



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: 6 November 2024

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

Merryweather v Scholtz & Another (447/2023) [2024] ZASCA 150 (6 November 2024)

The Supreme Court of Appeal (SCA) today struck an appeal and cross appeal by Mr Andrew Merryweather against Mr Oliver Scholtz and his father, Mr Gerard Scholtz, against a decision of the full court of the Western Cape Division of the High Court, Cape Town, from the roll with costs. The full court had previously upheld an appeal against a judgment of the trial court which awarded delictual damages in favour of Mr Merryweather against Mr Oliver Scholtz, but dismissed a claim to hold his father liable for the costs of the action.

Mr Merryweather's claim for damages arose from a physical altercation between two groups of young men at the Engen garage, Vineyard Motors, in Main Road, Newlands, Western Cape, in the early hours of 9 September 2006. Mr Merryweather was part of the one group and Mr Scholtz part of the other. Around 1.45 am, whilst Mr Scholtz's group was waiting to be collected, there was an exchange of words between the two groups. A physical altercation followed. At one stage during this altercation, Mr Merryweather rushed at Mr Scholtz, as if to tackle him from his right, at a rapid speed. Mr Scholtz testified that when Mr Merryweather came within reach, in order to avert the attack, he grabbed Mr Merryweather at the side of his shoulders, and as they were about to collide, he stepped to his right, turned him using his momentum, and pushed him away with a fast swivel movement, to avoid the collision. Mr Merryweather lost his footing and fell in the direction of a parked car, hitting the fender or the wheel of the car with the back of his head. Mr Merryweather as a result, sustained an injury, which has left him permanently partially paralysed, and wheelchair bound.

Mr Merryweather alleged that Mr Scholtz had spear tackled him and that this resulted in his injury. The full court held that the onus of proof always remained on Mr Merryweather to establish that Mr Scholtz 'spear tackled' him. It concluded, on an evaluation of the evidence, that Mr Merryweather had not proved his case, that it was more probable that he was injured as a result of the swivel and push defence, rather than a spear tackle, and that Mr Scholtz's reaction to avert the further threat to him was reasonable.

The SCA was not persuaded that the full court erred. But more importantly, it concluded that there were no special circumstances requiring that the full court's decision be re-considered in a further appeal to the SCA. That two judges of the SCA on petition granted special leave to appeal does not mean that the SCA was not required to consider whether the SCA should entertain the appeal. The judges considering the petition did not have the benefit of the full appeal record. It remained for the SCA, on a conspectus of the full record, to determine whether there are indeed special circumstances present. That is because the SCA will not interfere with a decision of a court, given on appeal, even if it considers the decision may possibly be wrong, unless there is some additional factor or criteria that play a part in the granting of special leave. Special circumstances require more than reasonable prospects of success; such as that the appeal deals with a substantial point of law, or is a matter of great importance to the parties or the public, or that the prospects of success on appeal are so strong that the refusal to grant leave to appeal would result in a denial of justice for the party seeking leave to appeal. This list is not exhaustive of what may constitute special circumstances.

The SCA concluded that there were no special circumstances present. The appeal does not raise a substantial point of law, nor is it an issue of great importance to the public. Mr Merryweather's prospects of success turn on various factual disputes which had already been considered carefully in the unanimous judgment of the full court by three judges. There was accordingly no reason why the SCA should determine any matter arising from the appeal to the full court further. That being so, the appropriate order was that the appeal and 'cross appeal' be struck from the roll with costs.

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