

## Health Law

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# Supreme Court Issues Decision Regarding Recoverable Damages for Wrongful-Birth in *Clark v. Children's Memorial Hospital*

In its recent decision in *Clark v. Children's Hospital*, No. 108656, 2011 WL 1733532, (Ill. May 6, 2011), the Illinois Supreme Court set forth rules for damages recoverable by plaintiffs in wrongful-birth actions. Preserving the distinction between wrongful-birth and wrongful life set forth in *Siemieniec v. Lutheran General Hospital*, 117 Ill. 2d 230, 512 N.E.2d 691 (1987), the court ruled that parents may not recover damages for expenses of caring for a child beyond the age of majority. However, the court also overruled *Siemieniec* in part, finding that the zone-of-danger test should not be applied where plaintiffs seek damages for emotional distress for a tort separate from negligent infliction of emotional distress.

### Background

The plaintiffs alleged wrongful-birth due to inaccurate physician opinions. Both defendant physicians attributed the existence of Angelman syndrome, a neuro-genetic disorder, in the plaintiffs' first son, Brandon, to non-genetic factors. However, subsequent tests later revealed that Brandon suffered from Angelman syndrome due to a genetic mutation. *Clark v. Children's Hospital*, No. 108656, slip op. at 2-3 (Ill. May 6, 2011). Prior to receiving the accurate information regarding the source of Brandon's disability, the plaintiffs gave birth to another child, Timothy, who also suffered from Angelman syndrome due to the same genetic mutation. The plaintiffs alleged that, but for the inaccurate information regarding the source of Brandon's Angelman syndrome, the couple would not have given birth to a second child.

The plaintiffs in *Clark* asked for damages spanning the lifetime of their second son, Timothy. This request was contrary to the general common law rule that parents can only collect damages up until the child reaches the age of majority. The plaintiffs also sought damages for negligent infliction of emotional distress. The circuit court dismissed both of the parents' claims with prejudice.

Because *Siemieniec* left open the possibility of damages spanning past the child's age of majority, the appellate court in *Clark* held that post-majority expenses are recoverable on a case-by-case basis and are not "automatically foreclos[ed] damages in a wrongful-birth case." *Clark v. Children's Hospital*, 391 Ill. App. 3d at 329-30. Similarly, the appellate court reversed the dismissal of the plaintiffs' claim for negligent infliction of emotional distress.

## Parents May Not Recover Expenses for Caring for a Child Post Majority

For a tortfeasor to be liable to parents for their child's medical expenses, the parents must "be legally liable for the charges, and the basis for such liability must exist prior to the creation of the charges and not arise due to a voluntary assumption of financial responsibility after the fact." *Clark v. Children's Hospital*, No. 108656, slip op. at 8-9 (internal citation and quotation omitted). Therefore, the question before the Illinois Supreme Court was whether Illinois law obligates parents to support a disabled adult child. The defendants argued that parents are only legally obligated to support a minor child. Finding in favor of the defendants, the court rejected four arguments presented by the plaintiffs: a common law argument, a statutory law argument, a foreign jurisdiction case law argument, and a public policy argument.

### *Common Law*

The plaintiffs in *Clark* first argued that Illinois common law allows for parents to receive damages to support adult children who are mentally or physically incapacitated. The plaintiffs, however, relied on cases presenting special exceptions for divorced parents and post-majority children pursuing higher education. *See Freestate v. Freestate*, 244 Ill. App. 166 (1927); *see also Strom v. Strom*, 13 Ill. App. 2d 354 (1957). The supreme court found that courts may exercise discretion in allowing for parental support for adult children in divorce cases. But, the court qualified its conclusion by stating, "[*Freestate* and *Strom*] do not stand for the general proposition that all parents, married or divorced, have an obligation to support an adult disabled child or to pay for a child's college education." *Clark*, No. 108656, slip op. at 11.

