



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**KIZZEN JAMES, et al. v. CITY OF PEORIA
CV-21-0125-PR**

PARTIES:

Petitioners/Plaintiffs: Kizzen James, individually, and on behalf of Dennis McGinnis, a statutory beneficiary, for the wrongful death of I.M., a minor

Respondent/Defendant: City of Peoria (“the City”)

FACTS:

The Accident and Lawsuit. In October 2018, twelve-year-old I.M. was killed when he was struck by a car while crossing a City street. In March 2019, within 180 days of the accident, James (I.M.’s mother) hand-delivered a timely notice of claim to the City, alleging that it was negligent because it did not have a cross-walk or traffic light at the intersection where I.M. was killed. The notice proposed settling the claim for a specifically stated amount, and stated that “[t]his compromise to settle is valid for thirty (30) days from the date of this letter.” The City never responded to James’ notice of claim.

In October 2019, James filed a complaint in superior court asserting a claim for wrongful death against the City and others. The City moved to dismiss on the ground that the notice of claim was defective. Among other things, it contended that A.R.S. § 12-821.01(E) required James to keep her settlement offer open for sixty days, relying on *Drew v. Prescott Unified Sch. Dist.*, 233 Ariz. 522, 523 ¶ 1 (App. 2013).

The statute provides that “[a] claim against a public entity or public employee filed pursuant to this section is deemed denied sixty days after the filing of the claim unless the claimant is advised of the denial in writing before the expiration of sixty days.” In response, James argued (among other things) that the City’s interpretation of the statute was not supported by the statute’s plain language as “it is clear the statute does not pertain to the length a settlement offer should remain open.”

The superior court converted the motion to dismiss into a summary judgment motion and later granted the motion in the City’s favor, ruling that the case was governed by *Drew* and that A.R.S. § 12-821-01(E) barred James’ claim because she “did not keep the settlement offer [open] for 60 days.” James then appealed.

The Court of Appeals’ Decision. The Court of Appeals affirmed in a memorandum decision. It explained that before initiating an action for damages against a public entity, a claim must provide a notice of claim to the entity that is compliant with A.R.S. § 12-821.01. It explained that in *Drew*, the Court of Appeals held that “‘absent an earlier response from the public entity, § 12-821.01(E) requires the settlement offer contained in the notice to be held open for sixty days.’” (Quoting *Drew* (emphasis added).) It further explained that “[s]uch a requirement exists to allow a public entity a ‘reasonable period of time’ to investigate and assess liability, permit the possibility of settlement before litigation, and assist in financial planning and budgeting.” (Quoting *Drew*.)

Here, it noted, “James’ purported notice of claim expressly provided that its ‘compromise to settle’ would only remain ‘valid for thirty (30) days from the date of this letter.’” After that thirty-day period, “the offer, despite James’ assertions to the contrary, could not be accepted” as an offeree’s power of acceptance is terminated on the date specified the offer. It explained that “as was the case in *Drew*, James’ purported notice of claim ‘failed to make a settlement offer that complied with A.R.S. § 12-821.01 because [her] offer explicitly lapsed’ after no more than thirty days from the date of the notice, when the City of Peoria should have been given an acceptance period of not less than sixty days.” (Quoting *Drew*.)

The court also rejected James’ attempt to distinguish *Drew* factually. In *Drew*, the plaintiffs stated that their offer of settlement would “*remain open* until December 30, 2011, unless earlier withdrawn,” whereas here, James’ notice stated, “[t]his compromise to settle *is valid* for thirty (30) days from the date of this letter.” The court explained that “[w]hile the two letters use different words, the purpose and effect of the language in both was to condition settlement upon acceptance of the proposed offer by a certain date.” It further explained that “[i]n so doing, both formulations substantively and impermissibly limited the public entities’ ability to accept proposed settlement offers in contravention of A.R.S. § 12-821.01(E)’s sixty-day timeframe, and their divergent means of expression present a distinction without a difference.”

It also rejected her argument that *Drew* was wrongly decided. James argued that the statute itself barred a claimant from changing the sixty-day offer period, making James’ inclusion of a shorter period without “the slightest meaning or effect.” The court disagreed, explaining that James could include a shorter period in her offer as a matter of contract law, and it was enforceable as such and not a nullity.

It also rejected James’ argument that the statute’s sixty-day timeframe “should automatically be deemed part of her defective notice of claim, overriding and effectively replacing the thirty-day deadline she expressly included.” It found the argument unpersuasive “because James’ imposition of a thirty-day deadline was permissible under Arizona contract law” and “was not, *per se*, incompatible with Arizona statutes or other law.” Instead, the court continued “[i]t only disqualified this offer from simultaneously serving a dual purpose as a statutorily compliant notice of claim.”

The court concluded that “[g]iven James’ defective notice of claim, and the passing of 180 days since her cause of action accrued, the superior court did not err in concluding that her claim was statutorily barred and dismissing the same with prejudice.”

ISSUE:

The Supreme Court will be addressing the following issue:

“Is a notice of claim invalid under A.R.S. § 12-821.01(E) if it provides that the claimant’s settlement offer will terminate in less than sixty days after the notice is served?”

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