

Houston Chronicle
Copyright 1999 Houston Chronicle

July 28, 1999

Section: A1

LIFE-CHANGING DECISIONS / Comatose woman's fetus focus of battle

RON NISSIMOV

A Houston man is involved in a potentially precedent-setting legal fight to keep a 15-week fetus alive in the womb of a comatose woman who may be legally brain-**dead**.

Scott Law, 35, claims he is the biological father of the fetus and the common-law husband of **Tammy Martin**, 34, who fell into a coma July 18, apparently after a blood vessel in her brain ruptured.

Law believes that officials at Memorial Hospital Northwest are conspiring with Martin's parents to allow her and the fetus to die and prevent his participating in the decision-making process.

State District Judge Scott Link on Friday issued a temporary restraining order preventing the hospital from withdrawing any life-support treatment until a further hearing Aug. 5.

"Basically, when we had our first meeting, they said maybe it's best to let the baby go, that they had already made funeral arrangements," a distraught Law said at his attorney's office this week.

"The baby means everything to me, I've never had any children. I feel the baby has every right to have a chance to live. They develop technology to be able to make things happen like this."

Martin's stepfather, J.D. Cox, 58, of Brackettville in South Texas, acknowledged Tuesday he wants his daughter taken off life support.

"We wanted the little baby to go to heaven with her mama," said Cox, who married Martin's mother, Joyce Cox, 28 years ago. "That's not God's work to keep a woman alive when she's already dead."

Cox said Martin was an alcoholic and a cocaine addict. Doctors have told him the fetus would likely have severe problems such as retardation or

deformities if it survives to when it could be removed from the womb at about 25-28 weeks into the pregnancy.

"They've told me there's already four strikes against the baby because she was a cocaine addict, an alcoholic, she's brain-dead and the baby will be premature," Cox said. "If the doctors assure us the baby will have 10 fingers and 10 toes, we might reconsider."

Patty Riddlebarger, spokeswoman for the Memorial-Hermann Healthcare System, said she could only offer a few comments because of confidentiality rules. Hospital attorneys were not present during Friday's temporary-restraining order hearing.

Riddlebarger said the mother and fetus are receiving "the highest level of medical care" and that a test to determine if Martin is brain-dead has not been done for medical reasons. She declined to elaborate.

Law and Cox said the test was planned for last week. Law said doctors called it off after he raised concerns that it might harm the fetus, and Cox said the restraining order has shied doctors away from performing the test.

"Otherwise (if the test was done), we could have had all this terminated. I had the funeral all paid," Cox said.

Elizabeth Heitman, associate professor of ethics at UT-Houston Health Science Center, said a fetus so young will generally have a difficult time developing properly if the mother is in a coma. She said she is aware of only one similar case - in Germany two years ago when doctors kept a woman artificially alive to try to save a 16-week-old fetus.

"Everybody (mother and fetus) died," Heitman said. "When you have a mother with profound neurological damage, it affects other organs, and the other organs affect development."

Law said he does not want to discuss in detail what caused Martin's injury, because Cox may be trying to file criminal charges against him. Law claims Martin hit her head against a car door before going to sleep and seemed fine until she started throwing up in the morning and losing consciousness.

Doctors told him he had no way of knowing what had happened to Martin and that he did everything he could, he said.

But Cox said he plans at the least to file negligent homicide charges because Law should have brought Martin to the hospital sooner. He claims Law

possibly hit Martin on the head and is trying to prevent her from being ruled brain-dead because he fears an autopsy.

Law said the allegations are absurd.

The Texas Natural Death Act establishes procedures that protect doctors and hospitals from lawsuits when withholding life-support care to terminally ill patients.

Under the law, if a patient ruled to be terminally ill did not previously specify whether he or she should be kept alive artificially, "surrogate decision-makers" are empowered to make such decisions.

Law's attorney, Jared Woodfill, said a spouse has the top priority as a surrogate decision-maker, and that under Texas law a common-law husband has the same rights as a legally married spouse.

Riddlebarger said Memorial-Hermann recognizes a common-law marriage only if the couple has filed such a declaration with a court or if a court orders that the marriage be recognized.

Woodfill said that under Texas law, common-law marriages can be declared if a couple lives together and agrees to present themselves as wife and husband. He said Law and Martin met the criteria and he will ask a judge Aug. 5 to rule his client to be Martin's common-law husband.

