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Iowan makes heartfelt push for unborn children's rights

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Laura Heimlicher says she was devastated when her unborn son died, stunned when local attorneys declined to take her medical lawsuit, and angered that Iowa law does not allow wrongful death claims for fetuses.

A northern Iowa jury still awarded the Spirit Lake woman and her husband \$1.7 million for loss of companionship.

But Iowa law does not allow parents to sue for wrongful-death damages in Iowa, if their child suffers injuries before birth and does not survive outside the womb.

Heimlicher, as a result, was not allowed to mention when she testified in court the emotional trauma she had suffered in February 2004 from the failed birth of her son, Cole Christopher Heimlicher.

"It was the most surreal experience," said Heimlicher, 38, a mother of five. "It was a huge deal for them to allow even one picture of Cole during the trial."

U.S. Magistrate Judge Paul Zoss upheld the jury's verdict in U.S. District Court, but reduced the award to \$1.55 million. The Heimlichers and Dickinson County Memorial Hospital later settled the case for a confidential amount to avoid further appeals.

The original lawsuit sought damages for funeral and burial expenses, medical bills and pain Heimlicher had suffered prior to the birth. Several Iowa law firms initially refused to take the case, she said, because the cost of the lawsuit outweighed the likely award.

"How the hell does one articulate their sense of loss, for one of the most important things in our lives, without expressing some element of emotional distress or grief?" said Heimlicher's attorney, Brian McKeen of Detroit. "It's like trying to separate a scrambled egg."

At least 36 states have enacted "fetal homicide" laws that would allow such claims to proceed, according to the National Conference of State Legislatures. Such laws often face heated debate between abortion opponents who call for explicit protection of mother and fetus, and abortion rights advocates who fear a slippery slope that could limit a woman's right to choose. Most of the laws, however, relate to deliberate acts of violence.

Heimlicher was eight months pregnant in February 2004 when she began to experience vaginal bleeding, according to the lawsuit in U.S. District Court. She called 911 and, about 15 minutes later, her water broke.

The first medic who arrived repeatedly told her to sit down even though the pain was less severe when she stood, according to the lawsuit. Later, medics reportedly insisted that she lie down on a cot despite her requests to walk out her front door.

During an ultrasound at the hospital, a technician allegedly spotted what she described as an "abnormality," but told doctors that the placenta lining had not separated from Heimlicher's uterus. Heimlicher said she continued to feel severe pain and bleed as she was driven to a larger hospital in Sioux Falls, S.D.

Along the way, a nurse who accompanied Heimlicher had difficulty measuring the fetal heart rate but allegedly did not notify the hospital in advance. When Heimlicher's condition worsened, the lawsuit alleges, the nurse opted not to divert them to a nearby hospital in Worthington, Minn.

The separated placenta lining — known as an "abruption" — allowed blood and clots into the uterus, according to the lawsuit. The baby was unresponsive during birth at Sioux Valley Hospital, and declared dead 17 minutes later despite attempts to revive him.

McKeen said the 102-mile late-night drive in snowy weather was unnecessary and created "an extraordinary risk for the life and health of the baby."

"It's tragic," he said. "This was a completely preventable tragedy. There was nothing to be gained by this transfer."

Lawyers for Dickinson County Memorial Hospital and Dr. James Steele, the doctor named in the lawsuit, denied all of the accusations in court papers.

Waterloo lawyer Stephen Powell, who represented Steele, could not be reached for comment. Joseph Fitzgibbons, an Estherville lawyer who represented the hospital, said he could not comment.

Similar cases have touched Iowa before. In 2007, a federal judge ruled that state law did not allow parents to sue for wrongful death in cases that involve a fetus.

The 8th U.S. Circuit Court of Appeals upheld the decision against Toni Scadden and Bill Storm, a Nebraska couple who sued after their son was stillborn in a Sioux City hospital. Appeals court judges did not address the dispute and dismissed the claim because the case did not fall within their jurisdiction.

Heimlicher said she wanted to speak out about her son's death and the trauma she experienced to help other parents who fall into similar circumstances. Heimlicher was so sick after the birth, she said, that she could not attend her son's funeral.

"I want to move forward," she said. "I don't want Cole's death to consume me in a negative manner. I want to use his death to further the rights of these unborn children whose families may have suffered this type of loss. I want in some regard to help them seek comfort through our justice system."
