



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED

FROM The Registrar, Supreme Court of Appeal
DATE 05 March 2024
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

MEC of Health and Social Welfare, Gauteng Provincial Government v M (272/2022) [2024] ZASCA 21(5 March 2024)

Today the Supreme Court of Appeal upheld an appeal by the MEC of Health and Social Welfare, Gauteng Provincial Government against a judgment of the full court of the Gauteng Division of the High Court, Pretoria. That court overturned a judgment of a trial court of the same Division which upheld a claim by Ms M for damages against the MEC for medical damages. In that claim Ms M alleged that the medical staff at Tshwane District Hospital failed to treat her with the required care and skill when she was giving birth to her son L at the hospital on 18 May 2010. She alleged that because the medical staff failed to monitor her baby's heartbeat with a cardiotocography machine (CTG) they did not detect irregularities in his heart beat. This led to an unduly prolonged labour and failure to refer Ms M for caesarean section on time. As a result, L suffered from Cerebral Palsy which was caused by asphyxia and brain injury sustained during birth.

The trial court dismissed Ms M's claim, having found that the evidence did not show that the brain injury to L was occasioned during birth. That court also found that negligence was not proved against the hospital staff. The full court reversed the trial court's decision. It held that on arrival at the hospital Ms M's condition and that of the baby was good, but when she was first put on the CTG the traces generated by that machine showed a cause for concern. Because of the foetal heartbeat should have been assessed with a CTG machine continuously or at two hour intervals. This was not done and the failure to do so and to follow the guidelines issued by the Department of Health constituted negligent conduct.

The SCA upheld the MEC's appeal against the judgment of the full court. It found that the irregularity which was observed when Ms M was first put on the CTG was corrected with a Ringer's Lactate solution, and thereafter L's heartbeat was regular for hours. The obstetricians agreed that the further irregular traces (type 2 decelerations) that were observed at 14h00, an hour and 15 minutes before L was born were not of such a kind that would alert the staff that an emergency caesarean section was required.

More importantly, the medical experts were in agreement that the brain injury sustained by L was acute and profound, which occurs suddenly, is of short duration, and distinguishable from a prolonged partial brain injury, which develops slowly over several hours. On this basis the SCA held that the evidence did not support the allegation that the medical staff were negligent in attending to Ms M. In addition, the SCA found that expert opinion and academic writings are inconclusive on whether use of CTG

monitoring gives warning of sentinel events which result in neonatal brain injuries. In this case there was no evidence of a sentinel event. There was no basis to conclude that a CTG machine would have given a warning of impending danger.

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