

**IN THE SUPREME COURT**

**STATE OF ARIZONA**

VICTOR SANCHEZ-RAVUELTA  
and JANETTE DODGE, a married  
couple, on behalf of themselves and  
their minor children ELIJAH  
SANCHEZ and AMELIA  
SANCHEZ,

Plaintiffs/ Appellants,

vs.

YAVAPAI COUNTY; TOWN OF  
DEWEY-HUMBOLDT; STATE OF  
ARIZONA; JOHN and JANE DOES  
I-X, ABC Corporations, XYZ  
Partnerships,

Defendants/ Appellees.

Arizona Supreme Court

Case No.: \_\_\_\_\_

Court of Appeals

Division Two

No.: 2 CA-CV 2023-0059

Maricopa County

Superior Court

Case No.: CV 2022-051670

**PETITION FOR REVIEW**

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C. Assuming the superior court had jurisdiction to act, was the Rule 54(b) judgment defective because it failed to recite the required language in the Rule, rendering it interlocutory and unappealable, and, if so, can a defective Rule 54(b) judgment perfect the time to file a notice of appeal?

E. Did the Court of Appeals err when it found Plaintiffs’ appeal was not defeated based on timeliness?

F. Did the Court of Appeals err when it dismissed the Town’s cross-appeal premised on timeliness, when the basis for perfecting the time to appeal is a judgment that was entered in violation of ARCAP 9(e), which vested jurisdiction in Division One, and entered in violation of Rule 54(b), rendering the judgment interlocutory and not appealable?

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## I. INTRODUCTION

The Town of Dewey-Humboldt (Town) petitions this Court to review Division Two's decision to dismiss the Town's cross-appeal for lack of timeliness and the issues that were raised therein. Division Two premised the dismissal by using a defective Rule 54(b) judgment as the basis to perfect the time to file a notice of appeal. The relevant Rule 54(b) judgment lacks the express determination of "no just reason for delay," which is required for there to be jurisdiction for an appeal by law. The Rule 54(b) judgment, therefore, cannot perfect the time to file an appeal.

The cross-appeal challenged jurisdiction over the entire appeal due to procedural irregularities that invoke interpretation of ARCAP 9(e), which this Court has not yet done. This Court's opinion in *Craig v. Craig*, stated,

We also reject Wife's suggestion that we today read ARCAP 9(b) as *in haec verba* with Federal Rule of Appellate Procedure 4(a)(4)(B)(i).

....

Whatever the conceptual merits of the federal rule, the language of ARCAP 9(b) is different, and Arizona jurisprudence interpreting our rule has taken a diametrically opposite approach for some thirty years. *A dramatic change to Arizona appellate procedure should occur through rulemaking, not through*

an opinion effectively rewriting our appellate rules and abandoning settled precedent.

227 Ariz. 105, 107 ¶ 15 (2011). That is exactly what happened, three years later. *See* R-13-0005.<sup>1</sup>

ARCAP 9(e)(2) was added, which provides that,

If a party files a notice of appeal before the timely filing of one of the motions identified in Rule 9(e)(1) or if a notice of appeal is filed during the pendency of such a motion, the appellant must notify the appellate court of the pending motion or motions when the appellate court assigns a case number under Rule 12(a). *Upon the appellate court's receipt of such notice, the appeal will be suspended until the last such motion is decided.* The appellant also must notify the appellate court when all such motions have been decided, *and the appeal will be reinstated as of the entry of the order disposing of the last remaining motion.*

ARCAP 9(e)(2) (emphasis added). This Court has not addressed this issue since the amendment, and Division Two's opinion conflicts with the adoption of the amendment.

The opinion, further, is internally inconsistent because in ¶ 7, Division Two opines that the initial notice of appeal did not divest jurisdiction under

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<sup>1</sup><https://www.azcourts.gov/rules/Recent-Amendments/Rules-of-Civil-Appellate-Procedure> (accessed 04/19/24) (“Order amending . . . *Rule 9, Rules of Civil Appellate Procedure (modeling appeal process after federal rules)*”) (emphasis added).

ARCAP 9(e) to make subsequent rulings, but later opines in ¶ 11 that the second notice of appeal divested the superior court jurisdiction to make subsequent rulings.

The opinion leaves the Town in a Catch-22, because under Rule 54(b), it had no ability to appeal rulings related to certain plaintiffs, as there was no final judgment related to them, and the Town is unable to appeal on the final Rule 54(c) judgment because the time to appeal perfected from the prior judgment. Moreover, the Rule 54(b) judgment failed to recite an express finding that there was “no just reason for delay,” as required, rendering the Rule 54(b) judgment interlocutory and unappealable as a matter of law.

The Town believes and, therefore, petitions this Court to review these issues. The Town only petitions for review of ¶¶ 5-11 of the opinion. The Town does not challenge any other portion of the opinion.

## **II. ISSUES DECIDED AND PRESENTED FOR REVIEW**

- A. Did the Court of Appeals err when it found that ARCAP 9(e) did not vest jurisdiction to Division One, rendering subsequent rulings by the superior court void?**
- B. Did the Court of Appeals err when it found that a Rule 54(b) judgment perfected the time to appeal claims related to parties that were not subject to it, despite the superior court correcting the Rule 54(b) judgment, and converting it to a Rule 54(c) judgment at those parties’ request?**

- C. Assuming the superior court had jurisdiction to act, was the Rule 54(b) judgment defective because it failed to recite the required language in the Rule, rendering it interlocutory and unappealable, and, if so, can a defective Rule 54(b) judgment perfect the time to file a notice of appeal?
- D. Did the Court of Appeals err when it found Plaintiffs' appeal was not defeated based on timeliness?
- E. Did the Court of Appeals err when it dismissed the Town's cross-appeal premised on timeliness, when the basis for perfecting the time to appeal is a judgment that was entered in violation of ARCAP 9(e), which vested jurisdiction in Division One, and entered in violation of Rule 54(b), rendering the judgment interlocutory and not appealable?
- F. Should the Court of Appeals consider the merits of the Town's cross-appeal?

**III. ADDITIONAL ISSUES PRESENTED BUT NOT DECIDED BY COURT OF APPEALS**

- A. Does the Town owe Plaintiffs a legal duty?<sup>2</sup>

**IV. BACKGROUND**

- A. Relevant Facts.

Plaintiffs were involved in a motor vehicle accident that occurred in April 2021, with non-party David Browne, who left the parking lot of Billy Jack's Saloon and Grill while intoxicated. Browne caused a multi-vehicle

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<sup>2</sup> The balance of the opinion deals with the fact sufficient clause of the A.R.S. § 12-821.01, which is not relevant to this petition, and was decided.

accident on SR-69. All four plaintiffs brought an action for damages.

**B. Relevant Procedural Facts.**

This Petition arises out of a complicated procedural posture, both at the superior court and at the Court of Appeals, in both Divisions.

Plaintiffs Victor Sanchez-Ravuelta and Jannette Dodge, along with their children, Elijah and Amelia Sanchez (Minor Plaintiffs), filed four complaints in the superior court, naming the Town, State of Arizona (State), and Yavapai County (County). The Town answered. All three defendants filed dispositive motions. The superior court held oral arguments on fully briefed dispositive motions on August 26, 2022. Things devolved from there.

On August 30, 2022, Plaintiffs filed a notice of dismissal purporting to voluntarily dismiss Minor Plaintiffs' claims against all defendants. Then, Plaintiffs filed a notice of errata and a Rule 41(a)(2) motion to dismiss Minor Plaintiffs' claims *without prejudice* as to the Town (since the Town answered). The next day, the Town responded to the Rule 41(a)(2) motion. The day following, September 2, 2022, Minor Plaintiffs replied, but then the clerk filed the superior court's order, dated August 31, 2022, which granted the State, County, and Town's pending dispositive motions, finding in favor of all defendants and against all plaintiffs. Plaintiffs subsequently, and without

explanation, filed an unauthorized second reply in support of their Rule 41(a)(2) motion to dismiss *without prejudice*. On September 27, 2022, the superior court denied the Rule 41(a)(2) motion as *moot*, in light of its grant of the Town's motion.

Throughout the appeal, the Town has asserted that the superior court's denial for mootness was appropriate and legally correct. The Town has also asserted that the reversal of that decision by the superior court, later, was a legal error. Plaintiffs' Rule 41(a)(2) motion was, as a matter of law, moot before being briefed and therefore properly denied. It was a legal error for the superior court to essentially reverse its own ruling. In sum, Plaintiffs used Rule 41(a)(2) to evade a granted dispositive motion. Plaintiffs later filed a notice of appeal, transferring jurisdiction of this case to Division One.

While jurisdiction vested there, the superior court ruled on a pending motion for new trial, but the required notice under ARCAP 9(e) had not been submitted. The Town contends that without that notice, ARCAP 9(e) vested jurisdiction in Division One until it later found the appeal to be abandoned and the superior court lacked jurisdiction to modify its prior dismissal of Minor Plaintiffs' claims *with prejudice*, because Division One properly had jurisdiction over this case. Compounding the procedural confusion, Division

Two's opinion that the Rule 54(b) judgment perfected the time to appeal is also a legal error that conflicts with Division One's jurisprudence and its own prior memorandum decisions.

Rule 54(b) states,

. . . the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if *the court expressly determines there is no just reason for delay* and recites that the judgment is entered under Rule 54(b). *If there is no such express determination and recital, any decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time* before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

But, there is no express determination and direction in the Rule 54(b) judgment, and “absent the ‘express determination and direction’ as set forth in Rule 54(b), the judgment is merely interlocutory,” and thus, unappealable. *Maria v. Najera*, 222 Ariz. 306, 308 ¶ 6 (App. 2009) (citing and quoting *Bulova Watch Co. v. Super City Dep't Stores of Ariz., Inc.*, 4 Ariz.App. 553, 554 (1967)). The error was later rectified in the fourth and final Rule 54(c) judgment that Plaintiffs appealed, and the Town cross-appealed, on.

