ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

AVITIA v. CRISIS PREPARATION AND RECOVERY, INC.
CV-22-0288-PR

PARTIES:

Petitioner:	Samuel Avitia
Respondent:	Crisis Preparation and Recovery, Inc. ("CPR")
Amicus Curiae:	Arizona Association for Justice (aka Arizona Trial Lawyers Association)

FACTS:

Avitia filed a wrongful death action against the State, the County, and numerous health care providers, including CPR. Avitia asserted that CPR had a statutory duty to report ML's abuse or neglect of his twin infants, including endangerment, and had not done so. Avitia also alleged that CPR failed in a common law duty to warn and protect the twins.

ML began suffering from mental illness in 2011 and was hospitalized for 17 days.

ML met Avitia in 2012, became pregnant, and gave birth to twin boys in May 2013. Avitia and ML lived separately and never married. Pursuant to a custody order, the twins were in Avitia's care half the time.

In October 2013, ML was taken to a crisis treatment center and evaluated by a CPR licensed professional counselor, who noted ML's history and concluded that ML did not meet the criteria for seriously mentally ill ("SMI") status.

In April 2014, ML was taken to an emergency room where she was evaluated by the same CPR counselor who evaluated her in 2013 and another CPR licensed professional counselor. After concluding that ML was not safe to be discharged to care for herself or her children, one of the counselors completed an application for involuntary evaluation. ML then received court-ordered evaluation and treatment.

In May 2014, after another CPR assessment, the superior court ordered ML to receive combined inpatient and outpatient treatment. Over the next year, ML received treatment at various facilities for her mental illness. Then, in August 2015, ML drowned her twins in a bathtub. ML was convicted of first degree murder of the twins. She was found guilty except insane and committed to the Arizona State Hospital.

In Avitia's lawsuit, CPR filed a motion for summary judgment. The superior court ultimately granted summary judgment in favor of CPR, finding that CPR did not have a duty to report ML's condition to the Department of Child Safety ("DCS") or any other State agency. Avitia appealed.

The Court of Appeals affirmed, finding that CPR did not owe a statutory duty under A.R.S. § 13-3620 to report child abuse or neglect to a peace officer or to DCS. The court noted that under § 13-3620(A), CPR personnel had a duty in April or May of 2014 to report to peace officers or DCS if they reasonably believed the twins were being, or had been, abused or neglected by ML. However, the court found that CPR's contacts with ML did not disclose any information that the twins were, or had been, victims of abuse or neglect or that ML made any threats to harm them. The court rejected Avitia's argument that CPR's evaluators had sufficient information at the time of their contacts with ML from which they could have surmised that the twins might have been neglected through a lack of supervision, food, clothing, shelter, or medical care causing unreasonable risk of harm to their health or welfare, or otherwise placed in a situation where they were endangered by ML.

The Court of Appeals also found that CPR had no common law duty to warn caregivers and protect the twins as foreseeable victims. The court noted that in *Hamman v. County of Maricopa*, 161 Ariz. 58, 65 (1989), this Court recognized a common law duty of psychiatrists to warn or protect those who are "within the reasonably foreseeable area of danger where the violent conduct of the patient is a threat." However, in subsequent decisions, this Court clarified that foreseeability is not a factor to be considered in determining duty. *See Gipson v. Kasey*, 214 Ariz. 141 (2007); *Quiroz v. ALCOA Inc.*, 243 Ariz. 560 (2018); *Dinsmoor v. City of Phoenix*, 251 Ariz. 370 (2021). Therefore, the Court of Appeals concluded that it could not find a duty to warn and protect others based solely on foreseeability.

ISSUES:

(1) Does the statutory duty to report child abuse or neglect under A.R.S. § 13-3620(A) encompass reporting a risk of future harm?

(2) Does a common law duty to warn and protect foreseeable victims still exist after *Gipson v. Kasey*, 214 Ariz. 141 (2007) and its progeny?

RELEVANT STATUTE:

A.R.S. § 13-3620 states, in pertinent part, as follows:

> A. Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature or who reasonably believes there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant who is protected under § 36-2281 shall immediately report or cause reports to be made of this information to a peace officer, to the department of child safety or to a tribal law enforcement or social services agency for any Indian minor who resides on an Indian reservation, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only. . . . For the purposes of this subsection, "person" means:
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> 1. Any physician, physician's assistant, optometrist, dentist, osteopathic physician, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.
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> . . . .
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> P. For purposes of this section:
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> 1. "Abuse" has the same meaning prescribed in § 8-201.
>
> 2. "Child abuse" means child abuse pursuant to § 13-3623.
>
> 3. "Neglect" has the same meaning prescribed in § 8-201.

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