



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**BANNER MEDICAL v. HON. GORDON/JEREMY HARRIS et ux
CV-20-0179**

PARTIES:

Petitioners/Defendants: Banner University Medical Center Tucson Campus LLC et al.

Real Party in Interest/Plaintiffs: Jeremy and Kimberly Harris

Amicus Curiae: (1) Arizona Association for Justice/Arizona Trial Lawyers Association; and (2) Arizona Counties Insurance Pool, the Arizona Municipal Risk Retention Pool, and the Arizona School Risk Retention Trust, Inc.

FACTS:

In 2015, Connor, a fourteen-month-old child, was brought into an emergency room. Connor exhibited extreme distress and was vomiting. Connor was transferred on an expedited basis to Banner-University Medical Center Tucson, an academic teaching hospital affiliated with the University of Arizona College of Medicine. Connor had surgery the following day and died soon after from complications relating to a bowel obstruction.

All but one of the physicians (“Physician Defendants”) who cared for the child were employees of Banner University Medical Group (“B-UMG”) and the University of Arizona. The parents, Jeremy and Kimberly Harris (“Plaintiffs”) sued the Physician Defendants individually, alleging medical malpractice. Specifically, they alleged the delay in surgery was caused by the malpractice of inexperienced residents who treated their son. They also sued Banner Health, Inc., and B-UMG (“Banner Defendants”), alleging they were vicariously liable for that malpractice, among other claims.

Physician Defendants and Banner Defendants filed motions for summary judgment. The judge granted summary judgment in favor of all but one of the individual Physician Defendants due to Plaintiffs’ failure to serve the doctors with notices of claim pursuant to A.R.S. § 12-821.01, which the judge determined was required because of their employment by the University. The university-employed Physician Defendants were dismissed with prejudice. The judge, however, denied Banner Defendants’ motion for summary judgment on the vicarious liability claim against it grounded in the negligence claims against the university-employed Physician Defendants.

Banner sought special action relief from the ruling, arguing that because dismissal with prejudice constitutes an adjudication on the merits, dismissal of the claims against the doctors requires dismissal of the vicarious liability claim against it grounded in the doctors’ alleged malpractice. Plaintiffs filed a cross-petition in which they sought review of the doctors’ dismissal

only if the COA reversed the vicarious liability ruling. The COA declined jurisdiction over the cross-petition.

The Court of Appeals issued a divided opinion on whether vicarious liability against a private employer survives the dismissal of claims against the employees. The majority concluded that it did survive.

Banner Defendants' petition for review of a special action decision of the Court of Appeals was granted by the Arizona Supreme Court.

ISSUES:

“Does the lower courts’ refusal to dismiss the vicarious liability claim contravene Rule 41(b) and *stare decisis*, treat agents’ dismissals with prejudice in an arbitrary manner depending on the status of the principal, eviscerate the individuals’ notice of claim rights, and render meaningless their dismissal with prejudice?”

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