



## AHMAD v. STATE

2018 | Cited 0 times | Court of Appeals of Arizona | November 13, 2018

IN THE ARIZONA COURT OF APPEALS DIVISION ONE

SHUJA SAYED AHMAD and MARGARET S. AHMAD, surviving parents of ALEXANDER SAYED AHMAD, deceased, Plaintiffs/Appellants,

v.

STATE OF ARIZONA, a body politic, Defendant/Appellee.

No. 1 CA-CV 14-0664

Appeal from the Superior Court in Maricopa County No. CV2008-030707 The Honorable David O. Cunanan, Judge

REVERSED AND REMANDED

COUNSEL

Treon & Aguirre, PLLC, Phoenix By Richard T. Treon

Treon & Shook, PLLC, Phoenix By Daniel B. Treon Co-Counsel for Plaintiffs/Appellants

, Tucson By Robert R. McCright Counsel for Defendant/Appellee OPINION

Presiding Judge Peter B. Swann delivered the opinion of the court, in which Judge Lawrence F. Winthrop and Chief Judge Samuel A. Thumma joined.

S W A N N, Judge:

¶1 This is an appeal from an order of remittitur and conditional new trial on reversed and remanded in Ahmad v. State Ahmad I , 240 Ariz. 380 (App.

2016). The supreme court vacated our decision in Ahmad I and remanded the case to us for reconsideration in view of Soto v. Sacco, 242 Ariz. 474 (2017). Applying the law of remittitur as articulated in Soto, we again reverse because the superior court failed to state with particularity the



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grounds for its order, and the record does not reveal substantial evidence to support the verdict.

### FACTS AND PROCEDURAL HISTORY

¶2 During a pursuit by state and city law enforcement, a criminal The Ahmads brought a wrongful death action against the state on the

theory that the pursuit was unnecessary and dispatchers failed to communicate essential information.

¶3 The jury returned a verdict in favor of the Ahmads, awarding them \$30 million in damages and finding the state death. The state moved for a remittitur or a new trial on damages. The

reducing the damages responsibility from \$1.5 million to \$500,000, and granted a conditional new trial on damages only. The court held:

While courts generally loathe to alter a jury award, Rule 59 of the Arizona Rules of Civil Procedure does permit a verdict, decision, or judgment to be vacated and a new trial granted if a damages award is excessive or insufficient. Based upon the evidence presented at trial and the damages recoverable in this action, the Court finds that the thirty million dollar award was excessive. Although the award by the jury was excessive, the Court acknowledges the findings of the jury. Based upon the evidence presented at trial, the Court finds that the reasonable value of damages is ten million dollars. Although this amount is on the high side of a reasonable and just damages amount, based upon the facts decision, the Court finds this amount appropriate.

¶4 In for a complete new trial on all issues and their motion for reconsideration, and, because the Ahmads declined to accept the reduced damages amount, ultimately ordered a new trial on damages. The Ahmads timely appealed, and we reversed and remanded in Ahmad I. We now reconsider that decision under Soto.

### DISCUSSION

¶5 Educated

damages award. Rule 59(f)(1)(A). 1 As Soto 2 and serves the Ariz. at 478, ¶ 8 (citation omitted); see State v. Fischer,

242 Ariz. 44 (2017) (discussing consideration of motions for new trial by the interfering with a jury verdict by carefully and sparingly exercising its

Soto, 242 Ariz. at 477-78, ¶ Id. at 477, ¶ 1



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We cite the current version of the Rule because no changes material to this decision have been made since the 2014 trial. Compare Ariz. R. Civ. P. 59(f), (i) (2018) with Ariz. R. Civ. P. 59(i), (m) (2014).

2 Soto - unanimity requirement of criminal cases pertains to civil trials. See Ariz. Const. art. 2, § 23; A.R.S. § 21-102. 3 Id. at 478, ¶¶ 8 9 (citation omitted).

¶6 Soto held that the jury has no more discretion in wrongful death than personal injury actions, and that the foregoing remittitur standard is identical in both categories of cases. Id. at 481, ¶¶ 18 19. Soto further held that the superior court must state with particularity the grounds for a remittitur order. Id. at 479, ¶¶ 11 12 (construing materially similar provisions of 2016 version of Rule). To satisfy the particularity requirement, the court must do more than merely quote or paraphrase the Rule Id. at 480,

¶¶ 13 14. In the absence of such a description, an appellee bears the burden Id. at ¶ 15.

¶7 Here, the superior court recited the Rule and concluded, ve and should be reduced by two-thirds. In doing so, the court failed to satisfy the particularity requirement as articulated in Soto. Further, the state has not offered substantial evidence to support the reduced award, and we reject ts that we must nonetheless affirm.

¶8 The state first contends that the jury verdict was excessive because it was based on noneconomic damages alone. But the law neither requires that damages in wrongful death actions include pecuniary harm, nor imposes constraints on awards that lack an economic component. Wrongful death is a statutory cause of action, Walsh v. Advanced Cardiac Specialists Chartered, 229 Ariz. 193, 196, ¶¶ 7 8 (2012), and the statutory City of Phoenix v. Whiting, 10 Ariz. App. 189, 196 (App. 1969). A.R.S. § 12-613 provides that

[i]n an action for wrongful death, the jury shall give such damages as it deems fair and just with reference to the injury resulting from the death to the surviving parties who may be entitled to recover, and also having regard to the mitigating

3 or pre order a new trial without a remittitur option. Soto, 242 Ariz. at 478, ¶ 9. or aggravating circumstances attending the wrongful act, neglect or default.

comfort, and guidance caused by the death; suffering. Walsh, 229 Ariz. at 196, ¶ 8. The Ahmads presented

significant and profound emotional distress and a loss of companionship

and comfort. Multiple witnesses testified that Alex shared a close, loving, and mutually supportive relationship with the Ahmads, and that his death



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of the loss of companionship, affection, and society, and the anguish the parents experienced as a result of their [child Hernandez v. State, 128 Ariz. 30, 32 (App. 1980). And

its authority or acted out of passion or prejudice. Indeed, the \$30 million

sum for the two parents, combined with the attribution of 5% of the fault to the state, suggests that the verdict was the result of a temperate deliberative process.

¶9 The state nonetheless contends that a reduction was necessary incorrect wisdom . . . in coming up with whatever you think is fair and just

of anything less than added.) Moreover, even if the Ahmads had requested a certain sum, the damages estimations. See A.R.S. § 12-613.

¶10 entions that the jury was necessarily influenced by references to unavailable categories of damages, damages by suggesting that the jury was tasked with preventing future

deaths. See A.R.S. § 12-820.04 (punitive damages unavailable against public entities and public employees acting within scope of employment). But the losing argument), and

determined that the jury instructions adequately limited the jury to compensatory damages. In view of that ruling, we are unpersuaded by the

punitive damages. Moreover, we hold that the jury was properly instructed companionship, care, protection, and guidance since the death and in the

suffering already experienced, and reasonably probable to be experienced See supra ¶ 8. We presume that the jury followed the instructions, Elliott v. Landon, 89 Ariz. 355, does not suggest otherwise.

¶11 damages were excessive in comparison to verdicts in other cases. Soto held

that comparative-verdicts trial court should not treat other damage awards as conclusive in assessing turn on fact-intensive determinations, and juries may view similar cases

comparisons have some relevance, standing alone they are insufficient to establish justification for a remittitur.

¶12 order constituted an abuse of discretion.



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### CONCLUSION

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