



Ntsels v. Member of the Executive Council for Health, Gauteng Provincial Government

CASE NO: 2009/52394

Country: South Africa

Region: Africa

Year: 2012

Court: South Gauteng High Court, Johannesburg

Health Topics: Child and adolescent health, Chronic and noncommunicable diseases, Health care and health services, Hospitals, Medical malpractice, Sexual and reproductive health

Human Rights: Right to health

Facts

The plaintiff filed an action for damages against the defendant on behalf of her minor child alleging that the nursing staff at the clinic failed to properly monitor the child's fetal growth and heart beat, refer her to a hospital for ante-natal sonar tests and were negligent in providing appropriate treatment and perform a caesarean section when it was necessary. She further stated that the clinic failed to perform their obligation under Section 27 of the Constitution to provide her reproductive healthcare to her and her minor child with reasonable skill and diligence. A suffered from pre-natal asphyxia which caused cerebral palsy.

Decision and Reasoning

The Court held the defendant liable to compensate the plaintiff's proven damages and litigation costs. The Court relied on the expert opinions, which stated that the cause of A's cerebral palsy was attributable to perinatal asphyxia. Dr. Marishane, an expert brought on record by the defendant admitted that he was pushed to prepare a medico-legal report to discredit the plaintiff's expert evidences. The court stated that because the defendant could not produce exculpatory evidence in rebuttal, it pointed towards failure to provide skilled and diligent treatment during a critical period.

The Court further noted that hospital notes were missing from the plaintiff's files. There was no evidence adduced evidencing that adequate treatment and techniques were given on time to the plaintiff. The Court applied the legal maxim *Res Ipsa Loquitur* (the thing speaks for itself) stated that given the missing records and failing to adduce evidence, the plaintiff's constitutional right under Section 27 had been violated.

Decision Excerpts

"In my view the circumstantial evidence regarding the nature of A's cerebral palsy justifies an inference on the probabilities that same occurred because of the defendant's employees negligence. In the absence of countervailing evidence to the contrary disproving the probability of negligence, the only logical and reasonable inference to be drawn from the defendant's employees failure to proffer an exculpatory explanation is, the defendant's employees were negligent in their failure to accord the plaintiff the treatment she was lawfully entitled to in conformity with the skill and diligence prevailing in the medical profession." (Para 104)

"The defendant's failure to take the court into its confidence and explain the reason why the nurses and doctors were not called to give contemporaneous evidence regarding the treatment accorded to the plaintiff and A, on 7 September 1996 inescapably justifies an adverse inference of negligence to be made against the defendant." (para 120)

"Because the defendant has failed to discharge the evidential burden disproving a causal connection between the negligence of his employees and A's cerebral palsy, the summation that the eventuality speaks for itself is unanswered." (para 126)