### C. Procedural Timeline.

A timeline illustrates the errors pressed here:

August 26, 2022	Oral Arguments on dispositive motions
August 30, 2022	Notice of Dismissal <i>without prejudice</i> of Minor Plaintiffs against all Defendants
August 30, 2022	Plaintiffs' Notice of Errata, noticing dismissal to Defendants State and County, only
August 30, 2022	Plaintiffs' Rule 41(a)(2) Motion to Dismiss Minor Plaintiffs' Claims against the Town <i>without prejudice</i>
August 31, 2022	Town's Response to Plaintiffs' Rule 41(a)(2) Motion
August 31, 2022 (entered on September 2, 2022)	Under Advisement Ruling granting all dispositive motions
September 1, 2022	Plaintiffs' Reply RE Rule 41(a)(2) Motion
September 8, 2022	Plaintiffs' Objection to Notice of Lodging Form of Judgment
September 8, 2022	Motion for Reconsideration RE Under Advisement Ruling
September 14, 2022	Plaintiffs' Second Reply in Support of Rule 41(a)(2) Motion to Dismiss
September 16, 2022	Order dismissing Minor Plaintiffs' claims

September 22, 2022	Order clarifying dismissal <i>without prejudice</i> as to Minor Plaintiffs pertained only to the State and County
<b>September 27, 2022</b>	<b>Order denying Plaintiffs' Rule 41(a)(2) Motion as to the Town, finding it moot due to the August 31, 2022 ruling</b>
October 17, 2022	Court enters Rule 54(c) Judgment #1, finding that all Plaintiffs' claims against the Town were dismissed <i>with prejudice</i>
October 31, 2022	Plaintiffs' Motion for New Trial
November 9, 2022	Plaintiffs' First Amended Motion for New Trial
November 22, 2022	Court enters Rule 54(c) Judgment #2, finding that all Plaintiffs' claims against the Town were dismissed <i>with prejudice</i>
November 27, 2022	State's Response to First Amended Motion for New Trial
December 1, 2022	Town's Response to First Amended Motion for New Trial
December 5, 2022	County's Response to First Amended Motion for New Trial
<b>December 8, 2022</b>	<b>Notice of Appeal #1</b>
December 19, 2022	Order vacating Rule 54(c) Judgment #2 and setting Oral Argument on January 25, 2023

December 30, 2022	Plaintiffs' Reply in Support of First Amended Motion for New Trial
<b>January 5, 2023</b>	<b>Division One Clerk Notice</b>
January 9, 2023	Division One Clerk Receipt
January 25, 2023	Oral Argument on First Amended Motion for New Trial
<b>January 25, 2023</b>	<b>Court enters Judgment #3, finding that Minor Plaintiffs' claims against Town were now dismissed <i>without prejudice</i> and entering judgment under Rule 54(b)</b>
<b>February 3, 2023</b>	<b>Division One finding appeal abandoned</b>
<b>February 4, 2023</b>	<b>Plaintiffs' Notice of Lodging Proposed Form of Judgment, noting Judgment #3 was inadvertently entered under Rule 54(b)</b>
<b>March 9, 2023</b>	<b>Court enters Judgment #4 under Rule 54(c), as requested by Plaintiffs</b>
<b>March 10, 2023</b>	<b>Plaintiffs' Notice of Appeal #2</b>
<b>March 29, 2023</b>	<b>Town's Notice of Cross-Appeal</b>
April 3, 2024	Division Two's Opinion

V. **REASONS THE PETITION SHOULD BE GRANTED**

A. **Division Two's opinion is legally erroneous and conflicts with Division One's jurisprudence on final judgments.**

The underlying opinion holds,

The court properly certified the third final judgment under Rule 54(b) because although the adult plaintiffs' claims were dismissed with prejudice, the minor plaintiffs' claims were all dismissed without prejudice, and thus, *there was no final judgment as to the minor plaintiffs' claims.*

Appendix A at 24 ¶ 10. However, in *Maria*, Division One held,

As provided in Rule 54(b), the superior court may designate as final (and therefore appealable pursuant to A.R.S. § 12-2101(B)) a judgment that disposes of fewer than all claims. This may be done, however, "only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Ariz. R. Civ. P. 54(b).

222 Ariz. at 307 ¶ 6.

It is well-settled law in this state that absent the express determination that "there is no just reason for delay and upon an express direction for the entry of judgment" any appeal of that judgment is void because the judgment itself is void and rendered interlocutory. *Id.* The relevant judgment is missing the express determination, but in dismissing the cross-appeal,

Division Two used the defective judgment as a basis for when the time to appeal perfected. This will cause considerable confusion in the future about appealing judgments, especially because Division Two has previously relied on *Maria* for the proposition that the language is mandatory. *E.g.*, *Rogers v. Board of Regents*, 2012 WL 988569 (Ariz. Ct. App. Div. 2. 2012); *accord Kadlec v. Dorsey*, 2012 WL 1694203 (Ariz. Ct. App. Div. 2 2012).<sup>3</sup> If that language is missing, as it is here, then a Rule 54(b) judgment cannot confer jurisdiction and certainly cannot perfect the time to file a notice of appeal. *Bulova Watch Co.*, 4 Ariz.App. at 554. Indeed, the parties fixed this error in the fourth judgment, which was certified under Rule 54(c), and did provide for a final judgment as to Minor Plaintiffs, which Rule 54(b) requires in these circumstances.

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<sup>3</sup> Unpublished Memorandum Decisions, used only to show Division Two has previously relied on *Maria*. Copies are attached to the Appendix. *See* Ariz. Sup. Ct. Rule 111(c).

**B. ARCAP 9 was amended after *Craig v. Craig* to conform with federal appellate jurisdiction rules, requiring guidance from this Court on the amendments.**

Previously, under *Craig*, “a notice of appeal filed . . . while any party’s time-extending motion is pending before the trial court, is ‘ineffective’ and a nullity.” 227 Ariz. at 107 ¶ 13. This Court noted that any “dramatic change” should be through rulemaking and not through an opinion. *Id.* at 107 ¶ 15. Since *Craig*, the Arizona Rules of Civil Procedure *have* been amended to include ARCAP 9(e). *See* R-13-0005. Now, the party who files a notice of appeal during the pendency of a Rule 59(a) or Rule 59(d) motion “must notify the appellate court of the pending motion or motions when the appellate court assigns a case number . . .” ARCAP 9(e)(2). “Upon the appellate court’s receipt of such notice, *the appeal will be suspended* until the last such motion is decided.” *Id.* (emphasis added). Here, the first appeal was never suspended. Consequently, the superior court modified its prior judgment without jurisdiction because jurisdiction properly vested with Division One, until abandoned.

Under *Craig*, the December 8, 2022 notice of appeal may have been treated as a nullity, however, given the introduction of ARCAP 9(e), which was amended *after Craig*, the November 22, 2022 Rule 54(c) judgment is

properly the final appealable order in this matter. *See State v. Hill*, 174 Ariz. 313, 323 (1993) (“A motion that is not ruled on is deemed denied by operation of law.”). This Court should find the same.

Plaintiffs then filed their first notice of appeal on December 8, 2022. If the November 22, 2022 order is treated, under *State v. Hill*, as a denial of the motion for new trial, then appellate jurisdiction vested in the Court of Appeals with Plaintiffs’ December 8, 2022 notice of appeal. That, in turn, would render the superior court’s subsequent rulings void under *Budreau v. Budreau*, 134 Ariz. 539, 541 (App. 1982). Under *Budreau*, and similar cases, the superior court loses its jurisdiction over a given case while an appeal is pending. *See id.* at 541. This is particularly troubling given that ARCAP 9(e) now requires an appellant to notify the Court of Appeals if a notice of appeal is filed while a time extending motion remains pending. ARCAP 9(e)(2).

**C. It was a legal error for the superior court to modify its prior dismissal from *with prejudice* to *without prejudice*.**

The superior court erred in granting the motion for new trial to alter a dismissal *with prejudice* to become one *without prejudice* and in apparently granting the Rule 41(a)(2) motion it had previously ruled as moot. Rule 41(a)(2) permits voluntary dismissal by a plaintiff after a defendant has filed

an answer or motion for summary judgment only by court order. The right to dismiss after an answer has been filed is discretionary with the trial court and requires a motion, hearing on the motion, and court order. *Cheney v. Superior Court*, 144 Ariz. 446 (1985). Though dismissal under Rule 41(a)(2) is “directed to the sound discretion of the trial court,” a court must nevertheless determine whether any of the defendant’s substantial legal rights would be violated by granting a dismissal *without prejudice*. *Schoolhouse Educ. Aids, Inc. v. Haag*, 145 Ariz. 87, 90 (App. 1985).

In *Cheney*, this Court held that dismissing a suit and refile to gain the application of a change in the law from contributory negligence to comparative negligence would constitute a deprivation of substantial legal rights. *See* 144 Ariz. at 448. This Court arrived at this conclusion by examining both Arizona’s minimal case law on Rule 41(a)(2) and federal case law on the Rule’s identical federal counterpart. *Id.*

Here, the dismissal of a claim *without prejudice* on Plaintiffs’ Rule 41 motion filed after oral argument on a motion for judgment on the pleadings where the superior court issued a ruling granting the motion for judgment on the pleadings before briefing on Plaintiffs’ motion for voluntarily dismissal is a similar deprivation of a substantial right or advantage. This

Court looks to federal interpretations of the civil rules of procedure when they are similar, as is often the case, to Arizona's rules. *See, e.g., Marquette Venture Partners II, L.P. v. Leonesio*, 227 Ariz. 179, 182 ¶ 11 n. 6 (App. 2011). As with Arizona, federal courts interpret Federal Rule of Civil Procedure 41(a)(2) to require denial of a motion for voluntary dismissal *without prejudice* "if granting it would cause the defendant to 'suffer some cognizable prejudice greater than the mere prospect of a second lawsuit.'" *Davis v. Huskipower Outdoor Equip. Corp.*, 936 F.2d 193, 199 (5th Cir. 1991). In *Davis*, the federal Fifth Circuit upheld the denial of a motion to dismiss *without prejudice* when that plaintiff "filed their motion after months of filing pleadings, attending conferences, and submitting memoranda." *Id.* Significantly, the Fifth Circuit noted that the plaintiff in *Davis* filed their motion "after the magistrate had considered the case and issued a comprehensive recommendation that was adverse to their position." *Id.*

Similarly, in *Phillips v. Illinois Cent. Gulf R.R.*, the Fifth Circuit held that a dismissal *without prejudice* legally prejudices a defendant when the defendant is "stripped of an absolute defense to the suit." 874 F.2d 984, 987 (5th Cir. 1989). Federal courts have repeatedly held that a Rule 41(a)(2) motion should be denied when a plaintiff seeks to circumvent an adverse

result on a pending merits motion. *See, e.g., Williams v. Ford Motor Credit Co.*, 627 F.2d 158, 160 (8th Cir. 1980).

Here, the prejudice is worse. Minor Plaintiffs' motion in this matter came so late that briefing was not completed until after the Town's motion was granted. At that point, the Town had an absolute defense to all claims by all plaintiffs, including Minor Plaintiffs. The motion for voluntary dismissal was mooted by the superior court's intervening under advisement ruling granting the Town's dispositive motion. Under federal law, even if not moot, it would have been an abuse of discretion to grant Minor Plaintiffs' motion, which was clearly filed to escape an adverse dispositive ruling. Taking things a step further by granting a Rule 59 motion for new trial, which was filed solely to avoid an adverse result and has the sole effect of granting, essentially, a motion for reconsideration on a Rule 41(a)(2) motion, had the effect of depriving the Town of a substantial legal right. This Court should reverse the superior court's decision to change the dismissal of Minor Plaintiffs' claims.

VI. CONCLUSION

This Court should grant review to clarify the issues identified above, cure legal errors, and resolve the conflict in jurisprudence between the Divisions of the Court of Appeals.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of April, 2024.

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IN THE SUPREME COURT

STATE OF ARIZONA

VICTOR SANCHEZ-RAVUELTA  
and JANETTE DODGE, a married  
couple, on behalf of themselves and  
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Defendants/Appellees.

Arizona Supreme Court

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No.: 2 CA-CV 2023-0059

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Superior Court

Case No.: CV 2022-051670

APPENDIX TO PETITION FOR REVIEW

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IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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VICTOR SANCHEZ-RAVUELTA AND JANETTE DODGE, A MARRIED COUPLE,  
ON BEHALF OF THEMSELVES AND THEIR MINOR CHILDREN,  
ELIJAH SANCHEZ AND AMELIA SANCHEZ,  
*Plaintiffs/Appellants,*

*v.*

YAVAPAI COUNTY, TOWN OF DEWEY-HUMBOLDT, AND STATE OF ARIZONA,  
*Defendants/Appellees.*

---

VICTOR SANCHEZ-RAVUELTA AND JANETTE DODGE, A MARRIED COUPLE,  
ON BEHALF OF THEIR MINOR CHILDREN,  
ELIJAH SANCHEZ AND AMELIA SANCHEZ,  
*Cross-Appellees,*

*v.*

TOWN OF DEWEY-HUMBOLDT,  
*Cross-Appellant.*

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No. 2 CA-CV 2023-0059  
Filed April 3, 2024

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Appeal from the Superior Court in Maricopa County  
No. CV2022051670  
The Honorable Melissa Iyer Julian, Judge

**DISMISSED IN PART; AFFIRMED IN PART; REVERSED IN PART  
AND REMANDED**

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SANCHEZ-RAVUELTA v. YAVAPAI COUNTY  
Opinion of the Court

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**OPINION**

Judge Eckerstrom authored the opinion of the Court, in which Judge Kelly concurred and Presiding Judge Eppich concurred in part and dissented in part.

