# CAN A PARENT BRING A SEPARATE CLAIM FOR EMOTIONAL DISTRESS AFTER EXPERIENCING A STILLBIRTH OF A CHILD?

Recently, the parents of a stillborn baby sued the midwife, health care center[1] and hospital for wrongful death and negligent infliction of emotional distress, the Marion Superior Court in Indianapolis granted the defendants summary judgment. The Court of Appeals reversed, holding that the parents have a valid claim for negligent infliction of emotional distress and should be allowed to proceed on it.

In December 2011, the Indiana Supreme Court issued its opinion in the matter of ***Spangler v. Betchtel et al.*** holding that a Parent's separate action seeking damages for emotional distress from experiencing the stillbirth of their child is not barred by the Indiana Child Wrongful Death Act or the Indiana Medical Malpractice Act.

- **Child Wrongful Death Act (CWDA) and Claims for Emotional Distress from Stillbirth:** At the time of the child's death and subsequent stillbirth, Indiana law precluded any claim for damages under the CWDA[2]. However, the Court of Appeals has interpreted Bolin to allow actions for emotional distress brought by mothers who suffer a miscarriage notwithstanding the CWDA. [3] As a result, the Indiana Supreme Court agreed with the Court of Appeals interpretation and held that parents who have suffered a stillbirth of a child are not precluded by the CWDA from seeking emotional distress damages in a negligence action.
- **Claims for Emotional Distress Damages in Negligence Actions:** In Indiana, actions seeking damages for emotional distress resulting from the negligence of another are permitted in two situations. First, where the Plaintiff has witnessed or come to the scene soon thereafter the death or severe injury of certain classes of relatives (i.e. the bystander rule[4]) or where the plaintiff suffered a direct impact. (i.e. modified impact rule[5]). This opinion is based on the Court's interpretation of the *modified impact rule*, allowing a plaintiff to recover so long as the plaintiff personally sustained a physical impact, in addition to emotional distress damages[6]. The Court disagreed with the Trial Court's contention that the modified impact rule impacts a plaintiff's recovery of emotional damages to situations where an injury was negligently inflicted on another person.
- **Claims brought under the Indiana Medical Malpractice Act**: The Hospital was a qualified health care provider and pursuant to the Indiana Medical Malpractice Act, argued a stillborn baby was not considered a patient and thus, parents could not bring an independent cause of action arising from the stillborn's infant death. In addition, the Hospital argued that the plaintiff's claims for negligent infliction of emotional distress were "derivative" of the injuries sustained by the unborn child, that a fetus not born alive should not be considered a "patient" under the MMA, and that the plaintiffs' claims are thus barred under the MMA because "there must be a patient from whom such a claim must derive. [7]
- However, the Court disagreed and stated "a parent who suffers emotional distress from experiencing the birth of a lifeless child resulting from medical negligence is a "patient" subject to the MMA, but such claims need not be seen as 'derivative' ones."

Should you have any questions, please contact your regular Hall Render attorney.

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[1] The midwife and the Center claims were governed under the CWDA because they were not qualified health care providers at the time of the alleged malpractice.

[2] *Bolin v. Wingert, 764 N.E.2d 201, 207 (Ind. 2002)*. Holding that eight to ten week-old fetus does not satisfy the definition of "child" under the CWDA and that "only children born alive fall under the CWDA.

[3] *Ryan v. Brown*, 827 N.E.2d 112, 118 (Ind Ct App. 2005; *Breece v. Lugo*, 800 N.E.2d 224, 229-30 (Ind. Ct. App. 2003).

[4] *Groves v. Taylor*, 729 N.E. 2d 569, 573 (Ind. 2000).

[5] Shuamber, 579 N.E.2d at 456

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[6] *Bader v. Johnson, 732 N.E.2d 1212, 1215, 1222, (Ind. 2000)*, finding that mother's continued pregnancy and the physical transformation that her body underwent satisfied the direct impact requirement

[7] *Ind. Patient's comp fund v. Winkle, 863 N.E. 2d 1 (Ind. Ct. App. 2007).*

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