

# Court: Parents cannot recover expense of adult child's care

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SPRINGFIELD — Parents cannot recover the cost of caring for their disabled child after he reaches the age of majority, but they can seek damages for the negligent infliction of emotional distress, the Illinois Supreme Court held today.

In a 32-page opinion delivered by Justice Rita B. Garman, the majority of the state high court reversed the portion of the 1st District Appellate Court ruling that allowed Amy and Jeff Clark to recover damages for the cost of caring for their disabled, adult child and affirmed the holding that let the couple sue for the emotional distress that arose from the wrongful birth of their son.

Justice Charles E. Freeman, however, concurred in part and dissented in part, saying he believed the Clarks should be entitled to recover for the post-majority costs associated with caring for their son.

The Clarks' lawyer, Christopher T. Hurley, said he was disappointed that the other justices didn't adopt Freeman's stance on the recovery issue, but was more than pleased with the court's ruling over emotional distress claims in wrongful birth suits.

"It's a huge step forward for Illinois law," said Hurley, a partner at Hurley, McKenna & Mertz P.C. in Chicago. "The most important thing the court did was make it clear that parents who have had the tort committed against them of wrongful birth are entitled to recover damages for emotional distress associated with that."

While he disagrees with the court's ruling that prevents his clients from recovering post-majority costs for their son's care, Hurley said it was a reasonable interpretation of current state law.

Gary Feinerman represented the defendants as an attorney with Sidley, Austin LLP in arguments before he was named to a federal judgeship. A message left with the firm seeking comment was not immediately returned today.

The issue stemmed from the Clarks' 2003 wrongful birth suit against several doctors and hospitals. After they reached settlements, the only remaining defendants were Children's Memorial Hospital in Chicago and its geneticist, Dr. Barbara Burton.

The Clarks' complaint alleged that Burton failed to inform them of test results that showed their first son, Brandon, had a

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genetic mutation that resulted in Angelman syndrome, a condition that causes mental retardation, jerky arm movements and growth deficiencies.

If they would have had that information, the Clarks claim they would have known their risks of having another child with the same condition and would not have conceived their second child, Timothy, who was born in 2002 and also diagnosed with Angelman syndrome.

The Cook County Circuit Court ruled that the Clarks could recover the costs of caring for Timothy during his minority, but could not do so for the cost after he reaches the age of majority.

The circuit court dismissed the case with prejudice. Affirming in part and reversing in part, the appellate court said the lower court was right to dismiss the Clarks' counts seeking damages for their son's wages, but was wrong to dismiss the counts seeking post-majority damages as well as those alleging negligent infliction of emotional distress.

During the March 2010 arguments before the Illinois Supreme Court in this case, the defendants claimed that the Clarks could not recover damages for post-majority expenses because under Illinois law, they have no legal obligation to support Timothy past the age of majority.

The majority of the state high court agreed.

"The generally accepted common law rule is that parents have no obligation to support their adult children," Garman wrote on behalf of the majority, explaining that "although the legislature for a time imposed a parent support obligation to support dependent adult children, it abandoned that policy decades ago."

Garman did, however, point to a possible exception to the common law rule in the Illinois Marriage and Dissolution of Marriage Act that the appellate court relied on its decision to let the Clarks recover post majority costs of care.

Section 513 of the act, 725 ILCS 5, says parents in divorce proceedings may be required to support their child beyond the age of majority if he is mentally or physically disabled.

But Garman said placing more of a significance on Section 513 than common law and state statutes that limit parental responsibility to support their adult children "would lead to unintended consequences."

"If the legislature prefers a different result that would place the burden of support on the tortfeasor rather than on the parents or the taxpayers, it could do so," Garman said. "Absent such legislative guidance, however, we conclude that under the common law and statutes of Illinois, 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."

In his 14-page opinion, Freeman said the majority's construction of Section 513 "is such that the court seems to be encouraging divorce as the way around its ruling."

While the majority of the court mentions the need for legislative action, Freeman said "it is my sincere hope that the General Assembly will look into this area of the law and provide the necessary redress for future plaintiffs who are put into the situation the Clarks find themselves in through no fault of their own."

In order to reach its decision, the state high court had to overrule a portion of its 1987 ruling *Siemieniec v. Lutheran General Hospital*, 117 Ill. 2d 230, that applied the so-called "zone of danger" rule to bar claims for emotional distress in wrongful birth suits.

The case is *Amy Clark et al., v. The Children's Memorial Hospital, et al.*, No. 108656.

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