

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LAW DIVISION

JENNIFER L. CRAMBLETT)



Plaintiff,)

vs.)

MIDWEST SPERM BANK, LLC)
c/o Scott J. Bakal, Statutory Agent)
2 N. LaSalle Street, Suite 2200)
Chicago, Illinois 60602,)

Defendant.)

Case No:)

COMPLAINT FOR WRONGFUL)
BIRTH AND BREACH OF)
WARRANTY)

(Jury demand endorsed hereon))

2014 SEP 29 PM 4:24
CLERK OF THE COURT
JUDICIAL CENTER
100 N. LA SALLE ST.
CHICAGO, IL 60602

COMPLAINT AT LAW

Plaintiff, Jennifer L. Cramblett, for her Complaint for Wrongful Birth and Breach of Warranty against Defendant, Midwest Sperm Bank, LLC, states and alleges as follows.

1. This civil action for wrongful birth and breach of warranty arises from the defendant's delivery of sperm from the wrong donor to an Ohio fertility clinic with which the plaintiff was artificially inseminated.

PARTIES, JURISDICTION AND VENUE

2. This court has subject matter jurisdiction of this action pursuant to Article VI, Section 9, of the Illinois Constitution.

3. This court has *in personam* jurisdiction over the defendant, because it is an Illinois limited liability company with its principal office in Chicago, Illinois.

4. Venue is proper in this court pursuant to Sections 2-101 and 2-102(c) of the Illinois Code of Civil Procedure, 735 ILCS § 5/2-101, 2-102(c), because the defendant has an office in this county, or an officer of the defendant resides in this county.

5. Plaintiff, Jennifer L. Cramblett, is a citizen and resident of Uniontown, Ohio.

6. Defendant, Midwest Sperm Bank, LLC, is an Illinois limited liability company with its principal office in Chicago, Illinois.

FACTS COMMON TO ALL CLAIMS

7. Jennifer Cramblett, 36, is a lesbian residing in Uniontown, Ohio (population 2,802 in rural Stark County), with her domestic partner, Amanda Zinkon, and her two year-old daughter, Payton. Ms. Cramblett was raised in Scio, Ohio (population 762 in Harrison County), graduating from Harrison Central High School in 1996. After high school, Jennifer earned a bachelor's degree from the University of Akron. She is the assistant manager of an AT&T retail store in Canton, Ohio. Jennifer and Amanda have been together for approximately four years.

8. In or about June, 2011, Jennifer and Amanda decided to start a family. Because Jennifer was older and had better health insurance, the two decided that Jennifer would be the first to become pregnant. From their perspective, artificial insemination was the only option. Both Jennifer and Amanda were sexually abused as young girls, Jennifer at age 8 by a neighborhood boy who was 17. As Jennifer explained to psychologist, Donald J. Weinstein, Ph.D., of Beachwood, Ohio, in November, 2012, "We would have to bring a male into our lives and when you think of sperm, you think of sexual encounters and neither of us wanted to think of males in our lives that way again."

9. In or about late July, 2011, Jennifer and Amanda met with Nicholas J. Spirtos, D.O., of the Northeast Ohio Fertility Clinic in Canton. During that initial visit, Dr. Spirtos recommended the defendant, Midwest Sperm Bank, for donor sperm. Jennifer and Amanda spent the next week researching the defendant's donor profiles. Their desire was to find a

donor with genetic traits similar to both of them. The plan was that, at a subsequent time, Amanda would become inseminated with sperm from the same donor so that their children would be blood-related. After making their top three choices, a Midwest Sperm Bank employee emailed Jennifer comprehensive histories, twenty-three pages in length, for each donor. After reviewing those histories, Jennifer and Amanda made their choice, Donor No. 380.

