



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ROBIN ROEBUCK v. MAYO CLINIC, et al.
CV-23-0262-PR**

PARTIES:

Petitioners: Mayo Clinic of Arizona, Mayo Clinic, Nicole Secret, and Robert Scott

Respondent: Robin Roebuck

Amici Curiae: State of Arizona (to share oral argument time with Petitioners); Arizona Association for Justice/Arizona Trial Lawyers Association (to share oral argument time with Respondent); Arizona Chamber of Commerce & Industry; Health System Alliance of Arizona; Arizona Hospital and Healthcare Association; American Medical Association, Arizona Medical Association, Phoenix Children's Hospital, HonorHealth, and Mutual Insurance Company of Arizona

FACTS:

On April 20, 2020, Plaintiff/Respondent Robin Roebuck was hospitalized at the Mayo Clinic ("Mayo") in Phoenix after presenting with COVID-19 ("Covid") symptoms. Roebuck had a heart transplant in 1993 and a second heart transplant and kidney transplant at Mayo in 2017; thereafter, Mayo provided Roebuck's follow-up care. Because Roebuck previously received a heart transplant, he was placed under the care of Mayo's congestive heart failure team when he was admitted for Covid. This was standard Mayo procedure for admitted heart transplant patients, regardless of the reason for their admission.

On April 23, 2020, a chest x-ray showed that Roebuck had developed pneumonia and needed supplemental oxygen. Also on that day, Dr. Ashraf, a cardiologist, ordered an echocardiogram to assess Roebuck's heart. The echocardiogram confirmed that Roebuck was not having primary cardiac issues or signs of rejection. In light of these results, the doctors proceeded with managing Roebuck's Covid, rather than focusing on cardiac management.

By the next day, Roebuck's pulse oximeter readings indicated that he was experiencing hypoxia, which means that his blood oxygen levels were below standard levels. Roebuck was also suffering from metabolic acidosis. Based on these symptoms, Dr. Ashraf ordered an arterial blood gas ("ABG") test. The test, which is drawn from a patient's radial artery, measures the oxygen in the patient's arterial blood. Nicole Secret, a registered nurse working under the direction of cardiologist Robert Scott, performed the ABG test, which revealed that Roebuck's blood had very low oxygen content. Shortly thereafter, Roebuck was given tocilizumab, a monoclonal antibody.

The next day, April 25, 2020, Roebuck developed complications from the ABG test. He was diagnosed with compartment syndrome and, on April 26, 2020, underwent emergency surgery on his right hand, forearm, and wrist. He needed an additional skin graft on May 1, 2020. Roebuck was left with diminished strength and use of his right hand and arm, as well as significant scarring.

On January 29, 2021, Roebuck sued Mayo, Secrest, and Dr. Scott (collectively “Mayo”) for medical negligence, alleging that Mayo negligently performed the ABG test. He did not allege gross negligence.

In May 2021, Mayo moved to dismiss the complaint. Mayo asserted that, because any injuries to Roebuck were sustained while Mayo was treating him for Covid, it was immune from Roebuck’s claims pursuant to Arizona Senate Bill (“SB”) 1377 of the 2021 Fifty-Fifth Legislative Session and Arizona Executive Order 2020-27. The Arizona legislature passed SB 1377 on March 30, 2021, and the governor signed it into law on April 5, 2021. As a result, A.R.S. § 12-515 and A.R.S. § 12-516, which address immunity from liability when the governor has declared a state of emergency for a public health pandemic, were enacted to retroactively apply “to from and after March 10, 2020.” Mayo also asserted that it was immune from suit based on the federal Public Readiness and Emergency Preparedness (“PREP”) Act, 42 U.S.C. §§ 247d-6d, 247d-6e.

The superior court determined that Mayo’s arguments hinged on whether the ABG test was in furtherance of Mayo’s treatment of Roebuck for Covid. The court denied Mayo’s motion to dismiss, assuming that the complaint’s allegations were true and that the blood draw pertained to Roebuck’s heart condition, rather than Covid treatment. In the same minute entry, the court ordered that the case’s scope of discovery initially be limited to the issues of the ABG blood draw’s purpose.

Following the limited discovery, Mayo moved for summary judgment, again based on immunity. The superior court granted Mayo’s motion. The court concluded that: (1) the ABG test fell within the scope of A.R.S. § 12-516 because it was done while providing health care services in support of Arizona’s response to the state of emergency caused by the Covid outbreak; (2) A.R.S. § 12-516 does not violate the Arizona Constitution’s anti-abrogation clause because it does not bar a plaintiff’s right to recover damages but instead simply requires a plaintiff to prove his or her claim by a higher evidentiary standard to prevail; and (3) the PREP Act did not apply to bar Roebuck’s claims. In its order, the court stated that Roebuck was not barred from filing an amended complaint asserting willful conduct or gross negligence.

Roebuck did not file an amended complaint but instead appealed the superior court decision. The court of appeals reversed. The court first found that A.R.S. § 12-516 is not ambiguous and unequivocally shields health care providers from ordinary negligence claims relating to provision of pandemic-related medical treatment. It next held that A.R.S. § 12-516 applied here, even though it was not in effect in when Mayo treated Roebuck, because the legislature specifically stated that the statute would be retroactive to March 11, 2020. The court then held that § 12-516 violated the Arizona Constitution’s anti-abrogation clause because: (1) medical malpractice actions have their origins in the common law and are therefore protected by the clause; and (2) although the statute did not limit a plaintiff’s right to pursue a gross negligence claim, it left no reasonable alternative or choice available to those injured by the ordinary negligence of medical professionals administering Covid-related treatment. The court last held that the PREP Act did not apply because the ABG procedure was not a qualifying countermeasure under the PREP Act.

ISSUE: Did the court of appeals err in finding A.R.S. § 12-516 violates the anti-abrogation clause of the Arizona Constitution?

STATUTORY AND CONSTITUTIONAL PROVISIONS:

A.R.S. § 12-516 provides in relevant part:

A. If the governor declares a state of emergency for a public health pandemic pursuant to title 26, chapter 2, a health care professional or health care institution that acts in good faith is not liable for damages in any civil action for an injury or death that is alleged to be caused by the health professional's or health care institution's action or omission while providing health care services in support of this state's response to the state of emergency declared by the governor unless it is proven by clear and convincing evidence that the health professional or health care institution failed to act or acted and the failure to act or action was due to that health professional's or health care institution's wilful misconduct or gross negligence.

B. Subsection A of this section applies to any action or omission that is alleged to have occurred during a person's screening, assessment, diagnosis or treatment and that is related to the public health pandemic that is the subject of the state of emergency . . .

* * *

E. This section applies to all claims that are filed before or after September 29, 2021 for an act or omission by a person that occurred on or after March 11, 2020 and that relates to a public health pandemic that is the subject of the state of emergency declared by the governor.

Article 18, section 6 of the Arizona Constitution states, 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

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