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## Couple alleges doctor performed below standard of care after three failed in vitro procedures

### MEDICAL MALPRACTICE-PHYSICIANS & HEALTH PROFESSIONALS

Obstetrician/Gynecologist

MEDICAL MALPRACTICE-PROCEDURES &amp; TREATMENT

Other

### LOS ANGELES COUNTY SUPERIOR COURT

*Bermant v. Vermesh*, Docket number: LC072543, Van Nuys.

Judge: Stanley M. Weisberg. Trial type: Jury: 7 days.

Verdict/Judgment date: 6/6/2007.

### VERDICT: DEFENSE

Defense verdict as to the standard of care of defendant Vermesh. Prior to trial, plaintiffs dismissed their complaint against defendant Snunit Ben-Ozer, M.D. Vote: 12-0. Deliberations: 1 hour.

### COUNSEL

Plaintiff: Linda Fermoyle Rice, Rice & Bloomfield, Woodland Hills.

Defendant: Raymond L. Blessey, Taylor Blessey, Los Angeles.

### FACTS/CONTENTIONS

According to defendant: Plaintiffs Dana Bermant, a 37-year-old magazine circulation supervisor, and Mike Bermant, a ticket-sales business owner, consulted with defendant Michael Vermesh, M.D., a board-certified obstetrician and gynecologist and board-certified in reproductive endocrinology and fertility, for the first time on March 10, 2003, following a one-year history of infertility. At the time plaintiffs presented to defendant Vermesh, plaintiff Mike Bermant had already undergone fertility testing, which showed no sperm motility, and had been evaluated by a urologist after obtaining a testicular ultrasound. Defendant Vermesh had Mike Bermant undergo supplementary testing to determine if there was any sperm motility. During the initial consultation, Vermesh discussed the options available to plaintiffs, which included in vitro fertilization

using Mike Bermant's sperm versus donor sperm as a possible back-up.

On March 11, 2003, Vermesh began the in vitro fertilization process with plaintiff's sperm. Following embryo transfer, a pregnancy test was performed showing an extremely low Human Chorionic Gonadotropin (HCG) value, consistent with a possible chemical pregnancy, versus residual HCG elevations as a result of hormone treatment. Following plaintiff's possible chemical pregnancy, Vermesh ordered further testing of Mike Bermant's sperm; 86% of Mike Bermant's sperm cells contained damaged DNA—any result greater than 30% is considered to have poor fertility potential. Vermesh informed plaintiffs of the Sperm Chromatin Structure Assay (SCSA) results, and again discussed the options available, including proceeding with treatments using donor sperm. Plaintiffs agreed to proceed with insemination using donor sperm.

The process of insemination using donor sperm began on August 1, 2003. On September 9, 2003, it was determined that plaintiff Dana Bermant had experienced another chemical pregnancy. Given that the donor sperm insemination did not result in a successful pregnancy, Vermesh began the process of ruling out female factors that could be causing the plaintiffs' infertility.

On September 25, 2003, Dana Bermant underwent a second IVF cycle using donor sperm. A series of pregnancy tests that followed, suggested a chemical pregnancy. On October 17, 2003, Vermesh ordered a hysterosalpingogram (HSG) to rule out an anatomical cause of plaintiff's inability to maintain a pregnancy. On October 21, 2003, plaintiff's HSG report revealed plaintiff had a 25% to 30% uterine septum. Further treatment options were discussed with plaintiffs on October 20, 2003, and they decided to proceed with another frozen embryo transfer.

On December 12, 2003, three embryos that had been fertilized from donor sperm were transferred. A January 8, 2004 pregnancy test and subsequent clinical course suggested a tubal pregnancy. Vermesh met with plaintiffs, and planned a further evaluation of the septum using laparoscopy and hysteroscopy, and, if indicated, resection of plaintiff Dana Bermant's uterine septum was to be carried out. However, plaintiffs did not return to Vermesh after January 8, 2004; plaintiffs were seen by Robert Boostanfar, M.D., another fertility specialist.

Shortly after beginning their treatment with Dr. Boostanfar, Boostanfar elected to surgically repair Dana Bermant's uterine septum. Following surgical removal of the plaintiff's septum, Boostanfar performed a frozen embryo transfer. The frozen embryos that were utilized by Dr. Boostanfar were fertilized using Mike Bermant's sperm obtained during the treatment with Vermesh. As a result of the transfer by Boostanfar, Dana Bermant became pregnant, and carried a healthy baby boy to term in March 2005.

Plaintiffs alleged they underwent painful and expensive fertility procedures, but were unsuccessful at maintaining the pregnancies due to the presence of a septum in the uterus which was known to defendant.

Defendant contended that the treatment provided was within the standard of care and did not cause or contribute to plaintiffs' injuries. The husband suffered from severe male factor infertility, and the wife showed no risk factors. Defendant further contended that there was no indication in ultrasounds performed that there was an anatomical explanation for plaintiff Dana Bermant's infertility.

#### CLAIMED INJURIES

According to defendant: Failed in vitro fertilization procedure.

#### CLAIMED DAMAGES

According to defendant: At trial, plaintiffs asked for an amount in excess of \$150,000 in medical and special damages.

#### SETTLEMENT DISCUSSIONS

According to defendant: Demand: \$89,999 from each defendant; Offer: Defendant offered to waive costs in exchange for dismissal.

#### EXPERTS

Plaintiff: Duncan F. Turner, M.D., ob/gyn, Santa Barbara (805) 682-6340.

Defendant: Gregory F. Rosen, M.D., ob/gyn, Reproductive Partners Medical Group, Beverly Hills (310) 855-2229.

#### EXPERT TESTIMONY

According to defendant: Plaintiff's expert, Dr. Duncan Turner, testified that Dr. Vermesh's care and treatment was below the standard of care because he failed to carry out an adequate evaluation of plaintiff Dana Bermant's uterus prior to the initial IVF cycle. In addition, he opined that Dr. Vermesh failed to appropriately act on the HSG findings, and, instead, proceeded with another frozen embryo transfer. Finally, Dr. Turner opined that the septum, to a reasonable medical probability, caused the three losses experienced by Dana Bermant during the time period she was being treated by Dr. Vermesh.

Defendant's expert, Dr. Gregory Rosen, testified that Dr. Vermesh's care was within the standard of care. He opined that plaintiff's evaluation results, including multiple ultrasounds and the HSG, were inconsistent with a large septum. He opined that the chemical pregnancy losses at issue were due to genetic abnormalities in the embryos.

#### COMMENTS

According to defendant: The complaint was filed on September 13, 2005.