



## J.R. v. The Member of the Executive Council, North West Division, Mahikeng

Case Number 303/16

**Country:**

**Region:** Africa

**Year:** 2017

**Court:** The High Court of South Africa, North West Division

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

**Human Rights:** Right to health

### Facts

JR in her capacity as the natural guardian of O claimed damages for medical negligence. O was admitted to the hospital as he was suffering from Diarrhoea. A drip was inserted on his forehead. The plaintiff noticed some black spots near O's ear and scalp (gangrenous tissue).

The plaintiff alleged that the failure to monitor and insert the infusion led to a cerebral venous thrombosis, atrophy and paralysis. O was unable to talk after this and still is unable to talk. O further suffers from a poor memory and mood swings, is unable to perform slightly complex tasks.

### Decision and Reasoning

The court held the defendant liable for negligence and ordered for the payment of damaged and costs. It stated that the plaintiff's evidence was unchallenged and the defendants did not call the attending doctor or the attending nurses for evidence. The expert witnesses were of the view that gangrene could develop over a short period of time. There was no evidence adduced from the defendant's side about how frequently the drip was monitored.

The Court based its decision on the factors of wrongfulness, negligence and causality. It stated that the casual connection between the negligent act and the injury must be established. The Court held that the plaintiff has successfully established the link between the nurse's negligent act and the injury caused to O.

### Decision Excerpts

“Plaintiff's evidence was largely unchallenged. The proven undisputed facts is that plaintiff observed the black spot around the site where the needle was inserted on the 11 November and Mr R. observed it the next day, on the 12 November. The experts who testified on behalf of the plaintiff relied on the history as told to them by plaintiff. Most of the expert witnesses regarded the dark pigmentation on O's forehead as gangrene. Prof Pantanowitz's evidence lends credence to plaintiff's evidence as he said the gangrene could have developed in a short time frame. Counsel for the defendant submitted that as the medical reports do not prove a black spot or gangrene the day after O's admission, that plaintiff's evidence should in the circumstances be approached with caution. As stated supra, the medical reports constitute hearsay evidence. I am of the view that plaintiff was a credible witness and her evidence was corroborated by Mr R. and there was no evidence presented by defendant to gainay plaintiff's evidence. For the reasons stated supra, I accept that gangrene developed soon after the drip infiltration.” (Para 42)

“As stated supra, there was no medical records presented or evidence from the nurses how frequently the drip was monitored or whether it was properly inserted and managed. Further Dr Maponya testified that the nursing staff should have been more vigilant with O. who was very sick and was also dehydrated. Defendant failed to lead any evidence of the steps it took to prevent harm to O.” (Para 44)

“When applying the but-for test, plaintiff established that it is more likely than not that but for the nurses wrongful and negligent conduct referred to supra, harm to O. would not have ensued. Accordingly plaintiff discharge the onus to prove the casual connection between the nurses negligent act and the damages suffered.” (Para 66)

