

Arizona Supreme Court
Civil Petition for Review - Appeal

CV-23-0152-PR

FRANCISCO, et al v AFFILIATED UROLOGISTS, et al

Appellate Case Information

Case Filed: 19-Jun-2023
 Case Closed:

Dept/Composition

En Banc
 Hon. Robert Brutinel
 Hon. Ann A. Scott Timmer
 Hon. Clint Bolick
 Hon. John R Lopez
 Hon. James P Beene
 Hon. William G Montgomery
 Hon. Rebecca White Berch

Side 1. DAVID FRANCISCO, et al., Plaintiff/Appellant

(Litigant Group) DAVID FRANCISCO, et al.

- David Francisco
- Kimberley Francisco

Attorneys for: Plaintiff/Appellant

Jason M Kelly, Esq. (AZ Bar No. 20525)
 Richard D Lyons, Esq. (AZ Bar No. 20558)

Side 2. AFFILIATED UROLOGISTS LTD, et al., Defendant/Appellee

(Litigant Group) AFFILIATED UROLOGISTS LTD, et al.

- Affiliated Urologists Ltd
- Kevin Art

Attorneys for: Defendant/Appellee

Eileen Dennis GilBride, Esq. (AZ Bar No. 9220)
 Cristina M Chait, Esq. (AZ Bar No. 15094)

Side 3. THE ARIZONA ASSOCIATION FOR JUSTICE/ARIZONA TRIAL LAWYERS ASSOCIATION, Amicus Curiae

(Litigant Group) THE ARIZONA ASSOCIATION FOR JUSTICE/ARIZONA TRIAL LAWYERS ASSOCIATION

- Arizona Association for Justice
- Arizona Trial Lawyers Association

Attorneys for: Amicus Curiae

David L Abney, Esq. (AZ Bar No. 9001)

Side 4. BANNER HEALTH, DIGNITY HEALTH, HONORHEALTH, PHOENIX CHILDREN'S HOSPITAL, THE ARIZONA MEDICAL ASSOCIATION, AND THE AMERICAN MEDICAL ASSOCIATION, Amicus Curiae

(Litigant Group) BANNER HEALTH, DIGNITY HEALTH, HONORHEALTH, PHOENIX CHILDREN'S HOSPITAL, THE ARIZONA MEDICAL ASSOCIATION, AND THE AMERICAN MEDICAL ASSOCIATION

- Banner Health
- Dignity Health
- HonorHealth
- Phoenix Children's Hospital Inc
- American Medical Association
- Arizona Medical Association

Attorneys for: Amicus Curiae

Rita J Bustos, Esq. (AZ Bar No. 25956)

CASE STATUS

Aug 16, 2024...Decision Rendered	Jan 9, 2024.....Oral Argument Granted
Dec 15, 2023....Continued	Jun 19, 2023.....Pending

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA 1 CA-CV 21-0701					
↪ MAR CV2020-010470	Medical Malpractice		James D Smith, Authoring Judge of Order Comments: (none)		

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CASE DECISION

16-Aug-2024 OPINION

For the reasons stated, we vacate the court of appeals' memorandum decision and affirm the trial court's judgment.

Filed: **16-Aug-2024**

Mandate:

Decision Disposition

CofA Vacated
Affirmed

William Montgomery.....Author
Ann Timmer.....Concur
John Lopez.....Concur
Robert Brutinel.....Concur
James Beene.....Concur
Rebecca Berch.....Concur
Clint Bolick.....Dissent in Part

39 PROCEEDING ENTRIES

1. 19-Jun-2023 FILED: Petition for Review; Certificate of Service; Certificate of Compliance; Memorandum Decision (Appellees Affiliated Urologists, et al.)
2. 19-Jun-2023 FILED: Record From CofA: Electronic Record
3. 23-Jun-2023 RECEIPT No.: 2023-00552 ; \$280.00, Authorization: 8473427916260736, Applied to: AFFILIATED UROLOGISTS LTD, et al. - Class A Filing Fee (\$280.00) Paid for: AFFILIATED UROLOGISTS LTD, et al. - By nCourt LLC
4. 27-Jun-2023 FILED: (Motion for Procedural Order) Unopposed Motion to Extend Time to Respond to Defendants'/Appellees' Petition for Review; Certificate of Service (Appellants Francisco, et al.)
5. 27-Jun-2023 A "(Motion for Procedural Order) Unopposed Motion to Extend Time to Respond to Defendants'/Appellees' Petition for Review" (Appellants Francisco, et al.) having been filed on June 27, 2023,

