

Harriton v Stephens [2006] HCA 15

The plaintiff, Alexia Harriton, was 25 at the time of the hearing, but her claim related to the failure of her mother's GP to accurately diagnose her mother's rubella during the first trimester of her pregnancy with Alexia. The rubella had devastating effects upon Alexia who was born with "catastrophic disabilities". She claimed, and this was accepted, that a reasonable medical practitioner would have arranged more detailed blood testing and have informed Alexia's mother of the high risk of severe congenital deformity to her unborn child. Alexia claimed that her mother would have had an abortion had she been made aware of the potential birth defects. The central issue to be decided was whether in the circumstances a duty of care was owed to Alexia. This is therefore a case brought alleging liability in negligence and seeking compensatory damages. The appeal to the HCA followed a dismissal of the plaintiff's claim by the NSW C/A 2/1. *Waller v James* (2006) HCA 15, a case with similar facts, was heard at the same time.

By a six to one majority the HCA dismissed the plaintiff's claim.

The Majority

Crennan J wrote the leading judgment and Gleeson CJ, Gummow and Heydon JJ all agreed with her judgment. Callinan and Hayne JJ wrote short separate judgments which also found against Alexia Harriton. Crennan J identified three major issues associated with imposing a duty of care in the circumstances: the difficulty of confining the duty of care to severely disabled persons, coherency of the law and the nature of the damage alleged. Ultimately she decided the case on the third ground. She concluded that the notion of life as compensable damage could not be apprehended or evaluated by the court, and could not therefore be recognised by the law:

"A comparison between a life with disabilities and non-existence, for the purposes of proving actual damage and having a trier of fact apprehend the nature of the damage caused, is impossible. Judges in a number of cases have recognised the impossibility of the comparison and in doing so references have been made to philosophers and theologians as persons better schooled than courts in apprehending the ideas of non-being,

nothingness and the afterlife...There is no practical possibility of a court (or jury) ever apprehending, or receiving proof of, the actual loss or damage as claimed by the appellant. It cannot be determined in what sense Alexia Harriton's life with disabilities represents a loss, deprivation or detriment compared with non-existence." (at 253).

This is an argument based in the logical impossibility of comparing non-existence (which cannot be experienced) to a damaged existence. This finding also led to the conclusion that no meaningful assessment of damages could be made in such a case.

The majority also noted that finding a duty of care in these circumstances would be inconsistent with laws on discrimination against the disabled and with the criminal law which does not differentiate between the unlawful killing of disabled and non-disabled persons. This was part of the majority's view that the law needs to be coherent in its structure, but it is also an argument giving precedence to the legal principle of the sanctity of life (which upholds that every life is equally valuable).

The Minority

Kirby J dissented, finding that the facts fell within the established duty of care which a medical practitioner owes a foetus to prevent pre-natal injury:

"...the appellant's case on the duty issue is an unremarkable one in which she sues a medical practitioner for failure to observe proper standards of care when she was clearly within his contemplation as a foetus, in utero of a patient seeking his advice and care. She was this in the standard duty relationship for such a case. She evidenced the important "salient feature" of vulnerability to harm (in the event great harm), should the respondent not observe proper standards of care with respect to her. Denying the existence of a duty amounts, in effect, to the provision of an exceptional immunity to health care providers. The common law resists such an immunity." [at 72]

He rejected the argument that the damage was unquantifiable on the basis that:

“the courts have been willing to assign monetary values to many intangible injuries and nebulous losses”, and that, “it has long been established that difficulties of quantification do not preclude relief where it is accepted that the plaintiff has suffered actionable damage.” [at 84]

Why was this High Court case significant?

1. The Court’s finding that life is not actionable damage; it is not possible for a person to claim compensation for his or her existence, even where that person has very significant disabilities and where, in the absence of the health professional’s negligence, that person would not have been born.
2. The ethical, social, and political dimensions of the case which encompass perspectives on the value of life and disability. Callinan J [at 205] described the appeal as raising a question “that has exercised the minds of philosophers, theologians, scientists, legislators and lawyers throughout the world.” Crennan J [at 258] stated that “It is odious and repugnant to devalue the life of a disabled person by suggesting that such a person would have been better off not to have been born into a life with disabilities.”

Useful Links on the case:

Case transcript <http://www.austlii.edu.au/au/cases/cth/HCA/2006/15.html>

ABC/PM – *High Court rejects ‘wrongful life’ argument*
www.abc.net.au/pm/content/2006/s1634644.htm (with podcast)

ABCRadio, The Law Report
<http://www.abc.net.au/rn/lawreport/stories/2006/1636890.htm>

Short case summary and discussion of related law: *“Wrongful life claims: dignity, disability and a line in the sand”*. Access at
http://www.mja.com.au/public/issues/185_10_201106/nev10697_fm.html

Detailed case note – *“Harriton v Stephens: Life, Logic and Legal Fictions”*.
Access at http://www.Sydney.edu.au/law/slr/slr28_3/Grey.pdf

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