

## ARIZONA APPEALS COURT CONCLUDES THAT PATIENT WHO COULD MANAGE HER VULNERABLE ADULT" UNDER APSA



*Richardson v. Hannallah*

Arizona Court of Appeals, Division II

March 7, 2024

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In a memorandum decision on March 1, the court of appeals affirmed the superior court's conclusion that no reasonable juror could find that a decedent was a vulnerable adult under the Adult Protective Services Act ("APSA") where the decedent could manage her own affairs and was not susceptible to abuse generally. In so doing, it rejected the plaintiff's argument that an adult who needs medical care could be vulnerable to certain medical decisions, as that would render almost any patient a "vulnerable adult" under the APSA.

The case involved a patient at a vascular clinic who had a diabetic ulcer on her left heel, causing difficulty walking and sometimes requiring the use of a wheelchair. A nurse practitioner suggested that she undergo an angiogram on her lower legs. The patient delayed the procedure to travel for vacation. She was able to manage her own care, had no cognitive problems, and could drive herself. Dr. Jack Hannallah saw the patient after her vacation and confirmed that she needed an angiogram. He did one for each leg, but during the right-leg procedure, the patient suffered a respiratory arrest that led to cardiac arrhythmia. She was hospitalized, and subsequently passed away in a long-term care facility.

The decedent's daughter filed suit alleging, among other things, violations of the APSA. Defendants filed a motion for summary judgment and argued that the decedent was not a "vulnerable adult" and that they were not "enterprises employed to provide care to a vulnerable adult" under the APSA. Plaintiff argued that no discovery had been done, but she did not argue that she did not have enough evidence to justify her opposition or otherwise request relief under Ariz. R. Civ. P. 56(d). Instead, she argued the merits of the issue, claiming that the decedent was a vulnerable adult because she was 69 years old, had several health problems, and was physically impaired at the time she received the care at issue. The superior court granted the motion, concluding that the doctors were caregivers, but that no reasonable jury could find that the decedent was a vulnerable adult.

The Court of Appeals affirmed. It interpreted the sections of the APSA that describes an abuse of vulnerable adult claim and found that the statute was not ambiguous. It explained that "vulnerable adult" is clearly defined by statute in A.R.S. § 46-451(A)(12). The parties agreed that the decedent was physically impaired, and the sole issue was whether she was unable to protect herself from "abuse, neglect, or exploitation by others."

Plaintiff argued that the decedent was unable to protect herself from the defendants' particular conduct because she was physically impaired, in pain, wanted to be healed, and the healthcare providers knew more about medicine than she did. The defendants argued—and the court of appeals agreed—that "a plaintiff's physical impairment must generally render her unable to protect herself from abuse, neglect or exploitation of others, not only from particular kinds of abuse, neglect or exploitation." Under the plaintiff's reasoning, any patient "would be a vulnerable adult under the APSA anytime the patient falls ill and becomes highly motivated to feel better with the help of a doctor," but that is simply not the law in Arizona. In this case, the decedent was able to protect herself and was independent in all respects in her life and financial affairs. The Court of Appeals found that nothing in the record showed that she had any cognitive deficiency and compared this case to other cases involving vulnerable adults who needed assistance in everyday activities. The Court therefore affirmed the trial court's grant of summary judgment because the decedent was not a vulnerable adult.

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