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A TORT DEFENDANT MAY NAME PLAINTIFF'S SUBSEQUENT PHYSICIAN AS A NON-PARTY AT FAULT, DESPITE THE "ORIGINAL TORTFEASOR RULE"

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Cramer v. Starr
Arizona Supreme Court, July 18, 2016

Arizona's comparative fault statute (UCATA) requires the trier of fact in a tort case to compare and apportion the fault of all persons who are alleged to have contributed to the plaintiff's injury. With a few exceptions, each person is liable only for his or her own percentage of fault. On the other hand, the traditional "original tortfeasor rule" states that if a negligent actor is liable for another's bodily injury, he is also liable for any additional bodily harm resulting from the normal efforts of third persons in rendering aid, whether negligent or non-negligent. In Cramer v. Starr the Arizona Supreme Court reconciled these two seemingly opposing concepts.

Cramer rear-ended Munguia's vehicle, injuring Munguia. Munguia was treated by a physician. Munguia sued Cramer, and an IME was performed on Munguia. The IME doctor opined not only that Munguia's injuries were unrelated to the accident, but also that Munguia's medical treatment was medically unnecessary and had "effectively disabled" Munguia. As a result, Cramer named Munguia's physician as a non-party at fault. Munguia moved to strike the notice, arguing that under the original tortfeasor rule, Cramer was liable not only for her own percentage of fault, but also for any injuries caused by the physician who treated Munguia's accident-related injuries. The trial court struck Cramer's non-party at fault notice based on the original tortfeasor rule, but ruled that Cramer could still dispute whether Munguia reasonably sought medical care and/or reasonably selected her doctor.

The Supreme Court reversed, holding that the UCATA is clear: Cramer was allowed to name the physician as a non-party at fault. Cramer might be liable for any enhanced harm to Munguia proximately resulting from the medical provider's negligent treatment, but only if the trier of fact allocates such fault to Cramer. Under UCATA, any liability placed on Cramer for Munguia's enhanced injury could not come from automatically imputing the physician's fault to Cramer. In so holding, the Supreme Court rejected Munguia's arguments that (a) UCATA does not apply because this case involved successive, not joint, tortfeasors, and (b) Cramer should be liable for the full amount of damages, but could seek contribution from the physician. Such arguments, said the Court, could not be reconciled with UCATA's clear directive that in general, each party is liable only for that percentage of fault the jury allocates to him or her. The Court explained:

> [T]he [original tortfeasor] rule cannot be used to automatically impute to the original tortfeasor the subsequent negligence of a medical provider or other person who renders aid reasonably required by the original tortfeasor's act. But . . . plaintiffs remain free to argue . . . that an original tortfeasor proximately caused subsequent, enhanced injury and shares all or at least some responsibility for that injury.

The trial court thus erred in preventing the jury from considering the physician's potential fault.

The Court did not address whether the preliminary affidavit requirements of A.R.S. §§ 12-2603 and -2604 applied to Cramer's notice of non-party at fault and, if so, whether Cramer's notice was compliant.

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