10. In August, 2011, Jennifer contacted the defendant and paid for two vials of Donor No. 380's sperm. On two consecutive days in the middle of the month, when she was ovulating, Jennifer was artificially inseminated at Dr. Spirtos' office. Because she did not get pregnant in August, and because pregnancy can often take a few months to occur, Jennifer ordered six vials of sperm in September, 2011. Jennifer placed her order by telephone. During that conversation, Defendant's receptionist asked Jennifer to verify that she was ordering six vials of sperm from *Donor No. 330*. Jennifer corrected the receptionist, pointing out that she was ordering sperm from *Donor No. 380*. After a brief hesitation, the receptionist said, "Oh yes, I see you need No. 380."

11. Jennifer did not get pregnant in September or October, 2011, and she skipped November, because she missed her ovulation period. In September and October, she used two vials of sperm on two consecutive days just as she had done in August. In December, 2011, because of the holiday season, she used just one vial of sperm. Had she not gotten pregnant in December, she would have used the last vial in January, 2012; however, on December 24, 2011, Jennifer learned that she was pregnant.

12. The pregnancy progressed normally, and on April 9, 2012, Jennifer and Amanda learned that they were having a girl.

13. On April 23, 2012, Jennifer called the defendant from work to order eight more vials of Donor No. 380's sperm, because she and Amanda were still planning to have another child, they had saved enough money, and because they had heard that their donor had moved and was no longer donating.

14. When Jennifer called the defendant to order additional sperm, she spoke to the same receptionist as before. The receptionist remembered Jennifer from the previous September. The receptionist asked Jennifer to hold while her file was retrieved. When she returned, the receptionist said, "Okay, you want eight vials of sperm from *Donor No. 330.*" Jennifer replied, "No, I said we need eight vials of *No. 380.*" Jennifer was put on hold again for what seemed to her like an eternity.

15. When the receptionist returned for the second time, she asked Jennifer if she had requested an African American donor to which she replied, "No, why would I request that? My partner and I are Caucasian. You know that from our profiles." She was placed on hold again. Finally, she was told that Dr. Spirtos had been sent vials of sperm from *Donor No. 330*, and that Midwest Sperm Bank would have to "call to confirm." Jennifer hung up immediately and called Dr. Spirtos.

16. Dr. Spirtos' secretary, Sandra, answered Jennifer's call. She could hear the concern in Jennifer's voice. Jennifer asked Sandra to check the remaining vial, the one Jennifer planned to use in January, 2012, to determine whether or not it was from Donor No. 380. After checking the vial, Sandra informed Jennifer that she had become pregnant on December 11, 2011, by *Donor No. 330*.

17. About an hour later, Dr. Spirtos called Jennifer to confirm the mistake, to apologize, and to ask how she was doing. Jennifer was crying, confused and upset. All of

the thought, care and planning that she and Amanda had undertaken to control their baby's parentage had been rendered meaningless. In an instant, Jennifer's excitement and anticipation of her pregnancy was replaced with anger, disappointment and fear.

18. After calming down a bit, Jennifer called Midwest Sperm Bank again. No one from Midwest had called her back, and she wanted to speak to someone before the end of the business day. The receptionist asked Jennifer if she had spoken with Dr. Spirtos. Jennifer said that she had. The receptionist then asked if Dr. Spirtos' office had confirmed receipt of sperm from Donor No. 330 to which Jennifer responded affirmatively. At that moment, the receptionist said, "I am sorry, but I am unable to speak to you about this matter anymore" and hung up.

19. Jennifer is not easily overcome by emotion, but when the receptionist hung up on her so rudely and insensitively, she began to cry uncontrollably. She began to shake and she could not breathe. She could not speak or think straight. Her hands and feet became numb. Jennifer's co-workers tried to calm her down to no avail.

20. Jennifer called her mother who knew instantly that something was wrong. She drove more than an hour to pick Jennifer up from work and take her home. The remainder of that day and night, and throughout the following day, Jennifer cried, depressed and angry. The following month, Jennifer received a letter from Midwest Sperm Bank apologizing for the "mix up." Enclosed with the letter was a refund check, but only for the six vials of incorrect sperm sent in September, 2011. Midwest kept the money Jennifer sent in August.

21. In the months that followed, Jennifer learned the reason for the defendant's error: its records are not electronic. They are kept in pen and ink. To the person who sent

Jennifer vials of sperm in September, 2011, the number “380” looked like “330,” and there are no redundancies to catch errors like the one the defendant made with respect to Jennifer Cramblett.

