

H v FETAL ASSESSMENT CENTRE 2015 (2) SA 193 (CC)

SUMMARY

- A boy with Down's syndrome — who was represented by his mother — sued the Fetal Assessment Centre for his damages flowing from its alleged failure to warn his pregnant mother that there was a high risk of him being born with the syndrome.
- He alleged that had his mother been informed of the risk she would have terminated the pregnancy.
- The damages he claimed were for his past and future medical expenses, for disability and for loss of amenities of life.
- The Centre excepted to the claim as not disclosing a cause of action, and the high court upheld the exception and dismissed it.
- He then appealed directly to the Constitutional Court. In issue was whether the common law might be developed to recognise the child's claim.
- *Held*, that it might be. This because:
 - Authority barring the claim did not take into account the right of a child in s 28(2) of the Constitution, nor other constitutional rights.
 - The elements of the law of delict could accommodate the claim.
 - There was some foreign authority for such a claim.
- *Held*, though, that it remained for the high court to determine whether the claim did exist, and if so, in what form.
- The Constitutional Court accordingly upheld the appeal, set aside the order of the high court, and replaced it with an order granting leave to amend his particulars of claim.