*Rosamund Smith Mooting Competition 2022, Semi-Final 2*

*Moot problem*

IN THE COURT OF APPEAL, CIVIL DIVISION

*NHS Frimley Health Foundation Trust (Appellant) v Lola Giordano (Respondent)*

1. In the early morning of 17 September 2019, Amelia Clark, a 31 year old pregnant woman, started experiencing strong contractions and her waters broke. She was 37 weeks gestation and had an uncomplicated pregnancy. Amelia contacted her local NHS Trust, the Appellant in this case, who advised her to make her way to the maternity unit. However, Amelia’s partner, George Gleave, was on a night shift at the time she went into labour and could not be contacted until he finished his shift at 9am.
2. Being unable to drive to hospital herself, Amelia knocked on her neighbour’s door and asked for her assistance. Amelia had known her neighbour, Lola Giordano, for many years, having grown up in the area since she was child. Lola had two adult children of her own and was a teacher, so Amelia thought that Lola would be a good backup birth partner. Amelia’s mother died when she was 17 years old and Lola had taken on a role as Amelia’s mother figure in the intervening years. Amelia sometimes even stayed with Lola when her and George had relationship problems.
3. Lola and Amelia drove to Frimley Park Hospital and arrived shortly after 1am, where Amelia was admitted to the labour ward. Amelia was placed under constant monitoring because her waters had broken. Amelia was experiencing severe pain and discomfort almost immediately following admission to the ward. Lola remained with Amelia throughout the morning as her labour progressed, witnessing Amelia’s severe discomfort. Around 5am Amelia requested an epidural for pain relief, but the epidural fell out and had to be re-inserted. After 3 failed attempts at insertion, the epidural was abandoned. This was very distressing for Amelia who was screaming in pain and Lola was becoming concerned for Amelia’s welfare.
4. Around 8.30am on the morning of 17 September 2019, the fetal heart rate monitor picked up a drop in the baby’s heart rate, signifying that the baby was now in distress. An emergency call was triggered and doctors and nurses came rushing in the room. The obstetric registrar examined Amelia and declared that the baby needed to be delivered in an emergency as the heart rate was not recovering. At this point, the registrar prepared Amelia for an instrumental delivery, using ventouse to deliver the baby. It took 3 attempts to do so and at 9.04am a baby girl was delivered.
5. The baby girl was born lifeless and blue and was immediately taken for resuscitation in one corner of the room. Amelia was screaming and trying to get to her baby but could not do so as she was suffering a severe postpartum haemorrhage and began to lose consciousness. Due to negligence in the performance of the instrumental delivery, Amelia had to be rushed to theatre for emergency life-saving treatment. At this point, Lola started to panic and did not know whether to stay with the baby or to be with Amelia. She was also responsible for calling George, Amelia’s partner, to let him know what had happened and to tell him to make his way to the hospital.
6. The baby girl was successfully resuscitated and survived but with brain damage impacting her for the rest of her life. Amelia did recover from her haemorrhage but was in hospital for 2 weeks and subsequently suffered postnatal depression following her discharge from hospital. Lola experienced frequent flashbacks of the labour and the moment that the baby girl was taken for resuscitation. Lola suffered panic attacks and found it very distressing every time she saw the baby girl out walking with Amelia. Lola was subsequently diagnosed with Post Traumatic Stress Disorder.
7. A clinical negligence claim was brought against NHS Frimley Health Foundation Trust. The Trust accepted liability for the injury caused to the baby and Amelia during the birth but did not accept liability for Lola’s injuries.
8. At first instance, Russell J held that the Trust were liable for Lola’s psychiatric injury on the grounds that Lola was a secondary victim under the *Alcock* criteria (*Alcock v Chief Constable of South Yorkshire* [1992] 1 AC 310). She was proximate in time and space to the childbirth, witnessed the birth with her own sight, and, had a close tie of love and affection with Amelia as her neighbour.
9. The Trust appealed on the following grounds:
10. Russell J erred in law because he failed to consider whether there was a sudden shocking event which violently agitated the mind (*Alcock v Chief Constable of South Yorkshire* [1992] 1 AC 310) in this case. The Trust submitted that childbirth does not automatically constitute a sudden, shocking event and a period of eight hours cannot be categorised as a sudden shocking event. On the facts, there was no relevant element that met the requirements of a shocking event which violently agitated the mind.
11. Lola was not a secondary victim. While the Trust accepted that she was proximate in time and space and did perceive the event with her own sight and senses, they submit that Lola did not have a close tie of love and affection such that she could recover for psychiatric injury.

*Moot problem set by:*

Jaime Lindsey

Faculty of Law, Essex University

6 June 2022