

# SIGNIFICANT DAMAGES AWARDED FOR PSYCHIATRIC INJURY FOLLOWING DEATH OF PLAINTIFF'S BABY

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## IN ISSUE

- Assessment of damages for psychiatric injury following death of baby.

## THE BACKGROUND

The plaintiff alleged that the Wagga Wagga Base Hospital (the hospital) failed to monitor her pregnancy and the delivery of her child, such that he died shortly after birth, in circumstances that could have been avoided had a Caesarean been undertaken earlier.

In April 2010 the plaintiff, whilst pregnant, suffered severe gastroenteritis and was monitored by the hospital. This necessitated daily attendances for 3 weeks for foetal heartbeat monitoring (CTG) and second-daily ultrasounds. On 14 May 2010, the plaintiff attended the hospital for several tests including an ultrasound. The treating doctor told her to go home after these tests but the midwife disagreed. There was a dispute between them but the plaintiff was ultimately sent home at 4.30pm.

The next day the plaintiff attended the hospital and after the CTG trace, she was told to go and have something to eat and then return. The plaintiff did this, and following a further trace and examination by her doctor, she was advised that a Caesarean would occur later that afternoon because she had eaten. The plaintiff and her husband returned at 1pm, with an intravenous line being inserted at 2.30pm. A hospital staff member looked at the CTG monitor and said words similar to, "We have to go now." Everything then became urgent and the plaintiff was taken into surgery for a Caesarean by general anaesthetic as opposed to an epidural (at her request, due to pre-existing back issues). When the plaintiff awoke, she was told by a doctor she hadn't previously met, "I'm really sorry but the baby didn't make it."

The plaintiff was shocked. She became depressed, socially withdrawn, suffered from

flashbacks and nightmares and became reliant upon alcohol. She was hospitalised on average twice per year prior to trial. She attempted to return to employment, without success, and the relationship with her husband deteriorated.

## THE DECISION AT TRIAL

Liability was admitted by the defendant hospital and the main issues for consideration at trial were the prospects of recovery by the plaintiff and the impact the resolution of the legal proceedings would have on that recovery.

The trial judge rejected the introduction of late evidence by the plaintiff that she had suffered an organic brain injury, and stated that in any event there was no evidence the plaintiff was labouring under any cognitive difficulties. He also found that the plaintiff was unlikely to undergo exposure therapy recommended by the defendant's expert, having previously attempted and discontinued such treatment, and this was not unreasonable in the circumstances.

Also, the trial judge held that the subject legal proceedings were only one factor contributing to the plaintiff's condition. The trial judge was of the view that resolution of the legal proceedings would not significantly alter the intensity of the plaintiff's presentation, which would continue to impede her function for the remainder of her life.

Damages were awarded at \$1,785,498 plus costs.

## IMPLICATIONS FOR YOU

The plaintiff's failure to produce available evidence of physical damage to neural pathways caused by post traumatic stress was fatal to her claim for damages for organic brain injury. It was inadequately supported by the expert medical evidence, which only went as far as a surmising that such damage would show if the appropriate testing was undertaken. Since that testing was not undertaken, the court could not assess damages on the basis that the alleged damage had been suffered. This case highlights the importance of considering the weight which will be given to expert evidence as a result of the material on which it is based.

*McManus v Murrumbidgee Local Area Health Network* [2016] NSWSC 1347

## AUTHORS



**MEGAN DANIEL**  
SPECIAL COUNSEL

+61 7 3231 6116  
[megan.daniel@bnlaw.com.au](mailto:megan.daniel@bnlaw.com.au)