

B. Negligence and Wantonness Claims

The second question raised in these consolidated appeals is whether the trial court erred in dismissing the plaintiffs' common-law negligence and wantonness claims. As discussed above, both sets of plaintiffs made clear in their operative complaints that those claims were "alternative" theories pleaded only as a fallback in case this Court held that extrauterine children are not protected by the Wrongful Death of a Minor Act. Since we now hold that the Act does protect extrauterine children, the plaintiffs' alternative negligence and wantonness claims are moot, and we affirm the trial court's dismissal of those claims on that basis.

C. Remaining Issues

During oral argument in these cases, the defendants suggested that the plaintiffs may be either contractually or equitably barred from pursuing wrongful-death claims. In particular, the defendants pointed out that all the plaintiffs signed contracts with the Center in which their

causing the death of the unborn child, no matter how desperately the surgeon and the parents wish to preserve the child's life. In light of that tragic reality, we do not see how any hypothetical plaintiffs who attempt to sue over the consensual removal of an ectopic pregnancy could establish the core elements of a wrongful-death claim, including breach of duty and causation.

embryonic children were, in many respects, treated as nonhuman property: the Fondes elected in their contract to automatically "destroy" any embryos that had remained frozen longer than five years; the LePages chose to donate similar embryos to medical researchers whose projects would "result in the destruction of the embryos"; and the Aysennes agreed to allow any "abnormal embryos" created through IVF to be experimented on for "research" purposes and then "discarded." The defendants contended at oral argument that these provisions are fundamentally incompatible with the plaintiffs' wrongful-death claims.

If the defendants are correct on that point, then they may be able to invoke waiver, estoppel, or similar affirmative defenses. But those defenses have not been briefed and were not considered by the trial court, so we will not attempt to resolve them here. We are "a court of review, not a court of first instance." Henry v. White, 222 Ala. 228, 228, 131 So. 899, 899 (1931). The trial court remains free to consider these and any other outstanding issues on remand.

Conclusion

We reverse the trial court's dismissal of the plaintiffs' wrongful-death claims in both appeal no. SC-2022-0515 and appeal no. SC-2022-