



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 28 May 2015

Status: Immediate

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

Neutral citation: *Pauw v Du Preez* (20197/2014) [2015] ZASCA 80 (28 May 2015)

The appellant is the owner of a house in the Strand. On Christmas Eve 2005, when the respondent was in the process of leaving the house, she lost her balance and fell from a flight of stairs leading to the street causing her to sustain bodily injuries. In due course the respondent instituted action for damages in the Western Cape High Court contending that the appellant had negligently failed to protect that portion of the stairs from which she had fallen with a railing that would have prevented her fall. When the matter came to trial, the issue of the appellant's liability was decided as a separate issue. The trial court concluded both that the appellant had been negligent and that she had failed to establish contributory negligence on the part of the respondent. It thus issued an order declaring the appellant to be liable to the respondent for whatever damages she might have suffered as a result of the injuries sustained by her in the incident.

The appellant appealed to a full court. In doing so she accepted that she had been negligent but argued that the trial court had erred in not finding contributory negligence on the respondent's part. Her appeal was dismissed but, with special leave, she appealed to the Supreme Court of Appeal contending, once again, that the respondent's own negligence had contributed to her fall.

It appears from the record that the respondent had lost her balance immediately after having closed a gate across the stairs. There was no evidence as to what had caused her to do so. The Supreme Court of Appeal held there are a myriad of potential reasons why persons might lose their balance. It therefore concluded that the fact that the respondent had lost her balance and fallen did not give rise to any inference of negligence on her part. The reason why she had fallen was thus unexplained and, in these circumstances, contributory negligence on her part had not been proved.

The appeal was therefore dismissed, with costs.

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