

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, FIFTH DIVISION

Miller v. Fertility Centers of Illinois, S.C.

2025 IL App (1st) 241645 · No. 1-24-1645 · Decided December 26, 2025

SUMMARY

The Illinois Appellate Court affirmed the dismissal of Andrea Miller’s claims against fertility providers and related defendants arising from a dispute over custody and disposition of embryos following her separation and divorce. The court held that the negligence claims failed because the defendants could not reasonably be charged with preventing all potential legal challenges to embryo custody, and the contract claims did not identify a breached promise by the fertility clinic. The court also held that the fiduciary-duty claims were duplicative of the negligence claims and lacked allegations that defendants sought a selfish benefit.

CASE DETAILS

COURT	Appellate Court of Illinois, First District, Fifth Division
WRITING FOR THE COURT	Justice Mikva; Presiding Justice Mitchell; Justice Oden Johnson
JURISDICTION	Appellate Court of Illinois, First District, Fifth Division
DECIDED	December 26, 2025
DOCKET	1-24-1645
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from dismissal with prejudice under section 2-615 of the Illinois Code of Civil Procedure of claims for negligence, breach of contract, breach of implied contract, breach of fiduciary duty, and medical battery, and from denial of a motion to reconsider.
STANDARD OF REVIEW	De novo review of a section 2-615 dismissal; the court accepts well-pleaded facts as true and asks whether the allegations, viewed in the light most favorable to the plaintiff, state a legally recognized cause of action.
PRECEDENTIAL VALUE	Published and precedential Illinois appellate opinion
PARTIES	Andrea Miller v. Fertility Centers of Illinois, S.C., Fertility Centers of Illinois, PLLC, Apparent IVF International, LLC, Gamete Resources Inc., Cryovault, Inc., Brian Kaplan, M.D.

TOPICS

motions to dismiss

pleadings

standard of review

contracts

civil procedure

PRACTICE AREAS

civil procedure

contracts

negligence

fiduciary duty

reproductive health law

QUESTIONS PRESENTED

1. Whether Miller stated a negligence claim by alleging that the fertility providers and cryogenic defendants owed her a duty to draft or provide consent forms that would protect her embryos from any legal challenge.
2. Whether Miller adequately pleaded breach of express or implied contract against Fertility Centers of Illinois based on the consent form and a nurse's alleged representation that the form applied to all treatments and would ensure Miller's ownership of the embryos.
3. Whether Miller's breach of fiduciary duty claims were duplicative of her negligence claims and whether she alleged that defendants obtained a selfish benefit.
4. Whether Miller stated a medical-battery claim by alleging that the IVF procedure was performed with a consent form that did not protect her from later litigation over embryo custody.
5. Whether the circuit court erred in denying Miller's motion to reconsider.

HOLDINGS

1. Miller failed to state a negligence claim because no defendant could be held to a duty to make her impervious to every possible legal challenge to her custody of the embryos. The cryogenic defendants also were not alleged to have drafted the consent form, participated in its drafting, or made the relevant representations.
2. Miller failed to plead breach of contract because, even assuming that the consent form and the nurse's statement bound FCI and applied to the December IVF cycle, neither contained an express or implied promise to prevent litigation or protect Miller from her husband's challenge to her control of the embryos.
3. Miller's breach of fiduciary duty claims were properly dismissed because they duplicated her negligence claims and because she failed to allege that any defendant sought a selfish benefit from retaining the embryos or failing to release custody.
4. Miller failed to state a medical-battery claim because she did not allege that the treatment substantially varied from the consent granted, and any alleged defect in the consent form did not constitute medical battery.
5. The circuit court properly denied Miller's motion to reconsider because she merely reasserted arguments previously rejected and identified no newly discovered evidence, change in law, or error in the prior application of existing law.

KEY QUOTATIONS

“A section 2-615 motion to dismiss is a challenge to the legal sufficiency of a complaint.” (¶ 27)

“This is asking the courts to impose a duty on clinics and providers to do the impossible.” (¶ 34)

“While pleading in the alternative is generally permitted, duplicate claims in the same complaint are not.” (¶ 48)

“For the foregoing reasons, we affirm the circuit court’s dismissal with prejudice of Ms. Miller’s claims for failure to state a claim on which relief could be granted.” (¶ 56)

FACTUAL BACKGROUND

Miller received fertility treatment from Fertility Centers of Illinois and Dr. Brian Kaplan, including IVF cycles that ultimately produced two viable embryos in December 2018. An August 2018 IVF consent form provided that, upon divorce or dissolution, the embryos would be awarded to Miller, but no new form was signed for the December cycle. After Miller and her husband separated, the clinic declined to transfer an embryo without additional consent or a court document, and the divorce court later awarded Miller complete control over the embryos. Miller alleged that the defendants' consent-form practices caused her to incur expenses and suffer delay while establishing custody.

PROCEDURAL HISTORY

Miller sued fertility providers and cryogenic-storage defendants concerning the alleged failure to protect her claimed custody of embryos after her separation and divorce. The circuit court dismissed various claims during successive amendments and ultimately dismissed all counts with prejudice after Miller's third amended complaint failed to allege an express promise that a consent form would prevent subsequent litigation over embryo disposition. The circuit court denied Miller's motion to reconsider, and she timely appealed. The appellate court affirmed.

DISPOSITION

affirmed

CASES CITED

- Bonhomme v. St. James, 2012 IL 112393, ¶ 34
- Wakulich v. Mraz, 203 Ill. 2d 223, 228 (2003)
- Jarvis v. South Oak Dodge, Inc., 201 Ill. 2d 81, 86 (2002)
- Doe v. Coe, 2019 IL 123521, ¶ 32
- City of Chicago v. Beretta U.S.A. Corp., 213 Ill. 2d 351, 368 (2004)
- Marshall v. Burger King Corp., 222 Ill. 2d 422, 429 (2006)
- Hills v. Bridgeview Little League Ass'n, 195 Ill. 2d 210, 228 (2000)
- Simpkins v. CSX Transportation, Inc., 2012 IL 110662, ¶¶ 20-21
- Jocelyn P. v. Joshua P., 250 A.3d 373, 381 (Md. Ct. Spec. App. 2021)
- Bilbao v. Goodwin, 217 A.3d 977, 989 (Conn. 2019)
- Uskup v. Johnson, 2023 IL App (1st) 220269-U, ¶ 29

- Babbitt Municipalities, Inc. v. Health Care Service Corp., 2016 IL App (1st) 152662, ¶ 27
- Olson v. Ferrara Candy Co., 2025 IL App (1st) 241126, ¶ 59
- Neade v. Portes, 193 Ill. 2d 433, 440, 443, 445 (2000)
- Majumdar v. Lurie, 274 Ill. App. 3d 267, 273-74 (1995)
- Tully v. McLean, 409 Ill. App. 3d 659, 681-82 (2011)
- Spring Valley Nursing Center, L.P. v. Allen, 2012 IL App (3d) 110915, ¶ 12
- Curtis v. Jaskey, 326 Ill. App. 3d 90, 94 (2001)
- Liceaga v. Baez, 2019 IL App (1st) 181170, ¶ 25

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