

ARIZONA SUPREME COURT CLARIFIES DUTY STANDARDS FOR NEGLIGENCE CLAIM

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Quiroz v. Alcoa

Arizona Supreme Court, May 11, 2018



In a departure from its historical expansion of the concept of duty between parties, the Arizona Supreme Court has ruled that an employer did not owe a duty to protect its employee's family from second-hand asbestos exposure. In so holding, the court declined to adopt the "presumed duty" standard set forth in the Restatement (Third) of Torts § 7, and limited the existence of a duty to the principles it had previously announced in *Gipson v. Kasey* (2007) for establishing when one party owes a duty to another.

In October 2014, Ernest Quiroz died from mesothelioma, a form of cancer associated with exposure to asbestos. Quiroz's surviving family sued Reynolds Metal, Alcoa, Inc., and Reywest Development (collectively "Reynolds"), alleging their negligence caused Quiroz's death. Quiroz's father had worked at Reynolds' plant from 1948-1983 and his clothes were contaminated with asbestos fibers. The family alleged that when Quiroz's father came home from work, Quiroz was exposed to the asbestos fibers on his father's clothes, which eventually caused Quiroz's mesothelioma. The family alleged that Reynolds had a duty to protect Quiroz from exposure to take-home asbestos.

Reynolds moved for summary judgment, asserting it owed no duty to Quiroz. The trial court granted this motion, and the court of appeals affirmed. The Arizona Supreme Court accepted review to answer the following two questions: (1) whether Reynolds owed a duty to Quiroz; and (2) whether Arizona should adopt the duty framework contained in the Third Restatement.

The Supreme Court vacated the court of appeals decision, but affirmed the ruling that Reynolds owed no duty to Quiroz. It also rejected the duty framework contained in the Third Restatement. The court held that the employer owed no duty to the public regarding secondary asbestos exposure because (a) there was no common law special relationship between the employer and the public, and (b) the family failed to identify a public policy giving rise to such a duty. The court reaffirmed that (1) duty is not presumed; in every negligence case, the plaintiff must prove the existence of a duty; (2) foreseeability is not a factor in determining the existence of a duty; (3) duty is based on either special relationships recognized by the common law or relationships created by public policy, and (4) in the context of duty, the primary sources for identifying public policy are state and federal statutes. In the absence of such legislative guidance, duty may be based on the common law — specifically, case law or Restatement sections consistent with Arizona law.

The court declined to adopt the Restatement (Third) of Torts § 7, which provides that duty is ordinarily presumed to exist when a defendant, by his actions, creates a risk of harm to a plaintiff. The court felt this section defines risk creation so broadly that "virtually every case falls under the presumed duty of § 7." The court also rejected the Third Restatement because Arizona bases duty solely on special relationships and public policy — not risk creation; and the Third Restatement framework is "impractical, unmanageable, and has never been the law of this state."

Chief Justice Bales and Justice Pelander dissented, arguing that a duty should exist in this case under existing Arizona cases. They also believed that the Third Restatement is not at odds with Arizona law, but rather, "reflects the common law understanding of duty."

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