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ECKERSTROM, Judge:

¶1 Plaintiffs Victor Sanchez-Ravuelta and Janette Dodge appeal from the dismissal of their personal-injury-related claims against defendants Yavapai County, the Town of Dewey-Humboldt, and the State of Arizona.<sup>1</sup> The town cross-appeals the superior court’s partial grant of

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<sup>1</sup>Elijah Sanchez and Amelia Sanchez are also named plaintiffs. They are the minor children of Sanchez-Ravuelta and Dodge. We refer to the family collectively as “plaintiffs,” and when necessary to distinguish, refer

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the plaintiffs' motion for new trial. For the following reasons, we dismiss the town's cross-appeal and affirm the court's dismissal of plaintiffs' claims for failing to provide a proper notice of claim. We reverse the court's dismissal of plaintiffs' claim of gross negligence by the Arizona State Department of Liquor Licenses, and we remand for further proceedings as to that claim.

**Factual and Procedural Background**

¶2 On appeal from the grant of a motion to dismiss, we take the facts alleged in the complaint as true, viewing them in the light most favorable to the plaintiffs. *Mintz v. Bell Atl. Sys. Leasing Int'l, Inc.*, 183 Ariz. 550, 552 (App. 1995). The complaint alleges that in April 2021, David Browne caused a multi-vehicle collision at an intersection on State Route 69 in the Town of Dewey-Humboldt in Yavapai County. After leaving the parking lot of Billy Jack's Saloon and Grill, a bar, Browne stopped at a stop sign and then pulled his vehicle into traffic. Browne struck the passenger side of a passing vehicle, causing it to spin and collide with the plaintiffs' vehicle. As a result, the plaintiffs suffered serious physical and emotional injuries. Browne had a blood alcohol concentration of more than .30 at the time of the accident.

¶3 The plaintiffs brought the present lawsuit claiming the defendants had collectively breached their duties to warn of the unreasonably dangerous and hazardous intersection; the state had breached its duty to enforce Browne's suspended license, court-ordered interlock, and court-ordered incarceration for Browne's previous driving under the influence of an intoxicant (DUI) convictions;<sup>2</sup> and the state had breached its duty to take reasonable measures to prevent Billy Jack's from creating hazardous conditions by overserving its customers. The plaintiffs also asserted a claim for negligent infliction of emotional distress as to all defendants.

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to Sanchez-Ravuelta and Dodge as "adult plaintiffs" and Elijah Sanchez and Amelia Sanchez as "minor plaintiffs."

<sup>2</sup>The plaintiffs initially brought this claim against all defendants, but subsequently dismissed it as to the county and the town.

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¶4 The defendants each moved to dismiss the complaint arguing, in part, that the notices of claim they had received were defective.<sup>3</sup> The state also argued that it owed no duty to the plaintiffs to prevent Billy Jack’s from creating hazardous conditions by overserving customers. After oral argument on the motions, the superior court entered an unsigned under-advisement ruling dismissing all of the plaintiffs’ claims. It found that the notices of claim did not contain sufficient facts as to any of the claims except those against the state relating to its duty to prevent Billy Jack’s from creating hazardous conditions. As to those claims, the court found the state owed no duty to the plaintiffs to “prevent drunk drivers from causing collisions.”

**Jurisdiction**

**A. Plaintiffs’ Appeal**

¶5 The town challenges our jurisdiction to hear the plaintiffs’ appeal, arguing it “should be denied as untimely due to the procedural irregularities introduced by Plaintiffs.” We also have an independent duty to determine whether we have jurisdiction to entertain an appeal. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465 (App. 1997).

¶6 After the superior court dismissed all of the plaintiffs’ claims, the minor plaintiffs filed a series of motions, countered by the defendants, litigating whether various claims should have been dismissed with or without prejudice. That litigation ultimately resulted in the court entering four different final judgments, each purporting to amend the previous judgment.

¶7 The town argues that the plaintiffs’ notice of appeal from the second purported final judgment was operative because, by not addressing

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<sup>3</sup>The plaintiffs argued to the superior court that the inclusion of the notice of claim in the defendants’ motions to dismiss converted them to motions for summary judgment. See Ariz. R. Civ. P. 12(d). Citing *Strategic Development & Construction, Inc. v. 7th & Roosevelt Partners, LLC*, the court rejected this argument, noting that the operative complaint referenced the notices of claim and the “notices are essential to the litigation of their claims.” See 224 Ariz. 60, ¶ 14 (App. 2010) (conversion unnecessary when materials not appended to complaint are central to complaint). The parties do not challenge this issue on appeal, and we therefore do not address it. See *Lunney v. State*, 244 Ariz. 170, ¶ 40 (App. 2017).

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the motion for new trial, that judgment denied the motion by operation of law. They further argue that because jurisdiction transferred to the court of appeals at that point, any further orders by the superior court were void, and the plaintiffs' failure to pursue that appeal is fatal to their present appeal by making it untimely. We disagree.

¶8 A superior court's failure to rule on a motion may constitute a denial of that motion by operation of law. *See Pearson v. Pearson*, 190 Ariz. 231, 237 (App. 1997) (failure to rule on fee request); *State v. Hill*, 174 Ariz. 313, 323 (1993) (failure to rule on motion to strike presentence report). However, the second purported final judgment was based on the town's proposed form of judgment, which had been filed nineteen days before the plaintiffs filed their motion for new trial. Furthermore, the court explicitly stated in a subsequent order that it had "inadvertently entered" a final judgment "without realizing that an appeal-tolling motion for new trial had been filed." We therefore cannot conclude that the second purported final judgment denied the plaintiffs' motion for new trial by operation of law. Further, this time-extending motion was still pending when the plaintiffs filed their notice of appeal. Thus, the appeal was premature and effectively suspended until the motion was decided. *See Ariz. R. Civ. App. P. 9(e)*.

¶9 We also disagree with the town that we lack jurisdiction because the plaintiffs failed to provide us notice that a motion was still pending before the superior court. *See Ariz. R. Civ. App. P. 9(e)(2)* (notice of pending time-extending motion must be given to court of appeals when appellate case number assigned under Rule 12, Ariz. R. Civ. App. P.). In this case, the appellate clerk issued the notice regarding assignment of a case number pursuant to Rule 12 on January 5, 2023. At that time, the motion for new trial was pending, and the superior court had issued its order vacating the second purported final judgment. As those proceedings were part of the record at the time we received it, we see no reason to have required the appellant to provide separate notice. The record itself gave this court notice of the pending motion. Indeed, in view of the superior court having vacated its earlier purported final judgment, that court could have dismissed the appeal. *See Ariz. R. Civ. App. P. 26*.

¶10 Shortly after the Rule 12 notice, the superior court entered its third final judgment, which disposed of the plaintiffs' motion for new trial. The court properly certified the third final judgment under Rule 54(b) because although the adult plaintiffs' claims were dismissed with prejudice, the minor plaintiffs' claims were all dismissed without prejudice, and thus, there was no final judgment as to the minor plaintiffs' claims. *See,*

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*e.g.*, *Grand v. Nacchio*, 214 Ariz. 9, ¶ 12 (App. 2006) (dismissal without prejudice not appealable final judgment); *Osuna v. Wal-Mart Stores, Inc.*, 214 Ariz. 286, ¶ 11 (App. 2007) (similar). The time for the plaintiffs to file a notice of appeal therefore began when the court entered the third final judgment. Because the plaintiffs filed a timely notice from that judgment, their appeal is not defeated on the basis of timeliness. *See* Ariz. R. Civ. App. P. 9(a), (e)(1)(D). As such, we have jurisdiction over the plaintiffs' appeal.

**B. The Town's Cross-Appeal**

¶11 Although the plaintiffs do not challenge our jurisdiction over the town's cross-appeal, we have an independent duty to evaluate our jurisdiction. *See Sorensen*, 191 Ariz. at 465. A notice of cross-appeal must be filed "no later than 20 days after appellant's filing of a notice of appeal, or 30 days after entry of the judgment from which the appeal is taken, whichever is later." Ariz. R. Civ. App. P. 9(b). As noted above, the plaintiffs perfected their appeal by filing a notice of appeal from the third final judgment. The superior court therefore lost jurisdiction, and the fourth purported final judgment it entered was void because it was not in furtherance of the appeal. *See In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 6 (App. 2012). The town did not file a notice of cross-appeal in this matter until after the plaintiffs filed a notice of appeal from the void, fourth judgment. Because the notice of cross-appeal was filed thirty-four days after the plaintiffs' operative notice of appeal and sixty-three days after the operative third final judgment, it is untimely, and we lack jurisdiction over the town's cross-appeal. *See* Ariz. R. Civ. App. P. 9(b).

**Discussion<sup>4</sup>**

**I. Notice of Claim**

¶12 The plaintiffs assert the superior court erred by dismissing their claims on the basis that their notices of claim contained insufficient facts. We review *de novo* whether a notice of claim complies with statutory requirements. *Jones v. Cochise County*, 218 Ariz. 372, ¶ 7 (App. 2008).

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<sup>4</sup>From this point forward when referencing "plaintiffs" we are solely referring to Sanchez-Ravuelta and Dodge because, as explained above, the minor plaintiffs were dismissed without prejudice and are not subject to the merits of this appeal.

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¶13 The plaintiffs provided all defendants with the same notice of claim, which recited the circumstances of the accident. It stated that the plaintiffs' injuries were the result of Browne's negligence and that the accident had been caused when Browne accelerated into the path of two vehicles travelling along State Route 69. It also stated that Browne had been drinking at Billy Jack's "up until minutes prior to the subject collision." The notice of claim additionally provided the following "legal basis":

Based upon information and belief, and without limitation, [t]he Arizona Department of Liquor Licenses and Control and Agents thereof – all had duties imposed upon them by Arizona Statute, and common law, to follow all laws, prevent dangerous conditions, to protect against hazards, not to create a dangerous condition, to warn of dangerous conditions, and to otherwise assure the safety of the Sanchez Family claimants. The aforementioned tortfeasors were further negligent in ways not set forth with particularity, and all of the tortfeasors['] actions, and/or inactions, set forth herein were the proximate cause and actual cause of each claimant[']s injuries. In this matter, the Arizona Department of Liquor Licenses and Control issued a liquor license to Billy Jack[']s on November 11, 1986 and renewed that license on August 10, 2021, giving a valid liquor license through August 31, 2021. This was done despite it being open and obvious through their advertising and website that Billy Jack[']s seeks to overserve their customers.

¶14 The notice of claim described in great detail the injuries suffered by the plaintiffs and medical costs resulting from the accident. The notice of claim also stated that the plaintiffs suffered extreme emotional distress from having witnessed each other suffer physical injuries. It provided a sum-specific amount for each plaintiff, totaling \$385 million.

