



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
1501 West Washington - Phoenix Arizona 85007- 3231
Public Information Office: (602) 542-9310

CASE SUMMARY

**BARBARA J. SHERMAN et al. v. CITY OF TEMPE AND NEIL GIULIANO,
CV-01-0287-PR**

Parties and Counsel:

Petitioners: City of Tempe and Neil Giuliano, represented by Andrew D. Hurwitz and Jill Harrison, Osborn Maledon P.A. and City Attorney C. Brad Woodford and Assistant City Attorney Janis L. Bladine.

Respondents: Barbara J. Sherman, Thomas L. Sherman, Eleonore Curran, Nancy Goren, Carole Hunsinger, Jalma W. Hunsinger, Catherine M. Mancini and Dominic D. Mancini, represented by Paul F. Eckstein, Joel W. Nomkin and Shelley D. Cutts, Brown & Bain, P.A.

Amici Curiae: City of Tucson, represented by City Attorney Michael D. House and Principal Assistant City Attorney Dennis P. McLaughlin, filed a memorandum, joined by The League of Arizona Cities and Towns, through its general counsel, David R. Merkel.

Facts: In the primary election held March 14, 2000, incumbent Tempe Mayor Neil Giuliano received a majority of all votes cast and was thus deemed elected May 16, 2000 at the general election. The May 16 ballot contained no entry for the office of mayor. By agreement with the City, Maricopa County mailed early ballots to City voters on April 13, 2000. The City opened its early voting polling place on April 17. In response to a citizen request, City officials mailed the publicity pamphlet on April 28, after nearly 7000 voters had cast their ballots.

In that election, Tempe voters adopted Proposition 100 (62% for, 38% against), amending the City charter to extend the mayoral term from two to four years. The proposition read:

A 'yes' vote shall have the effect of establishing a four (4) year term for the office of mayor to be operative for the term of mayor beginning on or after July 1, 2000 (this election); A 'no' vote shall have the effect of retaining the current two (2) year term for the office of mayor.

Respondents contested the election results in superior court. They claimed the publicity pamphlet was not distributed in time because Arizona Revised Statutes (A.R.S.) § 19-123(B) or §19-141(A) required that it be distributed before early ballots.

They also alleged the proposition was an unconstitutional special law. The superior court applied §19-141(A), which governed city charter amendment elections. It held that the pamphlets were timely distributed “not less than ten days before the election at which the measures are to be voted upon.” It also held Proposition 100 was not a special law. The Court of Appeals reversed on the first issue, and did not reach the constitutionality of Prop 100.

Issues:

“In invalidating an amendment to the charter of the City of Tempe overwhelmingly approved by the voters at the May 16, 2000 general election, did the Court of Appeals incorrectly read A.R.S. § 19-141(A)(Supp. 2000), which mandated the distribution of publicity pamphlets to voters ‘not less than ten days before the election,’ to instead require distribution not less than ‘ten days before a city places ballots in the hands of early voters?’”

The Court may also need to decide this issue:

“Is Proposition 100, which amended the charter of the City of Tempe to change the term of office of the Mayor from two to four years, an unconstitutional special law?”

Definitions:

Amici curiae: Latin for “friends of the court.” The singular is amicus curiae. An amicus has no role in the particular case, but may be affected by resolution of the issues, and can offer insights concerning the case’s implications the parties have not.

City charter: The city’s basic law, equivalent to a state or federal constitution. City councils may enact or amend ordinances, but only the city’s voters may amend the charter through an election.

Early ballots: Ballots provided to qualified electors (registered voters) to cast votes from 33 days before up until the date of the election.

Special law: A law that benefits a single person or unchanging group of people, rather than being of general application. Special laws are unconstitutional in Arizona.

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In the Matter of ASHLEIGH BRAVAKOS v. GEORGE BRAVAKOS,

No. CV-01-0113-PR

Parties and Counsel:

Petitioner: George Bravakos (“father”), represented by Michael S. Reeves.

Respondent: Ashleigh Bravakos (“daughter”), represented by J. Douglas McVay.

