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**SUPREME COURT
STATE OF ARIZONA**

JACQUELIN JAMILEX LOPEZ
SANCHEZ, an individual; MARLIN
LOPEZ SANCHEZ, an individual;
ROSARIO LOPEZ SANCHEZ, an
individual; ILIANA OFELIA
SANCHEZ, individually and as
parent/next of kin to minor
ORLANDO LOPEZ,

Plaintiffs/Appellants,

v.

MARICOPA COUNTY,

Defendant/Appellee.

Case No. CV-24-0013-PR

Arizona Court of Appeals
Case No. 1 CA-CV 22-0572

Maricopa County Superior Court
No. CV 2022-092441
Hon Rodrick Coffey

**SIMULTANEOUS SUPPLEMENTAL BRIEF
OF THE PLAINTIFFS/APPELLANTS**

Table of Contents

	Page
Table of Citations	3
The Rephrased Issues	5
Legal Argument	5
1. Introduction: The general principles that control this sort of situation.	5
2. Under the Arizona Claims Act, a county is the ‘public entity’ that employs a ‘public employee’ deputy county sheriff who has negligently caused a motor collision.	9
3. The injured motorists properly filed a notice of claim with the county as the ‘public entity’ that employed the deputy county sheriff as a ‘public employee’ in one of its departments, namely, in the office of the county sheriff.	11
Certificate of Compliance	14
Certificate of Service	14

Table of Citations

Cases

	Page
<i>Bone v. Bowen</i> , 20 Ariz, 592 (1919)	7
<i>Braillard v. Maricopa County</i> , 224 Ariz. 481 (App. 2010)	9, 10, 13
<i>Carnes v. Phoenix Newspapers, Inc.</i> , 227 Ariz. 32 (App. 2011)	11
<i>Grosvenor Holdings, L.C. v. Figueroa</i> , 222 Ariz. 588 (App. 2009)	6, 9

Constitutional Provision and Statutes

Ariz. Const. art. 12, § 1	6, 9, 12
Ariz. Const. art. 12, § 3	7, 10, 12
Arizona Claims Act, A.R.S. §§ 12-820 to 12-826	5
A.R.S. § 11-201(A)(1)	6-7, 9-12
A.R.S. § 11-201(A)(3)	7, 9
A.R.S. § 12-820(1)	7-8, 10-12
A.R.S. § 12-820(6)	6, 8, 10-13
A.R.S. § 12-820(7)	6, 8-10, 12
A.R.S. § 12-821.01(A)	5, 12
A.R.S. § 12-823	9, 13

Other Materials

<i>Black's Law Dictionary</i> 311 (12th ed. 2024)	6
<i>Black's Law Dictionary</i> 672 (12th ed. 2024)	6

<i>Black's Law Dictionary</i> 1487 (12th ed. 2024)	6
James L. Conlogue, <i>A Separation of Powers Analysis of the Absolute Immunity of Public Entities</i> , 28 <i>Ariz. L. Rev.</i> 49 (1986)	7

The Rephrased Issues

Under the August 23, 2024 Minute Letter, these are the rephrased issues:

1. “Under the Arizona Claims Act, is a county the ‘public entity’ that employs a ‘public employee’ deputy county sheriff who has negligently caused a motor collision?”
2. “Did the injured motorists properly file a notice of claim with the county as the ‘public entity’ that employs the deputy county sheriff as a ‘public employee’ in one of its departments, namely, in the office of the county sheriff?”

The answers to these two rephrased issues appear in sections two and three of this brief. The first section is an introduction.

Legal Argument

1. Introduction: The general principles that control this sort of situation.

We submit that this Court should acknowledge that these principles govern this case and all similar cases:

[1]. Arizona state-law tort claims and lawsuits can only be brought against an Arizona public entity, or an Arizona public employee, or both, under Arizona common law and under the Arizona Claims Act, A.R.S. §§ 12-820 to 12-826.

[2]. In particular, A.R.S. § 12-821.01(A) provides that: “Persons who have claims against a public entity, public school or a public employee shall file claims with the person or persons authorized to accept service for the public entity, public school or public employee as set forth in the Arizona rules of civil procedure within one hundred eighty days after the cause of action accrues.”).

[3]. “‘Public entity’ includes this state and any political subdivision of this state.” A.R.S. § 12-820(7). *Black’s Law Dictionary* 672 (12th ed. 2024) (A “public entity” is defined as a “governmental entity, such as a state government or one of its political subdivisions.”).

[4]. “‘Public employee’ means an employee of a public entity.” A.R.S. § 12-820(6). *Black’s Law Dictionary* 311, 1487 (12th ed. 2024) (A “public employee” is defined as: “Someone employed in a department responsible for conducting the affairs of a national or local government.”).

[5]. A “public employee” could never be regarded as a “public entity” because a “public employee” is a human being and a “public entity” is not and never could undergo a metamorphosis into a non-human “public entity.”

