

FILED
10/25/2023
Timothy W Fitzgerald
Spokane County Clerk

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SUPERIOR COURT, STATE OF WASHINGTON, SPOKANE COUNTY

SHARON HAYES individually,

Plaintiff,

Case No. 23-2-04548-32

v.

SUMMONS

DAVID R. CLAYPOOL, MD and JANE
DOE CLAYPOOL, individually and as a
marital community;

Defendants.

TO SAID DEFENDANTS:

A lawsuit has been started against you in the above-entitled court by Sharon Hayes, Plaintiff. Plaintiff's claims are stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and by serving a copy upon the person signing this Summons within 20 days after the service of this Summons, excluding the day of service, if you are served within the State of Washington; 40 days if you are a foreign insurance company; or 60 days if you are served outside the State of Washington, or a default judgment may be entered

1 against you without notice. A Default Judgment is one where Plaintiff is entitled to what he
2 or she asks for because you have not responded. If you serve a Notice of Appearance on the
3 undersigned person, you are entitled to notice before a Default Judgment may be entered.

4 You may demand that the Plaintiff file this lawsuit with the Court. If you do so, the
5 demand must be in writing and must be served upon the person signing this Summons. Within
6 14 days after you serve the demand, the Plaintiff must file this lawsuit with the Court, or the
7 service on you of this Summons and Complaint will be void.

8 If you wish to seek the advice of an attorney in this matter, you should do so promptly
9 so that your written response, if any, may be served on time.

10 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the
11 State of Washington.

12 DATED THIS 17th day of October, 2023.

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15 GLP ATTORNEYS, P.S., INC.

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17 Roger Ermola, WSBA #46228
18 Co-Attorneys for Plaintiff

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20 CASEY LAW OFFICES, P.S.

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22 Brandon Casey, WSBA #35050
23 Co-Attorneys for Plaintiff

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SUPERIOR COURT, STATE OF WASHINGTON, SPOKANE COUNTY

SHARON HAYES individually

Plaintiff

vs.

DAVID R. CLAYPOOL, MD and JANE
DOE CLAYPOOL, individually and as a
marital community;

Defendants

Case No. 23-2-04548-32

COMPLAINT FOR DAMAGES

Plaintiff SHARON HAYES, by and through her attorneys, GLP Attorneys, P.S.
Inc. and Casey Law Offices, P.S., for the claims against the Defendants, alleges as
follows:

I. IDENTIFICATION OF PLAINTIFF

1.1 Identification of Plaintiff: At all times relevant to this action SHARON
HAYES has been a resident of Kootenai County, Idaho.

II. IDENTIFICATION OF DEFENDANTS

2.1 Identification of Defendant: DAVID R. CLAYPOOL, MD, at all times
relevant to this action, was a licensed medical doctor providing healthcare and other

1 services in Spokane County, Washington. DAVID R. CLAYPOOL, MD presently
2 resides in Spokane County, Washington.

3
4 2.2 DAVID R. CLAYPOOL, MD, provided services to Plaintiff SHARON
5 HAYES at all times relevant to this cause of action.

6
7 2.3 At all times relevant to this cause of action DAVID R. CLAYPOOL,
8 MD, was acting for the benefit of the marital community.

9
10 2.4 Venue: The events which gave rise to this lawsuit occurred in Spokane
11 County, Washington. Accordingly, venue is proper in Spokane County Superior Court.

12 **III. STATUS OF CLAIM**

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14 3.1 Plaintiff has certified by a declaration that she elects not to submit this
15 dispute to medical arbitration under RCW 7.70A.020.

16 **IV. FACTUAL ALLEGATIONS**

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18 4.1 Defendant DAVID R. CLAYPOOL, MD, (hereafter named Defendant
19 CLAYPOOL, MD) performed artificial insemination procedures on Plaintiff SHARON
20 HAYES (hereafter named Plaintiff HAYES) in 1989.

21
22 4.2 During the pre-procedure consultations with Defendant CLAYPOOL,
23 MD, Plaintiff HAYES asked questions about the sperm and how it was going to be
24 selected.

25
26 4.3 Defendant CLAYPOOL, MD told Plaintiff HAYES the donor would be
27 selected based upon the genetic profile she chose, such as eye color, hair color, and other
28 physical features. Defendant CLAYPOOL, MD also told PLAINTIFF HAYES that the
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1 sperm would be genetically screened in regard to the health and genetic qualities of the
2 donor.

