

## **MACHON PUAH**

### **Who Owns the Embryos?**

Last week we reported the interesting case of Emma Gibson who was born from an embryo that had been purchased from another couple who no longer needed it. Emma Gibson is an unusual case since she was born after the embryo was frozen for 25 years - but this procedure raises serious questions about the ownership of frozen embryos and whether they can be sold.

In the 1990s there was a very famous case that reached the Israeli High Court called the Nachmani Case. Daniel and Ruthie Nachmani were married for a number of years and were unable to conceive. Ruthie underwent an operation which left her unable to carry a pregnancy and so the couple needed to use the services of a gestational carrier. They produced embryos from Ruthie's eggs and Daniel's sperm and the embryos were frozen while the couple searched for a suitable candidate to carry their child. In the meantime, the Nachmanis separated and Daniel lived with another woman and had a child with her. But he was still married to Ruthie who refused to accept a GET. She turned to the hospital and requested that they give her the embryos to use them with a gestational carrier but Daniel did not give his permission. The case came to the Israeli High Court.

The High Court decided that Ruthie could not use the embryos and this overruled a previous court decision

that permitted her to use them. They claimed that if a child was born, Daniel would have been forced to become a parent and no one can be coerced against their will into parenthood. This decision was challenged and the decision was again overturned by another court that decided that Ruthie's right to become a parent was more important than Daniel's right not to want to become a parent with these embryos.

Daniel appealed this decision claiming that it was in contradiction to their prenuptial agreement. At this point the court suggested that the couple seek arbitration and the couple were able to reach a divorce agreement. The agreement included Ruthie's right to use the embryos and released Daniel from any financial responsibility for any future children born from the embryos. As a result of this case, the law was determined that embryos cannot be used without the consent of both sides.

What does the halacha have to say in this case? How can we define who owns the embryos?

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