



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ELIZABETH ESPINOSA v. CARRINGTON SCHULENBURG, et al.,
CV 05-0158-PR**

PARTIES:

Petitioners: Carrington Schulenburg, an unmarried woman, and her parents John and Debra Schulenburg (“The Schulenburgs”) are represented by Ron Collett and Randy Warner of Jones, Skelton & Hochuli.

Respondent: Elizabeth Espinosa is represented by Christopher Curran and Chad Belville of Curran & Belville.

FACTS:

While off-duty, Espinoza, a firefighter and emergency medical technician who was driving home from work, stopped to help at an accident involving the Schulenburgs and their underage and unlicensed daughter Carrington who was driving the Schulenburg’s’ car when the collision happened. Espinoza was injured at the scene by another driver, Barnett, whose vehicle struck the rear of the Schulenburg’s’ vehicle that was parked on the side of the road after the collision. Just as Espinoza was leaning into the Schulenburg’s’ vehicle to activate its emergency flashers, Barnett’s vehicle rear-ended the Schulenburg’s’ vehicle. Espinoza sustained a broken hip, broken wrist, torn knee ligaments, a broken finger, and other injuries.

Espinoza applied for and received workers’ compensation benefits under Arizona’s law which provides that a firefighter who is injured while traveling directly to or from work as a peace officer shall be considered to be in the course and scope of employment solely for the purposes of eligibility of workers’ compensation benefits, provided that the peace officer is not engaged in criminal activity.

Espinoza filed this action, naming the Schulenburgs as defendants and seeking relief under the Rescue Doctrine which provides that an injured rescuer may recover damages from the original tortfeasor who negligently caused the event that precipitated the rescue even when a rescuer is injured while rendering aid due to another person’s intervening negligence.

The Schulenburgs moved for summary judgment based on the “Firefighter’s Rule,” which implements an exception to the Rescue Doctrine and provides that a professional rescuer who is injured while aiding a citizen in an emergency situation cannot sue that citizen for negligently causing the need for aid.

Espinoza cross-moved for summary judgment. The trial court granted the Schulenburg’s’ motion and denied Espinoza’s motion, finding that the Firefighter’s Rule precluded Espinoza from attempting to impose liability on the Schulenburgs.

Espinoza appealed. The court of appeals reversed and remanded, ruling that in Arizona, the Firefighter’s Rule, as an exception to the rule of liability reflected in the Rescue Doctrine, is to be applied narrowly. The court held that the Firefighter’s Rule will not bar an off-duty firefighter from seeking recovery for injuries sustained while undertaking a rescue or rendering aid, if the professional is truly acting as a volunteer and is not under an employment mandate to respond when off-duty.

The court of appeals noted that until this case, Arizona has yet to determine whether the Firefighter’s Rule should apply when the public safety professional is off-duty but she voluntarily renders aid. The court found that the Firefighter’s Rule should not be extended to an off-duty public safety professional who makes a voluntary effort to assist someone in an emergency because that type of activity was exactly the kind that the Rescue Doctrine was designed to protect.

The court held that no public policy would be advanced by precluding a volunteer such as Espinoza from receiving the benefit of the Rescue Doctrine. To the contrary, Arizona’s narrow construction that confines the Firefighter’s Rule within the framework of its original justifications dictates that courts should not apply the Doctrine to off-duty public safety professionals when they voluntarily attempt a rescue or to render aid. The court held that if a public safety professional is under no employment obligation to attempt rescue or render aid, but may with legal and professional impunity choose not to engage, the Fireman’s Rule will not bar recovery if the professional attempts rescue or renders aid and is injured.

The court noted that it is unclear whether Espinoza was under a professional mandate to engage and render assistance even when she was off-duty. In the absence of such evidence, the court assumed that Espinoza was under no requirement to stop and render aid to victims while she was off-duty. Therefore, the court held that as a matter of law, the Firefighter’s Rule did not apply. The court noted that before this decision Arizona law regarding the applicability of the Firefighter’s Rule to off-duty professionals was unsettled, including the question of the assigning of the burden of proof. Therefore, in the interest of fairness, the court found it was appropriate to remand to permit the Schulenburgs to pursue further discovery to determine whether they can provide the necessary proof consistent with their burden.

Issue Presented:

“Where an off-duty professional rescuer stops at an accident scene to render aid, and acts in her capacity as a professional rescuer, can she sue the accident victim for negligently creating the need for aid?”

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