



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: 15 December 2022

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

MEC for Health, Eastern Cape v N H obo A (513/2021) [2022] ZASCA 181 (15 December 2022)

Today, the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal by the Member of the Executive Council for Health, Eastern Cape against the decision of the Eastern Cape Division of the High Court, Bhisho (high court). The respondent is the mother of a minor child born in May 2012 with cerebral palsy. She instituted a claim for damages on behalf of her child and herself more than five years after the birth of her child. At the time of the child's birth, the respondent had no reason to suspect that the hospital staff may have done anything to cause the child to be born with cerebral palsy.

The claim of prescription was raised by the appellant in respect of the respondent's personal claim for trauma arising from her child's cerebral palsy. The high court dismissed the plea of prescription, finding that the respondent could not have had knowledge of the necessary facts at the time to have instituted a claim against the appellant, thereby interrupting the running of prescription. The matter came before the SCA with leave of the high court.

The facts revealed that the respondent endured a difficult labour, after which her child was born. Neither the medical or nursing staff at the hospital informed the respondent of any problems associated with the delivery of her child. She left the hospital after a week, without any knowledge that her child was born with cerebral palsy. It was only five years later, in January 2018, when she met another woman who similarly gave birth to a child with cerebral palsy, which led the respondent to seek legal advice. After consulting with an attorney and being advised that the condition of her child was probably due to the treatment the child received at the time of birth, did the respondent institute an action for damages against the hospital.

The respondent's personal claim had to be instituted within three years of acquiring knowledge of the facts from which the debt arose in terms of section 12(3) of the Prescription Act 68 of 1969. As she had only acquired this knowledge after consulting with her attorney, the respondent contended that prescription should have commenced to run from that date.

On appeal, the SCA held that it was only at the stage when the respondent consulted with her attorney that she acquired the knowledge that the hospital staff were the cause of her child's condition, and that the appellant was therefore the 'debtor' for the purposes of the Prescription Act. The Court held that the appellant had not discharged the onus of showing that the respondent knew, or ought to have reasonably suspected, that she received negligent treatment at the hospital, and that the disability suffered by her minor child was the result of that negligence. On that basis it could not be said that the respondent had knowledge of the facts that would have led her to think that the medical staff at the hospital were negligent, and that her child had cerebral palsy as a result.

Accordingly, the SCA dismissed the appeal.

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