



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



Simms v. Simms, CV-25-0079-PR

PARTIES:

Petitioners: Arizona Racing Commission
Jerry Simms, TP Racing, L.L.L.P., and Bell Racing, LLC

Respondent: Ronald A. Simms

Amicus Curiae: Arizona Attorney General
Pacific Legal Foundation
Ilan Wurman, Professor at University of Minnesota Law School

FACTS:

In 2000, brothers Jerry and Ron Simms and other investors acquired the horse-racing track Turf Paradise through a limited partnership called “TP Racing.” Jerry managed day-to-day operations while Ron participated in major decisions. The brothers were issued horse-racing licenses by the Arizona Department of Racing. Concerns arose about the ownership of the land underlying the track, leading to disputes over loans and land contributions made by the brothers to TP Racing.

In 2006, the brothers agreed to settle their loans to TP Racing. Jerry transferred land from his business to TP Racing, while Ron performed a land swap (called a 1031-exchange) to transfer land to TP Racing. The legal effect of Ron’s land swap became a point of contention.

Here are further key events in this case:

- **2010 Lawsuit:** In 2010, Jerry sued Ron over the loan/land swap. Overall, that lawsuit ended by preventing Jerry from ousting Ron as a minority owner of TP Racing.
- **2013 Ron’s License Denial:** Ron’s horse-racing license expired in 2012 and the Department of Racing denied Ron’s license renewal application. This led to Ron’s removal from TP Racing. Ron appealed the denial of his license to an “administrative law judge,” or ALJ.
- **2015 ALJ Ruling:** The ALJ ultimately found that Ron could repay his loan through the land swap and that he had accurately informed the Department of Racing about his finances. The ALJ ruled that the Department of Racing had improperly denied Ron a horse-racing license.

Also that year, the legislature reorganized the Department of Racing into a division of racing within the Department of Gaming called the Arizona Racing Commission. After the ALJ ruling, the Racing Commission took no action, which allowed the ruling to become final. Jerry and TP Racing then appealed, seeking to overturn Ron’s license.

- **2016 Commission Reversal:** The newly-formed Racing Commission did overturn the ALJ’s decision. The Commission ruled that Ron could *not* pay off his loan through the land swap and that he had *not* accurately disclosed his finances. The Commission denied Ron’s horse-racing license. Ron appealed that ruling.
- **2023 Superior Court Decision:** The Superior Court upheld the Commission’s findings, ruling that Ron could not repay his loan through the land swap and that he had not accurately disclosed his finances.

The court applied the new language from a 2021 amendment to the statute governing the standard of review, A.R.S. § 12-910. (The 2021 statutory language is printed at the bottom of this summary.) The Superior Court held that there was “substantial evidence” to support the Commission’s decision denying Ron a license. Ron and the Commission both appealed to the Arizona Court of Appeals.

- **2025 Court of Appeals Decision:** The Court of Appeals addressed the standard of review statute, § 12-910, and held that in administrative proceeding like this one reviewing courts should “independently review” the factual findings. *Simms v. Simms*, 567 P.3d 92, 103 ¶¶ 34, 35 (Ariz. App. 2025).

The Court of Appeals sided with the ALJ’s original findings and disagreed with the Racing Commission and the Superior Court. The Court of Appeals ruled that Ron could pay off his loan through the land swap and that he had disclosed his finances. The court vacated the Superior Court’s ruling and remanded to that court to enter judgment in favor of Ron.

The Racing Commission and Jerry each filed separate petitions for review. This Court agreed to address the following issues:

ISSUES:

Petition filed by Arizona Racing Commission:

1. Did the Legislature eliminate substantial evidence review when it amended A.R.S. §12-910(F) in 2021?
2. Are appellate courts required to independently review an agency’s fact findings de novo?

Petition filed by Jerry Simms:

What legal standard does a reviewing court apply to an administrative agency’s factual findings under §12-910(F)?

STATUTE AT ISSUE:

A.R.S. § 12-910 (2021), provides as follows:

A. An action to review a final administrative decision shall be heard and determined with convenient speed. If requested by a party to an action within thirty days after filing a notice of appeal, the court shall hold an evidentiary hearing, including testimony and argument, to the extent necessary to make the determination required by subsection F of this section. The court may hear testimony from witnesses who testified at the administrative hearing and witnesses who were not called to testify at the administrative hearing.

B. Relevant and admissible exhibits and testimony that were not offered during the administrative hearing shall be admitted, and objections that a party failed to make to evidence offered at the administrative hearing shall be considered, unless either of the following is true:

1. The exhibit, testimony or objection was withheld for purposes of delay, harassment or other improper purpose.
2. Allowing admission of the exhibit or testimony or consideration of the objection would cause substantial prejudice to another party.

C. For review of final administrative decisions of agencies that are exempt from §§ 41-1092.03, 41-1092.04, 41-1092.05, 41-1092.06, 41-1092.07, 41-1092.08, 41-1092.09, 41-1092.10, and 41-1092.11, pursuant to § 41-1092.02, the trial shall be de novo if trial de novo is demanded in the notice of appeal or motion of an appellee other than the agency and if a hearing was not held by the agency or the proceedings before the agency were not stenographically reported or mechanically recorded so that a transcript might be made. On demand of any party, if a trial de novo is available under this section, it may be with a jury, except that a trial of an administrative decision under § 25-522 shall be to the court.

D. For review of final administrative decisions of agencies that regulate a profession or occupation pursuant to title 32, title 36, chapter 4, article 6, title 36, chapter 6, article 7 or title 36, chapter 17, the trial shall be de novo if trial de novo is demanded in the notice of appeal or motion of an appellee other than the agency.

E. The record in the superior court shall consist of the record of the administrative proceeding, and the record of any evidentiary hearing, or the record of the trial de novo.

F. After reviewing the administrative record and supplementing evidence presented at the evidentiary hearing, the court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless the court concludes that the agency's action is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion. In a proceeding brought by or against the regulated party, the court shall decide all questions of law, including the interpretation of a constitutional or statutory provision or a rule adopted by an agency, without deference to any previous determination that may have been made on the question by the agency. In a proceeding brought by or against the regulated party, the court

shall decide all questions of fact without deference to any previous determination that may have been made on the question by the agency. Notwithstanding any other law, this subsection applies in any action for judicial review of any agency action that is authorized by law.

G. Notwithstanding subsection F of this section, if the action arises out of title 20, chapter 15, article 2, the court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

H. This section does not apply to any agency action pursuant to title 40, chapter 2, article 5 or 6.2.

(The underlined language in the statute was added in 2021.)