



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME
COURT OF APPEAL**

FROM The Registrar, Supreme Court of Appeal

DATE 16 September 2020

STATUS Immediate

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

*Minister: Western Cape Department of Social Development v E and Another
(379/2019) [2020] ZASCA 103 (16 September 2020)*

The SCA today upheld an appeal by the MEC: Social Development of the Western Cape against a judgment of the Western Cape Division of the High Court, Cape Town holding the MEC liable for damages arising from injuries suffered by E's daughter at her nursery school in Bredasdorp. The background to the case was that on 12 August 2008 E's daughter J, then five and a half years old, was playing on a swing in the nursery school she attended when the swing collapsed on top of her causing serious injuries and long term disablement. The evidence showed that the swing was poorly designed and constructed.

The school was operated by an NGO and accommodated some 190 children. There was no dispute that the school would be liable if there was negligence in the installation and maintenance of the swing. However, the school received a grant from the Western Cape Department of Social Development and was required to be registered by the Department as a place of care in terms of the provisions of the Child Care Act 74 of 1983. The issue was whether the MEC as the executive member responsible for the Department owed a legal duty to

J to ensure her safety while at school and the safety of the playground equipment at the school.

The school had been registered as a place of care for a number of years. Such registration had to be renewed every two years. This involved a quality assurance assessment to be undertaken by an appropriately trained official. Such assessments were undertaken by social workers in the employ of the Department, but they were not qualified to identify the design and construction faults in the swing. The plaintiff argued that it was incumbent on the Department to employ persons who would be able to undertake such an assessment and had they done so the defects in the swing would have been identified at an earlier stage and remedied.

The SCA held that the primary function of the Department in terms of the Child Care Act and the Regulations under the Act was that of a regulator. In granting registration for a place of care (which included places of safety, children's homes and shelters) the regulations required it to see the constitution of the association that would operate the place of care; to obtain a certificate from the local authority that the buildings complied or would comply with all structural and health requirements of the local authority; to obtain a certificate that the community needed the resource and to determine whether it would be managed and conducted in a way that would be suitable for the reception, custody and care of children. When a quality assessment review was undertaken every two years these were the issues that had to be considered.

The operation of all places of care was undertaken by NGO's and private organisations and individuals. The Department had no part to play in the operation of such places of care. Its obligation was to ensure that those operating the place of care would manage it in a way that was suitable for receiving and caring for children. The Department's responsibilities differed from those resting on Departments of Education in regard to public schools. These are operated by the Departments of Education and the majority of the educators employed there are employees of the State. The SA Schools Act provides that the State would be liable for delictual claims arising from school activities.

The SCA held that the same responsibilities could not be imposed on the Department of Social Development in regard to the operations of private

organisations and their employees. To impose a duty in the terms claimed would expose Departments of Social Development throughout the country to claims that it was not just and reasonable should be their responsibility. Accordingly, the court held that the MEC did not owe J the duty contended for and it was not fair, just and reasonable that the MEC should be obliged to compensate her for her injuries.