¶15 In ruling on the motions to dismiss, the superior court concluded that the notice of claim only alleged a claim against the state for "negligent issuance of a liquor license to Billy Jack's." Therefore, it was insufficient as to the plaintiffs' other claims against the state. The court also

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concluded that the notice of claim was insufficient with respect to the plaintiffs' claims against the other defendants because it did "not contain any factual allegations against the County or the Town."

¶16 A notice of claim that complies with the requirements of A.R.S. § 12-821.01 is a prerequisite to suing a public entity. *Donovan v. Yavapai Cnty. Cmty. Coll. Dist.*, 244 Ariz. 608, ¶ 7 (App. 2018); *see also Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, ¶ 6 (2007) (failure to comply with statute bars claim). Section 12-821.01(A) has two distinct requirements regarding facts that must be included in a notice of claim. A proper notice of claim (1) "shall contain facts sufficient to permit the public entity . . . to understand the basis on which liability is claimed," as well as (2) "a specific amount for which the claim can be settled and the facts supporting that amount." § 12-821.01(A). These requirements allow the public entity an opportunity to investigate and assess its potential liability, engage in settlement negotiation, and assist in financial planning and budgeting. *Deer Valley*, 214 Ariz. 293, ¶ 6.

¶17 The plaintiffs primarily argue that after our supreme court's opinion in *Backus v. State*, 220 Ariz. 101 (2009), the sufficiency of facts in a notice of claim is viewed from the claimant's perspective, meaning superior courts may not scrutinize the sufficiency of the factual disclosure. The plaintiffs argue that a claimant generally complies with the fact requirements of § 12-821.01(A) so long as the notice of claim provides some facts forming the basis of liability. We disagree that such a standard applies here.

¶18 In *Backus*, our supreme court concluded that a claimant complies with the requirement to include facts supporting the specific amount claimed "by providing the factual foundation that the claimant regards as adequate to permit the public entity to evaluate the specific amount claimed." 220 Ariz. 101, ¶ 23. The court noted that § 12-821.01 "does not require a claimant to set out facts 'sufficient' to support the amount claimed" under the second fact requirement, whereas it does require facts "'sufficient to permit' the public entity to evaluate liability" under the first fact requirement. *Id.* ¶ 22 (quoting *Havasupai Tribe v. Ariz. Bd. of Regents*, 220 Ariz. 214, ¶ 40 (App. 2008)). It reasoned that the legislature "would have said so" if it "had intended to require that a notice contain facts 'sufficient' to support the amount claimed." *Id.*

¶19 Here, the plaintiffs' claims were dismissed because the superior court found that their notices did not contain "facts sufficient to permit the public entity . . . to understand the *basis on which liability is*

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*claimed.*” § 12-821.01(A) (emphasis added). The legislature has explicitly required that the facts be “sufficient” in this context, *id.*, and to extend the *Backus* standard here would render the statute’s language superfluous, *see Deer Valley*, 214 Ariz. 293, ¶ 8 (each word given meaning so no part will be void).<sup>5</sup> Furthermore, the statute requires sufficient facts such that the *public entity* may understand the basis of the claimed liability. § 12-821.01(A). Such language directly contradicts the plaintiffs’ assertion that the sufficiency of facts regarding liability must be evaluated from the claimants’ perspective. We are reluctant to construe a statute to mean something other than what the words plainly state “absent a clear indication of legislative intent to the contrary.” *Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 526, 529 (1994). Where the statutory language is clear, as it is here, it is this court’s duty to apply that language as written. *See id.*

¶20 Because the notices of claim contained only facts sufficient for the state to understand the basis of the plaintiffs’ negligent issuance of a liquor license claim, we agree with the superior court’s conclusion that the notices of claim were insufficient as a matter of law as to all other claims. The notices do not specifically mention the county or the town at all beyond the cover page’s list of “[t]ortfeasors.” And although the notices explain the factual circumstances of the accident, they do not mention anything regarding hazardous conditions present at the intersection nor Browne’s prior DUI convictions and related court orders—facts necessary to link the accident to the defendants’ other allegedly tortious actions. The plaintiffs also assert “[t]he notices of claim contained a copy of the collision report written by the Arizona Department of Public Safety,” but they have not identified where in the record it is located. *See Ariz. R. Civ. App. P. 13(a)(7)(A)* (arguments must contain “appropriate references to the portions of the record on which the appellant relies”). We do not consider

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<sup>5</sup>The plaintiffs cite other cases in support of their position that the *Backus* standard applies here. *See Yollin v. City of Glendale*, 219 Ariz. 24, ¶¶ 22-24 (App. 2008); *Picht v. Peoria Unified Sch. Dist. No. 11 of Maricopa Cnty.*, 641 F. Supp. 2d 888, 895-96 (D. Ariz. 2009). However, *Yollin* only addressed the statute’s requirement that facts support the specific amount claimed, 219 Ariz. 24, ¶¶ 22-24, and *Picht* is not binding on this court, *see Arpaio v. Figueroa*, 229 Ariz. 444, ¶ 11 (App. 2012). To the extent *Picht* suggests generally that a “sufficiency standard . . . would not be consistent with the statutory text,” 641 F. Supp. 2d at 895-96, we disagree.

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matters not in the record before us. *Ashton-Blair v. Merrill*, 187 Ariz. 315, 317 (App. 1996).<sup>6</sup>

¶21 The plaintiffs also argue that their notices of claim complied with § 12-821.01(A) because they contained “just enough” facts to allow the defendants to investigate liability—something the plaintiffs allege the defendants chose not to do. They claim the defendants could have requested more facts and nothing prevented them from taking steps to obtain additional information. However, in support of this argument, the plaintiffs again rely on cases which only address the requirement that facts support the specific amount claimed. See *Backus*, 220 Ariz. 101, ¶¶ 22-23, 28; *Yollin v. City of Glendale*, 219 Ariz. 24, ¶ 32 (App. 2008). Furthermore, those cases do not stand for the proposition suggested by the plaintiffs here—that because a defendant has the ability to request more facts, a claimant need not strictly comply with the language of § 12-821.01(A). See *Backus*, 220 Ariz. 101, ¶¶ 28-29; *Yollin*, 219 Ariz. 24, ¶¶ 32-33; *Yahweh v. City of Phoenix*, 243 Ariz. 21, ¶ 12 (App. 2017) (claimants must “strictly comply with § 12-821.01(A)” and “[p]ublic entities . . . are not duty-bound to assist claimants with statutory compliance”); cf. *City of Mesa v. Ryan*, 256 Ariz. 350, ¶¶ 10-11 (App. 2023) (as to amount-certain requirement of § 12-821.01(A), statute “is clear as written and should be taken to mean what it says”). While comprehensive briefing is not required, under § 12-821.01(A), a claimant must include “facts sufficient to permit the public entity . . . to understand the basis on which liability is claimed,” and the plaintiffs failed to do so with respect to all but their claim against the state for negligent issuance of a liquor license. See *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525, ¶ 10 (2006) (“Actual notice and substantial compliance do not excuse failure to comply with the statutory requirements . . .”). Thus, the superior court properly dismissed the plaintiffs’ other claims on that basis.<sup>7</sup>

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<sup>6</sup>Even assuming the collision report had been included and contained the kind of information typically found in such documents, we have serious doubt that it would draw sufficient factual links to the specifically alleged negligent acts. Absent these factual links, the defendants can only speculate as to why they might be the subjects of a lawsuit upon receiving a notice of claim.

<sup>7</sup>The plaintiffs also argue for the first time in their reply to the town’s answering brief that the town waived any argument that the notice of claim did not satisfy § 12-821.01(A), suggesting that argument was not timely

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**II. Duty of Care**

¶22 The plaintiffs next assert that the superior court erred by dismissing their claim for negligent issuance of a liquor license and their accompanying claim against the state for negligent infliction of emotional distress. The court reasoned that the state owed plaintiffs “no duty to prevent drunk drivers from causing collisions.”<sup>8</sup> We review de novo the grant of a motion to dismiss for failure to state a claim upon which relief can be granted. *Orca Commc’ns Unlimited, LLC v. Noder*, 236 Ariz. 180, ¶ 6 (2014). “[W]e assume as true the facts alleged in the complaint and will not affirm the dismissal unless satisfied as a matter of law that plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof.” *Fid. Sec. Life Ins. Co. v. State*, 191 Ariz. 222, ¶ 4 (1998).

¶23 The plaintiffs’ complaint alleges, in relevant part, that the state “holds non-delegable duties to the public at large to provide protection from establishments that regularly over-serve their patrons and create hazardous conditions.” It further alleges that the state breached this duty by failing to investigate Billy Jack’s and by renewing its license to sell liquor despite its history of infractions and evidence that the bar “has a regular and frequent tendency to over-serve its patrons.”

¶24 The state moved to dismiss these claims on the basis that the plaintiffs had failed to set forth any factual or legal basis supporting the existence of a duty. The superior court granted the motion to dismiss, finding that even assuming the allegations in the complaint are true, “the State had no legal duty arising from its issuance of a liquor license to protect plaintiffs from the harm caused when Browne drove drunk and caused the accident that injured them.”

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presented to the superior court. However, we do not consider arguments raised for the first time in a reply brief. *See Dawson v. Withycombe*, 216 Ariz. 84, ¶ 91 (App. 2007).

<sup>8</sup>The plaintiffs allege the same negligent acts as the basis of both claims and both require a showing that the state owed a duty of care. *See Gipson v. Kasey*, 214 Ariz. 141, ¶ 9 (2007) (must prove duty to establish claim for negligence); *Vasquez v. State*, 220 Ariz. 304, ¶ 22 (App. 2008) (must prove duty when negligence is basis of infliction of emotional distress claim).

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¶25 The first element of a negligence claim requires proof that the defendant owed “a duty . . . to conform to a certain standard of care.” *Gipson v. Kasey*, 214 Ariz. 141, ¶ 9 (2007). The existence of a duty is a threshold legal issue to be decided by the superior court, and where there is no duty, a defendant cannot be liable for negligent acts “no matter how unreasonable their conduct.” *Id.* ¶¶ 9, 11. “[D]uty is not presumed,” and the plaintiff bears the burden of proving its existence. *Quiroz v. ALCOA Inc.*, 243 Ariz. 560, ¶ 2 (2018). To prove a duty exists, the plaintiff must show either a common law special relationship or a relationship created by public policy as evidenced primarily by statutes. *Id.* ¶¶ 14-15. Statutes create a duty when the plaintiff “is within the class of persons to be protected by the statute and the harm that occurred . . . is the risk that the statute sought to protect against.” *Gipson*, 214 Ariz. 141, ¶ 26; *see also Quiroz*, 243 Ariz. 560, ¶ 15; *CVS Pharmacy, Inc. v. Bostwick*, 251 Ariz. 511, ¶ 21 (2021).

¶26 Our legislature designed the statutory scheme that established the Arizona Department of Liquor Licenses and Control (the “Department”) to regulate actions of a licensee that could harm the general public. *See* A.R.S. §§ 4-111 through 4-120. As our jurisprudence has long acknowledged, the Department established “state-wide control over the traffic in intoxicating liquors” to address “the many inherent evils attending the traffic [of alcohol] and the abuses arising therefrom when not regulated.” *Mayor & Common Council of Prescott v. Randall*, 67 Ariz. 369, 374-75 (1948). Our legislature designed our state’s liquor laws, fostered and enforced by the Department, “to protect the welfare . . . and safety of all the citizens by providing for the strict regulation and control of the . . . distribution of alcoholic beverages.” *Mendelsohn v. Superior Court*, 76 Ariz. 163, 169 (1953).