[6]. An Arizona county is a political and corporate body. Ariz. Const. art. 12, § 1 (“Each county of the state, now or hereafter organized, shall be a body politic and corporate.”).

[7]. An Arizona county is a political subdivision of the State of Arizona. *Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz. 588, 595 ¶ 15 (App. 2009).

[8]. An Arizona county is thus a “public entity” under the meaning of the Arizona Claims Act. A.R.S. § 12-820(7).

[9]. An Arizona county has the statutory power to sue and be sued. A.R.S. § 11-201(A)(1) (“It has the power to: 1. Sue and be sued.”).

[10]. An Arizona county also has the statutory power to make such contracts “as may be necessary to the exercise of its powers.” A.R.S. § 11-201(A)(3). That statutory power necessarily includes the power to make employment contracts.

[11]. Under the Arizona Claims Act, an “employee” includes an “officer, director, employee or servant.” A.R.S. § 12-820(1).

[12]. One of the officers that acts under the authority of a county board of supervisors is its sheriff. Ariz. Const. art. 12, § 3 (“**There are hereby created in and for each organized county of the state the following officers** who shall be elected by the qualified electors thereof: **a sheriff**, a county attorney, a recorder, a treasurer, an assessor, a superintendent of schools and at least three supervisors.) (underlining and bolding added).

[13]. An Arizona county can only act through its “agents and officers,” and only when those “agents and officers are acting under authority of law” or under the board of supervisors’ authority. A.R.S. § 11-201(A)(1) (“The powers of a county shall be exercised only by the board of supervisors or by agents and officers acting under its authority and authority of law.”). James L. Conlogue, *A Separation of Powers Analysis of the Absolute Immunity of Public Entities*, 28 Ariz. L. Rev. 49, 53 (1986) (“A public entity acts through its officers and employees.”).

[14]. “The county is a body corporate, and, like other corporations, must exercise its powers through its officers and agents.” *Bone v. Bowen*, 20 Ariz. 592,

595 (1919).

[15]. Like any hierarchical organization, a county exercises control over its many and various employees through department heads (such as county sheriffs), and on down the chain of command through subordinate managers and sub-managers and subordinate agents and sub-agents with increasingly limited spheres of control, until we finally get to the official who, in this particular case, had control over the direct training and supervision of the work conduct of the deputy county sheriff public employee whose negligent driving injured the motorists in this one particular case. The county exercises full control—in the traditional chain-of-command manner used in private and public organizations.

[16]. A county sheriff is an “officer” of the county that the sheriff serves. A.R.S. § 11-401(A)(1) (“The officers of a county are: 1. Sheriff.”).

[17]. A county sheriff is, within the meaning of the Arizona Claims Act, a “public employee” because a county sheriff is an officer and employee of a “public entity.” A.R.S. §§ 12-820(1), (6) & (7).

[18]. An Arizona county’s department or division could never be regarded as a “public entity” under the Arizona Claim Act, because an Arizona county’s department or division is **not** a political subdivision of the State of Arizona and therefore could not be regarded as a “public entity” under the Arizona Claims Act. An Arizona county’s department or division is simply an administrative part of an

Arizona county.

[19]. In particular, a county sheriff's office is not "a separate legal entity" that can sue or be sued. *Brillard v. Maricopa County*, 224 Ariz. 481, 487 ¶ 12 (App. 2010).

[20]. A deputy county sheriff is a "public employee" who works for an Arizona county—which is a "public entity" under the Arizona Claims Act. A deputy county sheriff cannot be a "public employee" of a county sheriff's office, which is not even a separate legal entity, and lacks the capacity to enter into contracts, to sue, or to be sued.

[21]. Under the Arizona Claims Act, a monetary judgment against a "public employee" is only collectable from the "public entity" for which that "public employee" works. A.R.S. § 12-823 ("If judgment is rendered for the plaintiff, it shall be for the amount actually due from the public entity to the plaintiff, with legal interest thereon from the time the obligation accrued and with court costs.").

2. Under the Arizona Claims Act, a county is the 'public entity' that employs a 'public employee' deputy county sheriff who has negligently caused a motor collision.

The principles set out in this brief's initial section of this brief resolve the first issue. First, an Arizona county is a "public entity" since it constitutes a separate political subdivision of the State of Arizona. *See* A.R.S. § 12-820(7); Ariz. Const. art. 12, § 1; *Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz. 588, 595 ¶ 15

(App. 2009). An Arizona county can sue and be sued and has the power to make contracts, such as employment contracts. A.R.S. § 11-201(A)(1) & (A)(3).

A county sheriff is an “officer” and “public employee” of the “public entity” county for which the county sheriff works. Ariz. Const. art. 12, § 3; A.R.S. §§ 11-401(A)(1), 12-820(1), (6) & (7). An Arizona county is a public entity that can only act through its “agents and officers” when they are acting under authority of law or under a board of supervisors’ authority—as that authority is exercised through the usual methods in a hierarchical organization. A.R.S. § 11-201(A)(1).

