ConCourt dismisses mom’s bid to hold hospital staff responsible for son’s cerebral palsy

The Constitutional Court has dismissed a Johannesburg mother’s application against the Gauteng Health and Social Development MEC, in which she blamed Charlotte Maxeke Johannesburg Academic Hospital staff for her son’s cerebral palsy. She hS alleged that had a Caesarean section been performed on her, her child might not have been born with cerebral palsy.

News224 reports that according to the judgment by Justice Steven Mathopo, the child was diagnosed with cerebral palsy because of the hypoxic-ischaemic injury during birth.

The woman had when she had to go to theatre, she was told there was a backlog with what doctors said were “more pertinent cases”. She alleged that there had been times during the day when the theatre was not busy and the other mothers could have been attended to then.

She approached the Constitutional Court for leave to appeal after the Supreme Court of Appeal (SCA) set aside a Gauteng High Court ruling that the MEC was liable for damages arising from the child's injuries due to the negligent conduct of hospital staff.

But the Constitutional Court found that the matter did “not raise a constitutional issue” – a requirement before a matter can be taken to that court”.

“Another difficulty … is the inconclusive and divergent expert evidence…further compounded by the insufficient evidence and inadequate pleading of the down times.

"No effort was made to plead or lead evidence regarding the activities of the hospital staff during these times. Importantly, the majority, in line with what this court has held on numerous occasions, found that the application of factual causation to the facts of a case does not raise a constitutional matter."

He said that the mother was erroneously inviting the Constitutional Court to discuss factual issues.

"These are factual issues which she is inviting us to grapple, and we should decline the invitation. Whether the staff reached out to other hospitals about their availability and whether they could assist Ms TM, are also questions of fact.

"Whether the injury to MM occurred in the first hour or much later, is unfortunately, another question of fact. These questions do not require the interpretation of sections in the Bill of Rights. Importantly, it is accepted that there was a duty to treat Ms TM reasonably.

"Thus, the court must refuse to entertain an appeal that seeks to challenge only factual findings. I cannot overstate that a challenge to a decision of the Supreme Court of Appeal on the basis only that it is wrong on the facts does not raise a constitutional matter.”

The leave to appeal application was dismissed.

News24 article – ConCourt dismisses mom's bid to hold hospital staff responsible for son's cerebral palsy (Open access)

<https://www.news24.com/news24/SouthAfrica/News/concourt-dismisses-moms-bid-to-hold-hospital-staff-responsible-for-sons-cerebral-palsy-20220609>

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