

Unborn Children in Michigan
O'Neill v. Morse (1971)
385 Mich. 130

In *O'Neill v. Morse*, the plaintiff James O'Neill was the administrator of the estate of "Baby Boy Pinet," who was killed while still *en ventre sa mere*, or in the mother's womb. O'Neill sued three defendants for the wrongful death of Pinet, who was killed in a car accident, and the Michigan Supreme Court was left to decide whether a wrongful death tort could be filed on behalf of an unborn child.

The Court of Appeals had already decided against the plaintiff, but the majority of the Michigan Supreme Court, represented by Justice Brennan, reversed that decision. Brennan's reasoning was based on the legislative intent of the wrongful death statute that was enacted in 1848. He found that the "obvious purpose" of the statute was to provide an action for wrongful death whenever, if death had not occurred, such an action could have been pursued. As decided earlier that year in *Womack v. Buchhorn*, 384 Mich. 718, a child injured in the womb could later sue for damages after birth. Therefore, if death had not ensued in this instance, an action for damages could have been pursued. Hence, the legislative intent of the statute was to allow for torts like the one brought by O'Neill in *O'Neill v. Morse*.

Brennan further reasoned that the word "person" in the writing of the wrongful death statute did apply to unborn children. Borrowing an argument from Mr. Justice Boggs, he wrote, "If the mother can die and the fetus live, or the fetus die and the mother live, how can it be said that there is only one life? If tortious conduct can injure one and not the other, how can it be said that there is not a duty owing to each?"

In a dissenting opinion joined by Justice Adams, Justice Black argued that the intent of the 1848 Michigan Legislature that enacted the wrongful death statute clearly did not include unborn children as potential plaintiffs. Little was known about prenatal life in the 1800's, he argued, hence the word "person" in the statute could not have been meant to encompass the unborn child. Furthermore, the wrongful death statute was only written to provide compensation for "pecuniary loss" or injury suffered by a surviving widow, next of kin, or dependent. This left no rightful collector of any damages that may be found in court, effectively nullifying the statute as applying to prenatal death.

Shortly after the *O'Neill* case, the Legislature amended the wrongful death statute to include prenatal death, allowing parents to collect money for several grievances caused by such a wrongful death.