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The ART of Building Families

Allison B. Bullard • Of counsel with Harling & West, LLC

Do you remember the case you read in your law school Wills class about whether a child conceived posthumously, but with the deceased father's sperm, would inherit from the father's estate? Or, what about the infamous Baby M. case in Contracts about a surrogacy gone terribly wrong? We probably all remember reading these cases, but for me, these cases set the trajectory for my career. I was completely drawn into this new and emerging area of the law that was clearly only going to expand over time. After I got out into the real world, I started seeing and experiencing the practical side of cases like this and became deeply committed to catching the legal community up to what is already being done in the medical community.

According to the Centers for Disease Control and Prevention (CDC), 6.7 million women in the United States ages 15 to 44 have an impaired ability to have children and 7.4 million women ages 15 to 44 have used infertility services.1 In 2010, 443 fertility clinics in the United States reported to the CDC that there were 61,564 infants born through assisted reproductive technology procedures.2 Thirty-six percent of college-educated woman are waiting until after 30 to have their first child. 3 The fact that people are getting married and having children later in life means that getting pregnant "the old fashioned way" just isn't cutting it for a large number of people.

Aside from the statistics, there are also the real world examples of how society's approach to reproduction is changing. For



instance, last week a friend of mine e-mailed me a link to an article on egg freezing. Her e-mail was a bit panicked in tone. She is a 30-year-old single woman who hopes to have children one day, but it is not in her immediate future. She is engaged and knows she is about to be in a situation where people will start wondering when she's going to have children. The problem is she loves her job and has great ambitions for where her career is going. She knows one day she will have to balance her career with her family, but for now her career is still the focus. In reference to the article on egg freezing, she

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A REPORT TO MEMBERS OF THE SOUTH CAROLINA BAR YOUNG LAWYERS DIVISION

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Stars of the Quarter

For their hard work in landing the ABA Conference and planning programs and logistics:

Rebecca Roser Will Johnson

For an outstanding iCivics presentation at the ABA Conference: **Allison Sullivan**

For coordinating and implementing the ABA American Voter Project: **Beth Palmer**

For working on the Color of Justice events: **Evan Guthrie Chisa Putnam**

said, "I really want to do this so I can have kids when I WANT to have kids instead of basing it on my biological clock." We are clearly living in a new age. The fact that people have this choice and that we are not dependent on our biological clock to make decisions about when to have a family is a new way of thinking about how people choose to build their families.

While infertility is the result of many factors impacting both men and women of all ages, the delay in having children is contributing to the rise in the use of assisted reproductive technology (ART). As these statistics and examples show, the use of ART as a means to build a family is prevalent in the medical community. Those of us practicing in the area of ART law are working to make sure the individuals and couples who choose ART as the way to build their families are also creating families that are acknowledged and protected by the law. Below are a few examples of how ART lawyers are addressing these medical advances.

Donor egg contracts

I spoke with a woman recently who has been married for more than three years and trying to have a baby for almost two years. She finally went to a doctor to figure out what was going on, and she discovered she has never ovulated. For her this is a life changing revelation. When this happens, a physician will inform the couple of their options about how to approach their infertility. One option is to take a medication with the hope that the medication will help the woman start producing eggs. If the medications do not help, then the woman may be faced with the choices of not having children, adopting or getting a donor egg. Many women have a strong desire to carry their own child. Additionally, many men, even if their wife cannot produce an egg, want to have their own biological child. The way to solve this problem is for the couple to get a donor egg and have the donor egg fertilized with the husband's sperm and then transferred into the uterus of the wife.

When a donor egg is used, a contract should be drawn up between the donor and the donee. The contract will include different terms depending on whether the donor is a known donor or an unknown donor, but typically, at a minimum, the contract provides that the donor is releasing her rights to any potential child born as a result of the egg donation and should lay out that the donee intends to take parental responsibility for any child born as a result of the egg donation. Some of the other elements of the contract can include a limit on the number of times the donor may donate eggs to individuals (or a disclosure of how many times she has donated previously) and a limit on the geographical area in which the donor may donate in the future. These provisions help to prevent the possibility of genetic siblings living in close proximity.

