



RABBI GIDEON

**Machon Puah for Fertility and
Gynecology in Accordance with Halacha**

WEITZMAN

Having Children, Or Not

Last week we started looking at the Nachmani case in which a separated couple, Ruth and Daniel Nachmani, fought in the courts for the custody and use of their frozen fertilized eggs.

To recap, the Nachmanis were unable to have a child and decided to undergo fertility treatment using a gestational carrier. Ruth and Daniel underwent fertility treatment and created fertilized eggs that were frozen in a clinic in order to be implanted in the surrogate carrier. Some time after this, before they had the chance to use these eggs Daniel left Ruth and went to live with another woman who had a child together and so did not need to use the frozen eggs. Ruth was left alone and saw no reason that she would not use the eggs. She applied to the hospital to release the fertilized eggs into her possession for the purpose of the surrogacy procedure, but Daniel opposed this.

The hospital refused to release the fertilized eggs since they could not make the legal and ethical decision as to who possessed ownership of the eggs. This led to a long and complex legal battle in which various courts debated the question of the ownership of the eggs and the permissibility

to use them. The District Court agreed to produce an order against the hospital that would force them to release the fertilized eggs to be used by Ruth and the gestational carrier. But Daniel appealed the judgment of the District Court to the Supreme Court.

The Supreme Court overturned the District Court's decision, and so the hospital were under no obligation to release the fertilized eggs, that remained frozen and unusable. But the battle did not end there, and Ruth petitioned the Supreme Court to reconsider the matter and hold a further hearing.

While the first decision of the Supreme Court had been made by five judges, the second hearing was with a wider forum of eleven judges. They debated the previous decision and a majority reached the decision to overturn the previous ruling and permit Ruth Nachmani to use the eggs. The late Judge Tzvi Tal sat on the hearing and came to the decision that she could use the eggs. One of his justifications was the Jewish value of having children, if Daniel's position was upheld then the eggs would never become life. The only chance that they had to become life was to use them. In his words "Furthermore, Jewish heritage, which is one of the fundamental principles of the Israeli legal system, considers having children an important value, whereas not having children is not considered a value at all." ■