¶27 The Department has the express statutory authority to investigate and sanction licensees for serving obviously intoxicated persons. A.R.S. § 4-112(C) (director “shall establish” investigation unit “that has as its sole responsibility the investigation of compliance with this title”); § 4-118 (power to investigate premises); § 4-244(14) (unlawful for licensee to sell liquor to “obviously intoxicated person”). And, the legislature has provided the Department powerful regulatory tools to deter licensees from doing so: potential sanctions including fines for each violation or revocation of a liquor license. A.R.S. § 4-210.01 (fines); § 4-210(A)(9) (power to suspend or revoke liquor licenses if licensee “violates or fails to comply with . . . any liquor law of this state”).

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¶28 In short, this statutory scheme, which created the Department and provided its authority, expressly identified the overservice of patrons as among the risks to the general public that it sought to prevent. Conversely, those potentially harmed by an overserved patron represent the precise class of persons those statutes were designed to protect. *See Del E. Webb Corp. v. Superior Court*, 151 Ariz. 164, 169 (1986) (statutes prohibiting sale of alcohol to intoxicated persons “perhaps primarily . . . intended to protect the general public”). Thus, under the criteria for the statutory creation of a duty articulated by our supreme court, the Department had a duty to plaintiffs in these circumstances. *See Gipson*, 214 Ariz. 141, ¶ 26; *see also Quiroz*, 243 Ariz. 560, ¶ 15.<sup>9</sup>

¶29 The state maintains, however, that the above statutory duty is akin to a general law enforcement duty to enforce criminal laws. As the state correctly observes, we have previously held that the establishment of a police department does not make it a “general insurer of safety.” *Hogue v. City of Phoenix*, 240 Ariz. 277, ¶ 12 (App. 2016) (quoting *Austin v. City of Scottsdale*, 140 Ariz. 579, 582 n.2 (1984)). But the state created the Department to oversee only a specific and far more narrow group of actors than the general public: the state’s liquor licensees. The potential harms addressed by the statutory scheme are also specific: those caused by the abuse of alcohol that can be mitigated by the licensees. And, the statutory scheme seeks to protect a specific class of persons: those potentially harmed by the abuse of alcohol. *See Randall*, 67 Ariz. at 374-75; *Mendelsohn*, 75 Ariz. at 169.

¶30 We therefore reject the state’s suggestion that by acknowledging an actionable duty here, we would make the Department a general insurer of public safety. Notably, our state’s regulatory agencies

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<sup>9</sup>Plaintiffs have alternatively argued that the state has voluntarily undertaken a duty, pursuant to Restatement (Second) of Torts §§ 324A (1965), to protect the Arizona public by thoroughly and comprehensively regulating the sale of alcohol and commercial liquor establishments. Because we have found the state owed plaintiffs a duty anchored in express statutory law, and because plaintiffs failed to raise this argument until their motion for new trial in superior court, we decline to address that argument. *See BMO Harris Bank N.A. v. Espiau*, 251 Ariz. 588, ¶ 25 (App. 2021) (arguments not raised below waived on appeal); *Kent v. Carter-Kent*, 235 Ariz. 309, ¶ 20 (App. 2014) (party waives issues raised for first time in motion for new trial).

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are not broadly immune from civil lawsuits seeking redress for personal injury. Specifically, our legislature has provided that our state agencies, like the Department, can be sued for the “issuance of . . . any permit, license, certificate, approval, order or similar authorization” provided the plaintiff can show “gross negligence.” A.R.S. § 12-820.02(A)(5). Were we to find no duty here, we would render that provision a nullity for those persons the Department was created to protect.

¶31 The superior court therefore erred in granting the state’s motion to dismiss on the basis that the state did not owe a duty of care. We therefore reverse the court’s judgment on this issue and remand for further proceedings on that claim.

**Disposition**

¶32 For the foregoing reasons, we dismiss the town’s cross-appeal for lack of jurisdiction and affirm the superior court’s judgment as to the plaintiffs’ notices of claim. We reverse the court’s judgment with respect to the plaintiffs’ claim for negligent issuance of a liquor license and remand for further proceedings consistent with this opinion.

E P P I C H, Presiding Judge, concurring in part and dissenting in part:

¶33 As to the duty issue, I respectfully dissent. Although “[a] statute reflecting public policy may create a duty when a plaintiff ‘is within the class of persons to be protected by the statute and the harm that occurred . . . is the risk that the statute sought to protect against,’” *Quiroz v. ALCOA Inc.*, 243 Ariz. 560, ¶ 15 (2018) (quoting *Gipson v. Kasey*, 214 Ariz. 141, ¶ 26 (2007)), the statute must also regulate conduct, *CVS Pharmacy, Inc. v. Bostwick*, 251 Ariz. 511, ¶ 25 (2021). However, most of the statutes on which the majority relies generally describe the powers, duties, and organization of the Arizona Department of Liquor Licenses and Control. See A.R.S. §§ 4-111 to 4-120. And to the extent it could be argued that those statutes do regulate conduct, it is not conduct relevant to the issues presented in this case. See *id.* The majority points to the statute for revoking and suspending a liquor license, but the conduct being regulated there is that of the licensee or persons on the licensed premises, not the licensor. See A.R.S. § 4-210(A). Other statutes, which are more directly linked to the harms the plaintiffs suffered here, tend to govern the conduct of persons consuming or providing the alcohol. See, e.g., A.R.S. § 4-251 (prohibiting consumption of alcohol or possession of open alcohol containers in motor vehicles); A.R.S. § 4-311(A) (licensee may be liable for personal injuries arising from the sale of liquor to “obviously intoxicated” purchaser); A.R.S.

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§§ 28-1381 to 28-1383 (offenses for driving or actual physical control while under the influence of alcohol). I would therefore conclude that the plaintiffs have not met their burden of showing the existence of a public-policy-based duty here. *See Quiroz*, 243 Ariz. 560, ¶ 2.

¶34 Furthermore, to the extent that the majority focuses on the narrow class of licensees subject to the state’s regulation, that focus is misplaced, insofar as the special-relationship-based duty analysis turns less on the relationship between the state and licensees, and more on the relationship between the state and those to whom the purported duty is owed. In *Hogue v. City of Phoenix*, we expressly rejected the idea that the existence of a city police laboratory bureau creates a duty to the general public “to conduct all DNA tests on all evidence or subject the City to liability if such testing is not done immediately.” 240 Ariz. 277, ¶¶ 1, 13 (App. 2016). In our reasoning, we noted that imposing such a duty could potentially give rise to a cause of action for negligent investigation for every unsolved crime. *Id.* ¶ 13 (citing *Vasquez v. State*, 220 Ariz. 304, ¶ 31 (App. 2008)). Rather, we determined the question of duty turns on whether the public agency’s conduct is such that it has “endeavor[ed] to provide *specific protection* to a *particular person*.” *Id.* ¶ 12 (emphasis added); *see also Noriega v. Town of Miami*, 243 Ariz. 320, ¶ 29 (App. 2017); *Dinsmoor v. City of Phoenix*, 249 Ariz. 192, ¶ 19 (App. 2020), *vacated in part on other grounds*, 251 Ariz. 370, ¶ 29 (2021).

¶35 The majority identifies the purported protected class as consisting of “those potentially harmed by the abuse of alcohol,” which it characterizes as a “specific class of persons.” But that class is indistinguishable from the general public. Thus, because I agree with the state that the statutory authority here is akin to general law enforcement powers, which provide no actionable duty to protect any particular individual member of the public, *see Hogue*, 240 Ariz. 277, ¶¶ 12-13, I would affirm the superior court’s ruling on the duty issue. In all other respects, I whole-heartedly concur in the majority’s well-reasoned opinion.

2012 WL 1694203

Only the Westlaw citation is currently available.  
NOTICE: THIS DECISION DOES NOT CREATE  
LEGAL PRECEDENT AND MAY NOT BE  
CITED EXCEPT AS AUTHORIZED BY  
APPLICABLE RULES. See Ariz. R. Supreme  
Court 111(c); [ARCAP 28\(c\)](#); [Ariz. R.Crim. P. 31.24](#)  
Court of Appeals of Arizona,  
Division 2, Department A.

Paul KADLEC and Rachel Kadlec,  
husband and wife; and Duane  
Howell and Brenda Howell, husband  
and wife, Plaintiffs/Appellants,

v.

Daniel DORSEY and Sherri Dorsey,  
husband and wife, Defendants/Appellees.

No. 2 CA–CV 2011–0163.

|

May 15, 2012.

Appeal from the Superior Court of Pima County; Cause  
No. C20076040; Honorable [Christopher P. Staring](#), Judge.  
DISMISSED.

#### Attorneys and Law Firms

[Vernon E. Peltz](#), Tucson, Attorneys for Plaintiffs/Appellants,  
Duane and Brenda Howell.

Hinderaker Rauh & Weisman, P.L.C. by [Adam Weisman](#) and  
[Robert Rauh](#), Tucson, Attorneys for Defendants/Appellees.

#### MEMORANDUM DECISION

[HOWARD](#), Chief Judge.

\*1 ¶ 1 Appellants Paul and Rachel Kadlec and Duane and Brenda Howell appeal from the judgment in favor of appellees Daniel and Sherri Dorsey (Dorsey) following a bench trial concerning appellants' claim of a prescriptive easement across Dorsey's property. Because we do not have jurisdiction, we dismiss the appeal.

#### Factual and Procedural Background

¶ 2 The relevant procedural background is undisputed. Appellants filed complaints asserting they had a prescriptive or “consensual” easement across the Dorsey's property and that Dorsey had interfered with their use of the easement. Dorsey filed a third-party complaint against Laura Bradley, the previous owner of the property, alleging breach of contract, fraud, negligent misrepresentation, and rescission and requesting attorney fees. In her answer, Bradley requested attorney fees from Dorsey. The parties stipulated to a bifurcated trial between Dorsey and Bradley. After a bench trial between Dorsey and Bradley, the court took the matter under advisement until “completion of the bifurcated portion of this trial.”

¶ 3 Appellants and Dorsey each moved for partial summary judgment as to whom any recorded easement over the property was intended to benefit. The trial court granted appellants' motion, Dorsey appealed and we affirmed. [Kadlec v. Dorsey](#), 223 Ariz. 330, ¶¶ 1, 4, 223 P.3d 674, 675 (App.2009). On review, our supreme court vacated the decision and remanded the case to the trial court. [Kadlec v. Dorsey](#), 224 Ariz. 551, ¶ 13, 233 P.3d 1130, 1132 (2010).

¶ 4 Following a bench trial, the trial court held appellants had not proved a prescriptive easement by clear and convincing evidence and denied appellants' motion for reconsideration. On August 11, 2011, the court awarded attorney fees to Dorsey and entered an order it referred to as a final judgment. Appellants filed a notice of appeal and both parties filed appellate briefs in this court. On April 10, 2012, this court ordered the parties to file supplemental briefing addressing whether this court has jurisdiction to consider the appeal, and the parties filed a joint supplemental brief.

#### Discussion

¶ 5 The parties agree that the trial court's August 11 judgment was not final because it did not resolve the third-party complaint. However, they attach what appears to be an order, entered after our request for additional briefing, dismissing the third-party complaint by stipulation between Dorsey and Bradley. The parties argue that because the third-party complaint now has been dismissed and because Dorsey has not been prejudiced, we have jurisdiction based on [Barassi v. Matison](#), 130 Ariz. 418, 636 P.2d 1200 (1981).

