



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**John Terrell v. Ruby Torres  
CV-19-0106-PR  
246 Ariz. 312 (App. 2019)**

**PARTIES:**

*Petitioner:* John Terrell

*Respondent:* Ruby Torres

**FACTS:**

In June 2014, Torres was diagnosed with breast cancer and told she needed chemotherapy. The oncologist advised Torres that chemotherapy would impair her ability to become pregnant. After meeting with a fertility specialist at a reproductive clinic (“Clinic”), Torres decided to cryogenically preserve her eggs before chemotherapy, which required her to undergo in vitro fertilization (“IVF”) to produce embryos created using her own eggs and donor sperm. Torres initially asked Terrell, then her boyfriend, to serve as the sperm donor. He declined, but she found another donor, a prior boyfriend. Terrell then changed his mind and agreed to be the donor.

In July 2014, the parties executed the Agreement provided by the Clinic, and they married four days later. The Agreement specified in §§ 8–9 that any embryo resulting from Torres’s egg and Terrell’s sperm would be their joint property, and “consent of both will be required concerning their use or disposition.” The Agreement also provided:

*H. Divorce or Dissolution of Relationship—In the event the patient and her spouse are divorced or the patient and her partner dissolve their relationship, we agree that the embryos should be disposed of in the following manner (check one box only).*

*[X] A court decree and/or settlement agreement will be presented to the Clinic directing use to achieve a pregnancy in one of us or donation to another couple for that purpose.*

*[ ] Destroy the embryos.*

After the parties signed the Agreement and married, Torres underwent IVF, yielding seven cryogenically-preserved embryos. She subsequently underwent chemotherapy. After two years of marriage, Terrell filed for divorce. Although neither party disputed that the Agreement was a binding contract, they could not agree on disposition of the embryos. Torres argued that she should be awarded the embryos. Terrell opposed her plans to become impregnated with the embryos and ultimately indicated he would agree to their use by another couple.

The trial court identified three approaches adopted by other courts to determine disposition of

cryogenically preserved embryos created using one party's eggs and another party's sperm when the parties disagree: (1) the contractual approach, (2) the balancing approach, and (3) the contemporaneous mutual consent approach. The trial court interpreted the Agreement under the contractual approach and found the parties had agreed a court could decide disposition of the embryos. It then applied the balancing approach, weighing several factors and ordering that the embryos be donated to another couple. Terrell appealed.

The court of appeals entered a 2–1 opinion. The Majority also noted the three approaches and agreed that the contractual approach applied; it also interpreted the Agreement as giving the court discretion to order the disposition of the embryos. It then applied a balancing test and found that Torres's interests in the embryos outweighed Terrell's interest in avoiding procreation. The Majority vacated the trial court's order and remanded the matter for the trial court to enter an order awarding Torres the embryos.

The Dissent disagreed. The Dissent advised that "contracts matter" and agreed with Terrell that a separate contract "Note" to the effect that embryos could not be used to produce pregnancy against the wishes of one partner was the operative provision. The Dissent also believed that the parties' election in the check box was nothing more than an authorization allowing the clinic to abide by a court order or settlement agreement if they divorced. The Dissent also believed the Majority improperly applied the balancing test.

#### **ISSUES:**

1. Did the court of appeals correctly interpret an in vitro fertilization agreement to permit respondent to use the subject embryos?
2. Did the court of appeals err by failing to remand for the trial court to balance the parties' interests concerning disposition of the subject embryos?

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