Gestational carrier contracts

Another scenario in which the use of ART and ART law becomes necessary is when a woman is able to produce eggs, but is not able to carry a child to term. For some women they find this out after a number of painful or

even life-threatening miscarriages, while other women are able to find out with the help of doctors before they even get pregnant. Again the medical causes for a woman's inability to successfully carry a pregnancy to term are many and varied. If a woman learns that she cannot carry a pregnancy to term, but that she is producing viable eggs, then she has the option of using a gestational carrier. A gestational carrier is a woman who agrees to carry another couple's child. Unlike the horror stories of the past (like the case of Baby M.) where the surrogate ends up wanting to keep the child, a gestational carrier has no genetic link to the child she is carrying. Instead, the egg and sperm of the couple referred to as the "intended parents" is fertilized at a fertility clinic. When the fertilized embryo reaches the right stage of development, the gestational carrier undergoes a procedure in which the fertilized embryo of the intended parent is transferred into her uterus. Because the gestational carrier does not have a genetic connection to the child she is carrying, it becomes clearer that the child is in fact the child of the intended parents.

In this situation an ART lawyer should be contacted before a transfer occurs. Most of the fertility clinics in South Carolina encourage couples using a gestational carrier to seek legal advice and some even require it, but not all. It is my position that this is absolutely imperative to ensure the legal rights of all parties, including the unborn child, are adequately protected. The gestational carrier contract will cover a variety of issues, including the number of embryo transfers, the number of embryos to be transferred on each attempt, the intended legal rights of each party and who will take responsibility for caring for any resulting child.

Embryo cryopreservation

Embryo cryopreservation is the process of preserving, or freezing, an embryo for later use. Couples who use a gestational carrier as described above my have "leftover" embryos. This can occur because the number of eggs and sperm a fertility clinic was able to retrieve from a couple created

more embryos than necessary to get the gestational carrier pregnant. When this happens the couple is left with the choice of what to do with the unused embryos. The embryos are often cryopreserved for the couple to use in an attempt to get pregnant in the future. An ART lawyer is needed to assist the couple in thinking through what is to be done with the cryopreserved embryos in the event of death or divorce of one of the partners. Should the couple choose not to use the embryos at a later date, then decisions have to be made about whether the embryos can be used for research, adopted by another couple using ART procedures or discarded after a certain amount of time has passed.

Embryo cryopreservation is also being used more and more by members of the armed forces. Many men and women who serve in our armed forces come back from active service with injuries impacting their fertility, and ART gives them the ability to protect their desire to have children at some point in the future before they leave for active duty. Individuals with cancer and facing chemotherapy treatments also use embryo cryopreservation because chemotherapy can impact fertility. Doctors have started addressing the impact on fertility with their cancer patients, which has led to individuals being able to make proactive decisions about their reproductive health before undergoing chemotherapy.

This review of ART law barely scratches the surface of how ART lawyers are working with the medical profession to protect the rights of these individuals and the children born as a result of these procedures. It is time we make advances to get the legal field caught up with what the medical field has been doing in this area for decades.

Call for 2013-14 Programming Ideas

Dear Fellow YLD Members:

As we are less than halfway through the current fiscal year, July 1, 2013, is not exactly looming on the horizon yet. However, the new fiscal year will arrive before we know it, and planning for programming and budgeting will commence in early 2013. Over the last several years, on a number of occasions, we received great ideas for projects and service opportunities after completing the planning and budgeting process. Because we have a limited budget that we carefully allocate to a wide variety of worthy projects, facilitating a new project after the year is underway is a challenge, and often an insurmountable one. As a result, I strongly encourage all members of the Young Lawyers Division to submit their ideas and proposals for new projects to me by the end of 2012.

Currently, the Young Lawyers Division serves two key roles, serving its members and serving the public. Numerous committees serve as the modes of implementing the programming that fits within those two broad categories. Under the membership services umbrella, projects include the Bar Convention, Courthouse Keys, Color of Justice, Membership Events, Professional Development and Publications. Under the public service umbrella, projects include the Backpack Drive, Cinderella Project, Community Law Week, iCivics, Special Olympics, Voices Against Violence, Volunteer

Income Tax Assistance and the Habitat for Humanity Wills Clinics. Read more about all of these projects by visiting www.scbar.org and choosing "Service to the Bar" or "Service to the Public" from the Young Lawyers dropdown menu.

