ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

BART M. SHEA, et al. v. MARICOPA COUNTY, et al.
CV-22-0187-PR

PARTIES:

Petitioners: Bart Shea and Cheryl Shea
Respondents: Maricopa County, Maricopa County Board of Adjustment, and Maricopa County Planning and Development Department

FACTS:

Maricopa County's Planning and Development Department (the "Department") initiated code compliance proceedings against Bart and Cheryl Shea (the "Sheas"). After a hearing in December 2017, the Department's hearing officer fined the Sheas for violating several sections of the Maricopa County Zoning Ordinance. The Sheas timely appealed the hearing officer's decision to the Board of Adjustment ("Board"). The Board affirmed the decision in February 2018.

On March 16, 2018, the Sheas filed a special action complaint in superior court, naming Maricopa County, the Board, and the Department (collectively, the "County") as defendants. The Sheas sought an order declaring that: (1) the Department's finding and ruling was not supported by fact or law; (2) the Sheas owe no fines or penalties as set forth in the Department's December 2017 decision; and (3) the Department's and County Attorney's actions were the result of improper retaliation. In their complaint, the Sheas did not specify the date of the Board's final decision or attach a copy of the decision. However, the Sheas did allege that they had appealed the hearing officer's decision to the Board and that the Board denied their appeal. As the basis for the court's venue and jurisdiction, the Sheas cited various provisions in the Arizona Rules of Procedure for Special Actions and stated that the court had jurisdiction pursuant to A.R.S. § 11-816(D).

On August 2, 2018, the superior court denied the County's motion to dismiss the Sheas' special action complaint. The court found that the Sheas had erroneously filed their appeal as a special action and had proceeded under the incorrect subsection of § 11-816, but granted them leave to file an amended complaint.

On August 22, 2018, the Sheas filed an amended complaint, citing Arizona's Administrative Review Act (the "Act") as the basis for the court's jurisdiction and removing the reference to § 11-816(D), but failing to cite to § 11-816(B)(3). The County filed an answer and counterclaim, seeking to enforce the fines imposed by the hearing officer. The County alleged that the complaint violated the requirements of § 12-904, thus mandating dismissal under § 12-902 for lack of subject matter jurisdiction.

On August 27, 2019, after a judicial reassignment, the superior court entered an order in which the court *sua sponte* reconsidered the prior ruling on the County's motion to dismiss the original

special action complaint. The court found that although the special action complaint was filed within the 35 days specified for appeal of an administrative decision, the amended complaint was untimely because it was not filed until August 22, 2018. The court concluded that because the amended complaint was untimely, the court lacked subject matter jurisdiction under § 12-902(B). The court therefore dismissed the Sheas' amended complaint. The court also granted summary judgment in favor of the County on its counterclaim, finding that the Sheas' arguments against summary judgment were an attempt to relitigate the facts of the complaint that had been dismissed.

The Court of Appeals issued a split opinion on appeal. The majority found that the Sheas' original complaint was not in the proper form because: (1) it was not captioned as a notice of appeal; (2) it did not cite the Act as the basis for the superior court's jurisdiction; and (3) it did not specify the final Board decision being challenged or identify any issues related to that decision. The majority further found that the Sheas' amended complaint did not cure these deficiencies because it was untimely and failed to comply with § 12-904(A)'s decision and issue identification requirements. The majority rejected the dissent's proposed harmless error standard, finding that such a standard "has no connection to, and indeed conflicts with, the text of the Act." The majority concluded that because the Sheas failed to comply with the requirements of § 12-904(A), they failed to timely seek review "in the manner" required by the Act. Thus, under § 12-902, the superior court did not have jurisdiction to review the Board's decision.

With respect to the County's summary judgment motion, the majority rejected the Sheas' argument that substantial compliance is a defense to a claim to enforce fines for zoning violations. The majority found that evidence of substantial compliance pertains to the Sheas' argument that the Department should not have fined them in the first place, and that such an argument was foreclosed when the superior court dismissed their complaint.

The dissent found that the Sheas' original special action complaint satisfied the requirements of § 12-904(A), "albeit in a roundabout way." According to the dissent, several statements in the complaint, when read together, sufficed to identify the final administrative decision sought to be reviewed. Moreover, the complaint contained allegations which provided at least a bare minimum statement of the issues presented for review. Although the issues were expressed awkwardly, the dissent found that a fair reading of the complaint reflected a challenge to the factual and legal basis for the hearing officer's ruling (as affirmed by the Board) and alleged prejudicial procedural errors. The dissent believed that the Act does not deprive the court of jurisdiction based on technical flaws when an application for relief otherwise includes the substantive material required for review. According to the dissent, the majority's decision places form over substance and improperly denies the Sheas their day in court.

ISSUE:

Does A.R.S. § 12-904(A) bar petitioners' appeal from the Board of Adjustment's decision and their defense to the counterclaim?

RELEVANT STATUTES:

A.R.S. § 12-904(A) states as follows:

> An action to review a final administrative decision shall be commenced by filing a notice of appeal within thirty-five days from the date when a copy of the decision sought to be reviewed is served upon the party affected. The method of service of the decision shall be as provided by law governing procedure before the administrative agency, or by a rule of the agency made pursuant to law, but if no method is provided a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party affected at the party's last known residence or place of business. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address. The notice of appeal shall identify the final administrative decision sought to be reviewed and include a statement of the issues presented for review. The statement of an issue presented for review is deemed to include every subsidiary issue fairly comprised in the statement.

A.R.S. § 12-902(B) states as follows:

> Unless review is sought of an administrative decision within the time and in the manner provided in this article, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of the decision. If under the terms of the law governing procedure before an agency an administrative decision becomes final because of failure to file any document in the nature of an objection, protest, petition for hearing or application for administrative review within the time allowed by the law, the decision is not subject to judicial review under the provisions of this article except for the purpose of questioning the jurisdiction of the administrative agency over the person or subject matter.