Facts:

This is a suit by the adult daughter of a couple who divorced in 1991, seeking to require her father to pay half the cost of her college education. The 1991 dissolution decree included a provision directing that father would pay half of the children’s college expenses. Generally, a post-majority educational support provision in a dissolution decree is not enforceable because the domestic relations court loses jurisdiction to order child support once a child reaches the age of eighteen. Where the divorcing parents have entered into a binding contract to share college expenses, however, the contract may be enforceable even though the decree is not. Here, daughter contends that the property division set out in her parents’ dissolution decree was a contract between her parents. She has filed suit as a third-party beneficiary, seeking to enforce the contract. The trial court ruled in favor of daughter, and father appealed. The court of appeals affirmed, in a divided decision. The majority of the appellate panel concluded that when the parents stipulated to entry of the dissolution decree, they formed a contract and that this contract was enforceable by daughter as a third-party beneficiary. One judge dissented, finding that there was no contract between the parents.

Issues:

1. Whether the divorce court had authority to order a father to pay child support to an adult child in the form of a portion of the child’s college expenses.
2. Whether the trial court had jurisdiction to hear a post-minority support case.

3. Whether the Decree of Dissolution of Marriage was also a separate agreement.
4. Whether the Decree of Dissolution of Marriage conferred a third-party beneficiary rights upon the daughter of the parties to the Decree.

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**Thomas A. Dempster, a single man v. Gateway
Community High School, a public entity, et. al.
CV-01-0270-CQ**

Parties and Counsel:

Thomas Dempster, represented by Stanley Lubin and Nicholas Enoch of Lubin & Enoch. Gateway Community High School, represented by David Schwartz and April Adams Speelmon of Udall, Shumway, Blackhurst, Allen & Lyons.

Amicus Curiae:

Counsel Appearing in this Court for Amici Curiae:

The State of Arizona and the Arizona State Board for Charter Schools are represented by Lynne Adams and Kim S. Anderson, Assistant Attorneys General; Amici Curiae Arizona Charter Schools Association, Tucson Youth Development, Inc.; ACE Charter High School; The Academy of Tucson, Inc., Presidio School, Primeria Alta, Tucson Country Day Charter School, Hermosa Montessori Charter School, The Edge School Inc., Edge Charter School, and The Montessori School House of Tucson, Inc, are represented by Barry Corey, Darlene Millar-Espinosa and Michelle Michelson of Corey & Kime. Higley Unified School District No. 60 and a plethora of other charter schools that are Amici Curiae, are represented by Leonidas Condos. Amicus Curiae Benny and Judi White are represented by G. Todd Jackson of McNamara, Goldsmith & Jackson. Facts: This dispute arises out of Plaintiff Dempster's termination as a teacher with Gateway, a charter school. His dismissal did not comply with teacher dismissal statutes, A.R.S. § 15-536 et. seq., which establish procedures and time deadlines for termination of certificated teachers employed by traditional public school districts. Gateway filed a motion in part alleging that charter schools were exempt, pursuant to A.R.S. § 15-183(E)(5), from the teacher dismissal statutes. Plaintiff responded to the motion arguing that A.R.S. § 15-181, which establishes charter schools as public schools, and A.R.S. § 15-183(E)(5), which exempts charter schools from many general laws and rules applicable to traditional public schools, violated Article XI, § 1 of the Arizona Constitution which mandates:

The Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include kindergarten schools, common schools, high schools, normal schools, industrial schools and a university. (Emphasis added).

Issue: Do the statutes creating charter schools and exempting them from statutes and procedures which traditional public schools must follow violate the Arizona Constitution's mandate that the Legislature must provide for the establishment and maintenance of a "general and uniform" public schools.

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***State v. Carlson*
CR-00-0161 -AP**

PARTIES:

Petitioner: Doris Ann Carlson, defendant, represented by represented by Garrett W. Simpson and Carol A. Carrigan, Deputy Public Defenders, Maricopa County Public Defender.

Respondent: State of Arizona, represented by J.D. Nielsen, Assistant Attorney General.

FACTS:

Lynne Carlson [Lynne] received about \$850 each month from a trust fund, the value of which was between \$200,000 and \$300,000. The trust beneficiary was co-defendant David Carlson [David], Lynne's only child and the Defendant's husband. In addition, Lynne also had two annuities, with a combined value of approximately \$140,000. Lynne received approximately \$800 per month from the first annuity, and was allowed to draw on the principal from the second. David was the beneficiary of both of the annuities.

