NEW YORK COURT OF APPEALS ROUNDUP

LIFE, LOSS, AND THE LIMITS OF THE LAW

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In *SanMiguel v. Grimaldi*, the New York Court of Appeals confronted an emotionally wrenching scenario: a mother whose long, difficult labor ended in the emergency delivery of a gravely injured infant who fought for life for eight days before dying. Despite the undeniable human tragedy, a divided court held firm to a strict legal doctrine that limits recovery for purely emotional injuries.

The case asked whether the court's precedent—particularly *Sheppard-Mobley v. King*, 4 N.Y.3d 627 (2005), which unanimously barred such recovery when a fetus is injured in utero but born alive—should apply with equal force to claims premised on lack of informed consent, and if so, whether that precedent ought to be overruled.

In a four-three decision by Judge Madeline Singas and joined by Judges Michael J. Garcia, Anthony Cannataro and Caitlin J. Halligan, the court held that lack-of-informed-consent claims are simply another variety of medical malpractice and that a birthing parent may not recover purely emotional damages unless they suffered a physical injury independent of childbirth itself.

The majority acknowledged the heartbreaking facts and the moral force of the plaintiff's position but ultimately refused to disturb two decades of doctrinal development. The result is a reaffirmation of a bright-line rule long rooted in New York's historic skepticism toward claims for emotional harm, accompanied by a pair of powerful dissents by Chief Judge Rowan D. Wilson and Judge Jenny Rivera (joined by Judge Shirley Troutman) urging the court to abandon that line for a potentially more coherent and compassionate framework.

The facts of the case are tragic. Plaintiff Veronica SanMiguel was admitted to defendant St. Barnabas Hospital in July 2012 after passing her due date. For two days, doctors attempted to induce labor. Dr. Meryl Grimaldi attempted two vacuum extractions that failed, before resorting to an emergency C-section. The infant boy was born with no heartbeat, revived only after intensive efforts, and transferred between neonatal units as his grave neurological injuries became apparent. He died after eight days on life support.

Plaintiff sued on behalf of both herself and her son's estate. As relevant to the appeal, she narrowed her personal claim to a single theory: lack of informed consent for the attempted vacuum extractions. For that claim, she sought only emotional damages. Defendants moved for summary judgment, pointing to *Sheppard-Mobley*, which prohibits parents from recovering purely emotional damages when malpractice injures a fetus who is then born alive.

The Bronx County Supreme Court rejected that argument because "there is a triable issue of fact as to whether plaintiff consented to Dr. Grimaldi's use of a vacuum extractor to attempt to deliver the infant," and "the parties dispute whether the use of the vacuum extractor proximately caused plaintiff's alleged injuries." The Appellate Division First Department, with Presiding Justice Renwick dissenting, affirmed holding that *Sheppard-Mobley* did not bar plaintiff's claim because a claim for lack of informed consent "is separate and distinct from general allegations of medical negligence" like those at issue in *Sheppard-Mobley*.

According to the First Department, lack of informed consent "comprises different elements" and "implicates the prospective mother's active role as decision-maker for herself and on behalf of her fetus, with both capacities concerning the mother's right to the integrity of her body."

Alternatively, "assuming for the sake of argument that *Sheppard-Mobley* applie[d] similarly to claims for ordinary medical malpractice and lack of informed consent," the First Department "respectfully invite[d] the Court of Appeals to revisit the issue" because *Sheppard-Mobley* "is... unjust, as well as opposed to experience and logic," and that its "continued application... to claims like the present" would "be repugnant to common-sense justice" and to what the First Department described as "the fundamental principle that one may seek redress for every substantial wrong." The Appellate Division granted defendants leave to appeal and certified the question of whether its order was properly made.

The majority opinion for the Court of Appeals begins by returning to first principles. For more than a century, New York courts have been wary of expanding liability for purely emotional harm. With rare exceptions for mishandled corpses, false death reports, bystander trauma, or emotional injuries with physical manifestations, the court has declined to recognize such claims. That skepticism, the majority explains, is part of the DNA of New York tort law.

Against that backdrop, the majority revisits the lineage of cases restricting parental recovery for emotional damages arising from prenatal injuries. Beginning with *Howard v. Lecher*, 42 N.Y.2d 109 (1977), and continuing through *Becker v. Schwartz*, 46 N.Y.2d 401 (1978), *Vaccaro v. Squibb*, 52 N.Y.2d 809 (1980), and *Tebbutt v. Virostek*, 65 N.Y.2d 931 (1985), the court routinely rejected such claims except for a single detour in *Broadnax v. Gonzalez*, 2 N.Y.3d 148 (2004), which allowed recovery when malpractice caused a miscarriage or stillbirth.

