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"I see cross-state boundary issues as something family law practitioners need to keep their eye on," says Eva Juncker, a partner at Cipriani & Werner's Washington-area office and co-chair of its DMV Family Law practice group.

Alabama, Maryland decisions focus practitioners' attention on IVF

BY HOPE KELLER

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Two judicial decisions, one in Alabama and one in Maryland, have focused Maryland family law practitioners' attention on matters related to in vitro fertilization, or IVF.

The Alabama Supreme Court last month ruled that frozen embryos are children with legal rights. In Maryland, the Appellate Court in September elevated an unreported opinion to a reported opinion in a

case involving a dispute over the disposition of a stored embryo.

While attorneys say they do not foresee Maryland going the way of Alabama, they do see potential issues arising from so-called "personhood" laws in other states.

"I don't see any of us in family law in Maryland preparing for a change in the definition of 'minor child' or a chilling effect on IVF in Maryland," said Eva Juncker,

a partner at Cipriani & Werner's Washington-area office and co-chair of its DMV Family Law practice group. "The issue is more: What do we do if somebody has a custody order dealing with cryopreserved embryos? I see cross-state boundary issues as something family law practitioners need to keep their eye on."

In Maryland, laws dealing with custody, visitation and child sup-

port come into effect only once a child is born.

Continued Juncker: “We’ve got the full faith and credit provisions, where sister states are to honor the orders from another jurisdiction,” Juncker said. “But what happens if it’s an order from another jurisdiction that is against the public policy of the state that somebody’s coming into?”

Unless all 50 states pass laws allowing IVF to proceed without interference, Juncker said disputes between states are likely.

“Family law so rarely goes in a federal context, but one of the ways it goes into a federal context is when you have states that aren’t honoring one another’s orders,” she said.

Juncker outlined a hypothetical scenario in which a Maryland couple goes to an Alabama fertility clinic – because a specialist there deals with their particular fertility issue – and a dispute arises over which state’s laws apply to their frozen embryos.

“If that can’t be decided, does that then jump to a federal court?” she asked. “And obviously once you jump to a federal court, things have the potential to go to the (U.S.) Supreme Court.”

Joanne Rosen, a practice professor at Johns Hopkins University’s Bloomberg School of Public Health and co-director of the school’s Center for Law and the Public’s Health, worried about such a course.

“I think it would be risky to try to find a path that would allow you to have the question addressed by the Supreme Court, at least as the court is currently constituted,” Rosen said.

Family law practitioners say they have been hearing from clients who are worried about personhood laws elsewhere in the nation. Nineteen states consider fetuses to be people at some point during pregnancy.

“Clients who are about to freeze



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Family law practitioner David Diggs says a recent Maryland Appellate Court decision provides attorneys with “pretty firm guidelines” about how to handle cases involving embryos.

their embryos (are asking), “Tell us, do you think in light of what happened in Alabama should we be concerned?”” said Sogand Zamani, of Zamani & Associates in Washington, D.C.

Zamani said she asks these clients whether they anticipate moving – and, if so, where.

“I can only advise you as to Maryland and D.C. law, and if you store your embryos somewhere else, our choice of law can only go so far,” said Zamani, who added that people often store frozen embryos in western states, where many centers for cryopreserved genetic material are located.

Zamani said clients also have been asking her about a Maryland case, *Jocelyn P. v. Joshua P.*, which involved a dispute between a former husband and wife who had created a frozen embryo. The former husband wanted the embryo destroyed, while his ex-wife wanted to use it to try to have a baby.

The Maryland Appellate Court in June overturned the trial court’s decision and awarded the embryo to the former wife, finding that a previous oral agreement between



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Maryland’s *Jocelyn P. v. Joshua P.* ruling allows parties facing the same or a similar situation to rely on the opinion, says Shannon Boisseau, of Levin Gann in Towson, co-counsel for one of the parties in that case.

the progenitors to give any frozen embryo a chance at life “no matter what” was binding. The Maryland Supreme Court in September declined to hear an appeal by the former husband. That month the court also elevated the previously unreported opinion to a reported opinion.

In so doing, the court allowed parties facing the same or a similar situation to rely on the opinion, said Shannon Boisseau, of Levin Gann in Towson, co-counsel for the former wife.

“They can use the principles of contract interpretation and how they were referenced in this opinion to support their position going forward,” Boisseau said.

David Diggs, of The Law Office of David V. Diggs in Millersville, said the *Jocelyn P. v. Joshua P.* case provided attorneys with “pretty firm guidelines” about how to handle cases involving embryos but noted that the issue remained complicated: “It’s quite a can of worms.”