Where a higher standard of care is considered reasonable

Radovanovic v Cutter & Anor [2004] ACTSC 9

By Danielle De Paoli

This decision of Justice Gray of the ACT Supreme Court was delivered on 19 March 2004. The plaintiff alleged breach of duty in respect of the first defendant obstetrician's failure to diagnose foetal distress, to make himself aware of Mrs Radovanovic's history, and her reason for presentation to the hospital; to diagnose placenta praevia; and consequently, the mismanagement of the mother's labour. The claim against the second defendant, the hospital, was nursing staff's failure to inform the first defendant of the first antepartum haemorrhage.

THE FACTS

Dr Cutter was the specialist obstetrician responsible for the care and management of Mrs Radovanovic's pregnancy. It was commonly agreed between the parties that Mrs Radovanovic's pregnancy was high risk given her previous gynaecological history.

Mrs Radovanovic presented to the Canberra Hospital following a significant antepartum haemorrhage, of which Dr Cutter was not aware. Dr Cutter proceeded to rupture the membranes in the mistaken belief that the plaintiff's head was engaged.

Upon conducting an examination, the first defendant noticed a gush of liquor and blood, at which time he made a diagnosis of vasa praevia, a uniform diagnosis from experts of both parties. Essentially, where this diagnosis is made the baby bleeds, with disastrous effect, normally death; in this case severe cerebral palsy resulted, as the plaintiff's brain was deprived of blood. All parties to the matter agreed the cerebral palsy was a consequence of the vasa praevia.

LIABILITY

Justice Gray was of the opinion that the first defendant was negligent in his management of the plaintiff's birth; and that had he – as he claimed was his usual practice – obtained a history from the nursing staff or the patient, he would have been aware of the significance of the antepartum haemorrhage. Additionally, had he read the clinical notes, he would again have been made aware of the initial antepartum haemorrhage.

It was noted in the judgment that had the first defendant taken steps to make himself aware of the haemorrhage, he would have considered a differential diagnosis of placenta praevia. This would have had an effect on Dr Cutter's management of Mrs Radovanovic, in that accepted practice was that placenta praevia is a diagnosis that is to be considered until proven otherwise.

Justice Gray accepted the medical evidence of the plaintiff that the first defendant could not be justified in proceeding as he did without first ascertaining the position of the baby's head by abdominal palpation. It is accepted among medical practitioners that a vaginal examination in this situation is a dangerous practice and only to be carried out in an operating theatre prepared to perform an immediate emergency Caesarean section if necessary, an action that Dr Cutter failed to undertake.

STANDARD OF CARE

Clearly, the defendant owed the plaintiff a duty of care; however, the extent of that care was raised by Justice Gray. It was argued that Dr Cutter should have known that Mrs Radovanovic's pregnancy was considered high risk, and that this in itself should have informed the content and standard of the duty of care required. Justice Gray found this proposition difficult in that it suggests a standard of care other than that which is reasonable. Authority used in the determination of the standard of care is that in *Burnie Port Authorities v General Jones Pty Ltd*,[1] in which a higher degree of care is expected because 'those activities call for additional things to be considered and done because it is reasonable to consider or do them in particular circumstances'.

THE DECISION

His Honour entered judgment for the plaintiff against the first defendant. The plaintiff's claim and the first defendant's cross-claim against the second defendant were dismissed.

In making an assessment in relation to life expectancy, Justice Gray accepted the combined views of Dr Harbord and Dr Antony, in which they applied the Australian Life Tables and the paper of Strauss and Shavelle respectively, and accordingly decided that the plaintiff had a further 49 years' life expectancy. The plaintiff was awarded in excess of $8.3 million, excluding the costs of fund management and medical supplies of $550,000 funded by the defendants to date. General damages were assessed at $320,000 of the total judgment.

The first defendant has lodged an appeal to Gray in relation to liability. ■

Note: **1** (1994) 179 CLR 520 at 554.

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