



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: 31 March 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

NSS obo AS v The MEC for Health, Eastern Cape Province [2023] ZASCA 41

The Supreme Court of Appeal (SCA) today upheld an appeal against an order by the Eastern Cape Division of the High Court, Mthatha (high court), that the appellant (plaintiff) was not entitled to adduce evidence to disprove the contents of two expert reports. The SCA replaced the high court's order with an order dismissing the application by the respondent (defendant).

The plaintiff, the mother and natural guardian of her minor son (the child), sued the defendant, the MEC for Health, Eastern Cape Province, for compensation on behalf of her child who sustained perinatal asphyxia during labour, rendering him a cerebral palsy quadriplegic. She alleged that this occurred as a result of the negligence of the respondent's employees at St. Patrick's Hospital, Mthatha. The trial is pending in the high court, but could not proceed when the high court made an order preventing the plaintiff from adducing crucial expert evidence in support of the claim.

In 2015, the plaintiff filed reports by two specialist paediatric radiologists who expressed an opinion, based on a magnetic resonance imaging (MRI) scan, that the child sustained an acute profound hypoxic ischaemic injury (the reports). The defendant informed the plaintiff that the reports were 'admitted' and could be used as evidence in the case (the purported admission). When the plaintiff sought to present evidence deviating from the reports, the plaintiff applied to the high court for an order that the plaintiff was prevented from doing so in terms of s 15 of the Civil Proceedings Evidence Act 25 of 1965 (the Act). The high court granted the order.

The SCA held that the purported admission was not an admission – a statement adverse to the party making it – by the plaintiff, of a fact which she did not dispute. It was also not a formal admission as envisaged in s 15 of the Act, because it was not admitted on the record of proceedings. Section 15 of the Act did not apply to the case. The reports were merely opinions and could not serve as the basis for an admission under the Act. Moreover, the defendant could

not bind the court to the opinion of her opponent's expert witness, by conceding that the opinion is correct. Even if experts agree on a matter within their joint expertise, that is merely a part of the total body of evidence. The court must still assess the joint opinion and decide whether to accept it. The appeal was accordingly upheld. The order of the high court was set aside and replaced with an order dismissing the defendant's application.

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