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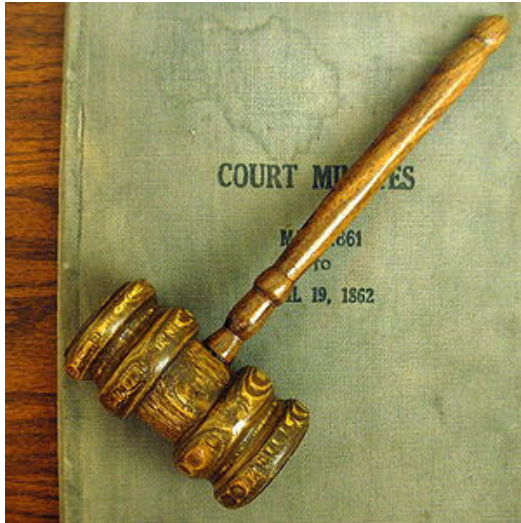
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Supreme Court of Illinois Revises Elements of Wrongful Birth Claim

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In *Clark v. Children's Memorial Hospital*, No. 108656, the Supreme Court of Illinois considered the validity of a lawsuit involving claims that a hospital and its physicians failed to properly test and diagnose a couple's first born child for a genetic defect and thus failed to advise the couple of the risk of conceiving a second child. The lawsuit revolved around claims of wrongful birth, negligent infliction of emotional distress and others.

As explained in the decision:

Plaintiffs Amy and Jeff Clark filed suit against Paul Wong, M.D., Rush University Medical Center (Rush), Baylor University Medical Center (Baylor), and Quest Diagnostics Clinical Laboratories (Quest), alleging various theories of liability in connection with the birth of their son, Timothy, who has Angelman Syndrome. They later added Children's Memorial Hospital (Children's Memorial) and Barbara Burton, M.D., as defendants. Their amended complaint alleged that Burton negligently failed to inform plaintiffs of test results revealing that their first son, Brandon, suffered from Angelman Syndrome due to a UBE3A genetic mutation, and that they would not have conceived Timothy had she provided them with accurate information regarding the risk of giving birth to another child with the same condition.

The first important holding of this case involved the "wrongful life" claim. The court reaffirmed its prior holdings and rejected this claim on public policy grounds, explaining that:

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“A child who is born with a genetic or congenital condition does not have a cause of action in this state against a health care provider whose breach of the standard of care “precluded an informed parental decision to avoid his conception or birth.” *Id.* at 236, 111 Ill.Dec. 302, 512 N.E.2d 691. His life, while burdened by his condition, is “as a matter of law, always preferable to nonlife.”

Next, the court addressed the negligent infliction of emotional distress claim and reached a conclusion that overturned prior Illinois court rulings. At issue was whether, in making an emotional distress claim, the parents were required to prove that any alleged negligence on behalf of the defendants in regard to their child also endangered the parents. This requirement is typical negligent infliction of emotional distress claims that are not grounded in any other claim.

However, the court noted that in this case, the emotional distress claim arose in the context of the “wrongful birth” claim. In other words, the parents were not asserting an emotional distress claim as a cause of action in and of itself, but rather asserted emotional distress as an element of damages for the personal tort of wrongful birth.

For that reason the court reversed Illinois precedent and concluded that it was illogical to apply the zone of danger to cases involving [wrongful birth claims](#):

In light of these considerations, we conclude that we erred in *Siemieniec* in applying the zone-of-danger rule to wrongful-birth plaintiffs’ claims for emotional distress. We overrule *Siemieniec* on this point, and specifically hold that the zone-of-danger rule applies only in cases where the plaintiff’s theory of liability is the negligent infliction of emotional distress. It does not apply where, as in a wrongful-birth case, a tort has already been committed against the plaintiffs and they assert emotional distress as an element of damages for that tort.

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) handles [workers’ compensation](#) and [personal injury cases](#). Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.