



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**COURTNEY RENE CRAMER v.
HON. PATRICIA ANN STARR/MUNGUIA/ BEJARANO
CV-15-0317-PR**

PARTIES:

Petitioner: Courtney Rene Cramer

Real Party in Interest: Tammy Munguia and Francine Bejarano

Amicus Curiae: Tucson Defense Bar, Inc.

FACTS:

In November 2010, plaintiff Francine Bejarano was driving her vehicle in the curb lane, approaching an intersection in Phoenix, Arizona. Plaintiff Munguia was a front seat passenger in the vehicle. At the same place and time, Defendant Cramer was driving behind Bejarano's vehicle. When Bejarano stopped at the intersection, Cramer's vehicle failed to stop and struck the rear end of Bejarano's vehicle. Munguia testified that at the time of the collision she was sitting with her right leg over her left knee. Just prior to impact, Bejarano yelled out, causing Munguia to turn her upper body to the left to look back at the vehicle behind them.

Munguia's expert, Richard Hindrichs, noted that Munguia struck her right shin on the handle located directly in front of the passenger seat. He further noted that there were two mechanisms of injury: (1) the fact that Munguia was turned to the left looking backward; and (2) the force of a metal reinforcing bar in the seatback that struck Munguia's lumbar spine.

Munguia immediately complained of headaches on the day of the collision. Plaintiffs sought treatment for their injuries two days after the collision. Munguia stated she was experiencing headaches, lower back pain, right hip pain and right shin bruising. Because of Munguia's ongoing complaints of lower back pain radiating to her right leg, she was referred for an MRI. The report, dated less than a month after the collision, noted that Munguia had suffered several disc protrusions in her lumbar spine.

Based on the MRI results, Munguia was referred to Dr. Fields for evaluation. Dr. Fields noted that Munguia had been experiencing back pain since the car accident a month earlier and was not able to work due to the pain. He stated with a high degree of medical certainty that the accident caused had Munguia's current herniated discs.

Dr. Ehteshami examined Munguia about seven months later. He noted that Munguia stated her back injury was "affecting her quality of life" and "limiting her social activities as well as her ability to complete certain activities of daily living." He further noted that she has had injections,

physical therapy, and pain medication, but she felt her symptoms were worsening, despite treatment. Dr. Ehteshami said “the patient is actually pacing across the room and has a difficult time sitting.” He advised that Munguia undergo surgery for spinal fusion, which she did in September 2011.

Plaintiffs later filed suit against Cramer. Munguia alleges that since her surgery she continues to suffer from debilitating back pain that limits all her activities significantly. In the course of the litigation of this case, Cramer retained Dr. Maric to conduct an examination of Munguia. In his report, Dr. Maric agreed that Munguia suffered a contusion of her right shin, but he did not find objective evidence that she sustained any physical injuries to her lumbar spine as a result of the motor vehicle accident in question. He stated that the two level spinal fusion Dr. Ehteshami performed was not medically justifiable, and that Munguia should expect to develop adjacent-level degenerative disc disease and to require more surgery down the line. He opined that the surgery to which Munguia was subjected “was not indicated and clearly did not benefit her,” and that it “effectively disabled her.”

Plaintiffs filed a motion for partial summary judgment asking the superior court to strike Cramer’s Notice of Non-Party at Fault naming Dr. Ehteshami, the doctor who performed back surgery on Munguia. Plaintiffs argued that Cramer, as the original tortfeasor, is liable for the foreseeable risks arising from the tort, including medical negligence. The court granted the motion, relying on the Restatement (Second) of Torts § 457, which provides that “[i]f the negligent actor is liable for another's bodily injury, he is also subject to liability for any additional bodily harm resulting from normal efforts of third persons in rendering aid which the other's injury reasonably requires, irrespective of whether such acts are done in a proper or a negligent manner.” The court also noted that several courts have held that the adoption of comparative fault did not supersede this doctrine. *See, e.g., Edwards v. Sisler*, 691 N.E.2d 1252 (Ind. App. 1998) (because adoption of comparative fault did not change this common law rule, Defendant could not name Plaintiff’s physician as a non-party at fault). Thus, the court held Cramer could not name Dr. Ehteshami as a non-party at fault. She could, however, dispute at trial whether Munguia reasonably sought medical care and/or reasonably selected her doctor. *See* Restatement (Second) Torts, § 457 (original negligent actor subject to liability for additional bodily harm resulting from normal efforts of third persons rendering aid which the injury *reasonably requires*).

Cramer filed a petition for special action in the court of appeals, which declined to accept jurisdiction. Cramer then filed her petition for review in this Court. Currently, the superior court has scheduled a 12-day jury trial to begin in this case on March 7, 2016.

ISSUES FOR WHICH REVIEW WAS GRANTED:

In direct conflict with Arizona's abolition of joint and several liability and adoption of pure comparative fault under [A.R.S. § 12-2506](#), the trial court held that a defendant in a minor-impact, rear-end car accident case can be held liable for the fault of a surgeon who eleven months after the accident performed unnecessary spinal fusion surgery on the plaintiff and "effectively disabled" her. In other words, according to the trial court, Defendant Courtney Cramer can be held liable for the fault of a completely separate and independent person acting months later.

Under those circumstances, did the trial court abuse its discretion or act in excess of its legal authority by striking Defendant's notice of non-party at fault as to the surgeon and refusing to allow the jury to consider and apportion the fault of all persons who may have contributed to the alleged injuries?

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office 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.