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COA: Wrongful death actions on behalf of a nonviable fetus get same treatment as if brought on behalf of a “person”

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The Michigan Court of Appeals held in *Simpson v. Alex Pickens, Jr. & Assoc., M.D., P.C.*, No. 320443, that an omission can serve as the basis of a wrongful death claim involving the death of a nonviable fetus. The court held that amendments made to the Wrongful Death Statute, MCL 600.2922, merely expanded the scope of actionable deaths to include the death of an embryo or fetus. The amendments did not force such an action to be brought under MCL 600.2922a, which requires an affirmative act to cause the death in order to state an actionable claim.

Plaintiff Shakeeta Simpson brought this claim as the personal representative of the estate of the decedent Antaun Simpson, alleging that defendants were negligent providing her prenatal care and treatment causing the premature birth and death of nonviable fetus, Antaun, at 18.2 weeks gestation. Specifically, plaintiff claims that she suffered a miscarriage because her physician failed to perform a cerclage despite knowing that she had two previous pregnancy losses as a consequence of cervical insufficiency. Defendants sought partial summary disposition arguing that the amendments to the Wrongful Death Statute incorporate by reference the full text of MCL 600.2922a which, in addition to providing a cause of action for the death or injury of an embryo or fetus, also requires the plaintiff to allege an affirmative act as the cause of death. Because plaintiff stated that an omission, rather than a positive act, was the cause of the wrongful death, defendants argue that the complaint fails to state an actionable claim.

The trial granted defendants’ motion, holding that under the amendments, MCL 600.2922a must be incorporated into MCL 600.2922 because that statute refers to “death as described in 2922a.” The Court of Appeals reversed this decision and held that a plain reading of MCL 600.2922 shows that the amendatory language simply refers to another death that is actionable under the wrongful-death statute—the death of an embryo or fetus. The court held that the amendment merely expanded the scope of actionable deaths. Further, the court stated that the trial court’s interpretation of the amendatory language as incorporating the entirety of one statute into the other statute would contravene long-standing rules of statutory interpretation. Because this action was not brought under section 2922a, but rather under section 2922, plaintiff was not required to allege that defendants committed an affirmative or positive act as the cause of the decedent’s death in order to state a claim. Accordingly, the trial court’s order granting defendants’ motion for summary disposition was reversed and the case was remanded for further proceedings.

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