



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**ESTATE OF JACOB BRADEN v. STATE OF ARIZONA  
CV-10-0300-PR**

**PARTIES:**

*Petitioner:* State of Arizona and the Division of Developmental Disabilities of the Arizona Department of Economic Security (collectively “the State”).

*Respondent:* The Estate of Jacob Braden by and through its personal representative, Tonya Gabaldon, his mother and legal guardian.

**FACTS:**

Jacob Braden, a developmentally disabled adult, received governmental services for his disabilities. The State’s Developmental Disabilities Division of the Department of Economic Security (the DDD) is authorized by statute to contract with private agencies to provide services for such persons. It contracted with such a private facility to provide services for Jacob.

In 2005, Jacob died as a result of injuries he suffered while living at the contract facility. His Estate sued the State and the facility, alleging (among other claims) statutory abuse and neglect pursuant to A.R.S. § 46-455, part of Arizona’s Adult Protective Services Act (APSA). The State moved for summary judgment on the ground that it was not liable under § 46-455 because it did not “assume a legal duty” to provide care and was not “employed” to provide care for Jacob.

The trial court granted the State’s motion for summary judgment and denied the Estate’s motion for new trial. In its minute entry, the trial court explained (1) that the State was not “employed” to provide services for Jacob because it was “not hired to care for the decedent and did not provide his actual hands-on care,” and (2) that the State had not “assumed” a legal duty to provide care for Jacob because it did not “take upon one’s self a duty,” but “was required to oversee and administer such care . . .” by statute. The Estate appealed from entry of judgment for the State. The contract facility settled with the Estate and is not involved in this appeal.

The court of appeals by a 2-1 majority reversed the summary judgment. First, it considered whether the State “provided care” to Jacob, and decided it did because it: (1) created an individual services plan (ISP) for him, determined the level of supervision he needed, and ensured that AIRES followed its requirements; (2) assigned a case manager to ensure he received the required care; and (3) directed staffing needs at the contract facility and monitored its compliance with the vendor agreement and ISP. These activities were required by statute or administrative regulation. Next, the majority considered whether the State “assumed a legal duty” to provide care and found that it had. The court declined to interpret the remedial

provisions of APSA in a manner that would require such a duty to be “assumed” only by voluntary action, rather than pursuant to a mandate imposed by statute. It said the legislature did not require voluntary assumption of this duty; and it found its conclusion was supported by a Merriam-Webster’s Online dictionary definition of “assume,” which showed assumption of a duty might be accomplished either by voluntary act or by mandate. It also found its interpretation comports with the APSA’s purpose and with other legislative mandates imposed on the State, like those requiring contracts for residential care services and periodic DES monitoring of the delivery of services under them. Finally, the majority examined whether the APSA exempts the State from liability and found that it does not.

The dissenting judge wrote that he would find the legislature did not intend the State to be one of the “enterprises” included within A.R.S. § 46-455(B), or that it “has assumed a legal duty to provide care,” and would not reach any of the other issues involved in the appeal.

**ISSUES:**

1. Did the State ‘assume a legal duty’ to provide care within the meaning of A.R.S. § 46-455(B)?
2. Did the State ‘provide care’ within the meaning of A.R.S. § 46-455(B)?
3. Does A.R.S. § 46-455(B) exempt the State?

An issue the State says may need to be decided if review is granted is:

Are the State and its Department of Developmental Disabilities “enterprises” within the meaning of A.R.S. § 46-455(B)?

**DEFINITIONS:**

A.R.S. § 46-455(B) provides in part:

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. . . .

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