Therefore, the court concluded that the common law rule that parents have no obligation to support their adult children is the law of Illinois. Any exceptions to this rule, the court found, are codified by statute.

### *Statutory Law*

Relying on statutory law, the plaintiffs attempted to show that the legislature intended parents to be responsible for adult children who are unable to live independently. Specifically, they pointed to section 513 of the Illinois Marriage and Dissolution of Marriage Act, which allows courts to award compensation to either or both parties for the support of an unemancipated adult child with physical or mental disabilities. *Id.* at 14 (citing 750 ILCS § 5/513(a)(1) (West 2006)). The present Public Aid Code, however, limits the parental obligation of adult children, indicating that "parents are severally liable for the support of any child under age 18, and for any child aged 18 who is attending high school, until that child graduates from high school or attains the age of 19, whichever is earlier." *Id.* at 13 (citing 305 ILCS § 5/10-2 (West 2006)).

In *Clark*, the court concluded that wrongful-birth actions should be distinguished from divorce cases, holding that "parents are not obligated to support a child after he reaches the age of majority, even if he is unable to support himself, unless ordered to do so pursuant to section 513 of the Marriage and Dissolution of Marriage Act." *Id.* at 18. Thus, the court found that, because statutory law does not obligate parents to support adult children with mental or physical disabilities, the defendant was not liable for post-majority expenses.

### *Case Law from Sister States*

The plaintiffs next argued based on cases from sister states allowing for the recovery of post-majority damages. These cases, however, were based in jurisdictions where parents, by statute and common law, were legally responsible for adult children with physical or mental disabilities. Therefore, the court relied upon the general common law rule, and concluded that "[b]ecause the common law and statutes of the State of Illinois do not require the plaintiff parents to support their child after he reaches the age of majority, they may not recover his extraordinary postmajority expenses as an element of their damages." *Id.* at 20.

## Public Policy

Finally, the plaintiffs contended that public policy justifies a departure from the general common-law rule. They argued that tortfeasors are responsible for all foreseeable damages caused by their negligence, and it was foreseeable to the defendants that either the plaintiffs or the state of Illinois would have to care for Timothy post-majority. The court agreed that tortfeasors are responsible for all foreseeable damages. However, the court found that the defendants did not cause the plaintiffs to be responsible for Timothy after majority. The court concluded that parents who support their child post-majority do so only voluntarily.

### **Plaintiffs May Seek Emotional Distress Damages as Direct Victims of Wrongful-Birth**

Negligent infliction of emotional distress, before *Clark*, generally required the plaintiff to be within a zone-of-danger and suffer injury or illness as a result of the defendant's negligence. *Rickey v. Chicago Transit Auth.*, 98 Ill. 2d 546, 457 N.E.2d 1 (1983). In *Siemieniec*, 117 Ill. 2d at 261, the Illinois Supreme Court applied the zone-of-danger rule to negligence actions, including those that use emotional distress in the calculation of damages, as opposed to actions alleging tort liability on the basis of negligent infliction of emotional distress. But, in *Clark*, the court determined that it had erred in *Siemieniec* to the extent that it applied the zone-of-danger rule to actions alleging liability for a tort other than negligent infliction of emotional distress. *Clark*, No. 108656, slip op. at 29. Therefore, the court held, "the zone-of-danger rule applies only in cases where the plaintiff's theory of liability is the negligent infliction of emotional distress. It does not apply where, as in a wrongful-birth case, a tort has already been committed against the plaintiffs and they assert emotional distress as an element of damages for that tort." *Id.* at 29-30.

### **Conclusion**

The Illinois Supreme Court's ruling establishes a bright-line rule for recovery of extraordinary child care damages in wrongful-birth cases. As parents have no obligation to support children post majority, parents may only receive such damages until the time the child reaches the age of majority. On the other hand, the court's ruling will allow for the recovery of damages for emotional distress in a wider range of cases because, in many instances, recovery will not be limited by the zone-of-danger rule.

## **About the Authors**

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