



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**PREMIER PHYSICIANS GROUP, PLLC v.
KIMBERLY & EDDIE NAVARRO
CV-15-0323-PR**

PARTIES:

Petitioners: Kimberly and Eddie Navarro, wife and husband (“the Navarros”)

Respondent: Premier Physicians Group, PLLC (“Premier”)

FACTS:

Factual Background: Between June and October 2011, Premier treated Mandy Gipson for injuries she sustained in a car accident allegedly caused by Kimberly Navarro. On September 16, 2011, Premier recorded a lien for about \$12,000 in connection with the health care services it provided. In 2013, the Navarros’ insurer settled with Gipson and paid her the settlement amount without paying off the lien. Gipson, in turn, failed to pay Premier what she owed for her care.

In early 2014, Premier sued the Navarros under A.R.S. § 33-934 to enforce the lien. A.R.S. § 33-932(A) requires a health care provider to record its lien “*before or within thirty days after the patient has received any services relating to the injuries*, except a hospital which shall record within thirty days after the patient is discharged.” The Navarros moved to dismiss Premier’s action, contending that its lien was invalid because it was not recorded “within thirty days after the patient has received any services relating to the injuries.” They argued that the statute required a non-hospital provider to record its lien within thirty days after it *first* provides services, and that Premier missed that deadline by almost forty days. In response, Premier disputed the Navarros’ interpretation of the statute, arguing that a provider’s recording is timely so long as “any service” is provided within the preceding thirty days. As such, it argued, Premier’s lien complied with the statute because it was still providing services to Gipson when it recorded the lien.

The superior court found the Navarros’ argument more persuasive and dismissed the complaint, prompting Premier to appeal.

The Court of Appeals Opinion. The Court of Appeals vacated the dismissal. It first turned to Premier’s interpretation of A.R.S. § 33-934(A), noting that Premier argued that its lien was valid because it recorded its lien within thirty days after it had provided “any services” to Gipson. The court rejected that interpretation on the ground that it ignored the distinction the statute draws between hospitals and non-hospital providers, essentially treating them the same. Premier’s interpretation, it reasoned, “would allow a non-hospital health care provider to record a lien for all services it provided to the patient as long as it recorded the lien within 30 days after discharging the patient—a right the Legislature gave only to hospitals.”

It then turned to the interpretation offered by the Navarros, who argued that the phrase “any services” refers to when “any services” are first provided. The court rejected that interpretation

because “we would have to insert an additional requirement into the statute, effectively changing it to require a non-hospital health care provider to record a lien within 30 days after the patient *first* receives any services relating to the injuries.” Doing that, it reasoned, would violate “a fundamental rule of statutory construction that a court should not impose a requirement into a statute that the Legislature has elected to omit.”

The court explained that it was bound to give effect to legislative intent, and, in doing so, it was not limited to the statutory interpretations offered by the parties. To determine legislative intent, it continued, “we examine the wording of A.R.S. § 33-932 as a whole, and we view that wording in context with due regard to the distinction the statute draws between hospitals and non-hospital health care providers.” It noted that under the statute, a hospital may perfect a lien by recording it up to thirty days after a patient’s discharge. Once that occurs, it continued, “a hospital’s lien applies retroactively to all services it provided to the patient related to the patient’s injuries, even if it provided those services more than 30 days before it recorded the lien.”

In contrast, it explained, a non-hospital provider may perfect a lien “only if it records the lien before or within 30 days after the patient receives any services related to the injuries.” From that, it reasoned that “[u]nless the lien is recorded before the patient receives the services, the lien applies retroactively only to the services provided to the patient within the 30 days prior to its recordation.”

Accordingly, the court concluded, “a non-[hospital] health care provider’s lien applies retroactively to any services received by the patient within the 30 days preceding the recording of the lien and prospectively thereafter, assuming the non-hospital provider complies with all other statutory lien formalities.” That construction, the court contended, “maintains the distinction between hospitals and non-hospital health care providers and is consistent with the purpose of the health care provider lien statutes,” which is “to lessen the burden on hospitals and other medical providers imposed by non-paying accident cases.” (Quoting *Blankenbaker v. Jonovich*, 205 Ariz. 383, 387 ¶ 19, 71 P.3d 910, 914 (2003).)

Applying this rule here, the court ruled that Premier’s lien “applied retroactively to any services it provided to the third party within the 30 days prior to September 16, 2011”—the date it recorded its lien—“and prospectively to any services rendered thereafter.” It also ruled that Premier could enforce its lien against the Navarros “insofar as it pertained to those services,” requiring reversal of the dismissal of Premier’s action. It also found that the Premier was the “prevailing party on appeal” and awarded it attorney’s fees under A.R.S. § 33-934(B).

ISSUES:

- (1) “Premier is a non-hospital health care provider. Was Premier’s health care lien untimely (and therefore unenforceable) because the lien was not recorded ‘before or within thirty days after the patient has received any services relating to the injuries,’ as required by A.R.S. § 33-932(A)?”
- (2) “A.R.S. § 33-934(B) requires a party to prevail in an action to enforce a lien before the court has discretion to award attorneys’ fees. Premier has not prevailed in an action to enforce a lien and may never prevail in such action. Thus, did the court of appeals err as a matter of law by awarding Premier fees?”

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