

ARIZONA COURT OF APPEALS HOLDS THAT BIFURCATION IS CONSTITUTIONAL IN CASES INVOLVING ROADWAY DESIGN AFFIRMATIVE DEFENSE

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Morales v. Coffey

Arizona Court of Appeals, Division 1

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In an opinion this week, the Arizona Court of Appeals held that a statute requiring bifurcation of trials for affirmative defenses in roadway design cases, A.R.S. § 12-820.03(B), is constitutional and does not infringe on the supreme court's authority to create rules of procedure.

This case involved a wrongful death claim after a car accident on the I-10 in Pima County. The statutory beneficiaries sued the State and claimed that the highway was negligently designed and that the State had failed to maintain adequate median separation and median-barrier protection. The State moved for summary judgment and argued that if the court disagreed, the court was required to bifurcate the trial to first to determine whether the affirmative defense found in A.R.S. § 12-820.03(A) applied. Plaintiffs argued that that the bifurcation provision was unconstitutional.

The trial court determined that A.R.S. § 12-820.03(B) required it to bifurcate the trial, but that it had discretion to determine what the bifurcated trial would look like. It ordered that the first phase of the trial would address whether the State met the elements of the affirmative defense requirements and, if it did not, the second phase would address the merits of Plaintiffs' claims. Plaintiffs petitioned for special action review, and the court of appeals accepted review.

The court of appeals determined that the bifurcation provision falls within the legislature's power under the Immunity Clause of the Arizona Constitution. The Immunity Clause gives the legislature the power to direct "in what manner and in what courts suits may be brought against the state." The court found that the plain language of the clause gave the legislature the power to direct the trial procedure in a case against the state.

The court compared this power to other aspects of immunity, such as the legislature's power to determine the applicable statute of limitations against the state and the venue where the suit must be litigated. It found the venue statute additionally instructive because venue is another procedure that removes discretion from the superior court.

Plaintiffs nevertheless argued that the Rulemaking Clause of the Arizona Constitution abrogated the legislative authority in the Immunity Clause, but the court disagreed. It explained that the Rulemaking Clause is a general grant of authority, but the Immunity Clause is a specific one. In constitutional law, a specific provision controls a general provision.

Although the court found the legislature had special authority to pass the bifurcation provision, it also addressed Plaintiffs' argument that the conflict between the statute and Rule 42 on bifurcation infringes on the supreme court's rulemaking authority. It found that the bifurcation provision and the rule do not conflict because the bifurcation provision was a more specific procedural direction than the broad framework of Rule 42.

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[Justin Ackerman](#) represents clients in federal and state appellate matters in cases involving excessive force, wrongful death, personal injury, bad faith, and premises liability. After graduating as the valedictorian of his class from Phoenix School of Law, Justin worked as a law clerk for the Hon. Michael J. Brown in Division One of the Arizona Court of Appeals. Following his clerkship, Justin has handled over 75 appeals, successfully arguing before the Arizona Court of

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