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***Cramer v. Starr*, 240 Ariz. 4, 375 P.3d 69 (2016)**

In Arizona, juries may now apportion fault to non-party physicians who treated plaintiff for injuries caused by a defendant's negligence.

Arizona no longer follows the RESTATEMENT (SECOND) OF TORT'S version of the original-tortfeasor rule, which provides that an individual who injures another is also responsible for the foreseeable additional harm caused by negligent medical treatment.

Following a rear-end collision, Tammy Mungia elected to have spinal-fusion surgery to treat back pain allegedly resulting from the collision. The operation did not resolve Mungia's symptoms and may have exacerbated them. Mungia sued for damages stemming from the collision. Cramer named, Dr. John Ehteshami, the physician who performed the surgery, as a non-party at fault in accordance with Arizona law. The trial court struck the notice. Cramer filed a special action, but the Court of Appeals declined jurisdiction. On appeal, the Arizona Supreme Court reversed and remanded.

Cramer argued the trial court erroneously "took the issue of comparative fault from the jury," in violation of the Uniform Contribution Among Tortfeasors Act ("UCATA"), ARIZ. REV. STAT. § 12-2506. Cramer also asserted that RESTATEMENT (SECOND) OF TORTS § 457—the basis of the trial court's decision—could not "trump . . . controlling Arizona statute[s] and case law." Finally, Cramer argued that a more current Restatement superseded RESTATEMENT (SECOND) OF TORTS § 457.

In response, Mungia countered that Arizona had long recognized the original-tortfeasor rule embodied in the Restatement—a rule not displaced or abrogated by UCATA. Mungia asserted Cramer "cannot escape or reduce her liability by claiming harm was caused by non-party [physician]" but rather Cramer was independently liable "for any and all enhanced harm proximately resulting from her actions" and "foreseeably caused by a successive tortfeasor"—here, Dr. Ehteshami.

The Arizona Supreme Court held that UCATA applied under these circumstances. Under the provisions of ARIZ. REV. STAT. § 12-2506(B), the jury assesses percentages of fault after considering the fault of all persons who contributed to the alleged injury. This assessment occurs "regardless of whether the person was, or could have been, named as a party to the suit." By so holding, the Supreme Court rejected Mungia's argument that the original-tortfeasor rule applies to automatically attribute liability to a defendant for any damages caused by the negligent medical care a plaintiff received. In addition, to the extent RESTATEMENT (SECOND) OF TORTS § 457 could be read to preclude the application of UCATA, and to preclude a jury's ability to attribute fault between the defendant and physician, it was directly contrary to Arizona law. Finally, the Supreme Court committed Arizona to the RESTATEMENT (THIRD) OF TORTS § 35. Under that view, a defendant who causes the original injury *could* be liable for additional harm caused by a negligent medical provider, but the defendant *is not prohibited* from allocating fault to that medical provider if properly noticed under UCATA and the Civil Rules.

For these reasons, the Supreme Court reversed and remanded to the trial court.