



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

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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

Du Preez N O v The Member of the Executive Council for Health & Social Development of the Eastern Cape Province (1032/2022) [2024] ZASCA 147 (28 October 2024)

Today, the Supreme Court of Appeal (SCA) dismissed an application for reconsideration of an application for leave to appeal, which the Acting President of the SCA referred for oral argument in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 (the Act).

The application arises from an action for damages instituted by Ms VN on behalf of her minor child, PN, against the respondent, the Member of the Executive Council for Health and Social Development of the Eastern Cape (the MEC). The Eastern Cape Division of the High Court, Port Elizabeth (high court) dismissed the action. An application for leave to appeal by the applicant was refused on 17 June 2022. A petition to this Court was dismissed on 12 September 2022. Ms VN applied to the Acting President of SCA to reconsider the dismissed petition. On 19 December 2022, the Acting President granted the application for reconsideration of this Court's decision to refuse the petition and referred it for oral arguments.

Unfortunately, PN passed on before this application was heard, and the Executor of her estate, Mr Du Preez, substituted Ms VN as the applicant. The issues before the SCA were whether the medical staff employed by the MEC were negligent in the care and treatment of PN's mother during labour and the delivery of PN, and if so, whether such negligence caused PN to suffer a severe brain injury resulting in cerebral palsy. The applicant's main contention was that the hospital staff were negligent in that the monitoring of the first stage of labour of Ms VN was inadequate; fundal pressure was applied to the pregnant abdomen of Ms VN by a security guard; and resuscitation of PN was woefully insufficient.

In dismissing the application, the SCA held that the application did not meet the stringent threshold required in this type of application. It reasoned that all the experts agreed that PN suffered an extremely severe and profound brain injury *in utero* during the second stage of labour, while the first stage of labour proceeded normally. The SCA further found no reason to disturb the factual finding made by the high court that no fundal pressure was applied to Ms VN's pregnant abdomen. Further that, the issue of poor resuscitation would not have played any role because all the experts agreed that it was impossible to prove any material contribution to the already highly severe brain injury sustained *in utero*.

Finally, the SCA also dismissed the application to introduce further evidence brought by the applicant shortly before the hearing of the application. It held that the new evidence sought to be introduced is irrelevant and would not advance the applicant's case any further.

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