



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ROBERTO TORRES et al v. JAI DINING SERVICES
CV-22-0142-PR**

PARTIES:

Petitioners: Roberto Torres, Orlenda Guillen, Hernan Gastelum Rosas, and Maria Suarez

Respondent: JAI Dining Services (Phoenix), Inc.

FACTS:

After an evening drinking and socializing at Jaguars, a strip club owned by JAI, Cesar Aguilera Villanueva crashed his truck into the back of a Honda Civic that was stopped at a red light. The impact of the crash killed the car's occupants, Guadalupe Gastelum Suarez and Jesus O. Torres Guillen. The victims' relatives (Petitioners) sued Villanueva and JAI, asserting a negligence claim against Villanueva and (1) common law negligence and dram shop liability, and (2) statutory negligence per se against JAI.

At the conclusion of a nine-day jury trial, the jury reached its unanimous verdict on liability, finding in favor of Petitioners on the claims for negligence, common law negligence, and dram shop liability, but finding in favor of JAI on the claim for negligence per se. The jury awarded \$2 million in compensatory damages to Petitioners, with fault apportioned sixty percent to Villanueva and forty percent to JAI.

Following an initial appeal by JAI on issues of proximate causation, this Court vacated the court of appeals' opinion and remanded to the court of appeals to consider other issues raised by JAI on appeal – primarily, whether Petitioners' common law negligence and dram shop claims were preempted by A.R.S. § 4-312(B).

On remand, the court of appeals issued an opinion explaining that in *Young v. DFW Corp.*, 184 Ariz. 187 (App. 1995), it had previously concluded that A.R.S. §§ 4-311 and 4-312 unconstitutionally abrogated the common law dram shop liability action for plaintiffs who could establish the elements of the common law action but not the elements of the more restrictive statutory action. However, the court of appeals concluded that the subsequent holdings of *Cronin v. Sheldon*, 195 Ariz. 531 (1999), and *Dickey ex rel Dickey v. City of Flagstaff*, 205 Ariz. 1 (2003) further clarified the scope of the anti-abrogation clause. It reasoned that under *Cronin* and *Dickey*, because dram shops enjoyed a common law rule of nonliability against negligence suits at the time the Arizona Constitution was adopted, the common law dram shop liability cause of action recognized later was not protected by the anti-abrogation clause. Accordingly, the court of appeals reversed the judgement against JAI and remanded to the superior court to enter judgement in favor of JAI and in favor of Petitioners only as to Villanueva.

ISSUE:

Are the protections of Article 18, § 6 of the Arizona Constitution limited to only specific common law rights of action to recover damages that could have been brought against specific defendants as of February 14, 1912, or do the protections apply to common law rights of action to recover damages that Arizona courts have recognized post-statehood?

ARIZONA CONSTITUTION:

Article 18, § 6 of the Arizona Constitution provides in relevant part:

The right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation. . . .

STATUTES:

A.R.S. § 4-311 provides in relevant part:

A. A licensee is liable for property damage and personal injuries or is liable to a person who may bring an action for wrongful death pursuant to § 12-612, or both, if a court or jury finds all of the following:

1. The licensee sold spirituous liquor either to a purchaser who was obviously intoxicated, or to a purchaser under the legal drinking age without requesting identification containing proof of age or with knowledge that the person was under the legal drinking age.
2. The purchaser consumed the spirituous liquor sold by the licensee.
3. The consumption of spirituous liquor was a proximate cause of the injury, death or property damage.

D. For the purposes of this section, “obviously intoxicated” means inebriated to such an extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

A.R.S. § 4-312(B) provides:

Subject to the provisions of subsection A of this section and except as provided in § 4-311, a person, firm, corporation or licensee is not liable in damages to any person who is injured, or to the survivors of any person killed, or for damage to property which is alleged to have been caused in whole or in part by reason of the sale, furnishing or serving of spirituous liquor.

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