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Sofia Vergara, Sherri Shepherd may make women rethink surrogate, IVF procedures



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Outside of talking about prenups, there's probably no other conversation more uncomfortable to have with a significant other than discussing child support, especially after the two have parted ways. But what happens when the couple splits up before the baby is even born and/or not birthed by the mother at all?

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Sofía Vergara, most popularly known for “Modern Family,” is already going through an ongoing legal battle with her ex-fiance Nick Loeb over frozen embryos. Although the two parted ways before marriage, a judge ruled in favor of Loeb to continue on with his civil case to gain custody of Vergara’s female embryos. According to [Daily Mail](#), he refers to the embryos as “his daughters.” He’s even named the embryos Emma and Isabella, [via Slate](#). And he wants them to reach the world regardless of their breakup and the contract confirming that the “resulting embryos would be brought to term only with both parents’ consent” after twice having vitro fertilization in 2013.

While Vergara and Loeb continue to battle it out in court, another celebrity is dealing with the effects of child support after the marriage ended. Sherri Shepherd’s ex-husband Lamar Sally wants more child support, according to [Essence](#). Lamar Jr., their son, was welcomed via a surrogate after the latter couple had already split up. The divorce happened after the surrogate was already pregnant with Lamar Jr. from her ex-husband’s sperm and a donor egg. Shepherd, who has no biological connection to the child, did not want her name on the birth certificate. [People magazine](#) reports that the judge still ordered her to pay child support and keep her name on the birth certificate regardless.

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Lamar Jr., who is now 2 years old, has a genetic disorder known as [G6PD](#). Commonly linked to anemia and oxidative stress, organic foods and homemade meals are a requirement to keep G6PD under control. Sally now wants an increase in child support after he estimated Shepherd's income nearing \$3 million (an increase of \$1.8 million after their last court case) to help him take care of the child. Sally, who is a substitute teacher, also wants Shepherd to pay all of his remaining legal fees from their first trial together and the current one to expand child support coverage.

Changes in circumstance after the child has been conceived

In Sherri Shepherd's case, the child was conceived before the couple divorced. Fair or unfair, Sherri has a parental obligation to Lamar Jr., since she is listed as his mother on his birth certificate. Legally, she is obligated to make child support payments.

Child support laws vary per state. In most states, one parent may request a modification of child support payments when there has been a substantial change in circumstances. Sally can assert several changes in circumstances (i.e., Sherri's increased salary and the health needs of their son).

It is up to a judge to decide if these changes warrant an increase in child support payments given to the father of the child.

Changes in circumstance before the child has been conceived

IVF has enabled many couples who otherwise would not be able to conceive a child to become parents. The law is still trying to catch up to medical technology. There are many unanswered legal questions surrounding IVF.

Many state legislators have not enacted laws that stipulate who retains custody rights to embryos after the couple has split. The U.S. Supreme Court has yet to answer the question of whether one partner should be able to conceive a child with the embryos, after the couple has split. State courts have been left to address this issue, and their decisions have been all over the board thus providing no real clarity on the issue.

Couples exploring IVF can protect their interests by entering into written contracts before commencing the IVF process. The agreement would address questions such as:

- If a couple wants to successfully have two children through IVF, what happens to the unused embryos? Are they donated or destroyed?
- What happens if the couple breaks up before the embryos are implanted? Can either party still use the embryos to have children?
- How many embryos does the couple want to create?
- Can the embryos be placed up for adoption if the couple no longer wants to use them?
- If one partner dies, can the other partner still implant the embryos?

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Even with a contract in place, a couple that has parted ways can still find themselves in court. This could be because one party filed a lawsuit against the other to enforce the terms of the contract. Or, the other party filed a lawsuit to have the terms of the agreement invalidated or interpreted by the court because the contract terms are ambiguous.

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While it may appear that Vergara’s fertility contract is clear — “embryos would be brought to term only with both parents’ consent” — there is still a silver lining that her ex-fiance may base his case on. [The Daily Beast](#) reports that the contract did not provide details on how the embryos would be treated if the couple broke up. If the judge sides with Loeb, the parental rights of the embryos could still be given to him. This could potentially make Vergara an egg donor instead of being classified as a parent. This could also greatly affect the chances that Vergara will be able to completely separate herself away from the embryos. Here is yet another example of why contracts need to be clear on all scenarios, including the worst case ones.

Have more questions about family law issues? Contact [J. Paye & Associates](#) today.

Shamontiel L. Vaughn contributed to this blog. Find out more about her at [Shamontiel.com](#).

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