22. On August 21, 2012, Jennifer gave birth to Payton, a beautiful, obviously mixed race, baby girl. Jennifer bonded with Payton easily, and she and Amanda love her very much. Even so, Jennifer lives each day with fears, anxieties and uncertainty about her future and Payton’s future. Jennifer admits that she was raised around stereotypical attitudes about people other than those in her all-white environment. Family members, one uncle in particular, speaks openly and derisively about persons of color. She did not know African Americans until her college days at the University of Akron.

23. Because of this background and upbringing, Jennifer acknowledges her limited cultural competency relative to African Americans, and steep learning curve, particularly in small, homogeneous, Uniontown, which she regards as too racially intolerant.

24. As just one example, getting a young daughter’s hair cut is not particularly stressful for most mothers, but to Jennifer it is not a routine matter, because Payton has hair typical of an African American girl. To get a decent cut, Jennifer must travel to a black neighborhood, far from where she lives, where she is obviously different in appearance, and not overtly welcome.

25. One of Jennifer’s biggest fears is the life experiences Payton will undergo, not only in her all-white community, but in her all-white, and often unconsciously insensitive, family. Despite her family’s attempts to accept her homosexuality, they have not been capable of truly embracing Jennifer for who she is. They do not converse with her about her gender preference, and encourage her not to “look different,” signaling their disapproval of

her lesbianism. Though compelled to repress her individuality amongst family members, Payton's differences are irrepressible, and Jennifer does not want Payton to feel stigmatized or unrecognized due simply to the circumstances of her birth.

26. Jennifer's stress and anxiety intensify when she envisions Payton entering an all-white school. Ironically, Jennifer and Amanda moved to Uniontown from racially diverse Akron, because the schools were better and to be closer to family. Jennifer is well aware of the child psychology research and literature correlating intolerance and racism with reduced academic and psychological well-being of biracial children.

27. Based upon the aforementioned facts and circumstances, *all* of Jennifer's therapists and experts agree that for her psychological and parental well-being, she must relocate to a racially diverse community with good schools.

FIRST CLAIM FOR RELIEF
(Wrongful Birth)

28. Plaintiff, Jennifer Cramblett, incorporates by reference the allegations in Paragraphs 1 through 27 above as if fully rewritten herein.

29. Defendant had a legal duty to comply with professional standards of care, and to exercise due care, in providing donor sperm to Jennifer Cramblett.

30. Defendant breached its legal duties to Jennifer Cramblett by failing to exercise the degree of skill, care and diligence of an ordinary and reasonable sperm bank, thereby causing Jennifer Cramblett to be artificially inseminated with sperm from the wrong donor.

31. As a direct and proximate result of Defendant's breaches of duty, Jennifer Cramblett has suffered personal injuries, medical expense, pain, suffering, emotional distress, and other economic and non-economic losses, and will do so in the future.

32. As a direct and proximate result of Defendant's negligence, Plaintiff has been damaged in an amount to be determined at trial, which amount exceeds \$50,000.

WHEREFORE, Plaintiff, Jennifer Cramblett demands judgment against Defendant, Midwest Sperm Bank, LLC, for compensatory damages in an amount exceeding fifty thousand dollars (\$50,000) and to be proven at trial, the costs of this action, and such other and further relief as justice and the law so require.

SECOND CLAIM FOR RELIEF
(Breach of Warranty – 745 ILCS § 40/3)

33. Plaintiff, Jennifer Cramblett, incorporates by reference the allegations in Paragraphs 1 through 32 above as if fully rewritten herein.

34. In accordance with 745 ILCS § 40/3, Defendant warranted to Jennifer Cramblett that it would exercise due care, and follow professional standards of care, in providing her with donor sperm.

35. Defendant breached its warranty to Jennifer Cramblett by failing to exercise due care, and by failing to follow the professional standards applicable to sperm banks, thereby causing Ms. Cramblett to be artificially inseminated with sperm from the wrong donor.

