
COURT ADDRESSES WHETHER MEXICO OR ARIZONA IS THE MORE CONVENIENT FORUM

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Parra v. Continental Tire North America, et al
Ct. Appeals, Div. One, July 28, 2009

Authored by the JSH Appellate Team

Plaintiff, a Mexican citizen residing in Yuma County, was driving her vehicle in Mexico when the tread of her tire separated. Plaintiff lost control of her vehicle, and went off the road, killing Plaintiff's mother and one of her daughters, and injuring herself, and other passengers. Plaintiff sued in Arizona. Defendants moved to dismiss, arguing the suit's connection to Arizona was "tenuous" and that Sonora was a more convenient forum. Plaintiff argued Defendants failed to establish that a Mexican court would accept jurisdiction where the statute of limitations had run. At oral argument, Defendants stipulated that they would submit to Mexican jurisdiction, and would waive any applicable statute of limitations. The Court ruled in favor of Defendants. In a motion for new trial, Plaintiffs provided an affidavit from a Mexican lawyer stating that Mexican law does not allow a waiver of the statute of limitations.

The court of appeals reversed. In a case brought by a resident, the superior court's discretion in balancing the respective private and public interests is limited by the weight it must give to the Plaintiff's choice of forum. Before a defendant may win a dismissal on forum non conveniens grounds, defendant must show there is an available and adequate alternative forum, and that, on the balance, the alternative forum is more convenient. This second prong contains a two part analysis, whereby the court must balance public and private interests. Here, Defendants failed to establish that an alternative forum was available, and the two part balancing test amounted to somewhat of a "draw." And where public policies weigh against dismissal and private interests weigh only slightly in favor of dismissal, those factors cannot outweigh the deference we must accord the plaintiff's choice of forum. Accordingly, the Court reversed the superior court's ruling, and remanded the case for trial.