



## 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:** 12 October 2023

**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***

*M M v MEC for Health; Eastern Cape* (580/2022) [2023] ZASCA 130

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Today, the Supreme Court of Appeal (SCA) dismissed an appeal with no order as to costs, from the Eastern Cape Division of the High Court, Bhisho, (high court). The appeal revolved around a claim for damages by the appellant arising out of a brain injury sustained by her minor child (ELM) after his birth at Frere Hospital in East London, causing the child to be diagnosed with dystonic cerebral palsy and profound developmental delays complicated by epilepsy, intellectual disability and a hearing defect, caused by hyperbilirubinemia on account of severe levels of total serum bilirubin (TSB).

After ELM's delivery, he was transferred to the nursery ward, whereafter he exhibited symptoms associated with jaundice and significantly high TSB levels. Hospital staff commenced intensive phototherapy and administered intravenous haemoglobin. The following day, a hospital note indicated that there was no significant relief evident regarding the TSB levels and that blood for an exchange transfusion had been ordered from Gqeberha, as there was no suitable blood available in East London. The estimated time of arrival of the blood was around 17h00 that same afternoon, however, the appellant instructed her child to be transferred to Beacon Bay Hospital, a private medical facility, around 15h00. During the time at Frere Hospital and up until the eventual blood transfer, the appellant's child did not indicate any symptoms of neurological complications. Regardless, the high court held that the staff at Frere Hospital were negligent and that the respondent was liable to pay such damages as can be proven. On appeal, the full bench dismissed the order of the high court that the staff at Frere Hospital were negligent.

The appellant approached this Court on appeal to determine whether the negligence of the hospital staff caused or contributed to the injury suffered by the appellant's child. The allegation was levelled that the attending physicians did not timeously order the blood required, but only did so on the following day, the 21<sup>st</sup> of October 2010. The appellant contended that the staff at Frere Hospital allowed the child to develop kernicterus in that they failed to prevent bilirubin encephalopathy from developing when they had ample opportunity to do so. The high court held that, based on a joint minute by experts, that the unreasonable delay on part of the hospital staff to order the requisite blood caused the resultant harm. However, the SCA held that the high court was mistaken in this regard as the inference drawn by the experts was clearly wrong and of no evidential value.

The SCA found that the attending physician dealt with the matter in all seriousness and was alive to what was expected of him as a medical practitioner. He was pertinently aware of the child's condition and took steps to not only bring it to the attention of the staff at Frere Hospital, but also the staff at Beacon Bay Hospital. In fact, the SCA found that substantial and supportive treatment was provided to the child during the time that blood was ordered and awaited. The matter revolved around the timeous ordering of blood, but no evidence was provided indicating that the blood was readily available there. The appellant ought to have obtained evidence from the blood bank confirming the exact time the order for blood was placed, as this would have been critical for the establishment of delictual liability.

Consequently, this Court determined that there was no factual or causal connection between the conduct of the staff at Frere Hospital and the harm suffered by the appellant's child. Had the staff become aware of the child's precarious condition and done nothing, negligence would clearly and obviously have been evident which would have opened the discussion regarding causation. However, the SCA found nothing to suggest that the staff performed their duties in any manner other than could reasonably have been expected and that the attending physician was anything other than a reasonable medical practitioner professionally performing his duties.

In the result, the appeal was dismissed, with no order as to costs.

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