IT IS ORDERED granting a first extension of time to file the response to petition for review on or before August 3, 2023. No further extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman, Clerk)
6. 3-Aug-2023 FILED: Response to Petition for Review; Certificate of Service; Certificate of Compliance (Appellants Francisco, et al.)
7. 11-Aug-2023 RECEIPT No.: 2023-00595 ; \$140.00, Authorization: 8561708728210024, Applied to: DAVID FRANCISCO, et al. - Class B Filing Fee (\$140.00) Paid for: DAVID FRANCISCO, et al. - By nCourt LLC
8. 24-Aug-2023 FILED: Amicus Curiae Brief of Banner Health, Dignity Health, Honorhealth, Phoenix Children's Hospital, the Arizona Medical Association, and the American Medical Association; Certificate of Service; Certificate of Compliance (Amicus Banner Health, et al.)
9. 24-Aug-2023 FILED: Consent of the Parties; Kelly Consent to File; Gilbride Consent to File (Amicus Banner Health, et al.)
10. 24-Aug-2023 FILED: Amicus Curiae Brief of the Arizona Association for Justice/Arizona Trial Lawyers Association; Certificate of Service; Certificate of Compliance (Amicus AZ Association/AZ Trial Lawyers)
11. 24-Aug-2023 FILED: Consent of All Parties to Amicus Curiae Brief (Amicus AZ Association/AZ Trial Lawyers)
12. 31-Aug-2023 FILED: Response to Amicus Brief of Ariz. Assoc. for Justice/Ariz. Trial Lawyers' Assoc.; Certificate of Service; Certificate of Compliance (Appellees Affiliated Urologists, et al.)
13. 13-Sep-2023 FILED: Response to Amicus Petition; Certificate of Service; Certificate of Compliance (Appellants Francisco, et al.)
14. 30-Oct-2023 FILED: Notice of Change of Firm Affiliation and Address; Certificate of Service (Amicus Banner Health, et al.)
15. 15-Dec-2023 ORDERED: Petition for Review = CONTINUED.

FURTHER ORDERED: Request for Attorneys' Fees (Appellants Francisco et al.) = CONTINUED.

