ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

MARCIE NORMANDIN v. ENCANTO ADVENTURES, LLC,
CV-18-0200-PR

PARTIES:

Petitioner: Marcie Normandin ("**Marcie**")

Respondent: Encanto Adventures, LLC ("**Encanto**")

FACTS:

In 1991, the City of Phoenix and Encanto's predecessor entered into an agreement to establish a children's amusement park within Encanto Park. Under that agreement, the City licensed certain exclusive rights to construct, maintain, and operate children's rides in a fenced-in area of the Concession Premises ("**Enchanted Island"**), which also allowed Encanto's predecessor to use the remainder of the Concession Premise. Encanto's owner testified that for 25 years he personally maintained the Concession Premises, including an area neighboring Enchanted Island where piñata games were often played ("**piñata area**"). Encanto's owner and employees regularly patrolled, maintained, inspected, prepared, and groomed the piñata area.

Marcie paid Encanto $287 for her one-year-old daughter's birthday to be held at the Enchanted Island. The package explicitly excluded a piñata and provided that no part of Marcie's payment would have been refunded had she decided not to bring her own piñata or declined to participate in a piñata activity.

Encanto allows its customers to bring a piñata and set up and break the piñata during their birthday celebrations. However, Encanto requires that any piñata be broken outside of the fenced-in area of Enchanted Island. Encanto recommends customers use the piñata area outside of Enchanted Island. Marcie stepped on a sprinkler-head divot in the piñata area and fell, breaking her ankle and injuring her arm.

Marcie sued the City and Encanto for simple negligence. Encanto and the City moved for summary judgment, arguing that they could not be sued under A.R.S. § 33–1551(A), also known as the "**recreational use statute.**" Marcie argued that the recreational use statute violates Arizona's constitution. The trial court granted the motion for summary judgment, and Marcie timely appealed. The court of appeals affirmed. In paragraph 6 of its opinion, the court of appeals wrote:

> [Marcie] argues the superior court erred by granting summary judgment because: (1) Encanto was not an entity protected by § 33–1551(A), whether as an "owner, ... lessee, ... manager or occupant" of the premises; (2) [Marcie] either paid more than a nominal fee to Encanto, which excluded her from being a recreational user of the

Park under § 33–1551, or the nominality of the fee paid is a question of fact to be resolved by a jury; (3) for private persons and private corporations, § 33–1551 violates the Anti–Abrogation Clause, Article 18, Section 6, of the Arizona Constitution; (4) the statute violates the Equal Privileges-and-Immunities Clause, Article 2, Section 13, of the Arizona Constitution; and (5) the statute is an unconstitutional special law.

ISSUE PRESENTED:

Did the court of appeals err in resolving the issues raised in paragraph 6 of the court of appeals' opinion?

ARIZONA CONSTITUTION:

A.R.S. Const. Art. 2 § 13

§ 13 Equal privileges and immunities

Section 13. No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

A.R.S. Const. Art. 4 Pt. 2 § 19

§ 19. Local or special laws

Section 19. No local or special laws shall be enacted in any of the following cases:

…

13. Granting to any corporation, association, or individual, any special or exclusive privileges, immunities, or franchises.

A.R.S. Const. Art. 18 § 6 ("Anti-Abrogation Clause")

§ 6. Recovery of damages for injuries

Section 6. The right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation ….

APPLICABLE STATUTE:

§ 33-1551. Duty of owner, lessee or occupant of premises to recreational or educational users; liability; definitions ("**recreational-use immunity statute**")

A. A public or private owner, easement holder, lessee, tenant, manager or occupant of premises is not liable to a recreational or educational user except on a showing that the owner, easement holder, lessee, tenant, manager or occupant was guilty of wilful, malicious or grossly negligent conduct that was a direct cause of the injury to the recreational or educational user. ...

C. For the purposes of this section:

...

3. “Park” includes outdoor school grounds that are open to recreational users, excluding swimming pools and other aquatic features.

4. “Premises” means agricultural, range, open space, park, flood control, mining, forest, water delivery, water drainage or railroad lands, and any other similar lands, wherever located, that are available to a recreational or educational user....

5. “Recreational user” means a person to whom permission has been granted or implied without the payment of an admission fee or any other consideration to travel across or to enter premises to hunt, fish, trap, camp, hike, ride, engage in off-highway vehicle, off-road recreational motor vehicle or all-terrain vehicle activity, operate aircraft, exercise, swim or engage in other outdoor recreational pursuits. ... A nominal fee that is charged by a public entity or a nonprofit corporation to offset the cost of providing the educational or recreational premises and associated services does not constitute an admission fee or any other consideration as prescribed by this section. ...