



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 31 July 2020
STATUS Immediate

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

McGregor and another v MEC Health Western Cape [2020] ZASCA 89

The SCA today dismissed an appeal against the judgment of the Western Cape Division of the High Court dismissing a claim for damages brought by Mr and Mrs McGregor against the MEC Health for the Western Cape. Their six year old son fell in the street outside their home and hit his head. He was taken to Red Cross Children's Hospital some two hours later shortly after 6.00 pm and after examination discharged into his parents' care because the doctor concluded that the injury was a minor one not requiring further investigation or admission to the hospital. Tragically he had sustained a linear fracture in the left temporo-parietal area of the head, which was undetectable on a physical examination. This ruptured the little meningeal artery causing a subdural haemorrhage that manifested itself at about 3.30 pm when he was difficult to wake and vomited. He was rushed back to hospital and an emergency craniectomy performed but the brain injury left him with cerebral palsy and spastic quadriplegia.

The risk of such a fracture occurring in those circumstances is extremely small and not detectable on physical examination, but would have been detected by a CT scan. However, such scans are not performed routinely because they pose other risks to the patient. The issue in the case was whether in this case a CT scan was indicated. The expert witnesses all agreed that on the attending doctor's examination showing all vital signs to be normal and the focal eye tests not manifesting any abnormality or neurological defect, a CT scan was not required unless the bump on the head felt fluctuant or boggy on palpation. The doctor's evidence was that she would have noted that in the patient's records and ordered a CT scan to be undertaken had it felt fluctuant. The high court held that it could not reject this evidence and the majority in

the SCA in a judgment by Wallis JA upheld this finding. In doing so it pointed out that the reference to the bump feeling fluctuant or boggy on palpation was only introduced at a late stage without proper notice. The court criticised the manner in which the expert evidence had been tendered.

The SCA also rejected, as had the high court, arguments that the doctor should have kept the child at the hospital for further observation and that her discharge advice to the parents was deficient. It also held that in any event there was no evidence to show that further observation for an hour or more detailed instructions would have altered the outcome. There had been nothing to suggest that there was anything abnormal occurring until the following morning.

The minority judgment of Molemela JA held that the examining doctor's examination of the child was deficient in the light of the absence of any reference in her notes to certain matters and would have upheld the appeal.

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 9:45 on 31 July 2020.