



HIGH COURT OF AUSTRALIA

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LIAM NEIL MAGILL v MEREDITH JANE MAGILL

An action for the tort of deceit brought by a man said to be the victim of paternity fraud failed, the High Court of Australia held today.

The Magills married in April 1988 and separated in November 1992, divorcing in 1998. They had two sons and a daughter between April 1989 and November 1991. After separation Mr Magill paid child support for all three children. After each birth, Ms Magill gave him birth registration forms to sign with him named as the father. In 1995, Mr Magill learned that Ms Magill at least suspected that her second son was not her husband's child. In April 2000, DNA testing established that Mr Magill had fathered neither this boy nor the girl. Child support payments were adjusted to allow for past overpayments and an extinguishment of arrears.

In January 2001, Mr Magill commenced proceedings against his ex-wife in the Victorian County Court for deceit. He claimed damages for personal injury in the form of anxiety and depression resulting from Ms Magill's fraudulent misrepresentations. He also claimed financial loss, including loss of earning capacity by reason of his psychiatric problems and expenditure on the children under the mistaken belief he was their father, and exemplary damages. Mr Magill did not claim in respect of the child support payments. He was awarded \$70,000: \$30,000 for general pain and suffering, \$35,000 for past economic loss and \$5,000 for future economic loss. The County Court found Ms Magill's presentation of the birth registration forms to Mr Magill constituted the representation by Ms Magill that he was the father. The Victorian Court of Appeal reversed that decision on the ground that Mr Magill had failed to establish the essential elements of the tort of deceit. He appealed to the High Court.

The Court unanimously dismissed the appeal. It rejected Ms Magill's contention that section 119 of the *Family Law Act*, which permits spouses to sue each other, and section 120, which abolishes certain actions such as damages for adultery, exclude any action for deceit. However, three members of the Court held that no action for deceit could lie for representations about paternity made between spouses, and three members of the Court held that, while there could be circumstances in which such an action might succeed, they were exceptional and did not cover Mr Magill's case.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*