision but stated that courts should not decide future cases based on a distinction between who is perceived as a normal child and a disabled child. Cady argued that courts should decide future cases based on differences in the financial costs of raising a disabled child. Justice Mansfield dissented with the Court's opinion. Mansfield argued that Iowa law had no precedent for wrongful birth and that the judgement in favor of FMCH should stand. He argued that wrongful birth did not fit within the established bounds of medical negligence since the physician did not cause the child's abnormalities. Mansfield also asserted that neither the constitution of Iowa nor the United States had any language that required the Court to define or accept wrongful birth as a legal course of action.

Sources

1. *Nanke v. Napier*, 346 N.W.2d 520 (App. Div. 1984). <https://law.justia.com/cases/iowa/supreme-court/1984/83-102-0.html> (Accessed April 11, 2018).
2. *Plowman v. Fort Madison Community Hospital*, 896 N.W.2d 393 (App. Div. 2017). <https://law.justia.com/cases/iowa/supreme-court/2017/150974.html> (Accessed November 12, 2017).