



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



GUADALUPE FALCON v. MARICOPA COUNTY
Supreme Court No. CV-06-0106-PR
Court of Appeals No.1 CA-CV 04-0801 (Opinion)

PARTIES AND COUNSEL:

Petitioner: Maricopa County, Maricopa Integrated Health Care System, doing business as Maricopa County Medical Center, by Deputy Maricopa County Attorney Bruce P. White.

Respondents: Guadalupe Falcon, by her children Antonio Sandoval, Jr., Guadalupe Pratt, Lydia Sandoval, Francisco Sandoval, Aurora Sandoval, Jos^u Sandoval, Reynaldo Sandoval, and Alfredo Sandoval, represented by John M. Curtin, Robbins & Curtin, P.L.L.C. and Victoria Curtin, Victoria Gruver Curtin, P.L.C.

Amici Curiae: Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai and Yuma Counties; City of Phoenix; Arizona School Board Association; Arizona School Risk Retention Trust; and the League of Arizona Cities and Towns, represented by Eileen Dennis GilBride, Jones, Skelton & Hochuli.

FACTS:

Guadalupe Falcon (the mother) died on April 16, 2002 after surgery at the Maricopa County Medical Center. Her surviving children (“Children”) believed county employees committed medical malpractice. One son sent a timely notice of claim by certified mail to Supervisor Andrew Kunasek, who was not then chairman of the Maricopa County Board of Supervisors. A Pitney Bowes contract employee authorized to accept certified mail for the board signed for the letter on October 4, 2002. Respondents assert that Mr. Kunasek’s office generally forwarded legal correspondence to the clerk of the board. Even so, this claim apparently did not reach the clerk, and the County did not act on it.

The Children then filed a timely medical malpractice and wrongful death complaint against the County. After answering, the County moved for summary judgment for failure to timely serve a notice of claim on the County under Arizona Revised Statutes (“A.R.S.”) § 12-821.01(A). It argued that even conceding the timeliness of the claim, Supervisor Kunasek was not a party authorized to accept such claims on behalf of the County. The trial court granted the County’s motion.

A split court of appeals reversed the trial court. It noted that a claimant must “file claims with the person or persons authorized to accept service for the public entity ... as set forth in the Arizona rules of civil procedure.” A.R.S. § 12-821.01(A). Arizona Rules of Civil Procedure, Rule 4.1(i) provides: “Service upon a county ... shall be effected by delivering ... the pleading to the chief executive officer, the secretary, clerk, or recording officer thereof.” The court of appeals unanimously held that the county board of supervisors is the entity empowered to direct and compromise all county lawsuits, and it is the county’s “chief executive officer” for service of process.

The majority reasoned that because Rule 4.1(i) is silent on whether the entire board should be served, it would look to other subsections of Rule 4.1 for how to serve process on multiple-person organizations. Two subsections permit service on a group by serving one member of it. The majority held most reasonable interpretation of Rule 4.1(i) is that a board of supervisors can be served through one member.

In dissent, Judge Orosco wrote that service of the notice of claim here could have been made on either the clerk of the board (but was not) or on its chief executive officer, which one member of a collective body is not. She would have held that service of notice on just one member was insufficient to effect service on the board as a body.

ISSUES:

“1. Is service on one member of a multi-member public body effective service on that public body for purposes of Rule 4.1(i)?

“2. Is the board of supervisors of a county the ‘chief executive officer’ of the county for purposes of Rule 4.1(i), Arizona Rules of Civil Procedure, notwithstanding the appointment by that board of a chief executive officer charged with administration and execution of its policies?”

DEFINITIONS:

Amici Curiae Latin for “friends of the Court” and plural of “amicus curiae,” amici are not parties to the case, but write a brief to assist the Court in its decision making and believe the Court’s decision will affect their interests.

A.R.S. § Arizona Revised Statutes section, the designation that precedes the title and section number of Arizona legislation.

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