



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STEVEN SHOLEM v. HON. GASS; MELISSA LANGEVIN,  
CV-19-0149-PR**

**PARTIES:**

*Petitioner:* Steven Sholem, M.D.

*Respondent:* Melissa Langevin

**FACTS:**

In 1996, Langevin's mother was treated at Phoenix Baptist Hospital and Medical Center (the "Hospital") while she was pregnant with Langevin. In 1997, Langevin's parents sued the Hospital and the treating physicians, Drs. Sholem and Carlson, arguing that their care fell below applicable medical standards. Langevin herself was not a plaintiff. After discovery had been completed, the case settled on the eve of trial.

In 2017, Langevin filed a lawsuit against the Hospital and Drs. Sholem and Carlson. Under Rule 4(i) of the Arizona Rules of Civil Procedure ("ARCP"), Langevin had until September 7, 2017 to serve the defendants with the complaint. During a two-week period in late July and early August 2017, Langevin and her attorneys unsuccessfully attempted to have Dr. Sholem served with the complaint six different times. The process server believed Dr. Sholem was at home because a package was removed from the porch during that time. Langevin and her attorneys did not attempt to serve Dr. Sholem at his office and, during the ninety-day period expiring on September 7, did not again attempt service at his home.

Meanwhile, Langevin's attorneys discovered that Dr. Carlson had died before the complaint was filed. They also discovered that the Hospital had changed ownership in the preceding twenty years and they attempted to identify and serve the proper Hospital party.

On May 4, 2018, nearly eight months after the Rule 4.1 deadline had passed, Langevin's attorneys filed a Motion to Extend Time Period for Service. With respect to Dr. Sholem, the motion stated:

Undersigned counsel has attempted service on Dr. Sholem no fewer than [six] times at his last known address which is in Arizona; however, service has yet to be accomplished. We cannot tell if he is avoiding service or has been out of town or the country; thus, pursuant to ARCP 4.1(i), we seek to sue [sic] him by publication. We will continue to effect personal service.

In a summary order, the trial court extended the time for service until August 31, 2018. On July 17, 2018, Langevin served Dr. Sholem and his wife at their home.

Dr. Sholem filed a motion to dismiss, contending that the extension of time to serve him was improperly granted because (1) Langevin’s Motion to Extend had not shown “good cause” for an extension of time within the ninety-day period for service as required by Rule 4.1, and (2) because Langevin’s extension request was submitted after the ninety-day period expired, under ARCP 6(b)(1)(B), the trial court could not grant an extension because Langevin did not show that she had “failed to act because of excusable neglect.” The trial court denied the motion to dismiss and a later motion to reconsider.

Dr. Sholem filed a Petition for Special Action in the court of appeals, arguing that the trial court improperly denied his motion to dismiss. The court of appeals declined to accept jurisdiction. This Court then granted Dr. Sholem’s Petition for Review.

**ISSUE:**

A party who waits to seek an extension to act until after the deadline to act has passed must show excusable neglect for failing to timely seek the extension. Rule 6(B)(1)(b), Ariz.R.Civ.P. And a party seeking an extension of time to serve a complaint under Rule 4(i) must show good cause and a diligent attempt to serve. Here the trial court granted Plaintiff’s request for extension to serve without meeting any of these requirements: (a) Plaintiff did not request the extension until many months after the service deadline expired, (b) she did not argue or show excusable neglect for the late request, (c) she did not show good cause or diligence in failing to timely serve, and (d) Defendant was not served until nearly a year after the case abated. Must trial courts enforce the abatement rules, or do the courts have basically limitless discretion to read abatement right out of the rule book?

**RULES:**

In relevant part, Rule 4(i) provides:

Time Limit for Service. If a defendant is not served with process within 90 days after the complaint is filed, the court—on motion, or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

In relevant part, Rule 6(b)(1)(B) provides:

Extending Time. Generally. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

....

on motion made after the time has expired if the party failed to act because of excusable neglect.

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