



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**LETTIE PRESTON v. KINDRED HOSPITALS WEST, LLC.  
CV-10-0292-PR**

**PARTIES:**

*Petitioner:* Defendants/Appellees Kindred Hospitals West, LLC.

*Respondents:* Plaintiffs/Appellants Lettie Preston and Rodena Preston, Co-Personal Representatives of the Estate of William Everett Preston.

**FACTS:**

In 2005, Billy Preston, a musician sometimes referred to as “the Fifth Beatle,” filed for Chapter 11 bankruptcy in California. Shortly thereafter, Mr. Preston became a patient at Kindred Hospital (“Kindred”) in Scottsdale, where he stayed until his death in June 2006. His bankruptcy was then converted to a Chapter 7 proceeding. According to federal bankruptcy law, any claims Mr. Preston had against Kindred belonged to the bankruptcy estate, not his personal estate.

Mr. Preston’s sisters (“the Prestons”), co-personal representatives of his estate, brought suit in California against parties other than Kindred for damages resulting from his alleged negligent care. The suit was dismissed with prejudice. The Prestons then filed a lawsuit in Arizona against Kindred, alleging wrongful death and elder abuse. Kindred moved to dismiss, arguing that the bankruptcy trustee was the real party in interest (*i.e.*, the party who should have brought the lawsuit), and that the Prestons were not proper parties to the action.

The Prestons conceded the claims were property of the bankruptcy estate and that the bankruptcy trustee was the real party in interest. Nevertheless, they argued they were entitled to correct their mistake by joining or substituting the trustee based on Rule 17(a), Arizona Rules of Civil Procedure. That rule provides, in part: “No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.”

The bankruptcy trustee submitted a formal declaration, stating that, in order to protect a potential asset of the bankruptcy estate, he supported the Prestons’ pursuit of the action and their opposition to dismissal. The declaration explained, however, that the trustee’s ability to act for the bankruptcy estate was stayed because of a pending motion to disqualify the trustee.

The trial court granted the motion to dismiss. Although it recognized Rule 17(a) provides that the real party in interest should be given a reasonable time to join in the action before dismissal, it noted that the rule is intended to prevent the forfeiture of claims when it is difficult to

determine who the plaintiff should be or when an understandable mistake has been made. In this case, the court concluded, “those considerations [were] not at play” because the Prestons were fully aware of the bankruptcy and no understandable mistake had occurred.

The court of appeals reversed the order of dismissal. It held that, under its interpretation of Rule 17(a), neither difficulty in determining the proper party nor an understandable mistake are preconditions to substitution of a real party in interest. Kindred petitioned the supreme court for review.

**ISSUE:**

“The court of appeals holding that, under Arizona Rule of Civil Procedure (‘Rule’) 17(a), a plaintiff can substitute a real party in interest, without establishing that the proper party plaintiff was difficult to determine or that they made an ‘understandable mistake,’ is contrary to both well-established law and sound public policy. *See Preston v. Kindred Hospitals West, LLC*, 558 Ariz. Adv. Rep. 54, ¶1 (August 5, 2010).

“The proper interpretation of the Arizona Rules of Civil Procedure is an issue of statewide importance, *see* ARCAP 23(c), and the Court has jurisdiction, under Article 6, Section 5(3) of the Arizona Constitution and A.R.S. §12-120.24 (2003), to review the court of appeals’ opinion. The Court should reverse the court of appeals opinion and remand the case back to the court of appeals for a determination of whether the trial court abused its discretion in finding that no understandable mistake was made in identifying the proper party to this action.”

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