¶ 6 We have an independent duty to determine whether we have jurisdiction. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App.1997). Our jurisdiction is prescribed by statute, and we have no authority to entertain an appeal over which we do not have jurisdiction. See *Hall Family Props., Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386, 916 P.2d 1098, 1102 (App.1995). Section 12–2101(A)(1), A.R.S., vests jurisdiction in this court for an appeal “[f]rom a final judgment,” which is one that “‘dispose[s] of all claims and all parties,’” *Maria v. Najera*, 222 Ariz. 306, ¶ 5, 214 P.3d 394, 395 (App.2009), quoting *Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981). Although a court may enter a final judgment on fewer than all the claims or parties, it may only do so “upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” Ariz. R. Civ. P. 54(b).

\*2 ¶ 7 In the absence of a judgment pursuant to Rule 54(b), there exists

only a limited exception to the final judgment rule that allows a notice of appeal to be filed after the trial court has made its final decision, but before it has entered a formal judgment, if no decision of the court could change and the only remaining task is merely ministerial.

*Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, ¶ 37, 132 P.3d 1187, 1195 (2006). Apart from these limited circumstances, a premature notice of appeal filed “in the absence of a final judgment ... is ‘ineffective’ and a nullity.” *Craig v. Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d 624, 626 (2011), quoting *Smith*, 212 Ariz. 407, ¶ 39, 132 P.3d at 1195.

¶ 8 When the trial court entered the August 11 judgment, it had not determined whether Bradley was liable or allocated attorney fees between Dorsey and Bradley. Although the court's decision on liability may have flowed from its decision on liability between appellants and Dorsey, at that time the court could have come to various decisions on the allocation of attorney fees. See *State ex rel. Corbin v. Tocco*, 173 Ariz. 587, 595, 845 P.2d 513, 521 (App.1992) (“The determination of the reasonableness of an award of attorney's fees is within the discretion of the trial court...”). Therefore, the court's decision concerning the third-party complaint was not ministerial and did not fall within the limited exception established by *Barassi*. See *Smith*, 212 Ariz. 407, ¶ 37,

132 P.3d at 1195. Additionally, until the entry of a true final judgment, the order adjudicating the rights between appellants and Dorsey could have been changed. See Rule 54(b) (“[T]he order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.”). Appellants filed their notice of appeal in the absence of a final judgment, causing it to be ineffective and a nullity. See *Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d at 626.

¶ 9 The parties have provided no authority for the proposition that an order entered subsequently to a notice of appeal can cure a void notice. Instead, our case law requires a supplemental notice of appeal. See *Engel v. Landman*, 221 Ariz. 504, ¶ 16, 212 P.3d 842, 847–48 (App.2009) (no jurisdiction over premature notice of appeal when not cured by supplemental notice of appeal); cf. *Raimey v. Ditsworth*, 227 Ariz. 552, ¶ 16, 261 P.3d 436, 442 (App.2011) (void agreement not subject to ratification or disaffirmance); *State ex rel. Dep't of Econ. Sec. v. Demetz*, 212 Ariz. 287, ¶ 12, 130 P.3d 986, 989 (App.2006) (void marriage never comes into existence and cannot be ratified). Finally, our supreme court has emphasized that *Barassi* established only a narrow exception to the final judgment rule and that a premature notice is a nullity if it is not within the exception and is filed without a final judgment. See *Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d at 626 (reaffirming exception from *Barassi* a limited one). Thus, we do not have jurisdiction over this appeal.

## Conclusion

\*3 ¶ 10 For the foregoing reasons, we dismiss the appeal for lack of jurisdiction. Dorsey requests costs and attorney fees pursuant to A.R.S. § 12–1103. We award Dorsey his reasonable attorney fees on appeal and the costs of appeal upon compliance with Rule 21, Ariz. R. Civ.App. P. See § 12–1103.

CONCURRING: PETER J. ECKERSTROM, Presiding Judge and GARYE L. VÁSQUEZ, Judge.

## All Citations

Not Reported in P.3d, 2012 WL 1694203

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 CITED EXCEPT AS AUTHORIZED BY  
 APPLICABLE RULES. See Ariz. R. Supreme Court  
 111(c); ARCAP 28(c); Ariz. R.Crim. P. 31.24.  
 Court of Appeals of Arizona,  
 Division 2, Department A.

**N. Terryl ROGERS**, as Successor Trustee  
 for the Bankruptcy Estate of Michael  
 Keith Schugg, Plaintiff/Appellant,

v.

BOARD OF REGENTS OF the UNIVERSITY  
 OF ARIZONA, Defendant/Appellee.

No. 2 CA–CV 2011–0128.

|  
March 22, 2012.

Appeal from the Superior Court of Pinal County; Cause No. S  
 1100CV200905071; Honorable **Bradley M. Soos**, Judge Pro  
 Tempore. APPEAL DISMISSED.

**Attorneys and Law Firms**

Beus Gilbert PLLC by **Leo R. Beus**, **L. Richard Williams**,  
**A. Erin McGuinness**, Scottsdale, Attorneys for Plaintiff/  
 Appellant.

**Steven Weatherspoon**, PLLC, by **Steven Weatherspoon**,  
 Tucson, Attorney for Defendant/Appellee.

*MEMORANDUM DECISION***ECKERSTROM**, Presiding Judge.

\*1 ¶ 1 In this action relating to an alleged easement, appellant N. Terryl Rogers, who is the successor trustee for the bankruptcy estate of Michael Schugg (hereafter “Schugg”), challenges the trial court’s dismissal of his complaint against appellee, the Arizona Board of Regents for and on behalf of the University of Arizona (“the university”). Schugg argues the court erred in concluding his action was barred by the one-year statute-of-limitations period in *A.R.S. § 12–*

821. Because the ruling Schugg challenges is not a final, appealable order, we dismiss for lack of jurisdiction.

¶ 2 In December 2009, Schugg filed a complaint alleging trespass, seeking a declaratory judgment, and asking to quiet title in regards to an alleged implied easement that gave him access to a road over the university’s land. The university filed an amended answer and counterclaim in December 2010. The answer included a statute of limitations defense, as noted above. The counterclaim sought (1) to quiet title against any claims by Schugg and (2) a declaratory judgment that Schugg had no right, title, or interest in the university’s property, “including any right of access on, over or through” it. The counterclaim also sought an award of attorney fees. After the pleadings had been submitted, the university filed a motion to dismiss Schugg’s complaint with prejudice based on *§ 12–821*, which the trial court granted after a hearing.

¶ 3 Upon granting the motion to dismiss, the trial court directed the university to prepare a formal order. Schugg objected to the university’s lodged order on the ground it did not include finality language that would authorize an appeal pursuant to *Rule 54(b)*, *Ariz. R. Civ. P.* Schugg thus submitted an alternative proposed order that included language “[f]inding no just cause for delay” and specifying “th[e] dismissal shall be final pursuant to ... Rule ... 54(b).” The court denied Schugg’s objection, observing it had “dismissed Plaintiff’s Complaint in its entirety.” The court did not address the outstanding counterclaims in its ruling.

¶ 4 The trial court then signed the university’s proposed dismissal order and entered it on June 2, 2011.<sup>1</sup> On June 16, the university moved for summary judgment on its counterclaims. The record does not reveal whether the court ruled on the university’s motion or on its request for attorney fees.

¶ 5 On June 27, Schugg filed a notice of appeal from the court’s June 2011 order in an “abundance of caution” that it might be appealable, even in the absence of *Rule 54(b)* language. The university moved to dismiss the appeal, arguing the judgment was not final and appealable in light of the pending counterclaims. The parties then argued the jurisdictional basis for the appeal by motions filed with this court. We denied the university’s motion to dismiss through an unsigned order filed in October 2011. Having reconsidered that order *sua sponte*, we now reach the issue again.

\*2 ¶ 6 “Our jurisdiction is provided and limited by statute, and we have an independent duty to confirm whether we have jurisdiction over the case before us.” *Santee v. Mesa Airlines, Inc.*, 629 Ariz. Adv. Rep. 18, ¶ 2 (Ct.App. Feb. 28, 2012) (citation omitted). The university argues the present appeal is premature because the trial court’s dismissal order did not resolve the outstanding counterclaims and thus was not a final judgment under what is now A.R.S. § 12–2101(A)(1).<sup>2</sup> Nor did the order contain the language necessary to make it final and appealable under Rule 54(b). See *Maria v. Najera*, 222 Ariz. 306, ¶ 6, 214 P.3d 394, 395 (App.2009) (“[C]ourt may designate as final ... a judgment that disposes of fewer than all claims” but may do so “ ‘only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.’ ”), quoting Ariz. R. Civ. P. 54(b). We agree with the university, and we reject Schugg’s arguments that we have jurisdiction over the present appeal.

¶ 7 Schugg first urges the appeal is proper because his complaint and the university’s counterclaims “relate to the same easement and are inextricably intertwined.” He maintains the court’s ruling dismissing the complaint based on the statute of limitations “took away [his] ability to assert a property interest in the easement” and “essen[tially] disposed of the counterclaim.” Analogizing his case to *Bothell v. Two Point Acres, Inc.*, 192 Ariz. 313, 965 P.2d 47 (App.1998), he thus argues jurisdiction is appropriate here even without Rule 54(b) language.

¶ 8 The university counters that *Bothell* is distinguishable because unlike that case, in which the dismissal of a negligence claim rendered the defendant’s counterclaim for indemnification moot, 192 Ariz. 313, ¶¶ 5–6, 965 P.2d at 50, the university’s counterclaim “asserts an independent claim that is in no sense dependent on the outcome of plaintiff’s claim.” We agree *Bothell* is distinguishable on this basis. Additionally, we note that Schugg has not legally supported his jurisdictional argument regarding “intertwined” claims, and our engaging in such an analysis would run counter to *Craig v. Craig*, 227 Ariz. 105, 253 P.3d 624 (2011), where our supreme court set forth a brightline jurisdictional rule that favors clarity in final judgments.

¶ 9 The *Craig* court concluded that unless an order falls within the narrow exception set forth in *Barassi v. Matison*, 130 Ariz. 418, 636 P.2d 1200 (1981), which is not applicable here, “a notice of appeal filed in the absence of a final judgment, or while any party’s time-extending motion is pending before the trial court, is ‘ineffective’ and a nullity.” *Craig*, 227 Ariz.

105, ¶ 13, 253 P.3d at 626, quoting *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, ¶ 39, 132 P.3d 1187, 1195 (2006). In so doing, our supreme court reaffirmed that “appellate courts should ‘dismiss for lack of jurisdiction the case where a litigant attempts to appeal where a motion is still pending in the trial court.’ ” *Id.* ¶ 1, quoting *Barassi*, 130 Ariz. at 422, 636 P.2d at 1204.

\*3 ¶ 10 While the *Craig* rule may appear formalistic, it effectively removes any confusion about a trial court’s jurisdiction to rule on a pending motion. *Santee*, 629 Ariz. Adv. Rep. 18, ¶ 4. The rule also helps to avoid piecemeal appeals. *Id.* Indeed, in the absence of Rule 54(b) language, “ ‘a judgment shall not be entered until claims for attorneys’ fees have been resolved and are addressed in the judgment.’ ” *Britt v. Steffen*, 220 Ariz. 265, ¶ 18, 205 P.3d 357, 361 (App.2008), quoting Ariz. R. Civ. P. 58(g).

