



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**DIANA GLAZER et al. v. STATE OF ARIZONA
CV-14-0123-PR**

PARTIES:

Petitioner: The State of Arizona

Respondents: Diana Glazer, as surviving spouse of Michael Glazer, deceased, on her own behalf and as statutory trustee for Lindsay Glazer and David Glazer, surviving children of Michael Glazer; and as surviving parent of Sydney Glazer, deceased.

Amici Curiae: Pima County; League of Arizona Cities and Towns; Apache, Cochise, Gila, Graham, Greenlee, LaPaz, Maricopa, Mohave, Navajo, Pinal, Santa Cruz, Yavapai, and Yuma Counties.

FACTS:

In August 2007, Diana Glazer, her husband, and minor daughter were traveling in a minivan westbound on the I-10. They had reached milepost 171 south of Phoenix on a portion of I-10 built in 1967. The speed limit was 75 mph and traffic was moving at or above the speed limit. Traveling eastbound on the I-10 was Melissa Sumpter, who attempted to pass a semi-truck by changing into the left lane. At exactly that moment, the semi-truck also began to change lanes into the left lane. In her attempt to avoid contact with the semi-truck, Sumpter lost control and her vehicle shot across the median into the Glazers' van, killing Glazer's husband and minor daughter and seriously injuring Glazer. The semi-truck driver did not stop, and neither the semi-truck nor the driver were ever identified.

Glazer sued the State, alleging negligence for failing to install median barriers separating the eastbound and westbound lanes of I-10 in the area of the crash. Glazer conceded that no median barrier was required when the road was built in 1967, but argued that substantial, material changes occurred on I-10 within a decade or less before the crash that created the asserted duty.

The State sought summary judgment pursuant to A.R.S. § 12-820.03, which establishes an affirmative defense in a suit against a public entity or employee if certain conditions are met. The provision states:

Neither a public entity nor a public employee is liable for an injury arising out of a plan or design for construction or maintenance or improvement to highways, roads, streets, bridges, or rights-of-way if the plan or design is prepared in conformance with generally accepted engineering or design standards in effect at the time of the preparation of the plan or design, provided, however, that

reasonably adequate warning shall be given as to any unreasonably dangerous hazards which would allow the public to take suitable precautions.

The Superior Court, Judge John C. Rea, found this statutory defense did not apply to the State in this case and denied the summary judgment motion. Judge Rea's ruling stated:

ARS 12-820.03 provides an affirmative defense to claims that the State is liable for an injury arising out of a plan or design for construction or maintenance if the plan or design was in conformance with generally accepted engineering or design standards in effect at the time of the preparation of the design or plan.

Plaintiffs do not contend that the highway was unsafe as planned and designed in 1967. They allege that the circumstances in 2007, the time of the accident, rendered the highway unreasonably unsafe. . . . Whatever the statute means, the Court does not construe it to grant the State immunity to properly design a highway in 1967 and then ignore the developments of 40 years in the speed, size, and volume of traffic that might render the highway no longer reasonably safe.

At the close of evidence in an eight-day trial, Judge Rea instructed the jury that the State has a duty "to keep its highways reasonably safe for travel" and that that duty includes "the duty to place proper barriers, railings, guards and/or warning signs at dangerous places on a highway when necessary for travelers' safety." However, he instructed, the "mere fact that an accident occurred does not compel the conclusion that a condition was unreasonably dangerous."

The jury awarded Glazer \$7.8 million in damages and apportioned 100% fault to the State and 0% fault to Sumpter and the unknown truck driver. The State appealed.

On appeal, the Arizona Court of Appeals agreed with Glazer, holding that Glazer did not challenge the design or construction of the roadway; rather, Glazer's claim was that she and her family were injured by the State's failure to keep I-10 reasonably safe when it failed to install a median barrier necessitated by substantial, material changes occurring on I-10 within a decade (or less) before the 2007 crash. Simply put, the Court of Appeals held, Glazer's claim, filings, and evidence at trial did not involve a claimed "injury arising out of a plan or design" for the construction of I-10 in 1967, meaning that the affirmative defense established by A.R.S. § 12-820.03 did not apply in this case.

ISSUE:

"A.R.S. § 12-820.03 immunizes public entities against claims of negligent highway design if the design met originally applicable standards. Glazer claimed injuries arising from lack of a design feature—a median barrier. Despite her concession that no barrier was originally necessary, the court concluded the statute did not apply because conditions had materially changed—a criterion not in the statute. Did the court improperly rewrite the statute?"

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