The Defendant and David moved from Illinois to Arizona, where Lynne had been living. Lynne withdrew \$70,000 from her second annuity and bought a house in Peoria to accommodate all of them. Lynne had multiple sclerosis, was confined to a wheelchair, and had trouble controlling her bodily functions. The Defendant was very impatient with Lynne, claimed that she was only pretending to have multiple sclerosis, and yelled and cursed at her. Several times a week, the Defendant would suggest that Lynne should be killed so that the Defendant and David could get Lynne's money. The Defendant and David were both dependent on Lynne's trust and annuities to pay their living expenses.

Because Lynne needed more care than David and the Defendant could give her at home, she moved into a residential care facility in July 1996. The trust then immediately stopped making payments on the utility bills, and redirected these bills to the home address. Lynne's trust fund and annuity checks also stopped coming to the house, leaving the Defendant and David "broke."

In late September or early October 1996, the Defendant approached their 20-year-old boarder, John Daniel McReaken [Dan] and asked him if he knew anybody who wanted to make \$20,000, as she wanted Lynne killed. After briefly thinking it over, Dan accepted the Defendant's offer. Later, another boarder, 17-year-old Scott Smith [Scott], offered to help Dan kill Lynne; Dan agreed to give Scott half of the \$20,000.

Several days later, the Defendant drove Dan and Scott to Lynne's residential care facility because she wanted them to know exactly where Lynne's apartment was and familiarize them with the area around it, and different ways into and out of the facility. The Defendant told them it needed to be done pretty soon.

Sometime after 1:00am on October 25, 1996, the Defendant drove Dan and Scott to a supermarket near Lynne's care facility and told them she would wait for them there. In order to make it look like a burglary, Scott stayed in the living room and disconnected the television and moved the items on top of it. Dan, meanwhile, went into the bedroom and after hesitating, closed his eyes and stabbed Lynne eight to ten times.

At about 5:00am that morning, October 25, 1996, a nursing assistant went to Lynne's apartment for her regular check. As she was unlocking the door, Lynne called out the assistant's name and yelled at her for help, telling her she had fought "them" off as hard as she could.

The Defendant, David, Dan, and Scott were arrested on November 21, 1996.

Lynne never recovered from the knife attack and underwent several more operations before dying on April 21, 1997.

On July 27, 1999, a jury found the Defendant guilty of first-degree murder, conspiracy to commit first-degree murder, and first-degree burglary. a jury Defendant guilty of first-degree murder, conspiracy to commit first-degree murder, and first-degree burglary. At an aggravation/mitigation hearing, the judge determined that the State had proven three aggravating factors beyond a reasonable doubt: that the Defendant procured Lynne's murder by promise of payment of something of pecuniary value, namely \$20,000, A.R.S. §13-703 (F) (4); Lynne's murder was committed in expectation of pecuniary gain, A.R.S. §13-703 (F) (5); and that Lynne's murder was committed in an especially heinous, cruel or depraved manner, A.R.S. §13-703 (F) (6).

The judge found one statutory mitigating circumstance existed, that of duress; and two non-statutory mitigating circumstances existed, they were no prior criminal history and brain damage. The mitigation was insufficient to call for leniency and the judge ordered the death sentence be imposed. The Defendant appeals her conviction and sentence pursuant to A.R.S. § 13-4031.

ISSUES:

- I. Should the trial court have granted a mistrial over the jury panel's knowledge of - and discussion about - trial counsel's alleged public sexual conduct with a client accused of murder in a different death penalty case?
- II. Does Arizona's constitution afford greater protection to the right to trial by jury than its federal counterpart?
- III. Does the statutory capital sentencing scheme in A.R.S. § 13- 703 - which prohibits the jury from determining the facts needed to impose the death penalty - violate the Arizona and United States Constitutions?
- IV. Is the Defendant entitled to a new sentencing hearing, and should it be before a jury? Were the aggravating factors not proved beyond a reasonable doubt? Was mitigating evidence of disparity wrongly denied? Was mitigating evidence of brain damage and the lack of a criminal record given insufficient weight?
- V. Is A.R.S. § 13- 703.01 unconstitutional?
- VI. Is executing brain damaged people a violation of the Eighth Amendment?

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