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THE NEGLIGENCE STANDARD APPLICABLE TO A COMMON CARRIER IS REASONABLE CARE UNDER THE CIRCUMSTANCES

Nunez v. Professional Transit Management of Tucson, Inc. (Ariz. Supreme Court, February 23, 2012)

Linda Brown was confined to a wheelchair. She boarded a Tucson city bus operated by Suntran. Zoellner, the bus driver, secured the wheels to the bus floor. After the bus resumed its trip, a car abruptly stopped in front of it. Zoellner braked sharply and Brown was thrown from her wheelchair. She sustained serious injuries.

Brown sued Suntran and Zoellner, alleging that Zoellner was negligent both in driving the bus and in failing to fasten Brown’s seatbelt. Suntran argued that brown’s refusal to wear a seatbelt caused her injury, and that her injuries were caused by the negligence of the driver of the car that stopped in front of the bus.

Suntran requested a jury instruction that common carriers have a duty to passengers to exercise reasonable care under the circumstances. The judge instead instructed the jury that “[Suntran] – as a common carrier of passengers for hire, is bound to exercise the highest degree of care practicable under the circumstances” and that “a failure to exercise the highest degree of care prac-

ticable under the circumstances is negligence.” The jury found the bus driver 70% at fault and awarded Brown \$186,777.00. The court of appeals affirmed, holding that case law required the “highest degree of care” instruction.

The Supreme Court reversed, holding that the appropriate standard of care in negligence actions by passengers against common carriers is the objective, reasonable person standard used in traditional negligence law. Under English common law, the rationale for applying the “highest degree of care practicable” standard was that passengers depended on the carrier to protect them from hazardous conditions frequently encountered in the early days of public transportation. Those same concerns are not present today. Today, if a common carrier acts with reasonable care in light of all circumstances, it has discharged its duty to its passengers.

COURT DISCUSSES EXPERT QUALIFICATIONS IN MEDICAL MALPRACTICE CASES; UPHOLDS CONSTITUTIONALITY OF EXPERT QUALIFICATION STATUTE

Baker v. University Health Physicians, et. al., (Ct. Appeals, Div. Two, February 22, 2012)

Plaintiff’s daughter, Tara, consulted with Dr. Wittman after being hospitalized for blood clots. Dr. Wittman was a certified specialist in pediatrics with a subspecialty in pediatric hematology/oncology. Tara later died and plaintiff sued for malpractice.

Prior to trial, plaintiff disclosed a medical expert, who was a certified internist specialist with subspecialties in oncology and hematology. Defendants moved for summary judgment, arguing the expert was not qualified under A.R.S. § 12-2604 because he did not have the same specialty and subspecialties as Dr. Wittman. The trial court granted summary judgment and plaintiff appealed.

The court of appeals affirmed. A testifying expert must be of the same specialty, but not the same subspecialty as the treating physician to testify to the appropriate standard of care. Specialists are categorized according to the twenty-four boards established by the American Board of Medical Specialties. Among the twenty-four boards are specialties in pediatrics and internal medicine. Therefore, plaintiff's expert was not qualified to testify to the standard of care of the treating physician. But because courts generally favor a resolution on the merits, the court allowed plaintiff the opportunity to present a qualified expert.

The court also rejected plaintiff's argument that A.R.S. § 12-2604 violates the Anti-Abrogation Clause of the Arizona Constitution. The Legislature may regulate a cause of action as long as it does not completely abolish it.

COURT EXAMINES CONSTITUTIONAL-
ITY OF CITY ORDINANCE REQUIRING
PRIVATE PROPERTY OWNER TO FIX
SIDEWALK

Bonito Partners, LLC v. City of Flagstaff (Ct. Appeals, Division One, February 21, 2012)

A City of Flagstaff ordinance requires a landowner to repair a public sidewalk adjacent to the landowner's property. If the landowner does not perform the repair, the City will perform the repair and bill the landowner. If the landowner refuses to pay, the ordinance allows the City to record a lien against the landowner's property.

Bonito is a landowner with an adjacent public sidewalk. The City recorded a lien against Bonito's land. Bonito then filed suit alleging the ordinance violates the federal and state takings clause, is an unlawful tax, and exceeds the scope of the City's authority. The trial court granted summary judgment in favor of the City, and Bonito appealed.

On the takings claim, the court of appeals first determined that the ordinance was a valid exercise of the City's police power under the Due Process clause of the Fourteenth Amendment. The ordinance did not constitute a "per se" taking however, and remanded the issue to determine if the ordinance was a taking pursuant to standards set forth in federal law.

The court also held that the ordinance did not constitute a "special tax" since the ordinance was not

revenue generating; and was not an unconstitutional "special law" because (1) it was rationally related to the legitimate government objective of abating nuisances; (2) the ordinance applied uniformly to all owners of land with adjacent public sidewalks; and (3) the class of persons the ordinance applies to is elastic – the property owner is part of the class while owning such land and leaves the class when such land is relinquished. Nor did the ordinance exceed the City's statutory authority.