

The Daily Item

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Lawyer to argue fetus' rights

Lynn attorney: Unborn should be able to sue mother

LYNN

BY THOR JOURGENSEN
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Lynn lawyer Michael Mahoney gets 15 minutes today to try to convince seven justices of the Supreme Judicial Court that a fetus has the right to sue its mother.

If the judges agree with Mahoney, they will send the case back to Worcester Superior Court for a jury trial to weigh the injuries the now 4-year-old girl suffered in a car accident and to determine the size of the insurance payment. "This is a case that involves focusing on specifics, including a little girl with \$20,000 in medical bills," Mahoney said.

Attorneys for Commerce Insurance Co. disagree.

They convinced a Superior Court judge in 2002 to throw the case out and argued that state law does not require a mother to extend a legal "duty of care" to her unborn child.

Mahoney appealed the case, and the SJC took the rare step of taking it from the state appeals court.

"I know lawyers who have practiced 25 years and haven't seen the court do this," Mahoney said.

Mahoney's case dates to Jan. 7, 1999, when Christine MacDonald of Worcester was involved in a car accident with another driver. MacDonald was 32 weeks pregnant and the impact of the collision ruptured her placenta. Her daughter was delivered by Caesarian section four days after the accident, and spent three weeks in the hospital.

The girl has respiratory problems Mahoney said are related to the accident. He will ask the court to follow a simple line of logic today when he asks them to break legal ground.

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Prior to 1975, state law held that families could not be subject to lawsuits between family members out of fear that such suits would tear apart the family unit. Children in the past three decades, including a girl injured in her family's pizza shop, have won the right to sue a parent so that the family can collect insurance payments.

Mahoney, with the assistance of partner Aline Carriere, will ask the court to extend the "duty of care" MacDonald owed to everyone else on the road under state law to her unborn child.

"The way the law is now, the mother currently owes a duty of care to everyone else except one — her unborn child," Mahoney said.

He is taking care to focus his argument on MacDonald's obligation as a driver and, in his own words, to avoid "a moral morass and create a general duty between a mother and her unborn child."

But Massachusetts Lawyer's Weekly News Editor John Cunningham said Commerce's attorneys will likely argue today that Mahoney is trying to pry open a Pandora's box of legal suits centering around fetuses' rights.

"He's asking the court to take the next step. If they do, it will open questions as to how far this right extends," Cunningham said.

A graduate of Boston College Law School who grew up in Lynn, Somerville and North Reading, Mahoney has practiced personal injury law on Blossom Street extension since 1996. He hopes the high court will rule on his case early next year.

"This is definitely my most unique case. It's one that will give me a great sense of justice," he said.