



May 2, 2016

**NEW JERSEY DISTRICT COURT RESTATES NJ LAW ON
DAMAGES RECOVERABLE IN WRONGFUL PREGNANCY CASES**

On January 26, 2016, in the matter of MALITON V. UNITED STATES, (12-1610), the United States District Court for the District of New Jersey refused to expand the parameters of recoverable damages in “wrongful pregnancy” cases. In a written opinion, Judge Chesler ruled that parents who file a wrongful pregnancy medical malpractice action cannot recover the costs of raising a child, whether the child is healthy or is born with disabilities.

The Maliton case involved an allegation by the parents that medical professionals’ negligence in performing a tubal ligation resulted in an unwanted pregnancy. The parents decided to keep the pregnancy despite being advised that the child would be born with Down’s syndrome. Since the parents were properly advised and were not deprived of the choice to terminate the pregnancy, they could not bring a “wrongful birth” or “wrongful life” case. The only allegation they made was that the pregnancy should never have taken place. The plaintiffs acknowledged that the existing New Jersey law of wrongful pregnancy only allowed parents to recover the medical expenses, pain and suffering, lost wages, and loss of consortium of pregnancy and delivery. Yet, because the child at issue will likely have extraordinary medical expenses throughout his life, the plaintiffs urged the court to allow them to also recover future medical costs. The Court refused.

Relying mostly on the New Jersey Appellate Division decision in P v. Portadin, 179 N.J. Super. 465 (App. Div. 1981), Judge Chesler found that the existing wrongful pregnancy jurisprudence in New Jersey does not condition the kind of damages that the plaintiffs can recover on whether the baby born as the result of the unwanted pregnancy is healthy or disabled. The crux of the issue was whether the alleged negligence deprived the parents of a choice to terminate the pregnancy. If it did not, then the only damages recoverable under the Portadin decision are the costs of medical care, pain and suffering, loss of wages, and loss of consortium associated with the pregnancy and delivery. Since the plaintiffs admitted that they were not deprived of an opportunity to terminate the pregnancy, the District Court refused to follow the plaintiffs’ invitation to expand New Jersey “wrongful pregnancy” jurisprudence and allow recovery for future medical expenses associated with raising a child with Down’s syndrome, as permitted in a “wrongful life” or “wrongful birth” cases.

Comments

This case confirms that in New Jersey wrongful pregnancy cases, damages are limited to medical expenses, pain and suffering, lost wages and loss of consortium during pregnancy. There are additional issues raised with this type of claim including whether a duty is owed to the unborn child and potential constitutional questions. We anticipate that the New Jersey Supreme Court will ultimately address wrongful pregnancy claims including whether the damages should include those damages recoverable in wrongful life/birth cases.

For more information on this matter or related issues, please contact Peter A. Marra, Esq., ptm@spsk.com a partner in the SPSK Health Care Law practice group for further discussion.

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