



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Case number : 340/07

In the matter between :

**ELIZABETH GEORGINA ELZONA STEWART
BRIAN STEWART**

**FIRST APPELLANT
SECOND APPELLANT**

and

**DR M BOTHA
DR S SMAL**

**FIRST RESPONDENT
SECOND RESPONDENT**

From: The Registrar, Supreme Court of Appeal
Date: 2008-06-03
Status: Immediate

The Supreme Court of Appeal this morning dismissed the claim of a child, born with severe defects including spina bifida and hydrocephalus, against the doctors who treated his mother during her pregnancy and negligently failed to advise her that her foetus suffered from congenital defects. The judgment recognises the parents' claim for the recovery of medical expenses, maintenance, special schooling and past and future medical expenses flowing from the child's condition, and refused that of the child for the same damages. A vital distinction is drawn between the parents' claim and that of the child, namely that the child's claim necessarily involves a decision that the child's life is worth less than non-existence. Whether that is so, depends on fundamentally subjective answers which are informed by individual theological, philosophical, emotional, moral and other values. The court concluded that as the question goes so deeply to the heart of what it is to be human, it should not be asked of the law.