¶ 11 Here, of course, the trial court did not address the issue of attorney fees in its June 2011 order, and the university’s motion for summary judgment was still pending when Schugg filed his notice of appeal. The notice therefore created uncertainty as to the superior court’s jurisdiction to rule on the pending motion, as well as the possibility of a future appeal solely on the issue of attorney fees. In other words, it triggered the very problems the *Craig* rule was designed to avoid. See *Craig*, 227 Ariz. 105, ¶¶ 9, 14, 253 P.3d at 625, 626. “[O]rdinarily, appellate courts lack jurisdiction if ‘a litigant attempts to appeal where a motion is still pending in the trial court.’ ” *Id.* ¶ 9, quoting *Barassi*, 130 Ariz. at 422, 636 P.2d at 1204. This appeal presents such an ordinary case. In the absence of Rule 54(b) language, the court’s June ruling was a partial, interlocutory order not subject to appeal. It was not a final, appealable order.

¶ 12 In a second and somewhat related argument, Schugg contends “[t]he trial court’s rejection of the Rule 54(b) language and statement that the case is dismissed in its entirety is sufficient to make the Order appealable.” In support of this contention, Schugg cites *Arizona Bank v. Superior Court*, 17 Ariz.App. 115, 495 P.2d 1322 (1972). His reliance is misplaced.

¶ 13 In *Arizona Bank*, which came before this court as a special action, the trial court had entered a “formal written judgment” as to some parties and claims, but not all. *Id.* at 116, 495 P.2d at 1323. In response to a motion to vacate the judgment for lack of finality, the trial court had amended its judgment by a minute entry order that expressly found “ ‘no

cause or need for delay.’ “ *Id.* at 117, 495 P.2d at 1324. We held the judgment was final and thus not subject to revision by a second judge assigned to the case. *Id.* at 117, 120, 495 P.2d at 1324, 1327. In reaching this conclusion, we noted the undisputed fact that “the wording of th[e] minute entry order [wa]s sufficient to constitute the required determination” under Rule 54(b). *Ariz. Bank*, 17 Ariz. A pp. at 119, 495 P.2d at 1326. Here, in contrast, no “express determination” was made pursuant to Rule 54(b), either by minute entry or otherwise. In fact, the court denied a motion requesting Rule 54(b) language. The case is therefore distinguishable.

¶ 14 To the extent Schugg reads *Arizona Bank* as doing away with Rule 54(b)'s requirement of an express determination, his interpretation is simply mistaken. In *Arizona Bank* this court held that the express determination required by the rule could be made by a later minute entry order; it need not appear in the judgment itself. 17 Ariz.App. at 119–20, 495 P.2d at 1326–27. The case did not imply that a trial court's “inten[t] to make [an][o]rder appealable” determines its finality, as Schugg suggests.

\*4 ¶ 15 In his third argument, Schugg claims the statute-of-limitations question posed by his current appeal is “distinct” from any issue presented by an appeal from the university's counterclaim, making jurisdiction proper under *GM Development Corp. v. Community American Mortgage Corp.*, 165 Ariz. 1, 795 P.2d 827 (App.1990). In that case, we noted Rule 54(b) allows a “final judgment on any particular claim ... only if the nature of the adjudicated claim is ‘such that no appellate court would have to decide the same issues more than once even if there are subsequent appeals.’ “ *GM Dev. Corp.*, 165 Ariz. at 9, 795 P.2d at 835, quoting *Cont'l Cas. v. Superior Court*, 130 Ariz. 189, 191, 635 P.2d 174, 176 (1981). Schugg fails to appreciate that *GM Development* stated a necessary condition for bringing an appeal under Rule 54(b), not a sufficient condition for bringing an appeal, generally. In other words, the mere existence of a distinct or nonrecurrent question does not render an interlocutory order appealable.

¶ 16 In his fourth argument, Schugg focuses on an isolated quotation from *Maria v. Najera* and contends we have

jurisdiction over the present appeal if we simply “look to the ‘character of the proceedings which resulted in the order appealed from’ to ascertain jurisdiction in [the] particular case.” 222 Ariz. 306, ¶ 9, 214 P.3d at 396, quoting *Kemble v. Porter*, 88 Ariz. 417, 419, 357 P.2d 155, 156 (1960). Again, however, Schugg overlooks the thrust of the case he cites as authority. *Maria* essentially held that an order must be both formally and substantively appealable under § 12–2101. 222 Ariz. 306, ¶¶ 4, 10, 214 P.3d at 395, 396; see *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, ¶ 14, 211 P.3d 16, 24 (App.2009). In short, a party may not transform a non-appealable order into an appealable one simply by filing a motion for a new trial and appealing its denial under what is now § 12–2101(A)(5)(a). *Maria*, 222 Ariz. 306, ¶¶ 7–11 & n. 1, 214 P.3d at 395–96 & 396 n. 1. When a party attempts such gamesmanship, we will look past the formal designation of the order to determine whether it is truly appealable. *Id.* We do not, however, have jurisdiction to consider appeals in the absence of an enumerated order under § 12–2101.

¶ 17 In his fifth and final argument, Schugg claims the dismissal order here is appealable pursuant to the current § 12–2101(A)(3), which allows appeals “[f]rom any order affecting a substantial right ... when the order in effect determines the action and prevents judgment from which an appeal might be taken.” As the university correctly points out, nothing about the dismissal order would prevent the trial court from ruling on the university's counterclaims and entering a final judgment disposing of all matters. Accordingly, this provision does not authorize the present appeal.

¶ 18 For the foregoing reasons, we conclude we lack jurisdiction to review the court's June 2011 order. We therefore order Schugg's appeal dismissed.

CONCURRING: JOSEPH W. HOWARD, Chief Judge and GARYE L. VÁSQUEZ, Judge.

#### All Citations

Not Reported in P.3d, 2012 WL 988569

#### Footnotes

- 1 This was a corrected order. An earlier order, signed May 27 and filed May 31, contained an erroneous reference to A.R.S. § 12–821.01 rather than § 12–821.

[2](#) This section was recently renumbered pursuant to 2011 Ariz. Sess. Laws, ch. 304, § 1.

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12 *Attorneys for Defendant Yavapai County*

13  
14  
15 **SUPERIOR COURT OF THE STATE OF ARIZONA**  
16 **IN AND FOR THE COUNTY OF MARICOPA**

17 VICTOR SANCHEZ-RAVUELTA and  
18 JANETTE DODGE, a married couple, on  
19 behalf of themselves and their minor children  
20 ELIJAH SANCHEZ and AMELIA  
21 SANCHEZ,

22 Plaintiffs,

23 vs.

24 YAVAPAI COUNTY; TOWN OF DEWEY-  
25 HUMBOLDT; STATE OF ARIZONA;  
26 JOHN and JANE DOES I-X, ABC  
27 Corporations, XYZ Partnerships,

28 Defendants.

Case No. CV2022-051670

**JUDGMENT (Dismissal)**

(Assigned to the Honorable Melissa Julian)

19 The Court has reviewed and considered Defendants’ Joint Notice of Lodging  
20 [Proposed] Form of Judgment pursuant to Arizona Rule of Civil Procedure 54(c), and good  
21 cause appearing,

22 1. The Court finds that, for the reasons set forth in the Court’s August 31, 2022,  
23 Minute Entry, Defendant County of Yavapai’s Motion to Dismiss, Defendant State of  
24 Arizona’s Motion to Dismiss, and Defendant Town of Dewey-Humboldt’s Motion for  
25 Judgment on the Pleadings were each granted as to all of Plaintiffs’ claims.

26 2. The Court further finds that, for the reasons set forth in the Court’s August  
27 31, 2022, Minute Entry, amendment as to any of the Plaintiffs’ claims would be futile.  
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Therefore,

**IT IS ORDERED** that Plaintiffs' claims against Yavapai County are dismissed with prejudice, and that each of the Plaintiffs take nothing from Yavapai County.

**IT IS FURTHER ORDERED** that Plaintiffs' claims against the State of Arizona are dismissed with prejudice, and that each of the Plaintiffs take nothing from the State of Arizona.

**IT IS FURTHER ORDERED** that Plaintiffs' claims against the Town of Dewey-Humboldt are dismissed with prejudice, and that each of the Plaintiffs take nothing from the Town of Dewey-Humboldt.

No further matters remain pending, and this judgment is entered under Rule 54(c).

DATE:

\_\_\_\_\_  
Honorable Melissa Julian  
Maricopa County Superior Court Judge

# eSignature Page 1 of 1

Filing ID: 14991757 Case Number: CV2022-051670  
Original Filing ID: 14803117

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Granted with Modifications



**ENDORSEMENT PAGE**

CASE NUMBER: CV2022-051670

SIGNATURE DATE: 10/14/2022

E-FILING ID #: 14991757

FILED DATE: 10/17/2022 8:00:00 AM

AMARA W EDBLAD

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13 **ATTORNEYS FOR DEFENDANT TOWN OF DEWEY-HUMBOLDT**

14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
15 **IN AND FOR THE COUNTY OF MARICOPA**

16 VICTOR SANCHEZ-RAVUELTA and  
17 JANETTE DODGE, a married couple, on  
18 behalf of themselves and their minor children  
19 ELIJAH SANCHEZ and AMELIA  
20 SANCHEZ,

21 Plaintiffs,

22 vs.

23 YAVAPAI COUNTY; TOWN OF DEWEY-  
24 HUMBOLDT; STATE OF ARIZONA;  
25 JOHN and JANE DOES I-X; ABC  
26 Corporations; XYZ Partnerships,

Defendants.

NO. CV2022-051670

**FINAL JUDGMENT**

(Assigned to the Honorable Melissa Julian)

27 The Court has reviewed and considered Defendant Town of Dewey-Humboldt's  
28 Notice of Lodging [Proposed] Form of Judgment pursuant to Arizona Rule of Civil  
29 Procedure 54(c), and good cause appearing,

30 1. The Court finds that on August 30, 2022, Plaintiffs filed Notices of Dismissal  
31 under Rule 41(a) as to Plaintiffs Elijah Sanchez and Amelia Sanchez's causes of action  
32 against Defendants Yavapai County and State of Arizona. Consequently, Plaintiffs Amelia

1 Sanchez and Elijah Sanchez’s claims against Defendants Yavapai County and the State of  
2 Arizona are dismissed without prejudice.

3           2.       The Court finds that, for the reasons set forth in the Court’s August 31, 2022,  
4 Minute Entry, Defendant County of Yavapai’s Motion to Dismiss, Defendant State of  
5 Arizona’s Motion to Dismiss, and Defendant Town of Dewey-Humboldt’s Motion for  
6 Judgment on the Pleadings were each granted as to all of Plaintiffs’ claims except as to  
7 those claims, Plaintiffs, and Defendants recited above.

8           3.       The Court further finds that, for the reasons set forth in the Court’s August  
9 31, 2022, Minute Entry, amendment as to any of Plaintiffs Victor Sanchez-Ravuelta and  
10 Janette Dodge’s claims would be futile.

11           4.       The Court further finds that, for the reasons set forth in the Court’s August  
12 31, 2022, Minute Entry, amendment as to any of Plaintiffs Amelia Sanchez and Elijah  
13 Sanchez’s claims against the Town of Dewey-Humboldt would be futile.

14           5.       The Court further finds that Plaintiffs Amelia and Elijah Sanchez’s Motion  
15 to Dismiss without Prejudice, filed on August 30, 2022, is moot for the reasons stated in  
16 the Court’s Minute Entry dated September 27, 2022.