While we are very proud of our existing slate of projects (five of which won prestigious, national Awards of Achievement from the American Bar Association this year), our goal is always to improve on our core missions and provide more value to our members. Please give some consideration to reviewing our current activities and sharing your input on how we might more effectively and more efficiently accomplish our goals in the coming year by e-mailing me at wjohnson@hsblawfirm.com. I would like to begin the planning process next year with a wide range of feedback and suggestions from our membership. While I will certainly be open to your input at any time, early communications will provide us with the best opportunity to be proactive in addressing concerns and implementing new programs in our early planning stages.

I look forward to working with many of you over the next 18 months. I hope that you and your families have a safe and happy holiday season.

Best regards, Will Johnson, YLD President-Elect

To submit items for the next issue of the **South Carolina Young Lawyer**, please contact:

Rebecca Roser rroser@robinsonlaw.com

or

Marshall Coleman Newton mnewton@robinsonlaw.com

For a list of the YLD Ex. Council, circuit representatives and upcoming events, please visit www.scbar.org/yld.

¹ www.cdc.gov/nchs/fastats/fertile.htm.

² www.cdc.gov/ART/index.htm.

³ www.google.com/url?sa = t&rct = j&q = &esrc = s&source = web&cd = 6&ved = 0CFcQFjAF&url = http%3A% 2F%2Fwww.cdc.gov%2Fnchs%2F data%2Fnhsr%2Fnhsr051.pdf&ei = xribUKmrI9LW0gGijIHwBw&usg = AFQjCNH8wMPTPbBdVtbX3tt86mL U1G3fww.

Recent Events



Welcome to the Newest Members of the S.C. Bar!

Young Lawyer organizations held new admittee receptions around the state this fall. Around 350 new lawyers were sworn in to the South Carolina Bar on November 14. In Columbia, the YLD and the Richland County Bar hosted the reception at the Main Street Bar at the Sheraton Hotel on November 15. On November 28, the YLD in Greenville joined the Greenville Young Lawyers Club to host a reception at High Cotton. The Charleston YLD joined with the Charleston Lawyers Club and Charleston County Bar Association to host the Lowcountry reception on November 29 at Upstairs at Midtown.



Mayor Benjamin before his presentation on November 1 in Columbia.

Professional Development: YLD/YBD event with Mayor Benjamin in Columbia and Brad Dean in Myrtle Beach

The YLD and the S.C. Bankers Association Young Bankers Division hosted a joint event in Myrtle Beach on November 1 at The Ocean Club. Brad Dean, president and CEO of the Myrtle Beach Area Chamber of Commerce, provided an update on The Grand Strand 2012 & Beyond.

The YLD and the Young Bankers Division collaborated in Columbia on

November 7 at Haynsworth Sinkler Boyd. City of Columbia Mayor Steve Benjamin spoke on his vision for Columbia and the future of the capital city. Both events were followed by a cocktail reception allowing for networking and conversation between the bankers and attorneys present. Look for more opportunities for professional development and networking from the YLD in the new year.



YLD president Trey Mills, Myesha Brown, past-president Rebecca Roser and Paul Hoefer enjoyed the event with the Young Bankers in Columbia.

Special Olympics

Alaina Beach • McAngus Goudelock & Courie, Greenville

The Young Lawyers gave their time and energy to the Special Olympics on October 20 to assist with the Upstate event's tennis competition. Volunteers assisted with various tasks, some of which included match set up, keeping score, encouraging players and retrieving tennis balls. The experience was very rewarding, and players from many districts traveled to Taylors to compete. Volunteers enjoyed working closely with the athletes and getting to know them during the course of their games.

Allison Richmond, one of the YLD's volunteers, was impressed by the athletes' great attitudes: "The athletes had so much fun, and it felt great to be a part of something that they look forward to all year. Also, it was amazing to see the support, encouragement and respect that the athletes showed each other, even when they were opponents on the tennis court." The experience was extremely rewarding, and we hope

the YLD can continue being involved in coming years. The upstate Young Lawyers also attended the Special Olympics Give to Gain Gala on November 29. The gala is a fundraiser at the Greenville Marriott benefiting Upstate athletes. The event featured a silent auction, live music, food and drinks.

