

McCulloch and others (Appellants) v Forth Valley Health Board (Respondent) (Scotland)

Case ID: 2021/0149

Case summary

Issue

In *Montgomery v Lanarkshire Health Board* [2015] UKSC 11, the Supreme Court held that a doctor "is under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments." In this appeal, the Supreme Court is asked to decide what test should be applied when assessing whether an alternative treatment is reasonable and requires to be discussed with the patient. More specifically, did the doctor in this case fall below the required standard of reasonable care by failing to make a patient aware of an alternative treatment in a situation where the doctor's opinion was that the alternative treatment was not reasonable and that opinion was supported by a responsible body of medical opinion? It is also asked whether the courts below erred in their approach to the issue of causation.

Facts

Mr Neil McCulloch died on 7 April 2012 at Forth Valley Royal Hospital, having suffered a cardiac arrest at home. The appellants are Mr McCulloch's widow and other relatives. They claim that his death was caused by the negligence of Dr Catherine Labinjoh, a consultant cardiologist employed by the respondent, the Forth Valley Health Board. Among other things, the appellants allege that, in line with the duty in *Montgomery*, Dr Labinjoh was required to discuss the option of using non-steroidal anti-inflammatory drugs with Mr McCulloch.

The appellants' claim failed before both the Outer House and the Inner House of the Court of Session. Both courts held that the duty in *Montgomery* does not require a doctor to discuss a course of treatment with their patient if the doctor has concluded, applying their professional skill and judgment, that it is not a reasonable option in the circumstances of the case and the doctor's view is supported by a responsible body of medical opinion. They also held that, even if negligence had been established, the claim would still have failed because the appellants had not proven on the balance of probabilities that it caused Mr McCulloch's death. The appellants now appeal to the Supreme Court.

Judgment appealed

[\[2021\] CSIH 21](#)

Parties

Appellants

Jennifer McCulloch and others

Respondent

Forth Valley Health Board

Interveners

General Medical Council
British Medical Association

Appeal

Justices

Lord Reed, Lord Hodge, Lord Kitchin, Lord Hamblen, Lord Burrows

Hearing start date

10 May 2023

Hearing finish date

11 May 2023

Watch hearing

10 May 2023 [Morning session](#) [Afternoon session](#)

11 May 2023 [Morning session](#)