



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**CVS Pharmacy, Inc. v. Hon. Bostwick/Tucson Medical Center,
CV-20-0120-PR**

PARTIES:

Petitioner: CVS Pharmacy, Inc. et al. (“CVS”)

Respondent: Tucson Medical Center (“TMC”)

FACTS:

TMC is a nonprofit community hospital that treats patients in southern Arizona. In 2018, TMC filed a complaint alleging that drug manufacturers, distributors, and marketers had conspired to unlawfully increase opioid sales by “falsely deny[ing] or trivializ[ing] the risks of opioids while overstating the benefits of using them for chronic pain.”

In 2019, TMC amended its complaint to add as defendants CVS, certain related CVS entities, and several CVS pharmacy stores (collectively, the “**CVS Defendants**”). The amended complaint alleged that the CVS Defendants and others had “extract[ed] billions of dollars of revenue from the addicted American public while hospitals sustain[ed] tens of millions of dollars of losses caused as a result of the reasonably foreseeable consequences of the prescription opioid addiction epidemic.” It also alleged that the “CVS Defendants failed to exercise due care in dispensing . . . opioids,” and that the CVS pharmacy stores had a duty to “establish policies and procedures that were effective and sufficient to avoid filling prescriptions indicative of abuse or diversion,” and to “report potential diversion to the DEA, the Arizona Board of Pharmacy,” and others.

CVS moved to dismiss, arguing in part that: (1) Arizona’s medical lien statute, A.R.S. § 33-934(A), precluded all of TMC’s claims against it; and (2) the CVS Defendants “did not owe a duty to protect plaintiff from the harm alleged in the complaint.” The trial court found that:

Statutes and case law provide a potential public policy basis for a CVS duty to [TMC] through the public policy in favor of a nonprofit community hospital providing care, including emergency and opioid-related care, to members of the public regardless of ability to pay, and to encourage and minimize damage and financial economic impact or burden on hospitals providing that critical care.

The trial court denied CVS’s motion to dismiss.

CVS then filed a petition for special action in the court of appeals. The court of appeals declined jurisdiction in a brief order, with one judge dissenting from the denial. CVS then filed a petition for review in this Court.

ISSUES:

This Court granted review of the following two issues, which were rephrased by the Court:

1. Whether a hospital may assert a direct claim against a third party it contends caused personal injuries to its patient, even if the patient is covered by Medicaid.
2. Whether a pharmacy that self-distributes prescription opioids to its affiliated pharmacies owes a duty to the hospital.

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