



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



Arizona Civil Liberties Union of Arizona v. Arizona Department of Child Safety, CV-20-0030-PR

PARTIES:

Petitioner: Arizona Civil Liberties Union of Arizona

Respondent: Arizona Department of Child Safety

I. FACTS:

On May 6, 2013, ACLU submitted a request to the Arizona Department of Economic Security (“DES”) for records concerning child welfare services in the possession of DES’s Division of Children, Youth, and Families (“DCYF”) and Child Protective Services (“CPS”). Among other questions, ACLU asked for detailed data on the children who died of child abuse or neglect and who had been identified by CPS within 6 months of their death. By the end of 2013, DES had provided records responsive to 14 of the 30 requests. The remaining requests were left unanswered. On January 28 and January 31, 2014, ACLU submitted a second and third request seeking information about children in foster care. In its three requests, ACLU submitted a total of 173 public records requests.

In 2014, Governor Brewer abolished DCYF and replaced it with the Department of Child Safety (“DCS”). On April 23, 2014, ACLU sent a demand letter in a final effort to obtain the documents and information requested in its May 6, 2013 request. On April 28, 2014, DCS sent ACLU a letter acknowledging the “unintended” delay, and declaring that DCS staff were “actively pursuing a review of the remainder of [ACLU’s] data requests to determine what data can still be produced without creating an undue burden. . . .”

On May 2, 2014, ACLU filed a special action pursuant to [A.R.S. § 39-121.02](#) (“Action on denial of access; costs and attorney fees; damages”). ACLU also requested attorneys’ fees pursuant to [A.R.S. § 39-121.02 \(B\)](#) (“The court may award attorney fees and other legal costs that are reasonably incurred in any action [for denial of access to public records] if the person seeking public records has substantially prevailed.”) (emphasis supplied).

Within two months of ACLU filing suit, DCS assembled approximately five hundred pages of documents responsive to some of the outstanding requests. DCS objected to the remainder of the requests, arguing that they were outside the purview of the public records law because they “required the creation of new documents using data contained in [the] CHILDS [Children’s Information Library and Data Source database].”

While the special action was pending, DCS replaced DES as the sole defendant in the case pursuant to legislation creating DCS as the new standalone agency responsible for state-mandated child welfare functions.

After discovery, briefing, and an evidentiary hearing, during which DCS denied that the CHILDS database was a public record, the Superior Court rejected ACLU's request that it order DCS to produce records responsive to the remaining outstanding record requests. The Superior Court denied all relief sought by ACLU, including the claim for attorneys' fees and costs, finding that ACLU did not "substantially prevail" in its action. ACLU timely appealed, raising the question whether the Superior Court abused its discretion in denying ACLU's request for attorneys' fees. In a 2016 opinion, the Court of Appeals held that the "CHILDS" database was a public record. It also reversed the denial of ACLU's request for an award of attorneys' fees, and on remand directed the Superior Court to reconsider whether ACLU had "substantially prevailed" in this case.

On remand, the Superior Court ruled that ACLU had "substantially prevailed," reasoning that the "crux of the case was whether [CHILDS] system was a public record," and that "ACLU-AZ substantially prevailed because ACLU-AZ prevailed on appeal on the issue of whether CHILDS was a public record and DCS failed to promptly furnish the post-litigation documents." The Superior Court therefore awarded ACLU \$239,842.21 in attorney's fees and costs.

In DCS's appeal of the attorneys' fees award to ACLU, the Court of Appeals concluded that the determination that CHILDS was a public record was not sufficient to support the finding that ACLU "substantially prevailed" in the action. Even assuming the public-record status of CHILDS was important, DCS did not take a contrary position, the Court held. The Court of Appeals concluded that, because DCS was not adversarial on this issue, the previous appellate ruling that CHILDS was a public record could not provide a basis for finding that ACLU "substantially prevailed." Furthermore, because no additional documents were produced as a result of the finding that CHILDS was a public record, that determination did not aid ACLU in fulfilling its original requests. The award to ACLU of \$239,842.21 was therefore reversed.

ACLU's Petition for Review was granted by the Arizona Supreme Court.

II. ISSUE:

Did the court of appeals err by restricting the fee-shifting provision of the Public Records Law such that a party "may only 'substantially prevail' based on the documents they receive," rendering irrelevant all other factors, including results achieved by the litigation?

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.