

ARIZONA SUPREME COURT ADDRESSES VIABILITY OF RESPONDEAT SUPERIOR CLAIM AFTER DISMISSAL OF EMPLOYEE

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Laurence v. Salt River Project Agricultural Improvement & Power District

Arizona Supreme Court

April 28, 2023

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In a four to three decision, the Arizona Supreme Court overruled in substantial part *DeGraff v. Smith*, a seminal 1945 case that required courts to dismiss claims against employers based on respondeat superior when the employee is dismissed with prejudice. Going forward, the courts must determine whether the claim against the employee was dismissed for reasons related to the merits of the case. If so, the respondeat superior claim must also be dismissed. But if the claim against the employee is dismissed for reasons unrelated to its merits, then the claim against the employer remains viable.

This case involved a car accident where Jacob Laurence and his minor son were injured by an employee of Salt River Project Agricultural Improvement & Power District (“SRP”). Laurence was required to comply with Arizona’s Notice of Claim requirements but was unable to timely serve the driver. He sued both the driver and SRP, and the driver moved for summary judgment based on Laurence’s failure to serve him with a notice of claim. The trial court granted the motion and SRP moved for partial summary judgment on Laurence’s respondeat superior claim based on *DeGraff*. Laurence argued that the reason for dismissal was not based on the merits and that court should deny the motion. The trial court agreed with SRP and granted the motion. The parties settled the remaining claims and the court entered a final judgment, which the court of appeals affirmed. The Supreme Court then accepted review of the case.

The Court first discussed the history of *DeGraff* and the logic of the opinion. It explained that *DeGraff* was based on cases that either discussed potential liability in future cases or cases where the decision regarding the employee was on the merits of the claim—neither of which occurred in this case. *DeGraff* did not rest on claim preclusion or issue preclusion. What *DeGraff* really did was create an entirely new doctrine, which was unique to respondeat superior claims. The Court then discussed the framework for stare decisis and concluded that there were several reasons to overturn *DeGraff*.

First, it concluded that *DeGraff* was clearly erroneous or manifestly wrong. In overruling *DeGraff*, the court discussed the effect of voluntary and involuntary dismissals under Rule 41 and adopted the federal standard that a dismissal under Rule 41 with prejudice only bars refiling of the same claim in the same court. The Court also explained that a previous decision, *Kopp v. Physician Group of Arizona*, had already partially abrogated *DeGraff*. Thus, after *Kopp*, application of *DeGraff* had a different meaning depending on the context of the case, which was confusing and unnecessary.

Another reason for overturning *DeGraff* was that it conflicted with Arizona case law and statutes which state that an employer is vicariously liable for its employee’s tortious acts, not the employee’s adjudicated liability. Additionally, *DeGraff* conflicted with precedent that said employers who are sued under a respondeat superior theory cannot assert defenses that are personal to their employees.

As a final concern, the Court also discussed the public policy rationale for overturning *DeGraff*. It explained that entities do not rely on procedural rules to know their substantive rights and thus overruling *DeGraff* would not disrupt any ongoing or future affairs. Thus, there was no reason to rigidly follow *DeGraff*. The court explained, however, that if a tort claim against an employee is dismissed on the merits, the claim against the employer for respondeat superior must also be dismissed.

Accordingly, in the context of this case, Laurence's claim against SRP remained viable because the dismissal of the employee was for failure to comply with the Notice of Claim statute, which was not an adjudication on the merits.

Justice Montgomery filed a concurring opinion explaining that *DeGraff* had additionally turned into a way for public entities to use the notice of claim requirements as a sword and shield and that this case would fix that problem. Justices Lopez, Beene, and King filed a rigorous dissent, arguing that the majority did not follow stare decisis. They also expressed concern that the decision could unsettle the law on Rule 41 and claim preclusion.

Finally, it bears noting that the Court stated in a footnote it had not yet addressed whether a release of an employee-agent would release an employer-principal, and that it was not deciding that issue in this opinion. It also explained that defenses in subsequent cases based on issue and claim preclusion fell outside of *DeGraff's* analysis. So these types of cases would not be affected by today's opinion.

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