

The scope of a doctor's duty of care

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Today the much-anticipated Judgment of Khan v Meadows was handed down.

The Supreme Court considered the scope of a doctor's duty of care. The issue considered was whether a doctor should be liable for the full care costs associated with a child born with two disabilities who would not have been born, but for the doctor's failure to advise on the risk of one of them.

The facts

Ms Meadows is the mother of Adejuwon who has haemophilia and autism. Prior to becoming pregnant Ms Meadows had concerns that she may be the carrier of the haemophilia gene. She attended her GP for investigations. The blood tests arranged were limited to determining whether Ms Meadows herself had haemophilia and were not determinative as to whether she was a carrier of the gene, and at risk of passing this on to any future children. As Ms Meadows did not have haemophilia her tests came back negative and she was led to believe by Dr Khan that any child she had would not have haemophilia.

Ms Meadows stated that had she been made aware that she was a carrier of the haemophilia gene, she would have undergone foetal testing during her pregnancy. This would have revealed that her son had haemophilia and Ms Meadows would have chosen to terminate the pregnancy.

As Ms Meadows had no cause to carry out foetal testing she progressed with the pregnancy and Adejuwon was subsequently born with haemophilia and autism. The autism was not linked to the haemophilia.

Ms Meadows brought a claim for wrongful birth and sought to recover all the costs associated with both disabilities.

The decision

The Supreme Court set out a 6 question test to assist in considering scope of duty and held that the scope of duty principle should not be excluded from applying to clinical negligence claims. Dr Khan was only liable for losses falling within the scope of her duty of care to specifically advise on whether Ms Meadows was the carrier of the haemophilia gene. Dr Khan was not liable for costs arising from the usual risks of pregnancy including the foreseeable risk of Adejuwon having autism. Key to the decision appears to have been the consideration that, had the advice given been correct and Ms Meadows had not carried the haemophilia gene, Adejuwon would still have been born with autism.

This decision will have a significant impact on the analysis of similar claims going forward.

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