ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

THE ESTATE OF MADDISON ALEXIS DESELA v. PRESCOTT UNIFIED SCHOOL DISTRICT NO. 1

CV-10-0172-PR

PARTIES:

Petitioner: Prescott Unified School District No.1

Respondent: The Estate of Maddison Alexis DeSela

FACTS:

On November 10, 2004, Maddison, then a 15-year-old student at Prescott High School, attended a rehearsal for her school's production of "Bye Bye Birdie." During an unsupervised break from the rehearsal, Maddison rode on the top of another student's car, lost her grip, and struck her head on the asphalt parking lot. She sustained a life-threatening closed-head injury. Maddison was severely incapacitated and may remain so.

On January 31, 2005, Maddison's mother, Alissa DeSela, assigned all of her claims or potential claims against the school district in which Prescott High School is located to Maddison or her Estate.

On March 22, 2005, Maddison field a timely notice of claim with the Prescott Unified School District No. 1 within the mandatory 180-day notice period. An Estate was opened in Yavapai County Superior Court.

On December 29, 2006, Maddison turned 18.

On December 31, 2007, within one judicial year after Maddison turned 18, the Estate filed suit against the Defendant school district and certain employees for past and future medical expenses and other damages. The Defendants moved to dismiss the claim for medical expenses based on the failure to file suit within the one-year limitations period in A.R.S. § 12-821. The trial court granted Defendants' motion to dismiss, finding that the cause of action accrued on November 10, 2004, and any claims against the public entity and its employees expired one year after that date. Maddison timely appealed.

The court of appeals framed the issue as follows: "whether the assignment of the claim to Maddison/Estate *before* the statute of limitations had run under A.R.S. § 12-821 tolled the running of the statute under A.R.S. § 12-502." Op. ¶ 8.

In an amended opinion filed May 27, 2010, the court of appeals reversed and remanded, finding that Maddison's action was timely filed. The court agreed with Maddison that her mother's assignment of the claim to Maddison activated the tolling provision of A.R.S. § 12-502 and prevented the one-year limitation period from running until Maddison reached age 18 on December 29, 2006.

The court observed that, although A.R.S. § 12-821 provides that "[a]ll actions against any public entity or public employee shall be brought within one year after the cause of action accrues and not afterward," A.R.S. § 12-502 provides that if a person entitled to bring an action is, at the time the cause of action accrues, either under 18 years of age or of unsound mind, "the period of such disability shall not be deemed a portion of the period limited from commencement of the action. Such person shall have the same time after removal of the disability which is allowed to others." *See* Op. ¶ 8.

In rejecting Appellees/Defendants' argument that A.R.S. § 12-502 could not apply because Maddison stood in the shoes of her mother, the court of appeals found several cases persuasive, including *Villa v. Roberts*, 80 F. Supp. 2d. 1229 (D. Kan. 2000) ("*Villa"*) and *United States ex rel. Small Bus. Admin. v. Kurtz*, 525 F. Supp. 734 (E.D. Pa. 1981) ("*Kurtz*"). In *Villa*, a mother of two injured minors established a conservatorship for the children. The parents sued as conservators in 1998 even though their children were injured in 1990. The district court held that, although the mother had waived her right to recover in her own name, the tolling statute applicable to minors, KSA 60-515(a), controlled—permitting an action to be brought on behalf of persons under 18 years of age no more than 8 years after the time of the act giving rise to the claim occurred—meaning that the claim was timely brought. *See* Op. ¶ 10.

In *Kurtz*, a life insurance company loaned money to a small business owner, Kurtz, under a Small Business Administration ("SBA") program. After Kurtz and his business defaulted, the life insurance company assigned to SBA the right to collect on the note or on the guaranty. The SBA sought collection from Kurtz, who argued that the claim was time barred by a four year statute of limitations (the statute of limitations applicable to private entities). The district court held that a six year statute of limitations applied (the statute of limitations applicable to public entities) because of the assignment of the claim from the private entity to the federal SBA. Moreover, the court noted that, had the government acquired the claim after the limitations period had run against the assignor, the claim would be barred. *See* Op. ¶¶ 11–12.

The court of appeals found that Maddison's mother had assigned her claim to Maddison prior to the expiration of the one-year limitations period on the mother's claim. Thus, the claim was governed by A.R.S. § 12-502, meaning that the "claim survives in the hands of the Estate and was timely filed . . . ." Op. ¶ 13.

The court of appeals found additional support in A.R.S. § 44-144, which states that an assignment "shall not prejudice any set-off or other defense existing at the time of the notice of the assignment." This statute supports the court's decision because Appellees/Defendants did not have a valid statute of limitations defense at the time of the assignment. Op. ¶ 15. The court similarly found support in the Restatement (Second) of Contracts § 226(2) (1981), which

provides in essence that "an assignee's right is subject to a claim or defense of the obligor that accrues before the obligor receives notice of the assignment, but is not subject to those defenses or claims accruing thereafter." Op. ¶ 14.

The court of appeals distinguished the cases advanced by Appellees/Defendants, including *Lopez v. Cole*, 214 Ariz. 536, 155 P.3d 1060 (App. 2007) (finding that the court did not reach the issue raised here); *Hutto v. BIC Corp.*, 800 F. Supp. 1367 (E.D. Va. 1992) (limitations period expired prior to assignment); *Stephens v. Textron, Inc.*, 127 Ariz. 227, 619 P.2d 736 (1980) (same); *State v. Juengel*, 15 Ariz. App. 495, 489 P.2d 869 (1971) (statute of limitations not implicated); and *Reimers v. Honda Motor Co., Ltd.*, 502 N.E.2d 428 (Ill. Ct. App. 1986) (child assigned claim after reaching majority). Op. ¶¶ 15-17.

Next, the court of appeals rejected an argument by Appellees/Defendants that because the assignment occurred 82 days after the statute of limitations began to run, the filing of the suit was 82 days too late. The court held that the statute of limitations did not begin to run until the claim was assigned to Maddison, and that this argument ignored A.R.S. § 12-502, providing that a disabled person "shall have the same time after removal of the disability which is allowed to others." *See* Op. ¶ 18.

Finally, the court found that barring Maddison's claim for medical expenses would serve no public purpose and that Appellees/Defendants received the benefit of the notice of claim statute because they received the notice of claim within six months of the injury. Op. ¶ 19.

On June 14, 2010, Appellees/Defendants filed their petition for review in this Court, raising the following issues.

ISSUES:

1. After an individual's cause of action has accrued and the statute of limitations has begun to run, can the individual manipulate this defense by assigning the cause of action to someone under a disability and obtain the benefit of tolling?

2. When an individual assigns a cause of action that has already accrued, does the statute of limitations completely reset and begin to run anew for the assignee?