
JURY IS APPROPRIATE FACT FINDER FOR QUESTION OF FACT ON NOTICE OF CLAIM COMPLIANCE

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Lee v. State

Ct. Appeals, Div. One, November 9, 2010

Authored by the [JSH Appellate Team](#)

A car accident killed Plaintiff's wife and the other two passengers in his car. Plaintiff sued the State claiming the State negligently designed, constructed, and maintained the road and guardrail involved. The State moved to dismiss on the ground that it had not received a notice of claim as A.R.S. § 12-821.01 requires. Plaintiff responded, providing a copy of his notice of claim and a declaration that Plaintiff had timely mailed the notice. The trial court granted the motion to dismiss, but the Supreme Court reversed, holding that when a claimant presents proof that a notice of claim was properly mailed to the proper authorities, it creates a rebuttable presumption that the notice was received, and whether the State received the notice of claim is an issue to be determined by the factfinder. On remand, the trial court ruled that it had broad discretion to resolve issues of fact pertaining to preliminary matters that do not go to the merits of the case, and set the notice of claim issue for an evidentiary hearing. After the evidentiary hearing, the trial court again dismissed the case, finding that the state had not received the notice.

The court of appeals reversed, ruling that a jury should have decided the factual issue. The court disagreed that the notice of claim filing requirement was only an "administrative barrier" or a procedural matter for the court. Rather, it is an affirmative defense that must be resolved by a jury. The court suggested that the trial court could immediately set a date for what likely would be no more than a one or two day jury trial on this limited issue, deferring discovery on the merits until the notice of claim issue is resolved. The court indicated that the notice of claim issue should not await trial on the merits.