**IN THE SUPREME COURT OF THE UNITED KINGDOM**

**ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION) ENGLAND**

**B E T W E E N:**

**EVELINA AND RICHARD SHAW**

Appellants

and

**DR SIMON BARNES**

Respondent

MOOT PROBLEM

1. Richard and Evelina Shaw are evangelical Christians. Evelina works part-time in a care home and Richard is a taxi driver. They met in early 2014 through their church and began dating soon afterwards. On 2 September 2014, Richard proposed and the couple set a wedding date of 6 July 2015. Soon after their engagement, the couple discussed their hopes and concerns about having children. Their faith permits contraception, but they are morally opposed to abortion. They were both keen to have children, but agreed that they would not until they had saved some money and found their own home. Richard was also worried that he might be a carrier of the sickle cell gene, as he had an uncle who suffered from the disease.
2. On 5 June 2015, they visited their GP, Dr Barnes, for advice. Dr Barnes was a sole practitioner at the Yellow Tree Clinic. He advised them on birth control methods, explaining their various pros and cons, and handed them an NHS leaflet entitled “*Your contraception guide*.” Richard also mentioned his concerns about sickle cell disease. Dr Barnes explained that as there were sufferers in Richard’s family, he might be a carrier, in which case any child they conceived could be at risk of having the disease. However, sickle cell trait could be tested via a simple blood test that could be arranged through the Clinic. Dr Barnes advised Richard that if the couple decided to try for a baby, he could ring the Clinic and arrange a date to come in for a test. For the time being, the couple decided that Evelina would go on the pill, which she started taking immediately.
3. In December 2015, the couple moved into a new home. That Christmas, they decided that they would like to try for a baby. On 2 January 2016, Richard called the Clinic to arrange for a blood test as to whether he had the sickle cell trait. He spoke to the receptionist, Paul, who had started that day as a part-time employee of the Clinic. Paul told Richard that he did not think blood tests of that type could be provided on the NHS and that if he wanted to have one he would have to arrange it through a private clinic. He told Richard that he had no idea how much a private consultation would cost, but he thought it would probably be “*several hundred pounds*.” This advice was incorrect – the blood test for sickle cell trait could be provided for free on the NHS.
4. Having just moved into a new home and not having significant savings, Richard and Evelina decided that they could not afford to pay for a blood test privately. Nevertheless, they were keen to get started and decided that Evelina would stop taking the pill. In March 2016, Evelina discovered that she was pregnant. Pre-natal testing revealed that Richard is a carrier of the sickle cell trait.
5. On 28 November 2016, Evelina gave birth to a baby boy, James, who suffers from sickle cell disease. As a result of unrelated (and non-negligent) complications during his delivery, James was temporarily asphyxiated by compression of his umbilical cord, which caused him to suffer irreversible brain injury and cerebral palsy.
6. Richard and Evelina sued Dr Barnes in negligence for the costs of bringing up a disabled child.
7. The Trial Judge, McManners J, held that:
8. Dr Barnes’s advice to the couple on 5 June 2015 was not negligent. He correctly advised them on birth control methods and the risks relating to sickle cell disease.
9. However, Dr Barnes is vicariously liable for Paul’s negligent advice by telephone on 2 January 2016 that a blood test could not be arranged for free (*Darnley v Croydon Health Services NHS Trust* [2018] UKSC 50 applied).
10. Had the Claimants known that the blood test could have been performed on the NHS, they would have delayed conception until after Richard had received the results of the test. The results would have revealed that Richard was a carrier of the sickle cell trait and the couple would either have taken steps with medical help to conceive a child without the disease or would have adopted a child instead.
11. Although James’s brain injury and cerebral palsy were medically unrelated to his sickle cell disease, Dr Barnes’s duty was to prevent birth and he was accordingly liable (through Paul) for all of the costs relating to James’s care (*Parkinson v St James and Seacroft University Hospital NHS Trust* [2002] QB 266 and *Groom v Selby* [2002] PIQR P18 applied). It was reasonably foreseeable that Paul’s advice could influence the couple’s decision whether to conceive before having a test.
12. Dr Barnes appealed to the Court of Appeal on two grounds:
13. The Trial Judge erred in finding that Paul, the Clinic’s receptionist and a non-medically trained member of staff, owed a duty of care to the Claimants in negligence.
14. Alternatively, the damage relating to James’s cerebral palsy was not within the scope of Paul’s duty of care.
15. The Court of Appeal allowed Dr Barnes’s appeal on both grounds, holding that:
16. A GP’s receptionist does not owe a duty of care to give accurate information about whether his employer’s services can be provided free of charge. *Darnley v Croydon* can be distinguished as the advice given to the receptionist there was provided within the context of a hospital’s A&E Department, in which it is established that the hospital owes a non-delegable duty of care. It would not be fair, just and reasonable to impose a similar duty on GP receptionists when giving purely administrative advice (*Caparo Industries v Dickman* [1990] UKHL 2 applied).
17. In any event, the damage relating to James’s cerebral palsy was not within the scope of Paul’s duty of care. Richard had called the clinic for advice on taking a test to see if he was the carrier of the sickle cell trait. The couple had accepted the risk that James could be born with brain damage or other complications and therefore Dr Barnes cannot be held responsible for the costs relating to those conditions (*Khan v Meadows* [2019] EWCA Civ 152 applied).

Richard and Evelina appeal to the Supreme Court on both grounds.

NOTE: The Supreme Court has directed that it would wish to hear leading counsel for both parties first on **Ground 2**, followed by junior counsel addressing **Ground 1**.