17           Therefore,

18           **IT IS ORDERED** that Plaintiffs Victor Sanchez-Ravuelta and Janette Dodge’s  
19 claims against Yavapai County are dismissed with prejudice, and that each of the Plaintiffs  
20 take nothing from Yavapai County.

21           **IT IS FURTHER ORDERED** that Plaintiffs Victor Sanchez-Ravuelta and Janette  
22 Dodge’s claims against the State of Arizona are dismissed with prejudice, and that each of  
23 the Plaintiffs take nothing from the State of Arizona.

24           **IT IS FURTHER ORDERED** that Plaintiffs Amelia and Elijah Sanchez’s claims  
25 against Yavapai County are dismissed without prejudice.

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**IT IS FURTHER ORDERED** that Plaintiffs Amelia and Elijah Sanchez’s claims against the State of Arizona are dismissed without prejudice.

**IT IS FURTHER ORDERED** that all Plaintiffs’ claims against the Town of Dewey-Humboldt are dismissed with prejudice, and that each of the Plaintiffs take nothing from the Town of Dewey-Humboldt.

No further matters remain pending, and this judgment is entered under Rule 54(c).

DATED this \_\_\_\_\_, day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
THE HONORABLE MELISSA JULIAN  
JUDGE OF THE SUPERIOR COURT

# eSignature Page 1 of 1

Filing ID: 15153338 Case Number: CV2022-051670  
Original Filing ID: 14978779

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**ENDORSEMENT PAGE**

CASE NUMBER: CV2022-051670

SIGNATURE DATE: 11/18/2022

E-FILING ID #: 15153338

FILED DATE: 11/22/2022 8:00:00 AM

AMARA W EDBLAD

BRANDON D MILLAM

DAVID L ABNEY

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2022-051670

01/25/2023

HONORABLE MELISSA IYER JULIAN

CLERK OF THE COURT  
A. Delgado  
Deputy

VICTOR SANCHEZ-RAVUELTA, et al.

AMARA W EDBLAD

v.

YAVAPAI COUNTY, et al.

JACOB A WELD

DAVID L ABNEY  
BRANDON D MILLAM  
NATHAN R ANDREWS  
LAWRENCE V ROBERTSON JR.  
JUDGE JULIAN

**ORAL ARGUMENT HELD**

**Re: Motion for New Trial**

**NOTE:** There is a **LATER** at the end of this Minute Entry.

Courtroom 108 - Northeast Regional Court Center

9:04 a.m. This is the time set for an Oral Argument regarding Plaintiffs' *First Amended Motion for New Trial*, filed November 9, 2022. Plaintiffs, Victor Sanchez-Ravuelta, et al. are represented by counsel David Abney and Amara Edbald. Defendant, Yavapai County, is represented by counsel Jacob Weld. Defendant, Town of Dewey-Humboldt, is represented by counsel, Brandon Millam. Defendant, State of Arizona, is represented by counsel, Lawrence Robertson. All parties present appear virtually via Court Connect.

Court Reporter, Hope Yeager, is present. A record of the proceedings is also made digitally.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2022-051670

01/25/2023

The Court has received Plaintiffs' First Amended Motion for New Trial, filed November 9, 2022, State of Arizona's Response to Plaintiffs' filed November 27, 2022, Defendant Town of Dewey-Humboldt's Response filed December 1, 2022, Defendant Yavapai County's Response In Opposition, filed December 5, 2022, and Plaintiff's Reply filed December 30, 2022.

Oral argument begins.

**IT IS ORDERED** taking this matter under advisement.

9:35 a.m. Matter concludes.

**LATER:** This matter having been taken under advisement, and the Court having considered the matters presented,

**UNDER ADVISEMENT RULING**

**RE: Plaintiffs' First Amended Motion for New Trial, filed November 9, 2022**

Pending before this Court is Plaintiffs' First Amended Motion for New Trial, filed November 9, 2022. The motion is fully briefed, and this Court heard oral argument on the motion on January 25, 2023.

As an initial matter, this Court agrees that it erred in denying the minor-plaintiff's motion to dismiss their complaint without prejudice as to the Town of Dewey-Humboldt. As Plaintiffs' motion points out, the Town is the only party who filed an answer to the complaint before moving for dismissal.

Despite this, the Town has not articulated any "substantive right" that would be violated if the dismissal of the minor-plaintiffs' claims is entered without prejudice. Any substantive defense would still be preserved in the event the minor plaintiffs elected to serve the Town with an amended notice of claim and later filed suit.

The parties do not dispute that the time period for compliance with the claim statute is tolled during the period of the minor plaintiffs' infancy. A.R.S. § 12-821.01(D) ("Notwithstanding subsection A, a minor or an insane or incompetent person may file a claim within one hundred eighty days after the disability ceases."). Thus, this court erred in entering a dismissal of the minor-plaintiffs' claims with prejudice. This case does not present the kind of "extraordinary circumstance" that merits an exercise of discretion otherwise. *Crawford By & Through Crawford v. Superior Ct.*, 144 Ariz. 498, 499 (Ct. App. 1984). The Court's error in denying the request should be corrected.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2022-051670

01/25/2023

As to the Plaintiffs' argument that their notice claim included sufficient facts to satisfy the claim statute independently, the Court disagrees. For the reasons set forth in its September 2, 2022, ruling, the notice of claim was insufficient as a matter of law as to the claims asserted by the adult plaintiffs.

Similarly, the Court declines to reconsider its conclusion that the State's issuance of a liquor license did not give rise to a duty of care as to intoxicated patrons overserved by a licensee.

For these reasons, the Plaintiffs' First Amended Motion for New Trial will be granted in part and a dismissal without prejudice will be entered for the claims asserted by the minor plaintiffs as to all three defendants. The remainder of the motion as to the substantive issues is denied.

**IT IS THEREFORE ORDERED granting in part, and denying in part**, Plaintiffs' First Amended Motion for New Trial, filed November 9, 2022.

**IT IS FURTHER ORDERED** directing the entry of the final order of dismissal consistent with this ruling pursuant to Rule 54(b) as to the claims asserted by the adult-Plaintiffs Victor Sanchez-Ravuelta and Janette Dodge.



DIVISION ONE  
 FILED: 2/3/23  
 AMY M. WOOD,  
 CLERK  
 BY: RB



## Court of Appeals

STATE OF ARIZONA  
 DIVISION ONE  
 STATE COURTS BUILDING  
 1501 WEST WASHINGTON STREET  
 PHOENIX, ARIZONA 85007

AMY M. WOOD  
 CLERK OF THE COURT

Phone: (602) 452-6700

Fax: (602) 452-3226

February 3, 2023

Jeff Fine, Clerk  
 Maricopa County Superior Court  
 201 West Jefferson  
 Phoenix, Arizona 85003

Dear Mr. Fine,

RE: 1 CA-CV 23-0014

SANCHEZ-RAVUELTA, et al. v. YAVAPAI, et al.

Maricopa County Superior Court  
 No. CV2022-051670

Pursuant to direction from the court and pursuant to A.R.S. §12-322A, the above entitled and numbered case has been abandoned. There are no physical record items to be returned to your Court.

If digital exhibits were submitted through the Arizona digital exhibit portal in this case, access to those exhibits by the Court of Appeals will be removed by the Superior Court pursuant to ARCAP Rule 24(c).

Section 12-322A provides as follows: . . . "If the fee is not paid within the ten days thereafter, the appeal shall be deemed abandoned and the record returned to the Court from which it came and the judgement may be enforced as if no appeal had been taken."

AMY M. WOOD, CLERK

By

\_\_\_\_\_  
 rab

Deputy Clerk

C:

David L Abney

Steven H Pincus

Amara W Edblad

Ryan Lamb

Kathleen L Wieneke

Laura Van Buren

Jacob A Weld

William H Doyle

Brandon D Millam

Nathan Andrews

Christopher B Davis

Lawrence V Robertson Jr

Hon Jeff Fine, Clerk

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11 aedblad@yourinjuryshield.com, rlamb@yourinjuryshield.com  
12 Attorneys for Plaintiffs

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 VICTOR SANCHEZ-RAVUELTA and  
14 JANETTE DODGE, a married couple, on  
15 behalf of themselves and their minor children  
16 ELIJAH SANCHEZ and AMELIA  
17 SANCHEZ,

16 Plaintiffs,

18 v.

19 YAVAPAI COUNTY; TOWN OF DEWEY-  
20 HUMBOLDT; STATE OF ARIZONA;  
21 JOHN and JANE DOES I-X, ABC  
22 Corporations, XYZ Partnerships,

23 Defendants.

Case No. CV2022-051670

**JUDGMENT**

(Hon. Melissa Iyer Julian)

24 **THE COURT HAVING CONSIDERED** Plaintiffs’ “First Amended Motion for New  
25 Trial” (filed Nov. 9, 2022), the “State of Arizona’s Response to Plaintiffs’ First Amended  
26 Motion for New Trial” (filed Nov. 27, 2022), “Defendant Town of Dewey-Humboldt’s  
27  
28

1 Response to Plaintiffs’ Motion for New Trial” (filed Dec. 1, 2022), “Defendant Yavapai  
2 County’s Response in Opposition to Plaintiffs’ Amended Motion for New Trial” (filed Dec. 5,  
3 2022), and Plaintiffs’ “Reply in Support of First Amended Motion for New Trial” (filed Dec.  
4 30, 2022), and  
5

6 **THE COURT HAVING CONDUCTED** oral argument on those matters on January 25,  
7 2023, and good cause appearing.  
8

9 **IT IS HEREBY ORDERED** that the claims of the minor Plaintiffs (Elijah Sanchez and  
10 Amelia Sanchez) against Defendants Yavapai County, Town of Dewey-Humboldt, and the State  
11 of Arizona are hereby dismissed without prejudice, with all parties to bear their own attorney’s  
12 fees and costs; and  
13

14 **IT IS FURTHER ORDERED** that the notice of claims presented by the adult Plaintiffs  
15 (Victor Sanchez-Ravuelta and Janette Dodge) lacked sufficient facts to satisfy the requirements  
16 of the notice-of-claim statutes as to Yavapai County and the Town of Dewey-Humboldt, as this  
17 Court explained in its Under Advisement Ruling (dated Aug. 31, 2022, and filed Sep. 2, 2022);  
18

19 **IT IS FURTHER ORDERED** that the notice of claim presented by the adult Plaintiffs  
20 (Victor Sanchez-Ravuelta and Janette Dodge) and that was served on the State of Arizona failed  
21 to assert sufficient facts to allow the State the investigate the claims against it, as this Court  
22 explained in its Under Advisement Ruling (dated Aug. 31, 2022, and filed Sep. 2, 2022);  
23

24 **IT IS FURTHER ORDERED** that it is the Court’s opinion that the State’s issuance of a  
25 liquor license to Billy Jack’s created no duty of care on its part to prevent alcohol-impaired  
26 drivers from causing motor-vehicle collisions, as this Court explained in its Under Advisement  
27  
28



# eSignature Page 1 of 1

Filing ID: 15651079 Case Number: CV2022-051670  
Original Filing ID: 15496703

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Granted with Modifications



**ENDORSEMENT PAGE**

CASE NUMBER: CV2022-051670

SIGNATURE DATE: 3/8/2023

E-FILING ID #: 15651079

FILED DATE: 3/9/2023 8:00:00 AM

AMARA W EDBLAD

BRANDON D MILLAM

DAVID L ABNEY