Woodfill said Law cannot now assert his legal rights as the biological father, because the fetus is not born.

Until the temporary restraining order was granted, Law said, hospital officials kept him in the dark about Martin's treatment because they considered him simply a "boyfriend." He said he has not been granted access to her medical records.

Law said he and Martin lived together the last 10 months and exchanged wedding rings because they intended to marry.

"It hasn't really hit me that she might die," Law sobbed. "I don't know if I can live without her, she was my life."

But Cox said he will contest Law's claim to be the common-law husband.

He said Ben Bruce, with whom Martin had lived for more than seven years, may be the biological father and will soon file legal papers demanding DNA

testing and that Bruce be declared the common-law husband.

Bruce acknowledged he plans to file a legal claim "as a family" with the Coxes, but declined further comment.

"He wants to be declared the father so he can let the baby die," Law said.

Martin was facing two years in prison after pleading guilty to reckless injury to a minor. She was charged with injecting cocaine into Bruce's minor daughter and then violated her probation.

Another legal issue is a provision in the Texas Natural Death Act that states, "(A) person may not withdraw or withhold life-sustaining procedures under this chapter from a pregnant patient."

Woodfill claims this means that the hospital must keep Martin alive because she is pregnant.

Riddlebarger said hospital attorneys told her the law is unclear.

Cox said that for the first two days after Martin was admitted to the hospital, officials told him they had to keep her alive because she is pregnant.

"They said that as long as the fetus had a heartbeat, their hands were tied," Cox said.

But on the third day, he said, hospital officials told him they consulted with their "legal team" and determined that treatment could be withheld.

Law said he never heard about these discussions.

Baruch Brody, director of the Center for Medical Ethics and Health Policy at Baylor College of Medicine, said attorneys frequently interpret the provision to mean treatment may not be withheld from pregnant women. But as an ethicist, he prefers to interpret it to mean that the law does not apply to pregnant women.

The provision, he said, means that doctors treating terminally ill pregnant women are not protected from liability by the state law and must decide whether to continue or stop treatment based on common-law rights.

Houston Chronicle
Copyright 1999 Houston Chronicle

July 31, 1999

Section: A1

Care for fetus could end if mom ruled brain-dead

RON NISSIMOV

Memorial Hospital Northwest, ordered last week to do everything possible to keep a comatose woman and her 16-week-old fetus alive, contends that it does not have to try to save the fetus if the woman is declared brain-**dead**.

Scott Law, 35, of Houston was named **Tammy Martin's** temporary guardian Friday after he presented a hospital attorney's letter saying that the court-ordered life support would be "inapplicable" if Martin, 34, is ruled brain-dead.

Harris County Probate Judge Rory Olsen's ruling means Memorial Northwest must seek Law's permission before performing any medical treatment on Martin.

Law, who says he is Martin's common-law husband and father of the fetus, wants her kept on life support - even if she is ruled brain-dead - to try to save the fetus, whose heart is still beating.

Martin's parents want her and the fetus to be allowed to die, and Law believes the hospital is doing everything it can to bring this end about.

Hospital attorneys were not present at Friday's hearing, and spokeswoman Patty Riddlebarger said she could not comment because of patient confidentiality rules.

Olsen named Law as temporary guardian until Sept. 28, and scheduled a hearing for Aug. 13 to determine whether the guardianship needs to be continued. The temporary order does not allow Law to authorize termination of life support.

Law and his attorney, Michael Stanley, declined to comment. But in court papers filed Friday, Law said Martin and the fetus "should be protected from a physician of the hospital's choice, which has shown by its conduct its hostility to (Law's) efforts to preserve and protect the lives of his wife and

child."

The papers also say Martin is showing "increased activity when spoken to in the presence of (Law)."

Martin's brother, Lonnie, 40, of Splendora, said that he learned about the latest legal maneuver from a reporter and that his parents, J.D. and Joyce Cox of Bracketville, had not heard about it.

"I can't believe they gave him temporary guardianship," Martin said. "We believe the baby should go to heaven with her mama."

Law was granted a two-week temporary restraining order July 23 - five days after Martin became comatose from a blow to the head - that instructed the hospital to do everything possible to keep Martin and the fetus alive.

