



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**MARIKA DELGADO v. MANOR CARE OF TUCSON LLC, et al.  
CV-16-0178-PR**

**240 Ariz. 294, 378 P.3d 736 (App. 2016)**

**PARTIES:**

*Petitioners:*

Manor Care of Tucson AZ, LLC; HCR ManorCare, LLC; Manor Care, Inc.; HCR IV Healthcare, LLC; HCR III Healthcare, LLC; HCR II Healthcare, LLC; HCR Healthcare, LLC; HCRMC Operations, LLC; HCR ManorCare Operations II, LLC; Heartland Employment Services LLC; and William Amoureux (collectively, “Manor Care”). Manor Care’s petition for review is joined in by Petitioners Gordon J. Cuzner, MD, and IPC The Hospitalist Company, Inc. (collectively, “Cuzner”).

*Respondents:*

Marika Delgado, personal representative of the Estate of Sandra Shaw, on behalf of the Estate of Sandra Shaw (“Shaw”), deceased; and Marika Delgado, personal representative on behalf of Sandra Shaw’s statutory beneficiaries pursuant to A.R.S. § 12-612(A) (“Delgado”),

**FACTS:**

**Statutes at Issue:** This appeal concerns the Arizona Adult Protective Services Act (“APSA”), A.R.S. §§ 46-451 to -459. A.R.S. § 46-455(B) authorizes a “vulnerable adult” to sue certain specified caregivers if he or she is injured by “abuse”:

A vulnerable adult whose life or health is being or has been endangered or injured by neglect, abuse or exploitation may file an action in superior court against any person or enterprise that has been employed to provide care, that has assumed a legal duty to provide care or that has been appointed by a court to provide care to such vulnerable adult for having caused or permitted such conduct. . . .

A.R.S. § 46-451(A) defines “abuse,” “neglect,” and “vulnerable adult” this way:

In this chapter, unless the context otherwise requires:

1. “Abuse” means:

\* \* \*

(b) Injury caused by negligent acts or omissions.

\* \* \*

6. “Neglect” means a pattern of conduct without the person’s informed consent resulting in deprivation of food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health.

\* \* \*

9. “Vulnerable adult” means an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment. Vulnerable adult includes an incapacitated person as defined in § 14-5101.

**Factual Background:** In early March 2012 at the age of 74, Shaw was discharged from an acute care hospital and entered a Manor Care skilled nursing facility in Tucson. At the time, she had been diagnosed with variety of chronic and acute ailments, including a urinary tract infection (“UTI”) and delirium related to depression. When she entered the facility, she was noted as “alert,” but was oriented only to “place” and not “time,” “person,” or “situation.”

During the first half of April, she appeared to be doing well. She took antibiotics for her UTI, but was not complaining of any particular pain. By mid-month, she was able to move, with assistance, from her bed to a wheelchair. The facility considered her ready to be discharged to live with her sister, Delgado, when Delgado returned from vacation in early May.

During the second half of April, Shaw’s condition declined. On April 21, staff reported that she was suffering “some confusion” but was able to make her needs known. By April 24, however, she began to refuse to get out of bed and started eating and drinking less. On April 30, she appeared to staff to be “very confused” and began “trying to get up at intervals” even though she could not walk. Later that day, staff noted that she was still “confused and lethargic” and was refusing all medicines and meals.

On the same day, Manor Care staff notified her attending physician, Dr. Cuzner, and ordered lab tests and a urinalysis. In a progress note, Cuzner noted “early sepsis”—a complication of infection -- as the diagnosis. Cuzner issued no new orders for further tests or treatment. Neither Cuzner nor Manor Care staff provided any further medical attention to Shaw.

On May 1, staff reported that Shaw was “lethargic” and “confused and disoriented.” They also noted that she had “not eaten or taken fluids for [at] least 2 days.” Shaw died later that day. Cuzner noted the immediate cause of death as “sepsis” that was “due to or as a consequence of” a meningioma (a slow-growing brain tumor), kidney stones, and coronary artery disease.

