ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

DAVID STAMBAUGH v. MARK KILLIAN et al.
CV-16-0217-PR

PARTIES AND COUNSEL:

Petitioner: David Stambaugh

Respondent: Mark Killian, Director of the Arizona Department of Agriculture

FACTS:

Eureka Springs Cattle Co. is a cattlegrower operating in Arizona and California. In California, Eureka Springs owns the "–7 (bar seven)" brand applied to the left rib of its cattle and Eureka Springs wanted to move its cattle from California to Arizona without rebranding its herd. At some point in the past, Eureka Springs applied to the Arizona Department of Agriculture (the "Department") to have the bar seven brand recorded in Eureka Springs' name. The brand clerk at the Department rejected Eureka Springs' previous application because it conflicted with a mark already recorded in Arizona by David Stambaugh; he applies the bar seven brand to the left hip of his cattle. The Eureka Springs brand is identical to Stambaugh's brand, but placed in a different location on the animal.

In August 2012, representatives of Eureka Springs, together with representatives from the Arizona Cattelgrowers Association, went to the Department and met with the brand clerk to discuss Eureka Springs' application to record the bar seven mark. After further internal review, the Department decided to accept Eureka Springs' brand for recording. The Department determined that, because the brands would be placed on different locations on the animal (with Stambaugh's on a cow's left hip and Eureka Springs' on a cow's left rib), the Eureka Springs brand was not so similar to any other brand that the brand could be converted or cattle could be misidentified.

The Department then publicly advertised Eureka Springs' request to record its brand. After learning of the Eureka Springs application, Stambaugh filed a protest. The Department denied the protest. It issued a certificate to Eureka Springs signifying its approval and recording the bar seven brand applied on the left ribs of cattle.

Stambaugh filed suit, challenging the Department's recordation of Eureka Springs' bar seven brand; both parties filed motions for summary judgment. Stambaugh argued that, under A.R.S. § 3-1261(B), the Department does not have discretion to record a brand that is identical to a previously recorded brand. That provision states:

> No two brands of the same design or figure shall be adopted or recorded, but the associate director may, in his discretion, reject and refuse to record a brand or mark similar to or conflicting with a previously adopted and recorded brand or mark.

A.R.S. § 3-1261(B). The Department argued that, reading the statutory scheme together, it had authority to record identical brands so long as it required that they be placed on different locations on an animal. It relied heavily on A.R.S. § 3-1261(G), which provides:

> It is unlawful to apply a recorded brand in any location on an animal except as specified on the brand registration certificate. The application of a brand in any other location is the equivalent of the use of an unrecorded brand.

A.R.S. § 3-1261(G).

The superior court granted summary judgment to the Department, finding that the Arizona statutes give the Department discretion to consider the location of a brand on an animal in determining whether two brands are of the same "design or figure" under A.R.S. § 3-1261(B).

In a 2-1 decision, the court of appeals affirmed. *Stambaugh v. Butler*, 240 Ariz. 354, 379 P.3d 250 (App. 2016). The court noted that the Arizona legislature has given the Department general supervision over the livestock interests of the state and authority to record brands and to require a picture of a proposed brand, including where on an animal the brand is proposed to be used. *See* A.R.S. § 3-1203(A), § 3-1262(A), § 3-1266, § 3-1268. Given this, the majority concluded that A.R.S. § 3-1261(B) was ambiguous with respect to whether the Department has discretion to consider the location of a brand in recording a conflicting brand.

It was not convinced that the "first clause of A.R.S. § 3-1261.B ('No two brands of the same design or figure shall be adopted or recorded')" established "the sole basis on which the Department is to decide whether to approve a brand" because "other statutes in the same chapter and article distinguish brands based on their location on livestock." *Stambaugh*, 240 Ariz. at 357 ¶ 12, 379 P.3d at 253. For example, A.R.S. § 3-1261(G), "provides that 'application of a brand in any other location is the equivalent of the use of an unrecorded brand.'" *Id.* (quoting A.R.S. § 3-1261(G)). This "reference to an 'unrecorded brand' indicates that an owner's choice of where a brand will be placed on the animal is part of the brand that the Department ultimately accepts and records." And, the majority read other statutes as undercutting Stambaugh's reading of A.R.S. § 3-1261. *Id.* ¶¶ 12-13 (discussing A.R.S §§ 3-1262(A), -1267(B) and -1261(G)).

As for the "the second clause of A.R.S. § 3-1261(B) ('the associate director may, in his discretion, reject and refuse to record a brand or mark similar to or conflicting with a previously adopted and recorded brand')," the majority did not read this as a limitation on the Department's authority, but rather as an "express[] grant[]" of "discretion in determining whether a proposed brand conflicts with one already recorded. When read in context to achieve a consistent interpretation, these statutes make clear that the Department may consider a brand's location when determining if duplicate brands are 'of the same design or figure.'" *Id.* ¶ 13, 379 P.3d at 254. The court thus affirmed the superior court's judgment. *Id.* at 359 ¶ 18, 379 P.3d at 255.

In dissent, Judge Jones interpreted A.R.S. § 3-1261(B) as "unequivocally" prohibiting the Department from considering the location of a brand in determining whether it is part of the "same design or figure." *Id.* at 359 ¶ 19, 379 P.3d at 255 (Jones, J., dissenting). In the dissent's view, the "fact that other portions of A.R.S. § 3-1261 regulate the location of a brand does not modify

the unambiguously plain and ordinary language of A.R.S. § 3-1261(B)." *Id.* ¶ 20.

As for the second clause of A.R.S. § 3-1261(B), the dissent read it as a limitation on Department authority, rather than an "express[] grant[] [of] discretion." *Id.* at 358 ¶ 13, 379 P.3d at 254. Under this reading,

> the Department may exercise its discretion only to "reject and refuse to record a brand or mark similar to or conflicting with a previously adopted and recorded brand or mark." This limited discretion does not allow the Department to accept and record identical brands simply because they are to be placed in different locations.

Id. at 360 ¶ 22, 379 P.3d at 256 (quoting A.R.S. § 3-1261(B)). The dissent would have reversed the order of the superior court and directed entry of judgment in favor of Stambaugh. *Id.* ¶¶ 24, 25.

ISSUE:

> Does A.R.S. § 3-1261(B) allow two brands of the same design or figure to be recorded as long as they are recorded in different locations on the animal?

STATUTE:

In part, A.R.S. § 3-1261 provides:

> **B.** No two brands of the same design or figure shall be adopted or recorded, but the associate director may, in his discretion, reject and refuse to record a brand or mark similar to or conflicting with a previously adopted and recorded brand or mark.
>
> . . . .
>
> **G.** It is unlawful to apply a recorded brand in any location on an animal except as specified on the brand registration certificate. The application of a brand in any other location is the equivalent of the use of an unrecorded brand.