In that order, state District Judge Scott Link said the hospital was restrained "from withholding treatment necessary to keep Tammy Martin and her unborn child alive and from in any way facilitating or expediting the death of Tammy Martin and Mr. Law's unborn child."

The hospital has apparently interpreted the order to mean it does not have to keep the fetus alive if Martin is ruled brain-**dead**.

In a letter dated Wednesday, hospital attorney Gregory Sapire said Link's order "would be inapplicable if **Tammy Martin** were found to have lost all spontaneous brain function."

Link's order would have lasted until Aug. 5, when a hearing is scheduled on Law's request to be declared Martin's common-law husband. But the order could presumably have been extended.

Since Tammy Martin did not specify if she should be kept alive by artificial means if she was ruled terminally ill, state law allows a "surrogate decision-maker" to make that determination.

If Law is declared Martin's common-law husband, he would have top priority in making such a decision. Currently, Martin's mother has that authority, family members have said.

Although Sapire's letter said Martin has not been ruled brain-dead, Lonnie Martin has said that doctors told him twice last week that they believe she is. He said a test that could make an official determination was scheduled for last week but was put off until at least Aug. 5 for "legal reasons."

Riddlebarger has said the test has not been done for "medical reasons." The apnea test measures the brain's ability to produce a breathing response when ventilating machines are turned off.

Martin's family says Law is not her common-law husband and may be criminally responsible for her death.

There is no point to keep her on life support if she is ruled brain-dead, they said, because she was an alcoholic and used cocaine and the fetus has little chance of being healthy.

Martin's former boyfriend, Ben Bruce of Houston, has said he plans to file court papers maintaining that he is her common-law husband. The family has said Bruce may even be the father of the fetus.

Law says Martin hit her head on a car door and fell unconscious several hours later. Even if she is ruled brain-dead, he says, she should be kept on life support at least until the fetus is old enough to be removed from her womb, between 23 and 28 weeks.

August 14, 1999 08B

Section: Metro / South Texas

Docs say mom, fetus dead; Finding ends fight over life support

HOUSTON - Court-appointed doctors have determined a comatose woman and her 17-week-old male fetus both are **dead**, effectively ending a bitter legal dispute over life-support, attorneys said Friday. A neurologist determined late Thursday that 34-year-old **Tammy Martin** is brain-**dead**, and a neonatologist found no evidence of a fetal heartbeat, said Craig Smyser, attorney for Memorial Hermann Hospital Northwest. The independent doctors were appointed by Harris County Probate Judge Rory Olsen to confirm the results of hospital tests performed Monday. Olsen has presided over the court case pitting Martin's boyfriend, Scott Law of Houston, against her relatives. Law, 35, believes he's the father of the fetus and filed suit to keep Martin on life support after she slipped into a coma July 18. Martin's relatives argued that she was brain dead and that the fetus had little chance for survival because she abused cocaine and alcohol. Smyser said the hospital hopes to bring a quick end to the saga. "We're trying to get a court hearing now. We want to have a hearing this afternoon to allow the natural processes which are already starting to be allowed to finish and to allow the family to handle Tammy as they see fit," he said. Martin's body will be kept on life-support until the judge rules the machines can be turned off. Olsen's court coordinator said she was trying to set up a hearing.

Martin's brother, Lonnie Martin of Splendora, said his family is glad to have the doctors' official rulings.

"We do have a sense of relief, but there's also a very big sense of grief because now we're going through two deaths," Martin said. "This will bring some closure for my mother and for my 9-year-old niece, Tammy's daughter." Law's attorney, Michael Stanley, said his client has been "devastated" since learning that the fetus might be dead on Monday. "He needs to talk to the doctors and understand what's going on," Stanley said. Hospital spokeswoman Patty Riddlebarger said the doctor examining Tammy Martin Thursday performed an apnea test, the definitive exam to detect brain activity. Doctors had previously refused to conduct the test for fear it might harm the fetus. Lonnie Martin said the family still wants Law held responsible for Tammy's death. "It's not over yet. It's not over by any

means," he said. "We intend to pull ourselves together and bury my sister and the fetus so they can go to heaven. Then we'll go from there," he said.

Harris County Sheriff's Lt. John Denholm said an investigation of the events leading up to Martin's injury has been referred to the district attorney's office for presentation to a grand jury. The sheriff's department routinely refers traffic fatalities to prosecutors.