In November 2013, Delgado—acting as the personal representative for Shaw’s estate and beneficiaries—filed a lawsuit against Manor Care and Cuzner. Among other claims, the suit asserted a cause of action under APSA. Manor Care and Cuzner moved for summary judgment, arguing that the claim should be dismissed under *Estate v. McGill ex rel. McGill v. Albrecht*, 203 Ariz. 525, 57 P.3d 384 (2002). They contended that “the alleged negligence occurred in connection with the diagnosis and treatment of an acute medical condition” and was not related to Shaw’s incapacity as required under *McGill*.

The trial court agreed and granted summary judgment. It acknowledged that “[i]t is unquestionable that Ms. Shaw was ‘vulnerable’ when she entered Manor Care,” but explained that “her death, according to the reports, is attributable to sepsis and perhaps occurrences secondary to sepsis.” In the court’s view, “[t]he management of an acute medical problem is what is at issue” and “[a]pplying the test of *McGill*, this case fails part four [of *McGill*’s four-point test] in that the sepsis is not related to that which caused the incapacity.” Delgado then appealed.

**The Court of Appeals Opinion.** The Court of Appeals reversed. It focused on the trial court’s ruling that APSA was inapplicable because the alleged negligence was unrelated to Shaw’s incapacity. The court noted that under *McGill*, a single act of negligence can constitute actionable

“abuse” under APSA if these requirements are met:

the negligent act or acts (1) must arise from the relationship of caregiver and recipient, (2) must be closely connected to that relationship, (3) must be linked to the service the caregiver undertook because of the recipient's incapacity, and (4) must be related to the problem or problems that caused the incapacity.

(Quoting *McGill*.)

The court explained that in interpreting these requirements, it was important to understand that APSA applies only to “situations in which the alleged negligence ‘is directly related to the caregiver’s responsibility in caring for the incapacitated patient is one from which that patient may not be able to protect him or herself.’” (Quoting *McGill*.) Such a claim may arise, the court continued, by a “‘nurse . . . plac[ing] an incapacitated person in a bathtub, turn[ing] on the water at too high a temperature, and [being] distracted for a moment.’” (Quoting *McGill*.) In contrast, APSA did not “apply to negligence that leads to injury that ‘can afflict anyone, not just the incapacitated,’” such as “a surgeon negligently failing ‘to remove an instrument or discover a perforation in the viscera.’” (Quoting *McGill*.)

Applying these principles here, the court noted that the parties did not dispute the trial court’s finding that Shaw was a vulnerable adult and that Manor Care was employed to provide care. The sole issue, the court explained, was whether the fourth *McGill* factor applied—“whether Manor Care’s alleged failure to provide medical services was related to the problems that caused Shaw’s incapacity.”

The court noted that Manor Care argued that Shaw’s death was caused by an acute medical problem unrelated to Shaw’s incapacity. Delgado, in contrast, argued that Shaw’s death was caused by Manor Care’s alleged failure to provide adequate medical care for Shaw once she presented with an UTI and later sepsis. But for her incapacity, Delgado contended, Shaw could have sought medical treatment for herself when the infection occurred. And Delgado pointed to the testimony of her standard of care expert and a nursing expert to establish Manor Care and Cuzner had been negligent in failing to seek or provide additional medical care for Shaw.

The court ruled that the evidence presented “could allow a factfinder to conclude that Manor Care had committed abuse under APSA by failing to seek medical attention for Shaw exactly because she was incapacitated.” The standard of care expert’s affidavit averred that “Shaw was incapacitated and was dependent upon nursing staff for the provision of medical attention.” From this, the court concluded that “Delgado presented triable issues of fact as to whether Manor Care’s alleged failure to seek further medical care for Shaw was ‘related to the problem or problems that caused [Shaw’s] incapacity.’” (Quoting *McGill*.) The court therefore held that “the trial court erred by granting summary judgment of Manor Care” and Cuzner.

#### **ISSUE:**

Manor Care and Cuzner are asking the Arizona Supreme Court to address this issue:

“Whether Manor Care’s alleged negligence was sufficiently related to Shaw’s ‘vulnerability’ to give rise to a claim for ‘abuse’ under A.R.S. § 46-451(A)(1)(b).”

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