36. As a direct and proximate result of Defendant's breaches of warranty, Jennifer Cramblett has suffered personal injuries, medical expense, pain, suffering, emotional distress, and other economic and non-economic losses, and will do so in the future.

37. As a direct and proximate result of Defendant's breaches of warranty, Plaintiff has been damaged in an amount to be determined at trial, which amount exceeds \$50,000.

WHEREFORE, Plaintiff, Jennifer Cramblett demands judgment against Defendant, Midwest Sperm Bank, LLC, for compensatory damages in an amount exceeding fifty

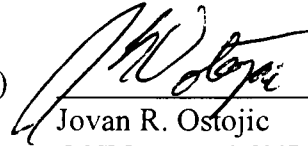
thousand dollars (\$50,000) and to be proven at trial, the costs of this action, and such other and further relief as justice and the law so require.

Of counsel for Plaintiff:

Thomas J. Intili (OH Reg. No. 0036843)
Danielle A. Groves (OH Reg. No. 0081136)
INTILI & GROVES CO., L.P.A.
130 West Second Street, Suite 310
Dayton, Ohio 45402-1534
(937) 226-1770; Fax: (937) 281-1562
Email: tom@igattorneys.com
danielle@igattorneys.com

Timothy P. Misny (OH Reg. No. 0000514)
Attorney at Law
9327 Chillicothe Rd.
Kirtland, Ohio 44094
Tel: (440) 256-1395
Fax: (440) 256-1614
Email: tmisny@misnylaw.com

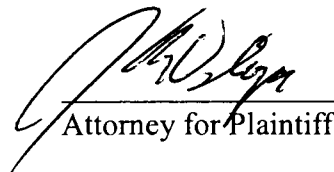
Respectfully submitted,



Jovan R. Ostojic
OSTOJIC & SCUDDER
332 S. Michigan Avenue, Suite 1000
Chicago, Illinois 60604-4408
Tel: (312) 913-0860
Fax: (312) 913-0868
Attorney No. 40088
Attorney for Plaintiff

JURY DEMAND

Plaintiff, Jennifer L. Cramblett, demands a trial by jury comprised of the maximum number of jurors permissible by law.



Attorney for Plaintiff

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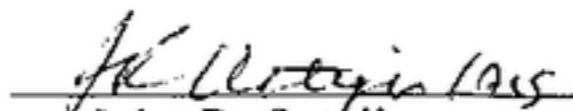
(Jury demand endorsed hereon))

SUPREME COURT RULE 222 AFFIDAVIT

John Ostojic, pursuant to Supreme Court Rule 222 (B) certifies as follows:

1. I am an attorney licensed to practice in the State of Illinois.
2. I am one of the attorneys representing the plaintiff, relative to the above-captioned lawsuit.
3. I am familiar with the facts pertaining to the lawsuit, and the matters alleged therein, and the plaintiff has a claim in excess of \$50,000.00.
4. I value the claim of the plaintiff to be in excess of \$50,000.00.
5. Pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the above statements set forth in this affidavit are true and correct.

FURTHER AFFIANT SAYETH NAUGHT.


John R. Ostojic

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LAW DIVISION

JENNIFER L. CRAMBLETT



Plaintiff,

vs.

MIDWEST SPERM BANK, LLC
c/o Scott J. Bakal, Statutory Agent
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DOROTHY H. BRADY
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, ILL.

735 ILCS 2-622(a)(2) AFFIDAVIT

John Ostojic, pursuant to 735 ILCS 2-622(a)(2) certifies as follows:

1. I am an attorney licensed to practice in the State of Illinois.
2. I am one of the attorneys representing the plaintiff, relative to the above-captioned lawsuit.
3. The affiant was unable to obtain a consultation required by 735 ILCS 2-622(a)(1) because a statute of limitations would impair the action and the consultation required could not be obtained before the expiration of the statute of limitations. The affiant is arranging for such a consultation and will provide the requisite affidavit within ninety (90) days.
4. Pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the above statements set forth in this affidavit are true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

John R. Ostojic