The premise for that exception was practical: New York does not recognize wrongful-death actions for stillborn fetuses, and without a narrow exception, negligent providers would face no liability at all. That exception, however, was pulled back sharply by *Sheppard-Mobley*, which held that if the infant is born alive, the normal rule barring emotional damages applies, and the mother can recover only if she suffered an independent physical injury. Because a liveborn child may assert their own malpractice claim, the legal gap that justified *Broadnax* disappears.

Plaintiff argued that lack of informed consent is different from a traditional medical malpractice claim. But the majority refused to draw such a distinction. Under Public Health Law § 2805-d, lack of informed consent is explicitly treated as a form of medical malpractice. As such, it falls squarely within the ambit of *Sheppard-Mobley*. Because plaintiff admitted she suffered no physical injury apart from the ordinary effects of childbirth, her claim cannot proceed.

The majority then turned to the second question: whether to overrule *Sheppard-Mobley*. Here too, the answer was no. The doctrine of stare decisis, the majority emphasized, demands continuity absent a compelling reason to change course. Nothing had altered the landscape in the two decades since the unanimous decision: not legal chaos, not unworkable application, not dramatic shifts in tort theory.

The majority dismissed arguments that its precedent was out of step with other jurisdictions, noting that most jurisdictions that take a different approach did so long before *Sheppard-Mobley*, not after it. The line may sometimes feel harsh, the majority acknowledged, but its consistency is its virtue. To create new exceptions—or adopt Wilson's suggestion that juries decide whether an infant's suffering was too limited to defeat the mother's claim—would, in the majority's view, be an act of judicial policy-making incompatible with restraint. When the law draws a line, the majority concluded, even tragedy cannot erase it.

Rivera in dissent (joined by Troutman) pushes back strongly on the majority's logic. Tracing a century of New York tort law, she argues that *Sheppard-Mobley* stands on outdated assumptions about emotional harm, rejected long ago in cases like *Battalla v. State*, 10 N.Y. 237 (1961), which recognized the legitimacy and provability of psychological trauma. As Rivera describes the current rule: a mother may recover

emotionally if malpractice causes a stillbirth, but not if the child lives for minutes, or hours, or days, perhaps unconscious and suffering from catastrophic injuries.

The emotional injury to the mother is identical; the medical provider's duty to the mother is identical; the trauma is identical. The line is arbitrary, she contends, and inconsistent with both tort doctrine and modern science recognizing the profound physical and psychological effects of childbirth-related PTSD. She would unequivocally overrule *Sheppard-Mobley* and recognize emotional-distress claims for malpractice during pregnancy and childbirth regardless of whether the infant is born alive.

Wilson agrees that the current rule produces injustice but proposes a narrower doctrinal fix. When a child is born alive but never conscious, or survives only because of life support, Chief Wilson argues that the *Broadnax* rationale applies: there is essentially no meaningful legal remedy available to the child's estate, because New York requires evidence of conscious pain and suffering to sustain a wrongful-death or survival action.

In such cases, the mother should be able to recover for her emotional harm, because without that, no remedy would be available for the malpractice. He further suggests a pragmatic alternative: allow both claims to proceed, but permit recovery on only the one that yields greater compensation. This approach, he argues, preserves stare decisis while avoiding the perverse incentive structure that now exists. The majority rejects his proposal as "judicial invention," but Wilson counters that the true fiction is forcing grieving parents into legal categories that erode meaningful remedies in the name of doctrinal purity.

The court's ruling closes the door on emotional-distress claims arising from prenatal injuries where the child is born alive, even if only briefly. It ties lack of informed consent tightly to traditional malpractice principles and places the burden on the Legislature to expand liability if New Yorkers believe emotional damages should be available in such cases. But the dissents foreshadow continuing pressure to revisit this area of law.

As medical science advances and more infants are resuscitated or sustained for hours or days after catastrophic in-utero injury, the doctrinal gap identified in this case may widen. For now, however, *Sheppard-Mobley* remains the governing rule, and the result for plaintiff is stark: the law recognizes the tragedy of her loss, but offers no personal remedy for the emotional devastation she suffered.

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