In the Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 17 March 2006
Status: Immediate

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DR R TRUTER and DR J VENTER v M A DEYSEL

The Supreme Court of Appeal today upheld the appeal of Drs R Truter and J Venter against a judgment of the Cape High Court which had dismissed a special plea of prescription raised by the two doctors in an action instituted against them by Mr M A Deysel for damages arising from a personal injury allegedly sustained by him as a result of a series of medical and surgical procedures performed on him by them during 1993.

The sole issue before the Cape High Court and before the SCA concerned the time at which prescription started to run in respect of Deysel's claim against Drs Truter and Venter. In terms of s 11(d) of the Prescription Act of 1969 (the Act), his claim would prescribe after three years. Deysel's summons was served on Drs Truter and Venter on 17 April 2000. Thus, if the date on which the three-year period started running was before 17 April 1997, then any claim which Deysel may have had would have been extinguished by prescription and the special plea should have been upheld.

During the period July to August 1993, Dr Truter had performed four different ophthalmologic procedures on Deysel's right eye, starting with a cataract operation. Thereafter, during September 1993, Dr Venter had performed two further ophthalmologic procedures on the same eye. For the purposes of deciding the special plea only, the parties agreed that the foreseeable and actual consequence of these six procedures were decompensation of the cornea, necessitating a corneal graft operation which was performed by a Dr Burger in December 1996. This, turn, developed complications and ultimately led to the removal of Deysel's right eye by Dr Burger in April 1997. As Deysel had, at the time of the procedures in 1993, already lost his left eye, he was thus rendered totally blind.

As early as July 1994, Deysel wrote to the Medical and Dental Council, lodging a detailed complaint against Dr Truter and asking the Council to investigate the matter. He mentioned in the letter that, according to a Dr Mouton, who had given him an opinion of the condition of his eye, there was 'permanent damage to the eye'. After asking for and receiving from Dr Truter her account of how she had treated Deysel, the Council

informed Deysel in writing that it was of the opinion that Dr Truter was not guilty of any improper or disgraceful conduct. During the period from 1995 to late 1999, Deysel appointed three different firms of attorneys, one after the other, to investigate and prosecute a medical malpractice claim against Dr Truter and Venter. These firms of attorneys obtained professional reports from three experts in the field of ophthalmology. In addition, Deysel also consulted four other eye specialists about the condition of his eye. All these experts were provided with all the relevant medical records and other documents, including Deysel's letter of complaint to the Council and the Council's response. None of the medical experts concluded that an inference of negligence on the part of Drs Truter and Venter was justified. Eventually, in early 2000, Deysel's 'new' firm of attorneys consulted with a Dr Steven, who expressed the view that the operations performed by Drs Truter and Venter had been done one after the other, without giving the cornea time to clear and heal, and that this constituted negligence on the part of the said doctors. This was the first 'positive' expert report that had been obtained and it was on the basis of this report that Deysel's summons was issued in April 2000.

Deysel's claim against the two doctors would have prescribed if he had have actual or deemed knowledge of 'the facts from which the debt arises', in terms of s 12(3) of the Act, prior to 17 April 1997. The High Court concluded that the first time that Deysel or his legal representatives were made aware that the known facts (the conduct of Drs Truter and Venter) constituted negligence was when Dr Steven expressed this view shortly before the issue of summons. Thus, the court held, prescription did not start to run until such time as Dr Steven's favourable medical opinion was obtained and the special plea had no merit.

The SCA disagreed. It pointed out that, for the purposes of the Act, a debt is due when the creditor acquires a complete cause of action for the recovery of the debt, ie the entire set of *facts* which the creditor must prove in order to succeed with his or claim against the debtor. In a delictual claim, the presence or absence of negligence is not a *fact*; it is a *conclusion of law* to be drawn by the court in all the circumstances of the specific case. An expert opinion that a conclusion of negligence can be drawn from a particular set of facts is not itself a *fact*, but rather *evidence*. Furthermore, a plaintiff has to claim in one action all damages, both already suffered and prospective, flowing from one cause of action. In this case, Deysel's cause of action was complete and the debt of Drs Truter and Venter became due as soon as the first known harm was suffered by Deysel, even though the loss of his eye occurred later.

The SCA concluded that all the facts and information in respect of the operations performed on Deysel by Drs Truter and Venter were known, or readily accessible, to him and his legal representatives as early as 1994 or 1995. There was no new *fact* which was given to Dr Steven in 2000 which had not been presented to the previous medical experts for their opinions. Therefore, prescription of Deysel's claim had started to run before 17 April 1997 (ie more than three years before the date on which Deysel instituted action). It followed that Deysel's claim against Drs Truter and Venter had been extinguished by prescription. The Cape High Court should have upheld the doctors' special plea and dismissed Deysel's action.