



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ELIZABETH WALSH v.
ADVANCED CARDIAC SPECIALISTS
CV-11-0198-PR**

PARTIES:

Petitioners: Annette Forrester, Scott Walsh, Steven Walsh, and Lisa Cline

Respondent: Advanced Cardiac Specialists

FACTS:

Jerome Walsh, a Minnesota resident, was treated by doctors employed by Respondent Advanced Cardiac Specialists while he was visiting in Arizona. Sometime after returning to his home in Minnesota, Jerome died of endocarditis, a form of heart infection. Petitioners, Jerome's adult children, together with their mother, filed a wrongful death suit against multiple defendants who took part in treating Jerome. They alleged that Respondent's employees failed to diagnose and cure Jerome's heart infection, thus causing his death.

At trial, Petitioners and their mother testified about their warm relationship with Jerome. Respondent did not present any evidence attempting to undermine Petitioners' characterization of their relationship with their father and did not cross-examine any of the Petitioners. In closing, Respondent argued primarily that the damages Petitioners and their mother were seeking were too high.

The jury found Respondent and certain other defendants were liable for Jerome's death. It awarded damages of \$1 million to Elizabeth and zero damages to each of the children. On the verdict form, the jury hand wrote "0" in the space next to each Petitioner's name. Petitioners' counsel did not request that the jury be required to deliberate further, nor did he argue that there was an error or defect in the verdict.

After the jury was discharged, Petitioners filed a motion for a new trial. They argued that Arizona's wrongful death statute, A.R.S. § 12-613, together with two prior court of appeals opinions in *White v. Greater Arizona Bicycling Ass'n*, 216 Ariz. 133, 163 P.3d 1083 (App. 2007), and *Sedillo v. City of Flagstaff*, 153 Ariz. 478, 737 P.2d 1377 (App. 1987), prohibited the jury from awarding zero damages to the Petitioners. According to Petitioners, because Respondent did not present any evidence challenging Petitioners' damages, the jury was required to award them at least nominal damages.

Respondent argued that Petitioners should have brought their motion before the jury was discharged, and their failure to do so caused the motion to be untimely, resulting in waiver of the argument. The trial court agreed with Petitioners that *White* and *Sedillo* require the jury to grant at least some damages, but it interpreted the lack of any damages for Petitioners to be

inconsistent, requiring Petitioners to object while the jury was still present. Because they did not do so they waived the issue, and the trial court dismissed their motion.

On appeal, the court of appeals determined *White* and *Sedillo* were wrongly decided, and a jury verdict of zero damages in a statutory wrongful death case is permissible. As such, the verdict was not inconsistent, and the waiver issue was moot. The court pointed out a wrongful death claim is a creature of statute, and its elements are controlled by the language of the statute. Here, A.R.S. § 12-613 provides:

the jury shall give such damages as it deems fair and just with reference to the injury resulting from the death to the surviving parties who may be entitled to recover, and also having regard to the mitigating or aggravating circumstances attending the wrongful act, neglect or default.

Under the statute's plain language, damages are not an essential element of a statutory wrongful death claim; it requires only that the jury give "such damages *as it deems fair and just*," thus permitting a jury award of zero damages. The word "shall" in the statute is not an imperative requiring the jury to award damages in a particular amount, but to do what is "fair and just."

The court found this statutory construction is consistent with previous holdings. *See, e.g., Quinonez v. Andersen*, 144 Ariz. 193, 198, 696 P.2d 1342, 1347 (App. 1984) (affirming award of zero damages to surviving husband who regularly had beaten and abused his deceased wife). With the exception of *White* and *Sedillo*, both the statutory scheme and prior case law support the conclusion that a wrongful death action does not preclude a jury from returning a verdict of zero damages.

In this case, the court found cogent reasons to disrupt existing precedent. To require an award of damages to a plaintiff in a wrongful death case absent contradictory evidence is legally flawed. First, the burden is on a plaintiff to prove damages; second, that burden does not shift; and third, only the jury is in the position to evaluate and weigh the evidence and witness credibility, and it is free to disregard the evidence a plaintiff produces. To adopt the rule that *White* and *Sedillo* promulgate does away with these foundational principles. The court therefore overruled *White* and *Sedillo*.

ISSUE:

Where wrongful death damages for all claimants were stipulated or conceded at trial by defendant, but the jury disregarded plaintiffs' undisputed evidence supporting the stipulation or concession, are claimants who were awarded 'zero' damages by the jury entitled as a matter of law to a new trial on the amounts of their wrongful death damages?

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