

Judge allows couple to become grandparents with dead son's sperm

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The parents of a dead soldier can use his sperm to produce grandchildren using a surrogate, a court has ruled.

Peter Zhu, who was in officer training at the West Point military academy, New York, died in March aged 21 after a skiing accident. He had always dreamt of bringing up five children on a ranch with horses, his parents told the New York supreme court.

Monica and Yongmin Zhu, who are from China and live in Concord, Cali-

fornia, said that their son was the family's only male heir because of their native country's one-child policy. The surname would be extinguished if he did not have children, they added.

They had already won a ruling allowing them to retrieve and freeze their son's sperm while he was brain dead but before his life support was turned off on March 1. It has been stored in a New York sperm bank for the past couple of months while the judge reached a decision about what could be done with it.

"Without obtaining sperm from

Peter's body, we will never be able to help Peter realise this dream of bringing a child into the world. This is our one and only chance of fulfilling Peter's wishes and preserving his incredible legacy," the parents said in court documents.

Few legal precedents exist on the subject of posthumous use of genetic materials, which has been the subject of heated debate since the family made their application.

The case has been complicated by the fact that Zhu did not put down his desire for children in writing, which is

usually requested by doctors to meet ethical standards in similar circumstances, though there was no national precedent governing the cases.

Last year the American Society for Reproductive Medicine recommended that reproductive tissue should be used posthumously only with the written consent of the deceased, or at the request of a surviving spouse or partner.

In his ruling Judge John Colangelo acknowledged that there were few precedents in law but said that courts had tended to reflect the wishes of the

deceased, written or otherwise. There was, he said, no legal impediment to ruling in the parents favour on the basis of their son's "presumed intent".

The retrieval of sperm from someone who is brain dead is illegal in France, Germany and Canada. In the UK doctors must have the written consent of the person involved.

James Smith, a reproductive specialist at the University of California, San Francisco, said that without Zhu's consent, extracting and use of his genetic material was "doing battery on him".

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