

Ninth Circuit Holds Arizona’s Notice of Claim Statute Does Not Apply to Claims for Nominal Damages

Platt v. Moore, 2021 WL 4516856 (9th Cir. Oct. 4, 2021)

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In *Platt v. Moore*, 2021 WL 4516856 (9th Cir. Oct. 4, 2021), the Ninth Circuit was called upon to decide whether Arizona’s notice of claim statute would apply to a claim for nominal damages – an issue that no prior Arizona state court had addressed. The court held in a split opinion that the Arizona Supreme Court would not apply the notice of claim statute to a claim for \$1 in nominal damages.

The majority reasoned that nominal damages, like declaratory relief, “are outside the preeminent financial and budgeting purposes of Arizona’s presuit claim-filing requirement.” “[T]here is scant difference between a claim for declaratory relief and incidental damages and one for nominal damages, except that the nominal damages are more like pure declaratory relief because they are by definition minute and so of no budgetary consequence.” The primary purpose of claims for nominal damages is not a substantial damages award but a legal liability ruling, rendering any one-dollar award comparatively inconsequential. Therefore, “suits for nominal damages are closely similar to suits for declaratory relief with respect to those purposes” and as a result the plaintiff did not need to comply with Arizona’s notice of claim statute (A.R.S. § 12-820.01) to pursue such damages.

In reaching this conclusion, the Ninth Circuit looked to California law interpreting its notice of claim statute, as it said Arizona courts had done in the past.

One judge dissented on this issue. He argued that litigants need a bright line rule between a claim requesting damages and a claim seeking injunctive/declaratory relief. The majority’s decision, he said, creates confusion on whether a notice of claim applies to certain requested damages. He also criticized the majority for over-relying on California law. Indeed, the primary Arizona case the majority cited, *Martineau v. Maricopa County*, distinguished California law; and Arizona appellate cases following *Martineau* made clear that even nominal damages falls within the notice of claim statute. Finally, the dissenting judge noted that in a case like this, where plaintiffs could only pursue a claim for nominal damages and not for declaratory or injunctive relief, “a claim for nominal damages is in this respect no different from a small claim for compensatory damages.”

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