



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. CHALICE RENEE ZEITNER
CR-18-0076-PR**

PARTIES:

Petitioner/Appellant/Defendant: Chalice Renee Zeitner

Respondent/Appellee/Plaintiff: The State of Arizona

FACTS:

Arizona participates in Medicaid, a joint state-federal funding program for medical care for the needy. In Arizona, Medicaid is administered through AHCCCS. On February 17, 2010, Zeitner applied for AHCCCS benefits. In her application, Zeitner said she was pregnant with a due date of July 20, 2010. Zeitner said she had no “serious” or “chronic” illnesses. The request for coverage was denied because Zeitner did not provide necessary verifying information.

Zeitner then went to a Phoenix obstetrician for an abortion in March 2010. She told him she just had discovered she was pregnant after recently undergoing extensive radiation and chemotherapy treatments for cancer. Zeitner said she wanted an abortion because she thought the radiation and chemotherapy likely had harmed her fetus. After examining Zeitner, however, the obstetrician concluded she was well-nourished and healthy, about 20 weeks' pregnant and in no acute distress. Accordingly, he proposed a course of care designed to avoid an abortion. He told Zeitner to obtain information from her cancer physicians about her treatments and referred her to a specialist in high-risk pregnancies in the hope that she could deliver a viable baby.

Zeitner met with the specialist a few days later. Examining Zeitner, the specialist grew suspicious. He thought it unusual that, although Zeitner told him she had a diagnosed malignant uterine tumor, the physicians treating her cancer had not removed her uterus. Zeitner told the specialist her main chemotherapy drug was acetaminophen—an over-the-counter pain reliever, not a chemotherapy drug. And Zeitner was unable to relate details of her cancer diagnosis or treatment, other than that she had been diagnosed at a hospital in Boston. From an ultrasound, the specialist saw no abnormalities that compelled an abortion. He reported his concerns about Zeitner's veracity to the obstetrician.

A few days later, Zeitner successfully applied for AHCCCS benefits. AHCCCS had turned down an application Zeitner had submitted just a month before, citing insufficient documentation. Although Zeitner's earlier application had said she had no serious or chronic illnesses, on the application she submitted in late March, Zeitner stated she had a serious chronic illness and said her pregnancy was high-risk and life-threatening.

On March 31, the obstetrician received an email signed "Al Zeitner" that seemed to be following up on behalf of Chalice Zeitner. Referencing Chalice in the third person, the email stated

the author was waiting to hear back from the obstetrician about a "procedure" that he purportedly had proposed. The email suggested the procedure was urgent, stating:

Chalice is scheduled to resume chemo and radiotherapy on April 9th. She must have the tumors removed in the next 4 weeks. She is on bedrest and supervised care in her home until notice from [the Phoenix obstetrician] of this procedure.

Shortly thereafter, Zeitner brought the obstetrician a letter dated April 1, purportedly written by a "Dr. McMahan" at the Boston hospital Zeitner claimed had treated her for cancer. The letter recommended that Zeitner "receive an urgent [abortion] . . . to relieve third term life-threatening certainties to the patient." Attached to the letter was a list of chemotherapy and radiotherapy medications purportedly prescribed to Zeitner. (Although a physician named McMahan actually practiced at the Boston hospital at the time, he had never treated Zeitner and had not written the letter or created the list of medications Zeitner gave to him.)

Accepting the letter as authentic, the obstetrician concluded Zeitner urgently needed an abortion. Based on his opinion that an abortion was necessary to protect Zeitner's health, AHCCCS authorized payment, and the obstetrician aborted Zeitner's fetus on April 9.

Meanwhile, Zeitner launched a scheme to garner donations from friends and others to fund her purported cancer treatments. Using the name "Trinity McLaughlin," Zeitner sent a social media message to her boyfriend, informing him that "Trinity" and a few others had created a webpage to raise funds for Zeitner's cancer treatments and suggesting the boyfriend take over the fundraising effort. The next week, "Trinity" emailed the boyfriend fundraising materials for him to use, including a heartrending plea for donations detailing Zeitner's cancer, her costly painful treatments and her resulting financial hardships.

Acting on "Trinity's" request, the boyfriend posted on a fundraising website the story "Trinity" had sent him, forwarded "Dr. McMahan's" letter to the website to satisfy its request for proof that Zeitner did truly have a medical condition, opened a bank account for donations, and solicited more than 600 social media friends to help pay for the purported cancer treatments. In response, more than 20 people donated a cumulative total of more than \$2,000 to Zeitner's cancer fund via the website.

Several months later, Zeitner became pregnant again, and the Phoenix obstetrician delivered her child by caesarean section. During the procedure, the obstetrician saw no evidence that tumors had been removed from Zeitner's uterus or that she had undergone chemotherapy or radiation. By then highly suspicious about Zeitner's claimed cancer, the obstetrician contacted Dr. McMahan at the Boston hospital, who said he had not treated Zeitner nor authored the letter Zeitner had given him. The obstetrician reported his suspicions about Zeitner to her health plan, which forwarded the matter to AHCCCS.

A grand jury eventually indicted Zeitner on 11 charges. AHCCCS generally does not cover abortions; the indictment alleged Zeitner defrauded AHCCCS and stole public health benefits by lying about having cancer so that her abortion would fall within an exception to that rule. The State also alleged Zeitner defrauded the donors to her cancer fund, attempted to steal

donations and committed identity theft and forgery.

After pleading not guilty to each of the charges, Zeitner moved to preclude all information her physicians obtained from her, including records relating to her communications with the physicians and their examinations of her, arguing they were protected under Arizona's physician-patient privilege, A.R.S. § 13-4062(A)(4). The State opposed the motions, arguing another statute abrogated the privilege and, in any event, Zeitner had waived it. The court denied the motions, concluding that the privilege was abrogated by A.R.S. § 13-4071, the statute that grants general subpoena power.

After an 11-day trial in which the court admitted Zeitner's medical records and allowed her physicians to testify, the jury found Zeitner guilty of all charges. The court sentenced her to concurrent prison terms, the longest of which was 10 years. Zeitner timely appealed.

In an opinion affirming Zeitner's convictions and sentences, the court of appeals rejected her claim that the trial court had erred by admitting her medical records and allowing her physicians to testify in violation of the physician-patient privilege.

ISSUE FOR WHICH REVIEW WAS GRANTED:

Implied repeal is disfavored. A court may only find a statute impliedly abrogated another if there is no reasonable interpretation that can reconcile the two statutes.

Here, without looking to whether any interpretations could reconcile the statutes, the lower court concluded AHCCCS statutes that authorized the release of documents within the system abrogated Chalice's physician-patient privilege. This repeal was extended to both the records and the testimony of doctors.

In doing so, the lower court ignored the plain language of the statutes. Specifically, the lower court ignored statutory language that indicated an intent to coexist with the physician-patient privilege and distinguished between the release and use of privileged information.

Did the AHCCCS statutes impliedly abrogate the physician-patient privilege?

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