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Fake names upheld in destroyed-sperm case

Panel grants privacy in suit against hospital, saying few situations are 'more devastating'

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Several men suing a hospital over destroyed sperm samples may proceed with their lawsuit under fictitious names, the 1st District Appellate Court ruled.

Northwestern Memorial Hospital challenged both the necessity of the plaintiffs' anonymity in filing the suits and the procedure in which a Cook County judge approved the fictitious names.

In a 29-page opinion written by Justice Stuart E. Palmer, the appellate panel held Friday that intimate details of reproductive health are sensitive enough to warrant the fictitious names.

"Here, those individuals' most basic human right, to have a biological child, has been irrevocably destroyed through no fault of their own," Palmer wrote. "We can imagine few circumstances more devastating, more highly personal and more entitled to privacy."

A wave of lawsuits came after a cryogenic tank at Northwestern failed in April 2012, destroying the semen samples being preserved for patients whose medical treatments or conditions would likely make them sterile.

In January 2013, former circuit judge William D. Maddux — then the presiding judge of the Law Division — issued an order assigning any case related to the cryogenic tank's failure to Circuit Judge Thomas L. Hogan.

In August 2013, 40 men whose semen was destroyed in the incident filed motions with the court asking to appear under

fictitious names in complaints against the hospital. Maddux approved the motions, and the men each filed cases, each as "John Doe," and some with their female partners as "Jane Doe."

Northwestern was served with the complaints with the "Doe" monikers in the case captions, but the plaintiffs also filed versions of the complaints with their actual names that are kept under court seal.

A year ago this month, the hospital filed a joint motion to dismiss three of the complaints, contending the plaintiffs lacked "good cause" to remain anonymous. On Oct. 3, Hogan denied the motion.

Later in October, 10 more plaintiffs obtained permission from Maddux to file under fictitious names.

The hospital moved to dismiss the complaints in November, arguing the orders granting use of fictitious names violated the hospital's right to due process. It argued the orders to file anonymously were void, as they were obtained through Maddux, when a court order directed all matters to Hogan's courtroom.

The hospital contended the plaintiffs did not show that their circumstances were so exceptional that their cases warranted anonymity and that the complaints violated a public policy interest of public access to the courts.

In January, Circuit Judge Irwin J. Solganick denied the hospital's motion, arguing the anonymity was granted before a suit was filed and before any would-be defendant required proper notice.

On appeal, the panel found that the use of pseudonyms is not necessarily limited to children, rape victims and other vulnerable parties, as they are most commonly found in court captions.

"The determination of whether a plaintiff's particular circumstances are 'exceptional' must be made by the court on a case-by-case basis," Palmer wrote.

"This is not a simple case of medical negligence. This is an exceptional situation, where plaintiffs facing grave health issues utilized the defendants' services to preserve their ability to reproduce with the intention that this would be done with their privacy maintained."

The details of the plaintiffs' treatment were never meant to be public, whether or not the cryogenic tank failed, the panel ruled.

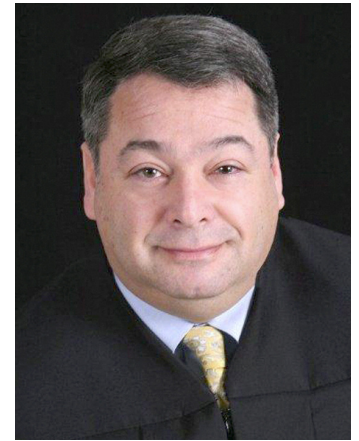
"Publicizing their identities along with the implicit details described above would only victimize them again," Palmer wrote. "We hold that the trial court did not abuse its discretion in allowing plaintiffs to proceed under fictitious names."

The panel also rejected the hospital's arguments that the plaintiffs used improper procedure. It found the hospital was not entitled to notice.

"As the trial court noted, plaintiffs presented their motions and obtained leave to appear under fictitious names 'pre-suit,' i.e., before they filed their complaints initiating the actions against defendants," Palmer wrote.

It's implied in the concept of filing anonymously that the permission is received before the case is ever filed, he wrote.

"Because no actions existed at the time plaintiffs filed the motions, defendants necessarily could not and did not appear in



Stuart E. Palmer

any actions related to the motions, could not be parties to nonexistent actions and, consequently, were not entitled to notice of the motions," he wrote.

The panel found no significance that the motions were before Maddux instead of Hogan. It affirmed the decision of the circuit court. Justices Robert E. Gordon and Jesse G. Reyes concurred.

The hospital was represented by John J. Duffy, Karen Kies DeGrand, Victoria D. Hartstein and Daniel J. Cozzi of Donohue, Brown, Mathewson & Smyth LLC.

Duffy said he disagrees with the court's conclusions and will evaluate next options with his client.

The plaintiffs are represented by Matthew T. Jenkins and Michael K. Demetrio of Corboy & Demetrio P.C.

"We're pleased with the opinion and happy that the court recognized the importance of protecting these patients' privacy," Jenkins said.

The case is *John Doe No. 1, et al., v. Northwestern Memorial Hospital, et al.*, 2014 IL App (1st) 140212.