

Can state seize unborn child? Wisconsin to decide

Mother-to-be hospitalized as drug addict

By JUDY PASTERNAK
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WAUKESHA, Wis. — The Wisconsin Supreme Court is expected to decide whether county officials acted legally when they took custody of an unborn child a month before its due date.

The mother-to-be was using cocaine, drugging the developing baby. The local social services agency asked Juvenile Court to place the fetus in Waukesha Memorial Hospital. A judge issued a detention order to the Waukesha County sheriff.

The 24-year-old addict had no say in the matter. She was not under arrest, nor charged with any crime. Yet she was confined.

What happened to Angela M.W. in September 1995 is a logical extension of the Roe vs. Wade case, says the county's Assistant Corporation Counsel William Domina.

His position, affirmed by the state Appeals Court, has heartened some youth justice experts. At the same time, it has appalled the American Civil Liberties Union, as well as some women's law specialists and public health advocates who contend that it would result in juvenile courts acting as pregnancy police, overseeing an expectant mother's way of life.

Twenty-four years ago, the U.S. Supreme Court decided in Roe that a woman had a right to choose whether to have an abortion or carry her pregnancy to term.

But as the fetus grows, the Supreme Court ruled, the state's interest — its right to intervene and regulate — grows as well.

It is "a very important statement about choice and the consequences of choice," Domina said. "If an individual chooses to carry a pregnancy to term, what does that mean?"

"Choice entails responsibility," said Margaret Zimmer, another assistant corporation counsel. "That's been given too little attention."

Plenty of attention is being paid now. The National Association of Counsel for Children and the prosecutor in neighboring Milwaukee County weighed in with legal briefs in support of recognizing the Juvenile Court's authority over babies-to-be. Eleven health, women's and children's organizations banded together

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to argue against seizing fetuses and depriving pregnant women of their liberty. They say the Roe decision applies only to the power to restrict abortion.

"This is heady stuff," said Deborah Mathieu, a University of Arizona political scientist and author of a recent book about prenatal protection.

She predicts the state Supreme Court justices will not uphold the lower-court decisions.

"But if they do, it puts pregnant women in Wisconsin on notice," she said. "They're liable to be snatched."

A second case has cropped up in Ashland. Last spring, a Juvenile Court judge ordered police to take a fetus — and of course, the woman carrying it — to a hospital because a physician had misgivings about the small-boned mother's plan to deliver the baby at

home with the help of a midwife.

Robin Shellow, the lawyer for Angela M.W., sees a "huge right-to-life conspiracy" behind the legal initiatives. "There's clearly an agenda which is being foisted upon the courts at this point," she said.

At least one anti-abortion activist, however, expressed qualms about imposing so much government control in the name of the fetus.

"We've got to look at this very carefully," said Susan Armacost, legislative director of Wisconsin Right to Life. "It could be an incentive for women to have abortions."

Attempts at criminal prosecutions of pregnant women who endanger their fetuses have brought mixed results over the past 15 years, with many cases dropped and most lower-court convictions overturned on appeal. In July, however, the South Carolina Supreme Court let stand the

manslaughter conviction of a woman who shot herself in the abdomen when she was more than 20 weeks pregnant, killing the fetus.

And in Wisconsin, a judge recently cleared the way for the trial of a Racine woman on charges of attempted murder. She allegedly drank alcohol in a bar while pregnant, saying she didn't care if the baby died because she didn't want it.

To Domina, Waukesha County's approach to fetal health is more humane. "Our system is about child protection, not punishment," he said. Angela M.W. "didn't go to jail. We were working toward reunification of the family as soon as she could be a safe parent."

Still, in a matter this complicated, said Mathieu, "there's nothing you can do that's good, that's not going to be, for someone involved, harmful and wrong."