

Mom loses against accident lawyers

Delay in RAF claim was due to diligence, not negligence, says judge

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A JOBURG mother has lost her case against one of SA's top personal injury law firms – and settled for far less than she would have got if she'd stayed with them.

Elizabeth Steyn challenged her former lawyers, Ronald Bobroff and Partners over a delay in her Road Accident Fund (RAF) claim – and sued them for nearly R500 000.

The court action stemmed from a crash involving her then-12-year-old son, Micah, who had been injured in the accident with a car in Wesselsbron, in the Free State, in 2005.

Micah was thrown off his bicycle and landed on the windscreen of the insured car. He fractured his skull, among other serious injuries.

The following year, Steyn approached Bobroff and Partners to prosecute a third party claim against the RAF.

But according to court papers she was not satisfied with the length of time it took them to conclude the case, so she dumped them and hired others.

Last February, the Joburg High Court ordered the RAF to pay Steyn R2.5 million, including R2m in general damages

and R500 000 for her son's future loss of earnings.

Five days later she instituted the action against Bobroff and Partners.

She wanted the firm to pay her interest of 15.5 percent a year for the nearly 15-month delay in her claim with the RAF, allegedly caused by the law firm.

She said the firm had been negligent "and wrongfully failed and or neglected to timeously prepare, formulate, collate, submit, institute and prosecute (Steyn's) claim to recover damages".

But yesterday Judge Moroa Tsoka found in favour of Steyn's attorney, Stephan Bezuidenhout, and Bobroff and Partners, saying the firm had, in fact, acted diligently in handling Steyn's case.

The judge said it was common knowledge that the waiting period for trial dates was about 12 months.

He said while Steyn was concerned about the delay in finalising the claim, she had never voiced these concerns to

Bobroff.

Tsoka said he was unable to find negligence by Bobroff. He said when she initially consulted the lawyers, they had informed her that matters of this nature took time.

In her evidence, Steyn had conceded this, said Tsoka.

"The claim is not only speculative, but is based on conjecture and inferential reasoning."

On 28 August 2009 the plain-

tiff sent an e-mail to the defendant acknowledging that the defendant was still to arrange an appointment for her son to consult Dr Maruse.

In the same e-mail,

the plaintiff noted that the forthcoming trial might have to be postponed in order for a proper neurosurgeon's report to be obtained.

"This, in my view, suggests that the plaintiff appreciated that her son's claim required proper attention and that a delay in the circumstances of this matter, may be necessary. The defendant committed no delict. Neither did (they) breach any contractual mandates."

Judge Tsoka further found that Bobroff's conduct had not been unlawful. The alleged acts of negligence had not caused (Steyn) patrimonial loss.

Neither had it been foreseeable that they would result in the trial date being allocated 14 months in the future.

"On the totality of evidence before me, I am unable to find any wrong done by the defendant. On the contrary, the defendant acted diligently in accordance with their written mandates," Tsoka said.

Bobroff's senior director, Ronald Bobroff, said last night he appreciated Judge Tsoka's comments and that the judgment had been a vindication of the practice and its good reputation.

"The unfortunate thing here is that Mrs Steyn's son's condition had deteriorated," Bobroff said. "Mr Bezuidenhout had advised her that it took longer for children and young people to show long-term effects of such accidents."

"This is why she was cautioned against settling her claim too quickly."

"It is sad, because the claim was settled too quickly and for way too little. And the door has been closed on this case forever," Bobroff said.

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