Charleston held the 13th Annual Special Night for the Special Olympics on November 3. The event is designed to raise awareness of the Special Olympics athletes, as well as to raise money for the South Carolina Special Olympics' general operating funds. The cocktail attire event was held at the Daniel Island Club and had both a live and silent auction. Several athletes and their parents spoke to attendees about the organization's positive impact on their lives. The YLD agreed to act as a sponsor of the event and raised money by members purchasing tickets.



Voices Against Violence Necessities Drive

YLD member Melissa Maddox-Barnes stands with some of the goods that were donated for local women's shelters. October was Domestic Violence Awareness Month, and YLD collected necessities and paper products for shelters housing victims of domestic violence and sexual assault. Fourteen attorneys around the state volunteered to host drop-off sites, and the items were delivered to shelters including My Sister's House, Sistercare, Sexual Trauma Services of the Midlands, Hope Haven, SAFE Homes Rape Crisis Coalition and Foothills Alliance Center.

American Voter

Beth Palmer • Rosen Hagood, Charleston



YLD volunteers Steven Bell, Ann Urquhart Bell, Evan Guthrie and Beth Palmer assisted students in registering to vote at West Ashley High School in Charleston.

"Nobody will ever deprive the American people of the right to vote except the American people themselves and the only way they could do this is by not voting."

-Franklin D. Roosevelt

With much attention being paid to this year's elections, the YLD realized it was an opportunity to inspire the next generation to cast their ballots to make their voices heard at all levels of government. Members of the YLD teamed up with the American Bar Association to bring the ABA's American Voter project, a non-partisan public service initiative designed to educate young people about the history and importance of voting and to inspire all Americans to participate in the election process, to West Ashley High School in Charleston.

The first part of the project at West Ashley High School consisted of a voter registration drive that took place on September 27. YLD volunteers, including Steven Bell, Ann Urquhart Bell, Evan Guthrie, Tim Muller, Beth Palmer and Jane Stiegman, manned the registration tables and assisted students in completing the registration forms. Joan Dehne, a director of the Charleston Area League of Women Voters, also assisted students in registering to vote and fielded many questions from students of all ages. Approximately 50 students registered to vote.

The second part of the project was a presentation to approximately 180 students that took place on October 18. The students viewed a video from American Voter showcasing efforts to equalize access to the ballot box, reminding them of their civic duty and urging them to honor their forebears' sacrifices by exercising their right to vote. The video also highlights the civil rights era; the 1965 Voting Rights Act; and the 15th, 19th and 26th Amendments to the U.S. Constitution. The video is

available for viewing at www.american-voter.org. Following the video, prizes were awarded for correct answers to trivia questions.

To show the students how the right vote can changes lives, Rev. Thomas Dixon, a former convict, and Marcela Valer, a naturalized immigrant, both shared their personal stories of gaining the right to vote and what it means to them. The YLD is very appreciative of the efforts of Lauren Williams of Williams & Walsh, LLC, who secured these two guest speakers. Also on hand to assist with the presentation were YLD volunteers Evan Guthrie, Sarah Woodard, Maria Neal and Beth Palmer.

Implementing the American Voter project in Charleston would not have been possible without the help of Molly West, a counselor at the high school. Mrs. West acted as the YLD's liaison to the school and helped with everything from securing equipment and supplies to rallying the

students, spreading the word about the project and coordinating the volunteers and speakers. Mrs. West said, "This is a great opportunity for us to have a twofold impact on the students by showing them young professional role models and sharing the importance of voting."

This project was also implemented in Rock Hill thanks to efforts by Shauntae Burke, Dean Robert Finch, Lori Hoover, Dean Lewis Hutchinson, Miriama Jefferson, Kindle Johnson, Teresa McCullough, Hon. Jane Modla, Anwur Muhhamed, Chisa J. Putnam, Roberta Reid, Hon. Carolyn Rogers, Leslie Smith, Majorie Smith, Cody Stilling, Lamar Thyall, Judah Vansyckel, Gwen Wilson, Stephanie Wood and Hon. Mandrile Young. Young lawyers who are interested in implementing the American Voter project at their local high schools should contact Beth Palmer (epalmer@rrhlawfirm.com) for more information.

Letter From the President

Trey Mills • Trammell & Mills Law Firm, P.A.



