



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**HESHMAT NADEALI DOROSTI v. RECOVERY INNOVATIONS OF
ARIZONA INC.,**
CV-19-0136-PR

PARTIES:

Petitioners/Appellants/Defendants: Recovery Innovations of Arizona, Inc. and Recovery Innovations, Inc. (collectively, “Recovery”)

Respondent/Appellee/Plaintiff: Heshmat Nadeali Dorosti

FACTS:

Medhi Najafian suffered from bipolar disorder and became manic when unmedicated. In September 2012, police brought Najafian to Recovery, a psychiatric urgent care center. When admitted, Najafian was violent and aggressive. After refusing medication, he was administered a sedative injection and was assigned a room. Najafian then left the room and walked into the common area, where he disrobed and claimed to be an orangutan. He then grabbed the lead nurse, picked her up and threw her head-first onto a concrete floor. A group of behavioral care technicians then restrained Najafian for three to four minutes, either face down or on his side. He yelled, cursed at the staff, and complained he could not breathe. He later stopped breathing and became unresponsive. An ambulance rushed him to the hospital, where he was pronounced dead.

Najafian’s mother, Heshmat Nadeali Dorosti, sued Recovery for wrongful death, alleging it negligently caused her son’s death. Recovery answered, asserting comparative fault as an affirmative defense. Recovery argued that Najafian bore fault for his own death because (1) he failed to take his antipsychotic medication, which caused his manic and violent behavior, and (2) his violent behavior precipitated the struggle and his death.

The jury heard testimony from twenty-four witnesses. Recovery pressed its comparative fault theory with various expert and lay witnesses. Recovery elicited testimony that Najafian did not like taking his medication; became violent when unmedicated and knew it; had visited Recovery three or four previous times after not taking his medication; and might have skipped his medication before the incident.

Recovery did not request a comparative fault jury instruction. At trial’s end, however, Recovery filed a proposed form of verdict with blank spaces for the jury to attribute any “relative degrees of fault” to and between Recovery and Najafian. Dorosti argued Recovery’s verdict form was not proper and proposed a version without the apportionment option, which the court accepted because “[t]here’s no basis for comparative fault in this case.”

The jury found in Dorosti’s favor and awarded \$2,000,000 in damages. Recovery then moved for a mistrial or new trial, arguing, among other things, that the Superior Court erred by

failing to instruct the jury on Najafian’s comparative fault. The Superior Court denied the motion, explaining that Recovery had received “ample opportunity to fully and fairly defend,” and the “jurors carefully deliberated and reached a verdict that was not disproportionate to the evidence presented.”

Recovery filed a second motion for new trial after entry of the final judgment. The Superior Court granted this request limited to the issue of comparative fault, confirming its error was limited to “not allowing Defendants the opportunity to argue to the jury that fault could be allocated against the decedent for contributing to his own death.” The Superior Court envisioned a second trial where it (1) informs the second jury that Recovery was determined to bear an undetermined percentage of fault for Najafian’s death in an earlier jury trial, and (2) asks the second jury to determine whether Najafian bears any fault for his own death and, if so, to apportion fault between Najafian and Recovery.

In a timely appeal, Recovery argued the Superior Court abused its discretion by granting a limited new trial on comparative fault, divorced from liability. Dorosti, however, claimed that Recovery should not have a second chance to litigate the question of liability because the first jury found liability after a full and fair trial on the issue, and Recovery does not contest that finding. In a memorandum decision filed March 19, 2019, the Court of Appeals affirmed the Superior Court’s decision to limit the new trial to the issue of comparative fault.

The Court of Appeals noted that “[a] new trial, if granted, must be limited to the question or questions found to be in error, if separable.” Ariz. R. Civ. P. 59(e). However, a partial new trial on one issue is only appropriate when the discrete issue to be retried is “not inextricably intertwined” with other issues determined in the first trial “and can be separated without prejudice to the parties.” To determine whether two issues are inextricably intertwined for purposes of Rule 59, courts examine whether a single error from the first trial affects both issues—if yes, both issues must be retried in a new trial; if no, separate trials are permissible. Here, the Court concluded that no single error infects both liability and comparative fault. Thus, a limited retrial on comparative fault is appropriate.

The Court of Appeals pointed out that Recovery did not argue that the first jury reached an unsupported or incorrect result on liability. Furthermore, if an instruction had been provided, the Court believed there was no reason to assume Recovery would have escaped liability. Moreover, Recovery did not claim the new trial on comparative fault will include new or different evidence that absolves it from responsibility and was not presented in the first trial.

Recovery also argued that because the first jury’s general verdict did not explain “the particular respect or theory of negligence” for finding Recovery at fault, the second jury is left without critical information upon which to determine and assign relative fault. However, the Court found that the second jury need not know precisely how and why the first jury reached its conclusion, just that it did. The second jury can and will hear the same or similar evidence presented at the first trial to inform its apportionment of fault.

Recovery also warned of the potential for inconsistent verdicts if the second jury determines that Recovery bears no fault for Najafian’s death, while the first jury concluded that Recovery was liable. The Court of Appeals pointed out that this has not occurred and may never

occur. Moreover, during the new trial, the parties and Superior Court can craft jury instructions and special interrogatories to account for the issue.

Recovery also asserted that its liability and the comparative fault of Najafian are inextricably intertwined because the issues turn on common witnesses, testimony, and evidence. The Court of Appeals held, however, that common facts do not prevent the limited new trial granted. The Court concluded that while common evidence will be introduced in both trials, the first and second jury are charged with independent tasks and their ultimate conclusions need not conflict. The first jury determined that Recovery bears a percentage of fault for Najafian's death; the second jury will determine the percentage.

The Court of Appeals also held that Recovery has not demonstrated prejudice from a limited new trial. The Court noted that Recovery received a full and fair trial on liability and damages, and it will receive a full and fair opportunity to argue that Najafian bears fault for his own death.

Aside from Rule 59, Recovery separately argued that a new trial limited to comparative fault would deprive it of a "right to have its liability exhaustively decided by a jury deciding all issues." The Court of Appeals pointed out, however, that all the jurors participated in resolving each of the issues.

Recovery also proposed a *per se* rule preventing a separate trial limited to allocating the fault of plaintiff and defendants. The Court of Appeals concluded that such a rule is not warranted because courts use a case-specific inquiry under Rule 59 to determine what issues should be tried in a new trial, examining the link between issues and the potential for prejudice.

Finally, Recovery claimed that Arizona's Uniform Contribution Among Tortfeasors Act requires a new trial to determine both liability and comparative fault. However, the Court of Appeals held that "[t]he statute does not require that liability and comparative fault be determined in one trial, however, only that the determination and apportionment of the *relative degrees* of fault be determined in the same trial. A.R.S. § 12-2506(C) ("The *relative degree* of fault of the claimant, and the *relative degrees* of fault of all defendants and nonparties, shall be determined and apportioned as a whole at one time by the trier of fact.") (emphasis added)."

ISSUE FOR WHICH REVIEW WAS GRANTED:

Did the Court of Appeals err in holding that liability and comparative fault are separable issues that can be decided by different juries in separate trials without any doubt of prejudice?

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