



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



***Gabriel Garibay et al. v. Hon. Johnson/Fox***  
**CV-24-0091-PR**

**PARTIES:**

*Petitioner:* Plaintiff William Fox, surviving spouse of Angela Fox, deceased, individually and on behalf of all those entitled by law to recover for the death of Angela Fox

*Respondents:* Defendants Gabriel Garibay, Deborah Martinez-Garibay, and Pima County

**FACTS:**

In March 2022, the Pima County Board of Supervisors appointed Deborah Martinez-Garibay as a constable. In August of that year, Martinez-Garibay attempted to serve a writ of restitution on a tenant at a Tucson apartment complex. The tenant was being evicted because he had threatened a resident with a firearm. The apartment manager, Angela Fox, accompanied Martinez-Garibay to the tenant’s apartment. Martinez-Garibay knocked on the door for several minutes and then announced that she was from the Constable’s Office and would call the police if he did not open the door. Martinez-Garibay then entered the apartment with a key and had a verbal exchange with the tenant, who fatally shot three victims: Martinez-Garibay, Fox, and Elijah Miranda, a guest in a neighboring apartment, before shooting himself.

The toxicology report on Constable Martinez-Garibay was positive for five substances above the reporting limit, Ethanol, Alcohol, Amphetamine, Benzoylcegonine, and Cocaine. Decedent Fox’s spouse, William Fox, brought a wrongful death action against Gabriel Garibay as Constable Martinez-Garibay’s surviving spouse, as well as Pima County, and the Arizona Constable Ethics, Standards and Training Board (“CESTB”). Fox alleged that Constable Martinez-Garibay negligently and grossly negligently breached her duty “to protect and avoid exposing [Fox] . . . and the general public to harm” while in the course and scope of serving the writ as part of her constabulary duties. Fox alleged that Pima County was Martinez-Garibay’s employer and was therefore vicariously liable for her conduct under the doctrine of respondeat superior. Fox alleged that Pima County and the CESTB had “negligently failed to adequately hire, train, supervise, and monitor” Martinez-Garibay.

Defendants Garibay and Pima County moved for judgment on the pleadings, arguing that the Board of Supervisor’s decision to appoint Martinez-Garibay as constable was shielded from liability by absolute immunity, that Pima County was not responsible for training or supervising constables, and that respondeat superior did not apply to constables because they are “an officer of the court whose duties are imposed by statute.” Defendants also argued that Martinez-Garibay, as a constable, enjoyed judicial immunity under A.R.S. § 12-820.01(A)(1) and was therefore shielded from liability under A.R.S. § 11-449 for “any misconduct in the service or

execution of a writ of restitution.” Superior Court Judge Kellie Johnson denied defendants’ motion, rejecting the immunity claims and ruling that a finder of fact could conclude that the County controlled the actions of Martinez-Garibay, who had a duty to act as a reasonably prudent constable.

Defendants Garibay and Pima County brought an interlocutory challenge to this ruling by filing a petition for special action in the Court of Appeals, arguing that constable Martinez-Garibay was entitled to judicial immunity by statute and owed no duty to Fox.

The Court of Appeals accepted jurisdiction of the special action and, after briefing and oral argument, held that the actions of Constable Martinez-Garibay were shielded by judicial immunity under A.R.S. § 12-820.01(A)(1) and she therefore could not be held liable under A.R.S. § 11-449. Those portions of Judge Johnson’s ruling holding judicial immunity inapplicable to Constable Martinez-Garibay were reversed. Plaintiff Fox filed a Petition for Review which the Arizona Supreme Court granted as to this rephrased issue:

**ISSUE:**

“Does judicial immunity preclude application of the liability provisions of A.R.S. § 11-449 to a constable for ‘any misconduct in the service or execution’ of a writ of restitution?”

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