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16. 9-Jan-2024 ORDERED: Petition for Review = GRANTED.
- FURTHER ORDERED: The case shall be set for oral argument.
- FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than 20 days from the date of this Court's Minute Letter. Any amicus briefs are due on or before February 12, 2024 and any responses to amicus briefs are due on or before March 4, 2024. Any amicus briefs or responses may not exceed 20 pages in length.
- FURTHER ORDERED: Request for Attorneys' Fees (Appellants Francisco et al.) = CONTINUED.
17. 11-Jan-2024 NOTICE OF ORAL ARGUMENT: Set for Tuesday, March 12, 2024 at 9:30 A.M. [twenty (20) minutes per side]
18. 15-Jan-2024 FILED: Stipulated Motion to Continue Oral Argument; Certificate of Service (Appellants Francisco, et al.)
19. 24-Jan-2024 FILED: Notice of Change of Counsel Within Firm; Certificate of Service (Appellees Affiliated Urologists, et al.)
20. 24-Jan-2024 FILED: Unopposed Motion for Procedural Order for Extension of Time to File Supplemental Briefs; Certificate of Service (Appellees Affiliated Urologists, et al.)
21. 29-Jan-2024 On January 15, 2024, Appellants Francisco, et al., filed a "Stipulated Motion to Continue Oral Argument" and on January 24, 2024, Appellees Affiliated Urologists, et al., filed an "Unopposed Motion for Procedural Order for Extension of Time to File Supplemental Briefs." After consideration,
- IT IS ORDERED the Oral Argument currently set for Tuesday, March 12, 2024, has been rescheduled to Tuesday, April 9, 2024 at 9:30 a.m.
- IT IS FURTHER ORDERED extending all briefing dates in this matter. Parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than February 2, 2024. Any amicus briefs are due on or before February 16, 2024, and any responses to amicus briefs are due on or before March 8, 2024. Any amicus briefs or responses may not exceed 20 pages in length.
- IT IS FURTHER ORDERED that the Clerk of the Court shall issue a notice with the rescheduled oral argument date and time. (Hon. Robert Brutinel)
22. 2-Feb-2024 FILED: Supplemental Brief; Certificate of Service; Certificate of Compliance (Appellants Francisco, et al.)
23. 2-Feb-2024 FILED: Appendix to Supplemental Brief; Certificate of Service (Appellants Francisco, et al.)
24. 2-Feb-2024 FILED: Defendants'/Petitioners' Supplemental Brief; Certificate of Service; Certificate of Compliance (Appellees Affiliated Urologists, et al.)
25. 5-Feb-2024 NOTICE OF ORAL ARGUMENT: Set for Tuesday, April 9, 2024 at 9:30 A.M. [twenty (20) minutes per side]
26. 5-Feb-2024 FILED: Notice of Acknowledgment of Oral Argument (Eileen Dennis GilBride will argue) (Appellees Affiliated Urologists, et al.)
27. 16-Feb-2024 FILED: Supplemental Amicus Curiae Brief of the Arizona Association for Justice/Arizona Trial Lawyers Association; Certificate of Service; Certificate of Compliance (Amicus Amicus AZ Association/AZ Trial Lawyers)
28. 21-Feb-2024 FILED: Response to Supplemental Amicus Curiae Brief of the Arizona Association for Justice/Arizona Trial Lawyers' Association; Certificate of Service; Certificate of Compliance (Appellees Affiliated Urologists, et al.)
29. 6-Mar-2024 The Court set this case for oral argument to be held on Tuesday, April 9, 2024, at 9:30 A.M., in its Courtroom, Phoenix, Arizona. On the Court's own motion,
- IT IS ORDERED Rescheduling Oral Argument in this matter to be held on Thursday, April 18, 2024, at 9:30 a.m. in its Courtroom, Phoenix, Arizona.
- IT IS FURTHER ORDERED that the Clerk of the Court shall issue a notice with the rescheduled date and time. (Hon. Robert Brutinel)
30. 6-Mar-2024 NOTICE OF ORAL ARGUMENT: Set for Thursday, April 19, 2024 at 9:30 A.M. [twenty (20) minutes per side]
31. 6-Mar-2024 FILED: Record From CofA: Electronic Record
32. 7-Mar-2024 FILED: Notice of Acknowledgment of Oral Argument (Jason Kelly will argue) (Appellants Francisco, et al.)
33. 7-Mar-2024 FILED: Notice of Acknowledgment of Oral Argument (Eileen Dennis GilBride will argue) (Appellees Affiliated Urologists, et al.)

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34. 8-Mar-2024 FILED: Response to Supplemental Amicus Curiae Brief of the Arizona Association for Justice/Arizona Trial Lawyers' Association; Certificate of Service; Certificate of Compliance (Appellants Francisco, et al.)
35. 8-Mar-2024 FILED: Motion to Strike Plaintiffs' Response to ATLA's Supplemental Amicus Brief; Certificate of Service (Appellees Affiliated Urologists, et al.)
36. 11-Mar-2024 Justice King is recused and will not participate in the above captioned matter. Therefore, pursuant to Article 6, Section 3 of the Arizona Constitution,
- IT IS ORDERED that the Honorable Rebecca White Berch, Justice (Retired) of the Arizona Supreme Court, is designated to sit on the case until it is finally determined. (Hon. Robert Brutinel)
37. 15-Apr-2024 Appellees Affiliated Urologists LTD, et al. filed a "Motion to Strike Plaintiffs' Response to ATLA's Supplemental Amicus Brief" on March 8, 2024. Upon consideration,
- IT IS ORDERED denying the motion to strike. (Hon. Robert Brutinel)
38. 18-Apr-2024 ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: Eileen Dennis GilBride, Jason M. Kelly)
39. 16-Aug-2024 OPINION - For the reasons stated, we vacate the court of appeals' memorandum decision and affirm the trial court's judgment. (Hon William G. Montgomery - Author; Hon. Ann A. Scott Timmer - Concur; Hon. John R. Lopez IV - Concur; Hon. Robert Brutinel - Concur; Hon James P. Beene - Concur; Hon. Rebecca White Berch - Concur; Hon. Clint Bolick - Dissent in Part)