



**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**

**CV-99-0273-PR
William H Dickery/William Dickery et al
vs City of Flagstaff**

WILLIAM H. DICKEY, on his own behalf and as Guardian ad Litem of minor child WILLIAM DICKEY; REBECCA CARLSON DICKEY v. CITY OF FLAGSTAFF.
1 CA-CV 98-0026 (Opinion).

I. Petition for review filed by Jerry L. Smith and Dale Itschner, attorneys for plaintiffs/appellants. Response filed by Daniel J. Stoops of Mangum, Wall, Stoops & Warden, representing defendant/appellee City of Flagstaff.

II. ISSUES PRESENTED FOR REVIEW

The constitutionality of the Recreational Use Statute, in light of the Constitution of the State of Arizona, Article 18, Section 6 which provides: 'The right of action to recover damages for injuries shall not be abrogated and the amount recovered shall not be subject to any statutory limitation.'"

III. FACTS AND PROCEDURAL BACKGROUND

This is a case in which a ten year boy was crippled in a sledding accident in a Flagstaff park. The boy's family sued the City of Flagstaff for negligence. The city invoked the protection of the Recreational Use Statute, A.R.S. § 33-1551, which prohibits liability against public or private owners of land used for recreational purposes unless the owner is guilty of wilful, malicious or grossly negligent conduct. Judge Michael Flournoy granted summary judgment to the city. The Court of Appeals affirmed.

The City of Flagstaff acquired the land known as Thorpe Park from the federal government in 1989. The quitclaim deed transferring the property contains a covenant that the land “shall be used for public open space, park and recreational purposes.” The accident happened on Mars Hill. Sometime before 1964 whoever owned Mars Hill cleared trees and stumps to create a small ski hill.

The city has attempted to discourage sledding at Thorpe Park and Mars Hill. It periodically posts signs stating: “WARNING This Area Not Recommended For Any Form Of Sledding.” However, the signs frequently disappear. It seems that people often remove them and use them for sleds. Rebecca Dickey, the boy’s stepmother, testified that she did not see any signs on the day of the accident.

This Summary was prepared by the Arizona Supreme Court Staff Attorney’s Office and the Administrative Office of the Courts solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.



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**ANALYSIS OF PETITION FOR REVIEW
CV-01-0039-PR**

DAVID MICHAEL HENNESSY and JANN HENNESSY v. CITY OF PEORIA;
HELLMUTH, OBATA & KASSABAUM.
1 CA-CV 00-0295 (MD).

I. Petition for review filed by Arthur G. Newman, Gerald J. Strick, and Brett L. Slavicek of Treon, Strick, Lucia & Aguirre, attorneys for plaintiffs/appellants Hennessy. Response filed by Stephen M. Kemp and Stephen J. Burg, Peoria City Attorneys. Response filed by Roger E. Brodman of Brockelman & Brodman, representing defendant Hellmuth, Obata & Kassabaum.

II. ISSUES PRESENTED FOR REVIEW

“Can a court preempt the jury and decide the issue of breach of duty as a matter of law in certain lawsuits for policy reasons - even where reasonable jurors could find that defendant breached a duty of reasonable care to plaintiff? Does a trend in the Court of Appeals allowing such ‘preemption’ of the jury violate a litigant’s right to a jury trial under Art. 2, Sec. 23 of the Arizona Constitution?”

III. FACTS AND PROCEDURAL BACKGROUND

Plaintiff Michael Hennessy was blinded in one eye when he was hit by a foul ball at a spring training game at the Peoria Sports Complex. He alleges that City of Peoria (the owner of the stadium) and HOK (the architects) were negligent in failing to protect him from foul balls. Judge Michael O’Melia granted summary judgment to the defendants. The Court of Appeals affirmed.

Hennessy was struck in a walkway on the third base side of the field. He had gone to the concession area behind the seats and was returning to his seat when the foul ball hit him. He never saw it coming. He could not see the field from his position in the walkway.

The lower courts chiefly relied on *Bellezzo v. State*, 174 Ariz. 548 (App. 1992), where the court upheld a summary judgment granted the defendants in another baseball case. The *Bellezzo* court recognized a stadium owner's duty to protect invitees from an unreasonable risk of being injured by a foul ball. Because there is an inherent risk to baseball spectators of foul balls flying into the stands, the court held that an owner satisfied the duty of due care by providing sufficient screened seating in the most dangerous part of the field, the area behind home plate.

The plaintiffs did not dispute the adequacy of the netting behind home plate. In response to the defendants' motion for summary judgment, they supplied a report from their expert architect. He described the unprotected concession area behind the stands at the Peoria ball park and opined that it was unreasonably dangerous to patrons. In particular, the unprotected walkway where patrons could not see the field was unduly hazardous. The expert generally avowed that "Defendants could have effectively, aesthetically and inexpensively provided protection in the form of netting without compromising any patron's view of the game."

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