THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

The Member of the Executive Council for Health, Eastern Cape v DL obo AL (Case no 117/2020) [2021] ZASCA 68 (03 June 2021)

Today the Supreme Court of Appeal (SCA) upheld an appeal from the Eastern Cape Division of the High Court, Bhisho (high court). Damages were claimed by the respondent (plaintiff in the high court) for medical negligence on behalf of her baby, who had developed cerebral palsy during the birth process at the Midlands Hospital, Graaff-Reinet. The respondent's case was that the baby developed cerebral palsy because of the hospital's failure to monitor her adequately, and to take appropriate action when foetal distress arose during her labour. The appellant's case was that all the hospital staff members who had attended to the respondent had acted with the necessary skill, care and diligence as could reasonably have been expected in similar circumstances, and had not been negligent in dispensing medical care to the respondent. The issue was whether the hospital staff had, through alleged inadequate monitoring and failure to timeously perform a caesarean section operation, negligently caused the brain injury that resulted in the baby developing cerebral palsy. The high court found that the hospital staff at Midlands hospital had not acted with the necessary skill, care, diligence and supervision when dispensing medical care to the respondent during her labour. It found the MEC for Health, Eastern Cape, vicariously liable for

100% of all damages which the respondent could prove.

The SCA held that the determination of negligence is a fact-bound enquiry. It took into account that both obstetricians called as witnesses by both parties were in agreement that at all material times during which the foetal heart rate was monitored by CTG, there was no basis for concluding that there was foetal distress. The SCA found that the facts of the case, cumulatively considered, did not suggest that a reasonable health professional in the position of the nurse who attended to the respondent during labour could have foreseen any reasonable possibility of harm ensuing and taken steps to prevent it.

The SCA took into account that the sum total of the medico-legal reports compiled by two paediatric radiologists, which were admitted into evidence by agreement between the parties, was that brain injury was as a result of severe in utero hypoxia and ischemia that evolved rapidly over a matter of minutes and thus constituted an obstetric emergency at the time. It found that it was not open to the high court to disregard those findings and to, instead, prefer the contrary opinion proffered by another radiologist who opined that the foetus had suffered a collapse of circulation which had occurred as a result of a process that had developed over a period of time. The SCA concluded that to the extent that the latter's testimony was inconsistent with the admitted evidence of the other two radiologists whose reports were admitted into evidence by agreement between the parties, it did not take the respondent's case any further.

The SCA also paid consideration to the fact that the obstetrician who testified on behalf of the respondent had stated that it was difficult to pinpoint when the brain injury had occurred. She further stated that she could not say that the sentinel event would not have happened if the caesarean section operation had been performed within an hour from the time it was decided that the operation must be performed. The SCA found that the respondent had not proven causation on a balance of probabilities. It accordingly upheld the appeal.