



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

**MEDIA SUMMARY – JUDGMENT DELIVERED
IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 1 December 2017

Status: Immediate

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.

GEOFFREY STEDALL & ANOTHER

V

CLINT PATRICK ASPELING & ANOTHER

On 27 July 2004, the respondents' minor daughter, a 30 month year old toddler, fell into a swimming pool at the home of the appellants in Cape Town. Although she did not drown she sustained severe brain damage as a result of this accident. The respondents sued the appellants for damages in the Western Cape Division of the High Court, alleging that the accident had been due to negligence on the part of the appellants.

When the matter came to trial, the parties agreed to separate ‘the merits and the quantum’. This was presumably a request to the court to determine the issues relevant to liability. In any event, although no formal separation order was issued in that regard as should have occurred, the court heard evidence and determined the question of liability alone. In doing so, it found that the accident had been due to negligence both on the part of the appellants as well as the second respondent, the child’s mother. It held that the appellants had been twice as culpable as the child’s mother and made what it viewed to be the appropriate order to reflect this to be the case. It was against that order that the appellants appealed to the Supreme Court of Appeal.

The SCA today upheld the appeal. In doing so, it found that the trial court had overlooked the necessity to have regard to the delictual element of wrongfulness, and had only taken the question of negligence into account. It further concluded that in the circumstances under which the accident had occurred, where the child had been in the care and under the supervision of its mother while visiting the appellants’ home, and had come to be injured mainly as a result of her mother having been distracted for a short period, it would be over-burdensome to impose liability upon the appellants, regard been had to public and legal policy consistent with constitutional norms.

The SCA further held that the appellants, as owners of the home where the accident occurred, had not been negligent in that they were entitled to expect that the child would be looked after by her mother whilst at their home, and there had been nothing to alert either of them to the fact that the child had been left unattended by her mother for a brief period.

In the result, the appellants had succeeded on appeal in showing that the respondents had failed to prove that their conduct had been either wrongful or negligent. The appeal therefore succeeded and the order in the court a quo holding the appellants liable for damages was set aside.