



Written by [Dave Bohon](#) on March 15, 2012

## Jury Awards Parents of Down's Daughter \$3 Million for "Wrongful Birth"

While the Levys insist that they love their daughter, their attorneys argued that the hospital should pay for the extra care Kalanit will require over her lifetime because its staff failed to diagnose the chromosomal condition that causes Down's syndrome. The 12 jurors in the case unanimously agreed, reported the *Oregonian*, finding "Legacy Health negligent on five fronts, including that the doctor who performed the prenatal test took too small of a sample from Levy's womb to be useful. They concluded that employees — including the doctor who took the sample and lab workers who analyzed it — failed to communicate, leading to the erroneous result."



In November 2006 the Levys, who were already the parents of two boys, "were surprised to learn Deborah Levy was pregnant again," recalled the *Oregonian*. "Because she was 34, she and her husband were concerned about the possibility of genetic disorders. Experts testified that about 1 in 250 women that age give birth to a baby with Down syndrome. A first-trimester screening estimated Deborah Levy's chances were even higher: 1 in 130."

When Mrs. Levy went for an exam 13 weeks into her pregnancy, her doctor performed a prenatal test called chorionic villus sampling (CVS). "A Legacy lab tested a small amount of tissue that the doctor had removed from Levy's womb," the paper reported. "The results showed the Levy's daughter had a normal chromosomal profile." While follow-up ultrasounds appeared to show a likelihood that the child would be born with Down's syndrome, the Levys said doctors assured them that their daughter would be normal. Additionally, the Levys attorneys said, medical staff failed to do a follow-up amniocentesis, another prenatal test for Down's syndrome.

The couple's attorneys argued that in performing the CVS procedure the doctor mistakenly removed maternal rather than fetal tissue from Mrs. Levy's womb, and that the hospital's lab staff did not recognize the tissue as maternal. In its defense, the hospital's attorneys "called on experts who said the CVS was properly done, and that the results showed the girl has a normal genetic profile because she has mosaic Down syndrome, meaning a significant number of her cells don't contain an extra 21st chromosome."

According to the *Oregonian*, the jury was emotionally moved by the Levys, who were one of the rare couples who file a "wrongful birth" lawsuit against a hospital over a missed prenatal diagnosis. Noted the paper: "Experts say so few parents choose to file wrongful birth suits because it forces them to take an awkward position: They must be willing to say on the record that they would have aborted the



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pregnancy, and that they feel a burden — albeit financial — of raising the child.”

Following the trial, as the Levys mouthed a “thank you” to jurors for the enormous monetary gift, “a few nodded back, smiled or reached out a hand toward the Levys,” reported the paper. “One juror visibly held back tears. Another wished them peace.”

Pro-life leaders and joyful parents of Down’s syndrome children had a different reaction. “Despite the verdict of a jury, ‘wrongful birth’ remains a contradiction in terms,” Melinda Delahoyde, president of the pregnancy resource network Care Net and the mother of a Down’s syndrome child, said in response to the case. “However challenging the circumstances, every birth is beautiful because every life is a miracle. As the proud mother of a son who shares the diagnosis of the child who became the subject of this trial, I pray that these parents will come to know their daughter, not as a medical mistake, but as the perfect addition to their family that she is.”

Delahoyde added that “what is truly ‘wrongful’ is that nearly 90 percent of all babies diagnosed with Down’s Syndrome are quietly aborted before they are born.”

[LifeSiteNews.com](#) noted that last September a Florida couple was awarded \$4.5 million in a “wrongful birth” lawsuit, after their son was born with no arms and one leg. “The couple claimed that had they known of their unborn son’s disabilities before he was born, they would have aborted him,” reported LifeSite.

In an editorial penned following the latest lawsuit, Wesley Smith, a director of the [Discovery Institute’s Center for Human Exceptionalism](#), said that “wrongful birth” lawsuits are “merely the newest front in the ongoing eugenic search-and-destroy mission aimed at wiping people with Down syndrome off the face of the earth.”

He called it a “bitter irony” to live “in a society in which the ethical commitment to universal human equality may be at an all-time high. Americans heartily cheer on the participants in the Special Olympics. The Americans with Disabilities Act enjoys widespread support. Yet, many support targeting fetuses with Down syndrome and other genetic conditions for elimination in the womb.”

Smith added that the time has come for society to change its mind about children with disabilities like Down’s syndrome. “We could begin with states prohibiting wrongful birth lawsuits as a matter of public policy,” he suggested. “We may have a right to have a baby, but we don’t — or at least shouldn’t — have a right to the baby we want. Most importantly, none of us should ever be declared by a jury to be a wrongful life.”

He expressed his heartfelt hope that Kalanit Levy will never learn that had they had a choice, “her parents would have prevented her from ever being born.”



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