Here's to You Young Lawyer,

Many moons ago when I first became involved in YLD, active participation of members was

something to be desired. I would say less than five percent were active. I remember repetitive calls from the Bar liaison each time an ABA conference was being hosted in some far away place begging members to go-all expenses paid. Things have only changed for the positive since that time, and I attribute that to the strong leadership of the past presidents with whom I was directly involved: Venus Poe, Tiffany Spann-Wilder, Trey Suggs, Tina Herbert and Rebecca Roser. I'm excited to say dozens of members have volunteered for only a few slots for the upcoming ABA Midvear Meeting in Dallas.

The Fall ABA YLD Conference

hosted this past October in Charleston had more than 320 young lawyers from across the nation participate in a highly educational, engaging and entertaining line-up of speakers and activities. More than 37 percent of the young lawyers that attended the conference were local, or South Carolina young lawyers. That is an amazing statistic and something I am proud of our members for doing.

This past November, I was a member of the Nominating Committee and could not have been more pleased to have discussed so many worthy candidates who were nominated to various leadership and circuit representative positions. Please continue to stay active, to learn more about the qualifications of the position you may be interested in, and to hone your leadership skills by participating in local, state and national events.

Every single one of you has a unique opportunity to make an exceptional and positive impact upon your profession, your community, your state and this nation. To make things simpler to those that should rise to that challenge, the road has been paved before you. The YLD has an opportunity almost every week of every month somewhere in this easily navigable state. Didn't know about an event? Au contraire, my highly educated friend. We have a calendar online, we have a weekly email blast and we will soon roll out our very own Facebook page! I know, right—can't be a young lawyer without a Facebook page.

Mark your calendars for the next big event you'll want to be present for: the S.C. Bar Convention in Myrtle Beach – January 24-27, 2013. Register online at www.scbar.org/ convention.

Sincerely,_

Floyd S. "Trey" Mills III

Slate of Officers and Representatives

The Young Lawyers Division Nominating Committee is recommending the following slate of representatives to serve for the 2013-15 term:

First Circuit Representative: Charlie Williams

Third Circuit Representative: Mandy Shuler

Fifth Circuit Representative: Foster Girard

Seventh Circuit Representative: Grant Close

Ninth Circuit Representative: Patrick Wooten

Eleventh Circuit Representative: Will Whetstone

Thirteenth Circuit Representative: Anna Hamilton

Fifteenth Circuit Representative: Blake Hewitt

Out-of-State Representative: Lindsey Lovingood The Nominating Committee is recommending the following slate of officers to serve for the 2013-14 term:

President-Elect:

Lynsey Kmetz

Secretary/Treasurer:

Britt Kelly

The bylaws that govern the process of nominating are as follows: Section 8.5 Nominating Procedure.

(a) On or before November 15 of each year, the Nominating Committee shall meet at a time and place designated by the Chairman and shall promptly make nominations by a majority vote for the offices of President-elect, Secretary-Treasurer, the appropriate Circuit Representatives, and the Out-of-State Representative, if applicable in that year, from those names submitted to the Division. To

be eligible to vote, all members of the Nominating Committee must attend the meeting, either in person or by telephone. The vote may be by secret ballot and shall be counted by the Chair of the Nominating Committee and a member of the Bar staff.

(b) Prior to the following December 15, the Executive Council shall send the name of each nominee selected by the Nominating Committee to all members of the Division by regular mail. On or before the following January 1, any twenty-five (25) or more members of the Division in good standing may file with the Executive Council a signed petition nominating a candidate or candidates for any or all offices to be filled. The nominations must be received at South Carolina Bar by January 1. On January 1, the nominations shall be closed.









FRIDAY AFTERNOON, from 2:30 until 5:45, YLD is co-sponsoring a CLE with TIPS titled "Evidence Where It Counts." The program, which was created and will be presented by Judge Few, will consist of a hands-on approach on how to win struggles over the admissibility of evidence.

FINALLY, on Friday evening, January 25 join fellow young lawyers for the YLD Oyster Roast at the Dunes Club which is located at 9000 North Ocean Boulevard. This event, which will start at 7:00 pm, is open to young lawyers and a guest. There is no fee to attend, but you must register by January 11.

REGISTER TODAY!

January 24–27, 2013

Myrtle Beach Marriott Resort & Spaat Grande Dunes

www.scbar.org/convention



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