



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**Richey Myers, surviving husband of Ann Myers, et. al.  
v. City Of Tempe, CV-05-0154-PR**

**PARTIES AND COUNSEL:**

**Petitioner:** Tempe is represented by Marlene Pontrelli and Andrew B. Ching, Tempe City Attorneys. In lower courts, Larry Crown, Jennings, Haug & Cunningham, represented the other political subdivisions and individual emergency responders.

**Respondent:** Myers did not respond to either the petition or *amicus curiae* brief.

**Amicus Curiae:** With Court permission, David Merkel, League of Arizona Cities and Towns, filed an *amicus curiae* brief.

**FACTS:**

This wrongful death case involves a 911 call that originated in Tempe, but was responded to by the Guadalupe Fire Department. The call concerned Ann Myer's asthma attack. Mrs. Myers died. Her husband, for himself and their children, filed a complaint against Tempe, Guadalupe, and the individual first responders, alleging that her death was caused by the Guadalupe Fire Department's gross negligence.

The basic facts are that Guadalupe's Fire Department responded to the call because it participated in an "automatic aid agreement." Tempe and several other political subdivisions participated in the agreement which uses a computerized GPS system to dispatch the closest fire unit to an emergency, regardless of whether that emergency is in that fire unit's jurisdiction.

An Arizona law, A.R.S. §11-952, allows municipalities and other political subdivisions to enter into such intergovernmental agreements. However, §11-952(C) specifically says that "No agreement made pursuant to this article shall relieve any public agency of any obligation or responsibility imposed upon it by law."

Tempe initially moved to dismiss the complaint for failure to state a claim arguing that: (1) Tempe did not have a non-delegable duty to render emergency services that would prevent it from avoiding liability by delegating responsibility to an independent contractor; (2) the "Good Samaritan" Rule did not apply because Tempe had not rendered services or increased the risk of harm to Jo Ann Myers; and, (3) Tempe was entitled to absolute immunity pursuant to A.R.S. §12-820.01(A)(2)(2003) because entering into the Automatic Aid Agreement was an exercise of an administrative function involving determining fundamental government policy.

Responding, Myers contended that Tempe breached its duty to provide emergency services "when persons in one geographic [area] are susceptible to receiving emergency services of a lower standard than people in another geographic area." Myers also argued that Tempe was not entitled to

absolute immunity because exceptions to the rule of liability are narrowly construed and the decision to send an emergency unit pursuant to the Aid Agreement's procedures was an "operational" decision. Citing to A.R.S. §11-952, Myers argued that Tempe retained any liability it might have had before the Agreement and that Tempe was liable for failing to meet the applicable standard of care, not for its decision to enter into the Aid Agreement.

Tempe replied that it was absolutely immune for failing to inspect the Guadalupe Fire Department's equipment or facilities, and that delegating responsibility to an independent contractor was a discretionary policy decision. Tempe argued that §11-952(c), an older, more general statute than §12-820.01, did not apply because no state law imposed a legal duty on Tempe to provide emergency services. Even if Tempe had a legal duty, it did not breach that duty by entering an agreement to reduce response times when all participants had to have the same education and training.

The Superior Court found that immunity applied and granted summary judgment for Tempe, finding that Tempe's decision to enter into the Aid Agreement was a fundamental policy decision upon which Myers' cause of action was based.

Myers appealed. The court of appeals reversed, agreeing that Tempe's decision to enter into the Agreement was an immune policy decision under §12-820.01, but disagreeing with the trial court's conclusion that Myers was suing Tempe because of this decision. Rather, the court held that Myer's claims against Tempe rested on the Guadalupe Fire Department's alleged negligence in providing emergency services to Mrs. Myers and on Myer's claim that Tempe could be held responsible for the Guadalupe Fire Department's alleged negligence. The court held that Tempe's actions were operational actions and decisions not entitled to absolute immunity.

Discussing the Automatic Aid Agreement's background, the court noted that the document stated that each municipality had determined "the decision to enter into this Automatic Aid Agreement constitutes a fundamental governmental policy of the parties . . . and includes the determination of the proper use of the resources available with respect to the providing of governmental services and the utilization of existing resources . . ." The Agreement also said that "[n]o term or provision in the agreement [was] intended to create a partnership, joint venture, or agency arrangement between any of the parties."

The court held that Tempe's decision to enter into the Aid Agreement involved the determination of a fundamental governmental policy. Tempe's decision required the weighing of benefits (reduced response times to emergency calls using improved technology) against the possible risks. Therefore, the court agreed with the trial court that Tempe's decision to enter into the Agreement was a fundamental policy decision and was thus immune. However, the court determined that Tempe is not absolutely immune for actions and decisions made in the course of implementing the emergency response services allowed by the Aid Agreement. The decision to dispatch the Guadalupe Fire Department to the call regarding Ms. Myer's asthma attack was not a decision resolving an issue of fundamental governmental policy. In fact, the "decision" did not involve any real discretion because Guadalupe Fire Department, as the closest emergency unit, was automatically sent. Accordingly, this was an operational decision not entitled to absolute immunity.

The court concluded that the focus of Myers' complaint was not on Tempe's discretionary policy decision to enter into the Agreement, but was on whether the services authorized by the Automatic Aid Agreement were negligently provided and whether it could be held liable for the Guadalupe Fire Department's alleged negligence. Tempe seeks to have this Court review that decision.

**ISSUES:**

“1. Whether dispatching the Guadalupe Fire Department paramedic unit to the emergency call for Jo Ann Myers in Tempe pursuant to the East Valley Automatic Aid Agreement is entitled to immunity under A.R.S. §12-820.01.

2. Did the court correctly rule that A.R.S. §11-952(C) means that Tempe cannot relieve itself of liability for providing emergency services by delegating its obligation to provide the services to other entities through an automatic aid agreement, meaning that the standard set forth in *Wiggs v. City of Phoenix*, 198 Ariz. 367, 10 P.3d 625 (2000), (City's duty to provide safe highways was a non-delegable duty) extends to the provision of emergency services.“

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