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NOTICE OF CLAIM THAT FAILS TO CORRECTLY IDENTIFY OWNER OF SUBJECT REAL PROPERTY DOES NOT SATISFY CLAIM STATUTE

Turner v. City of Flagstaff (Ct. Appeals, Div. One, February 22, 2011)

The Arizona Private Property Rights Protection Act provides a cause of action for the "owner" of real property if a land-use law reduces the value of the property. *See* A.R.S. § 12-1134(A). Before a property owner can file suit pursuant to A.R.S. § 12-1134, however, he must satisfy the notice provisions of both § 12-1134 and § 12-821.01.

The property here was owned by an LLC, of which Turner was president and sole shareholder. But his notice of claim stated that he was the owner of the property, and that the City's ordinance had deprived him of property rights that entitled him to just compensation. The City moved to dismiss the complaint on the ground that the true "owner" of the subject property, an LLC, failed to file a notice of claim. The trial court granted the motion and the court of appeals affirmed, reasoning that the statutory language is clear - "owner" for purposes of the statutory notice provisions means the property's true owner. Substantial compliance does not excuse compliance with notice of claim requirements.

The court vacated and remanded the case to allow the court to consider Turner's request for leave to amend the notice of claim.

A.R.S. § 12-2604, THE MEDICAL EXPERT REQUIREMENT STATUTE, IS NOT UNCONSTITUTIONAL

Governale v. Lieberman (Ct. Appeals, Div. One, March 10, 2011)

Governale filed a medical malpractice suit against Lieberman, a neurosurgeon. In his initial disclosure, Governale listed, as an expert witness, an anesthesiologist and pain management specialist. Defendants moved for summary judgment, arguing that Governale's expert was not qualified under A.R.S § 12-2604. Governale cross-moved for summary judgment and challenged the statute under the anti-abrogation, equal protection, due process, special legislation, and jury trial provisions of the Arizona Constitution. The trial court granted Defendants' motion and denied Governale's cross-motion. Governale appealed.

The court of appeals held that A.R.S. § 12-2604 does not violate the anti-abrogation clause, due process, or equal protection. While the right to bring a negligence action is a fundamental right, and the statute might have prevented Governale from using his chosen expert, the statute does not abolish the right to bring a medical malpractice action, did not limit Governale's theory of liability, and did not prevent Governale from finding a qualified expert witness. The statute does not impose a burden upon a plaintiff at filing, nor does it unduly limit whom the plaintiff can employ as an expert. The statute is also rationally related to the legislative goal of discouraging the rise of medical malpractice insurance rates.

The statute also is not an unconstitutional special law. It (1) protects the public health by addressing rising medical malpractice insurance rates; (2) applies uniformly to all members of the classes of health care providers

and to persons suing them; and (3) the classification is sufficiently elastic to admit entry of additional persons or to allow others to exit the class. Finally, the court rejected Governale's argument that the statute infringes on the right to a jury trial by compromising his ability to present a persuasive, well-prepared case. The statute does not eliminate a medical malpractice plaintiff's right to have a claim fully and finally determined by a jury.

AHCCCS IS LIMITED IN ITS LIEN RECOVERY FROM A TORT PLAINTIFF WHO SETTLES FOR LESS THAN THE VALUE OF HIS CASE

Southwest Fiduciary, Inc. v. AHCCCS (Ct. Appeals, Div. One, March 10, 2011)

This is a consolidation of two cases. In the first case, plaintiff Lundy had a tort claim which included past medical bills of $920,000. AHCCCS satisfied Lundy's medical bills by paying $268,080. Lundy ultimately settled with the tortfeasor for $842,696 - about 24% of the total value of Lundy's damages. In the second case, plaintiff Flynn had a tort claim which included past medical bills of $138,710. AHCCCS satisfied Flynn's medical bills by paying $51,760. Flynn settled his claim for $100,000, which was about 40% of the total value of his case. The foregoing settlements resolved both parties' respective claims for all damages, including past and future medical expenses, pain and suffering, lost wages, and other out-of-pocket costs. AHCCCS did not argue that the settlements disproportionately undervalued the medical payments AHCCCS made on behalf of Lundy and Flynn.

The issue was whether AHCCCS's lien rights were to be measured by what it actually paid to settle its liens or by the plaintiffs' billed charges. The issue arises because in Arizona injured persons may sue in tort to recover the full amount of their billed medical expenses caused by the tort, even though they may not have paid that amount or (any amount) of medical expenses.

The director of AHCCCS decided in favor of AHCCCS in the administrative proceedings, measuring its lien rights by the total billed medical expenses. The trial court, interpreting A.R.S. § 36-2915, held that AHCCCS's lien rights were not only to be (a) measured by what it actually paid, but also (b) reduced by the ratio the lien settlement amount bore to the total value of the plaintiff's case.

The court of appeals affirmed. Interpreting A.R.S. § 36-2915 and being guided by federal law, it held that AHCCCS's share of a settlement should be calculated based on amounts it paid for the victim's medical care, not based on larger amounts reflected in billed charges that are negotiated down and which are never paid or owed. The court reasoned that "a fair approach" to allocation was to conclude that the recovery for past medical expenses was received in the same proportion that settlement bore to total claimed damages. Therefore, because the Lundy settlement represented 24 percent of the value of her case, AHCCCS was entitled to recover 24 percent of what it paid toward her medical expenses. In Flynn's case, he settled for 40% of the value his case, so AHCCCS was entitled to receive 40 percent of the amount it actually paid for his medical expenses.

PLAINTIFF NEED NOT SHOW THAT FAILURE TO NAME A REAL PARTY IN INTEREST WAS DUE TO MISTAKE

Preston v. Kindred Hospitals West, L.L.C. (Arizona Supreme Court, March 24, 2011)

Personal representatives on behalf of musician Billy Preston's Estate sued the Hospital for wrongful death, negligence, and elder abuse. Before his death, Preston had commenced a bankruptcy proceeding that continued after his death. The hospital moved to dismiss the complaint, arguing that the claim belonged to the bankruptcy estate, and therefore the bankruptcy trustee was the real party in interest. The estate moved to substitute in the bankruptcy trustee. The trial court denied the motion and dismissed the complaint because the real party in interest had not been difficult to determine; the personal representatives knew about the bankruptcy. The court of appeals reversed, which the supreme court affirmed, thus allowing the substitution of the trustee for the decedent's estate. The plain language of Rule 17(a) does not require that the failure to name a real party in interest was due to understandable mistake or difficult identification.

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