



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**BARBARA SOWARDS v. TOMMY SOWARDS
CV-22-0065-PR**

No. 1 CA-CV 21-0098 FC, 2022 WL 678530 (Ariz. App. Mar. 8, 2022)

PARTIES:

Petitioner: Barbara Sowards (Wife)
Respondent: Tommy Sowards (Husband)

FACTS:

While the Sowards were married, they recovered compensatory and punitive damages in an action arising from Husband's pacemaker surgery. The Sowards used a financial advisor to create a structured settlement agreement ("Agreement") with the defendants for a sizeable punitive damages award. The Agreement provides for both a lump sum payment as well as "non-qualified periodic payments" in various monthly and annual amounts.

Wife subsequently petitioned for legal separation. The matter was converted to a dissolution action and proceeded to trial. The superior court entered a dissolution decree, finding that the punitive damages settlement was not community property but instead was subject to distribution pursuant to the terms of the Agreement. Wife appealed, arguing that the Agreement was an estate planning device by which she chose not to waive or disclaim any community interest in the punitive damages award.

The Court of Appeals found that the Agreement was a valid postnuptial agreement. The court noted that regardless of whether the punitive damages were community or separate property when they were awarded, the parties elected to define their rights to those damages by entering the Agreement. The court concluded that although the Agreement did not state that Wife was disclaiming a community interest, the net effect of the Agreement was to give Husband a sole interest in the periodic payments during his life, with Wife having a right to receive them only upon his death.

ISSUE:

Did the Court of Appeals commit an error of law in interpreting the Settlement Agreement as a binding property settlement agreement?

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