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4 4.4 Defendant CLAYPOOL, MD, represented to Plaintiff HAYES that he
5 would obtain donor genetic material from anonymous donors such as college and/or
6 medical students who physically resembled Plaintiff HAYES' husband at the time.
7

8 4.5 Plaintiff HAYES agreed to the artificial insemination procedure, but only
9 if Defendant CLAYPOOL, MD, could find a donor with characteristics physically
10 resembling her husband. Defendant CLAYPOOL, MD, informed Plaintiff HAYES that
11 she would need to provide \$100.00 in cash for each sperm donation, because the sperm
12 donation would be provided by college and/or medical students.
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14

15 4.6 Defendant CLAYPOOL, MD, instructed Plaintiff HAYES to track her
16 fertility so that at the appropriate time a donor could be located for the procedure.
17 Defendant CLAYPOOL, MD, represented to Plaintiff HAYES that sometimes a donor
18 may not be available during the time of month when Plaintiff HAYES was able to have
19 the procedure done.
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22 4.7 Plaintiff HAYES's health insurance was billed for the examinations and
23 procedures; however, Defendant CLAYPOOL, MD, asked Plaintiff HAYES to pay
24 \$100.00 cash for the sperm donation each time the insemination procedure was
25 performed. PLAINTIFF Hayes paid the \$100.00 for the sperm donation to Defendant
26 CLAYPOOL, MD, multiple times. Defendant CLAYPOOL, MD, told Plaintiff HAYES
27 the \$100.00 would paid to the sperm donor.
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1 4.8 Defendant CLAYPOOL, MD's representations were false and known by
2 DEFENDANT CLAYPOOL, MD, to be false when he made the representations.

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4 4.9 Plaintiff HAYES believed and relied upon the representations Defendant
5 CLAYPOOL, MD, made.

6
7 4.10 The procedure was attempted at least two times before Plaintiff HAYES
8 became pregnant.

9
10 4.11 DEFENDANT CLAYPOOL, MD, never told Plaintiff HAYES that he
11 intended to use his own sperm during the insemination process. He knowingly concealed
12 the use of his own sperm during the artificial insemination and knowingly allowed
13 Plaintiff HAYES to believe that she was receiving sperm from an anonymous college and
14 /or medical student based upon the genetic profile she had selected.

15
16 4.12 Plaintiff HAYES's daughter, Brianna Hayes, was born June 9, 1990.
17 Brianna Hayes uploaded previously obtained genetic test results to MyHeritage.com on
18 March 6, 2022. Brianna Hayes did so to learn whether some of the health issues she had
19 been dealing with were part of her family genetics.

20
21 4.13 Through genetic testing, Brianna Hayes discovered on or about March
22 2022, that Defendant CLAYPOOL, MD, is her father. Brianna Hayes informed her
23 mother, Plaintiff HAYES, shortly thereafter on or about March 2022.

24
25 4.14 Defendant CLAYPOOL, MD's physical characteristics were materially
26 different than those of Plaintiff HAYES's husband.
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1 4.15 As a direct and proximate result of the Defendant CLAYPOOL, MD's
2 actions, Plaintiff has experienced severe and traumatic emotional distress, sleeplessness,
3 anxiety, and disruptions in her relationship with her daughters as well as other damages.
4

5 **V. FERTILITY FRAUD (Negligent Misrepresentation in the Alternative)**

6 5.1 Defendant CLAYPOOL, MD, established a fiduciary relationship with
7 Plaintiff, HAYES. Defendant CLAYPOOL, MD, knowingly concealed the use of his own
8 sperm without the consent of his patient, Plaintiff HAYES, constituting fertility fraud.
9

10 5.2 Defendant CLAYPOOL, MD, knowingly made misleading statements
11 and representations, which he knew or should have known were being relied upon by
12 Plaintiff HAYES.
13

14 5.3 As a proximate result of Defendant's knowing concealment, Plaintiff
15 suffered damages including the need for counseling, as well as emotional damages.
16
17

18 **VI. MEDICAL NEGLIGENCE**

19 6.1 Plaintiff SHARON HAYES sustained these injuries and damages due
20 to the Defendant CLAYPOOL, MD's failure to exercise reasonably prudent care as
21 medical doctor under the same or similar circumstances in the state of Washington.
22 These injuries and damages to Plaintiff were a direct and proximate result of this failure
23 to use reasonably prudent care.
24
25

26 6.2 Defendant CLAYPOOL, MD, failed to exercise the degree, skill, and
27 learning of reasonably prudent medical care specialists in the state of Washington
28 performing in the same or similar circumstances and the failure to exercise such skill,
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1 care, and learning was a proximate cause of the injuries and damages including
2 damages for any health care expenses incurred, and other economic losses.

