



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY

26 September 2012

STATUS: Immediate

Paixão v Road Accident Fund (640/2011) [2012] ZASCA 130 (26 September 2012)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal (SCA) handed down judgment today in an appeal from the South Gauteng High Court, Johannesburg (High Court). The matter concerned the common law dependent's action and, specifically, whether the common law protection it affords should be available to parties in a permanent heterosexual life partnership.

Mrs Paixão and her daughter sued the Road Accident Fund for loss of maintenance and support as a result of the death of Mr Gomes. They contended that Mr Gomes had contractually undertaken to maintain and support them, was legally obliged to so, and would have done so for the remainder of Ms Paixão's life and until her daughter became self-supporting.

Mrs Paixão and Mr Gomes had been living together and had planned to marry. Mr Gomes supported Mrs Paixão and her children financially, had formed a strong bond with the children, and had a joint will wherein they referred to "our daughters". On her part, Ms Paixão nursed and supported Mr Gomes when he was unable to work. They were accepted by their relatives, community and friends as a family unit.

The High Court, in a judgment wherein it was said that it “would be an affront to the fabric of society” and “seriously erode the institution of marriage” if the dependants’ action would be extended to Ms Paixão and her daughter, found that no legal duty of support had been owed to them. It dismissed their claims.

The SCA recognised that only those with a legally enforceable duty to maintain and support could successfully institute the dependant’s action. A dependant must have a right which is worthy of the law’s protection to claim support. Whether that is so is determined by the legal convictions of the community, which is in turn determined by among other things society’s history, its ideas of morals and justice, its perception of where the loss should fall, and the convenience of administering the rule. The court found that, as the legal convictions of the community is the decisive factor in the determination, the dependents’ action has always had the flexibility to adapt to social changes and modern conditions. It held that there is no reason to restrict the action to traditional family and blood relationships when social change does not require it. The SCA recognised that the nuclear family has, for a long time, not been the norm in South Africa and that millions of South Africans live together without entering into formal marriages. This was so for religious, legal, social, cultural and financial reasons. What is more, South Africa’s inherited legacy of family disruption caused by apartheid’s migrant labour system

On the facts, it found that there was a tacit agreement creating a binding and legal obligation between Mrs Paixão and her daughter, and Mr Gomes. It found further that Mrs Paixão and her daughter had established that they had an enforceable agreement with Mr Gomes and that the obligations created by the nature of their relationship was worthy of the law’s protection. In coming to this conclusion it found that the Road Accident Fund would not have undue practical problems in refuting claims and that not recognising the claim, in deference to the legislator, would be an abdication of judicial responsibility.

Thus, held the court, where an agreement between parties to a permanent heterosexual life partnership establishes a reciprocal duty of support it should be

afforded the protection of the common law dependants' action. The general sense of justice of the community demanded it. Accordingly, the appeal was upheld.