**PARENTS WIN $2.9 M FOR ‘WRONGFUL BIRTH’ LAWSUIT**

MEENA HART DUERSON Sunday, March 11, 2012 http://articles.nydailynews.com/2012-03-11/news/31146217\_1\_doctors-baby-syndrome

A Portland, Ore. couple was awarded $2.9 million on Friday for the care of their Down syndrome baby, who they argue would not have been born if doctors had not been "negligent” in their pre-natal care.

Ariel and Deborah Levy won their "wrongful birth" suit against Legacy Health System, arguing they chose to continue their pregnancy based on what doctors told them, according to ABC News, and would have terminated it if they had not been assured their baby did not have the genetic condition.

Jurors found five instances of Legacy Health's negligence, including a doctor's finding that the baby had a normal chromosomal profile based on a test that was performed and analyzed incorrectly.

Thirteen weeks into Deborah Levy's pregnancy, according to The Oregonian, her doctor tested a sample of tissue and concluded the baby did not have any chromosomal problems. Even though later tests suggested it might have Down syndrome, doctors assured the family that nothing was wrong.

A week after the baby was born, the Levys discovered their baby did in fact have Down syndrome. The doctor had taken a sample of the wrong kind of tissue, according to the lawsuit - a mistake that was never caught.

They also argued the doctors were "negligent in their performance, analysis and reporting" of their daughter's test results after she was born.

The child is now four years old.

"It's been difficult for them," the family's lawyer David K. Miller told KATU-TV. "There's been a lot of misinformation out there.

“These are parents who love this little girl very, very much,” Miller said. “Their mission since the beginning was to provide for her and that’s what this is all about.”

The Levy family originally sued for $7 million to cover the costs of care for their daughter over her lifetime.

While the parents chose not to comment after the verdict, the health care company hit back at the decision in a statement.

“While Legacy Health has great respect for the judicial process, we are disappointed in today’s verdict," the statement read. "The legal team from Legacy Health will be reviewing the record and considering available options."

**COUPLE AWARDED $3M IN ‘WRONGFUL BIRTH’ SUIT**

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WASHINGTON (BP) -- A "wrongful birth" lawsuit is a horribly flawed response to the unexpected birth of a baby with a disability, pro-life bioethics specialists said in the wake of an Oregon jury's award of nearly $3 million to the parents of a child with Down syndrome.

The 12-member jury unanimously awarded $2.9 million to Ariel and Deborah Levy, a Portland-area couple, in their suit against a hospital system that failed to detect the chromosomal disorder in their unborn daughter, Kalanit, who is now 4. The Levys said they would have aborted her had they known she had Down syndrome, but Legacy Health System's Center for Maternal-Fetal Medicine assured them after a test their daughter did not have the condition.

"In a civil society, there must be better remedies for cases like these," said C. Ben Mitchell, professor of moral philosophy at Union University in Jackson, Tenn. "Rather than 'wrongful birth' suits, a robust social services infrastructure could relieve the burden families feel when they choose to bring disabled children into the world. There are many communities who would be willing to rally around these families if they knew the need.

"At the same time, we must repudiate abortion for disability," said Mitchell, also a biomedical and life issues consultant for the Southern Baptist Convention's Ethics & Religious Liberty Commission. "The diagnosis of a disability, including Down syndrome, should not be a death sentence for the unborn baby."

Such lawsuits "are merely the newest front in the ongoing eugenic search-and-destroy mission aimed at wiping people with Down syndrome off the face of the earth," Wesley Smith wrote in a column for The Daily Caller.

"The time has come to reverse course," said Smith, co-director of the Discovery Institute's Center for Human Exceptionalism. "We could begin with states prohibiting wrongful birth lawsuits as a matter of public policy. We may have a right to have a baby, but we don't -- or at least shouldn't -- have a right to the baby we want. Most importantly, none of us should ever be declared by a jury to be a wrongful life. May Kalanit never learn that her parents would have prevented her from ever being born."

Bioethicist Art Kaplan, who is not a pro-life advocate, also contended "wrongful birth" lawsuits should not be allowed.

"Wrongful birth lawsuits are a horrible way to deal with failed prenatal testing," said Caplan, director of the Center for Bioethics at the University of Pennsylvania, in a MSNBC commentary. "Forcing parents to argue that their child never should have been born may make legal sense but it is morally absurd."

The Arizona Senate approved in a 20-9 vote March 6 a bill that would protect health-care providers from "wrongful birth" lawsuits while permitting malpractice suits, the Arizona Capitol Times reported. If Arizona enacts the legislation, it would become the 10th state to bar "wrongful birth" or "wrongful life" court actions.

"Wrongful birth" lawsuits are rare, Caplan said, but some have resulted in awards of millions of dollars.

An estimated 90 percent of unborn children in the United States diagnosed with Down syndrome are aborted, and the estimate of abortions for other genetic abnormalities in the unborn is about the same. Down syndrome normally results when a person has three copies, rather than two, of chromosome 21.

Deborah Levy, who already had two sons with her husband, underwent a test known as chorionic villus sampling (CVS) when she was 13 weeks pregnant at the age of 34, according to The Oregonian. The lab results from tissue taken from her womb showed Levy's unborn daughter had a normal chromosome make-up.

Two ultrasounds performed later showed abnormalities that can indicate Down syndrome in an unborn baby. Legacy staff assured the Levys, however, their daughter did not have the condition and did not recommend another prenatal test, amniocentesis, The Oregonian reported.

The Levys argued Deborah's tissue instead of the baby's tissue was extracted during the CVS test and the Legacy staff should have identified it as such.

Expert witnesses for Legacy testified the CVS was performed correctly. They said the lab result showed a normal chromosome count because Kalanit has mosaic Down syndrome, which means some of her cells do not have an extra copy of chromosome 21, according to The Oregonian.

The $2.9 million award was estimated to cover the extra costs required to care for Kalanit, the newspaper reported.

**FOOD FOR THOUGHT:**

This week’s Food for Thought section is all about providing your EVALUATION (Not just your opinion, right? PLUS, your own values come into play). You were provided with two versions of the same story to demonstrate both sides…but what do YOU think? Should we have the option to terminate pregnancies that may result in babies with disabilities? Yes? No? Exceptions? Should we have the option to sue a possibly negligent party in a case like this? Yes? No? Exceptions? Which article had more points with which you agreed? Why?