3
4 **VII. FAILURE TO OBTAIN CONSENT (Medical Battery in the Alternative)**

5 7.1 Defendant CLAYPOOL, MD, failed to inform Plaintiff of material facts
6 relating to the care, treatment and alternatives provided or not provided to Plaintiff.

7
8 7.2 Defendant CLAYPOOL, MD's actions or omissions were concealed
9 from Plaintiff HAYES knowledge until approximately March 2022.

10
11 7.3 A reasonably prudent patient under similar circumstances would not
12 have consented to the treatment or lack of treatment if informed of the treatment or
13 reasonable alternatives.

14
15 7.4 The treatment, or lack thereof, rendered by the Defendant proximately
16 caused the injuries of Plaintiff and/or were done without her consent.

17
18 7.5 Among the material facts is the failure to inform Plaintiff HAYES that
19 Defendant CLAYPOOL, MD, intended to use his own sperm instead of the sperm from
20 anonymous sperm donors matching the genetic profile selected by Plaintiff HAYES.

21
22 **VIII. TORT OF OUTRAGE (In the Alternative)**

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24 8.1 Defendant CLAYPOOL, MD, willfully engaged in extreme and
25 outrageous conduct with reckless disregard of the consequences under such
26 circumstances and conditions that a reasonable person would know, or should know, that
27 such conduct would, in a high degree of probability, result in substantial harm to another.

28
29 8.2 Defendant CLAYPOOL, MD's outrageous conduct proximately caused
30 emotional distress to PLAINTIFF.

1 **IX. CONSUMER PROTECTION ACT (In the Alternative)**

2 9.1 Defendant CLAYPOOL, MD, engaged in an unfair practice deceptive act
3
4 or practice in trade or commerce that impacts the public interest, by knowingly concealing
5 that he was using his sperm while charging Plaintiff HAYES \$100.00 for third party
6 sperm donations, which caused injury to Plaintiff's property, and which injury is causally
7 linked to the unfair or deceptive act.
8

9 9.2 Upon information and belief, Defendant CLAYPOOL, MD's deceptive
10 practices were part of a deceptive pattern of billing.
11

12 9.3 Defendant CLAYPOOL, MD's actions in violation of the CPA entitle
13 Plaintiff to damages, reasonable attorney fees, costs of suit and other relief as permitted
14 by statute.
15

16 **X. DAMAGES TO PLAINTIFF**

17
18 10.1 Proof of Damages: Plaintiff SHARON HAYES has suffered physical and
19 emotional injuries, injury to property and damages set forth in this Complaint's prayer,
20 which is incorporated by this reference. The amount of damages will be proven at the
21 time of trial.
22

23 **WHEREFORE**, the Plaintiff respectfully prays for judgment against the
24 Defendants individually, jointly, and severally:
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- 26 1. For damages for any health care expenses incurred and damages for loss
27 of love and companionship of her daughters, loss of her daughters'
28 emotional support, and for injury to the parent-child relationship.
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- 2. Economic and non-economic damages including but not limited to, loss of income, medical treatment, emotional suffering, loss of quality of life, damage to reputation, and any other damages proven at trial.
- 3. For any damages allowed under the law related to the above pled causes of action, including damage multipliers, costs of suit, for pre-judgment interest, attorney's fees, and statutory costs; and for such other and further relief as the Court may deem just and proper.

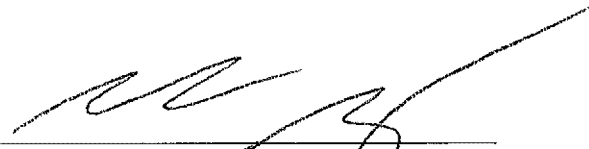
DATED this 11th day of October 2023.

GLP ATTORNEYS, P.S., INC.



Roger J. Ermola, II WSBA #46228
Co-Attorneys for Plaintiff

CASEY LAW OFFICES, P.S.



Brandon Casey, WSBA #35050
Co-Attorneys for Plaintiff