A deputy county sheriff could not be a “public employee” of a county sheriff because the county sheriff is only a “public employee” managing a county division or department, namely, the office of the county sheriff. In addition, the office of the county sheriff is not “a separate legal entity” that can sue or be sued. *Brillard v. Maricopa County*, 224 Ariz. 481, 487 ¶ 12 (App. 2010). Further, the office of the county sheriff does not even have legal capacity to make contracts, such as a contract to employ a deputy county sheriff.

A deputy county sheriff driving within the scope and course of employment is acting in the scope and course of the deputy county sheriff’s employment as a county officer or employee, because the deputy county sheriff is an “employee” and “officer” of the county, A.R.S. §§ 12-820(1) & (6), who works for the county “public entity,” A.R.S. § 12-820(7).

Moreover, an Arizona county can only act through its agents, officers, and employees when they are acting under authority of law and under the board of supervisors' authority. A.R.S. § 11-201(A)(1).

Within the meaning of the Arizona Claims Act, a deputy county sheriff whose negligent driving causes a motor-vehicle collision in the course and scope of employment as a public employee is liable as a public employee of the public entity that was authorized to make a contract of employment to employ that deputy county sheriff. *See Carnes v. Phoenix Newspapers, Inc.*, 227 Ariz. 32, 35 ¶ 9 (App. 2011) (An “employer may be held vicariously liable on the theory of respondeat superior for negligent driving of a vehicle by its employee if the facts establish an employer-employee relationship and the negligence of the employee occurred during the scope of her employment.”).

3. The injured motorists properly filed a notice of claim with the county as the ‘public entity’ that employed the deputy county sheriff as a ‘public employee’ in one of its departments, namely, in the office of the county sheriff.

The principles set out in the initial section of this brief also resolve the second issue. Since the deputy county sheriff was undeniably a “public employee” under A.R.S. § 12-820(6), when it came time to file their notice of claim, the injured motorists had three choices:

They could (1) file a notice of claim with the public-employee deputy county sheriff whose negligent driving injured them, (2) file a notice of claim with

the public-entity county that employed the public-employee deputy county sheriff, or (3) file a notice of claim with both the public-employee deputy county sheriff or with the public-entity county. A.R.S. § 12-821.01(A).

The injured motorists identified Maricopa County as the “public entity” that had employed the public-employee deputy county sheriff. That identification was proper. After all, despite obtaining the job of county sheriff as the result of a public election, the county sheriff himself was only a county “officer” and “public employee” working for the county and never magically transformed from a human being into a non-human “public entity.” A.R.S. §§ 12-820(1), (6) & (7);

Maricopa County was also the proper “public entity” upon which to file the notice of claim because:

- (1) it is a political subdivision of the State of Arizona, A.R.S. § 12-820(7),
- (2) it is a “body politic and corporate,” Ariz. Const. art. 12, § 1, and
- (3) it has the statutory power to sue and be sued. A.R.S. § 11-201(A)(1).

There is no other suable “public entity.” After all, the county sheriff is merely an “officer” and “public employee” of Maricopa County. A.R.S. §§ 12-820(1) & (6); A.R.S. § 11-401(A)(1); Ariz. Const. art. 12, § 3. The county sheriff is, moreover, a human being, and could never be regarded as a suable “public entity,” since a suable “public entity” is the non-human State of Arizona “and any political subdivision” of the non-human State of Arizona. A.R.S. § 12-820(7).

The office of the county sheriff is also out as a possible suable “public entity,” because the office of a county sheriff is neither the State of Arizona nor a political subdivision of the State of Arizona, A.R.S. § 12-820(6), and is thus not “a separate legal entity” that can sue or be sued. *Braillard v. Maricopa County*, 224 Ariz. 481, 487 ¶ 12 (App. 2010).

Making sure that a responsible “public entity” is identified and is therefore vicariously liable for the misconduct of a public employee is immensely important because, even if you are fortunate enough to get a judgment against a public employee, you can only collect it from a responsible public entity. See A.R.S. § 12-823 (“If judgment is rendered for the plaintiff, it shall be for the amount actually due from the public entity to the plaintiff, with legal interest thereon from the time the obligation accrued and with court costs.”).

There might be situations where the public-employee county sheriff might be personally liable for the misfeasance of a particular public-employee deputy county sheriff. Imagine, for instance, a traffic accident scene where the county sheriff directly took control and told a deputy county sheriff to act in a certain way that, in the end, resulted in causing injury to others on the scene. But we are not dealing with anything like that. And in any event, even in such unusual situations, it is the county that remains the ultimately liable “public entity.” The county sheriff would never, under any imaginable circumstance, miraculously mutate into a non-

human “public entity.”

In summary, there is only one responsible “public entity” upon which the injured motorists could file the notice of claim. That responsible “public entity” is Maricopa County, the public-entity employer of the public-employee deputy county sheriff whose negligent driving injured the motorists.

DATED this 3rd day of October, 2024.

AHWATUKEE LEGAL OFFICE, P.C.

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Certificate of Compliance

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