



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**SHANNON BACKUS; ROSEMARY JOHNSON v. STATE OF
ARIZONA, ARIZONA DEPARTMENT OF CORRECTIONS
CV 08-0284-PR**

PARTIES AND COUNSEL:

Petitioner: The State is represented by Richard Broder, Assistant Attorney General, Tucson and by Daniel Schaack, Assistant Attorney General, Phoenix.

Respondent: Joel Robbins of Robbins & Curtin represents Ms. Johnson on behalf of herself as the mother of Vickie Johnson, deceased, and Vickie's statutory beneficiaries. Backus is represented by Leslie Rakestraw, Cates, Hanson, Sargeant & Rakestraw.

Amicus Curiae: The Arizona Trial Lawyers' Association, supporting Backus and Johnson, is represented by Stanley Feldman, Haralson, Miller, Pitt, Feldman & McAnally and by Richard Gerry, Aiken Schenk Hawkins & Ricciardi.

FACTS:

The surviving family members of two deceased state prisoners brought wrongful death actions against the State. In both cases, the State moved to dismiss for deficiencies in notice of claim letters. The cases have been consolidated in appellate courts.

In *Backus*, in October 2005, Gerald Dunford died from infection. An Arizona Department of Corrections (ADOC) doctor saw Dunford a few times but found nothing wrong with him. Subsequently, Dunford went to the hospital critically ill with sepsis due to having a prolonged infection at the site he had told the doctor was painful. He later died.

On March 17, 2006, Dunford's daughter, Backus, sent a notice of claim letter to the State pursuant to §2-821.01. Her letter provided a factual summary and asserted that ADOC was negligent in providing medical care to Dunford. With respect to the damages claim and settlement demand, as required by the statute, her letter stated:

As he was born on January 15, 1947, Gerald Michael Dunford was only fifty-eight years old at the time of his death. According to the mortality tables, a person between the ages of 58 and 59 has a life expectancy of 23.6 years. For the sole purpose of putting a damage amount on the life of Gerald Dunford, Mrs. Backus is claiming \$21,500 per year for the loss of her father. At 23.6 years, this is a total of \$507,400. As a result of this unfortunate incident, Mrs. Backus has authorized me to make a claim upon the Maricopa

County Sheriff's Office in the amount of \$500,000.

In July 2006, the State sent Backus a letter, noting that the State did not respond to Backus's claim letter within sixty days and therefore, pursuant to §12-821.01, the claim was deemed denied. Accordingly, Backus was free to file suit against the State. The State requested, however, that she not initiate such an action prior to the October 18, 2006 statute of limitations deadline in order to allow the State additional time to investigate, and possibly resolve, her claim. The State's risk management representative did not ask for any additional information concerning the facts allegedly supporting the liability claim, other than to request a signed release authorizing the State to examine Dunford's medical records. With respect to the damages claim and settlement demand, the State did not request any specific or additional factual information, other than proof that Backus had "standing" to bring this claim under Arizona's wrongful death statute, A.R.S. §12-612 (2003). The record on appeal does not reflect any response from Backus or her attorneys, or any further requests for additional information from the State.

In October 2006, Backus filed a complaint alleging that the State's negligence in providing medical treatment to Dunford proximately caused his death. The State moved to dismiss Backus's second amended complaint for failure to comply with §12-821.01 because the State argued her notice of claim did not set forth any facts to support the specific amount for which she was willing to settle her claim. The court granted the motion, ruling that Backus's notice of claim did not satisfy §12-821.01(A).

In the *Johnson* case, Vickie Johnson was a 35-year-old mother of six children who died while serving a 2.5-year prison term in ADOC. Sometime in the beginning of her second year in prison, she became seriously ill and began requesting medical attention. Approximately fourteen months into her sentence, she was taken to a hospital for medical treatment in a comatose state. She remained comatose until her death approximately four months later on March 16, 2006. On May 31, 2006, the attorney for Rosemary Johnson ("Johnson"), Vickie's mother, filed a notice of claim with the State on behalf of herself and Vickie's six biological children. The notice of claim stated:

Vickie Johnson had been in the custody of the Arizona Department of Corrections since September 17, 2004. While incarcerated, Ms. Johnson became ill and asked to be seen by the medical staff. Upon information and belief, there was a substantial delay in medical care provided to Ms. Johnson, which caused Ms. Johnson's condition to deteriorate dramatically. Ms. Johnson became seriously ill in November of 2005 and was taken to Banner Estrella Hospital for emergency medical treatment. Upon further information and belief, Vickie Johnson suffered brain damage due to lack of oxygen and remained in a persistent vegetative state during her entire hospital stay. She was eventually taken to a long term care facility, where she remained until her death on March 16, 2006.

Ms. Johnson's cause of death was bilateral pulmonary edema and congestion with bronchopneumonia. Had Ms. Johnson received the proper

medical care she needed, her death and needless suffering would have been avoided. Ms. Johnson was scheduled to be released from custody in just a few short months, and leaves behind six (6) children[.] This Notice of Claim is for the wrongful death of Vickie Johnson, caused by the negligence of the Arizona Department of Corrections and its medical providers. I have been given authority by the statutory beneficiaries of Ms. Johnson to resolve this matter in the amount of \$2,000,000.00.

On January 25, 2007, having received no response to the notice of claim from the State, Johnson, on behalf of herself and Vickie's six children, filed a complaint for negligence or gross negligence and wrongful death. In February, 2007, the State filed its answer, denying liability, but not raising a specific defect in Johnson's notice of claim.

On February 26, 2007, *Deer Valley Unified School District No. 97 v. Houser*, 214 Ariz. 293, 152 P.3d 490 (2007), issued. On March 6, 2007, the State moved to dismiss arguing "the [n]otice of [c]laim fail[ed] to comply with A.R.S. §12-821.01[(A)], as interpreted by the Arizona Supreme Court in *Deer Valley ...*, in that it fail [ed] to contain facts supporting the specific amount for which the claim [could] be settled with the State." The court granted the State's motion to dismiss without comment, summarily denied her motion for reconsideration and clarification, and entered judgment against her.

The surviving family members of *Backus* and *Johnson* appealed. The court of appeals ruled the statutory notice requirement that a claimant provide facts to support a proposed settlement in a claim against the State is satisfied by setting forth some facts to support proposed settlement amounts. Here, the surviving family members' claim letters in both cases satisfied the statutory requirement. The court would not interpret statute as meaning a claimant has to provide "sufficient" facts to support a proposed settlement, absent direction from statute or case law defining what, beyond providing no facts at all, would be considered insufficient.

ISSUES:

"[A.R.S.] § 12-821.01(A) requires claimants to state a specific amount for which their claims against a public entity can be settled and it unequivocally requires them to provide "the facts supporting that amount." Did the court of appeals err by holding that a claimant may comply with the statute merely by giving *any single fact* that arguably supports the amount, rather than giving *the facts* supporting that amount, as the statute's plain language requires?"

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