



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**CLAUDIA DUFF v. HON. KENNETH LEE,
CV-19-0128-PR**

PARTIES:

Petitioner: Claudia Duff
Respondent: The Honorable Kenneth Lee, Pima County Superior Court

FACTS:

[Under Arizona Revised Statutes \(A.R.S.\) § 12-133](#), the superior court must establish jurisdictional limits for arbitration that do not exceed \$65,000. The statute also mandates arbitration for all cases that fall below that limit. In October 2016, the Committee on Civil Justice Reform proposed a Fast Trial and Alternative Resolution Program (“FASTAR”) that allows a plaintiff to choose between a short trial and arbitration. If a plaintiff chooses a short trial, then the rights to a subsequent trial de novo and appeal remain intact. Plaintiffs who choose arbitration, however, must waive those rights—rights that would otherwise be available under [§ 12-133\(A\)\(1\)](#).

In October 2017, the Arizona Supreme Court issued [Administrative Order No. 2017-116 \(“AO 2017-116”\)](#). That order approved new Pima County Superior Court rules and implemented the three-year FASTAR pilot program. The AO also lowered Pima County’s jurisdictional limit for [§ 12-133](#) arbitration from \$50,000 to \$1,000. Because Pima County Superior Court’s jurisdictional minimum for civil claims is \$1,000, the AO effectively eliminated [§ 12-133](#) arbitration for the county. This Court lowered the limit to “experiment with using short trials and an alternative resolution program instead of compulsory arbitration in cases in which the amount of money sought does not exceed \$50,000.” The pilot program runs from November 1, 2017 to October 31, 2020. This Court later approved Pima County’s rule changes, which became effective July 1, 2018. [R-17-0051](#)

In May 2018, Duff filed a complaint in Pima County Superior Court seeking damages for injuries she allegedly sustained in a collision with a Tucson Police Department vehicle. She filed a certificate of compulsory arbitration and claimed that the amount in controversy did not exceed the superior court’s jurisdictional limit for [§ 12-133](#) arbitration, which was then \$50,000. She also filed a FASTAR certificate, stating that the action did not meet FASTAR eligibility criteria.

Soon after that, Duff filed a motion objecting to the FASTAR pilot program and she asked the court to order a [§ 12-133](#) arbitration. She argued the FASTAR program was invalid and unconstitutional as applied to her because it eliminated her rights to a trial de novo and appeal after arbitration.

The trial court denied the motion. It noted that the FASTAR program preserved Duff’s right to a jury trial and an appeal through the “fast trial” option. The court also found it significant

that by choosing arbitration plaintiffs voluntarily waive their jury trial and appeal rights. The court concluded that because there is no right to arbitration outside the court’s prescribed \$1,000 limit and Duff’s claim fell outside that limit, she was not entitled to [§ 12-133](#) arbitration.

Duff obtained a stay and filed a special action in the court of appeals.

The court of appeals held that FASTAR cannot be harmonized with [§ 12-133](#) because it is inconsistent with the purposes of the statute. [Section 12-133](#) is a procedural statute that the supreme court can regulate via rules. Because the supreme court’s October 2017 administrative order lowered Pima County’s jurisdictional limit for [§ 12-133](#) arbitration, the FASTAR pilot program applied to Duff when she filed her complaint.

Judge Brearcliffe wrote a special concurrence agreeing with the result but rejecting the court’s holding that FASTAR is inconsistent with the statute. He argued that nothing in [§ 12-133](#) implies a minimum qualifying dollar limit for mandatory arbitration, so it was wrong for the court to read that minimum into the statute. By needlessly finding a conflict between FASTAR and [§ 12-133](#), he wrote, the court did more than was necessary in holding that the statute is procedural.

DEFINITIONS:

Procedural law: A law (statute or rule) that lays down the procedures and methods for enforcing rights and duties and for obtaining remedies or results.

Special action: A filing that asks the court to act in an extraordinary way to prevent or to compel an act by a lower court or other public official. Special action is taken when no equally speedy or just remedy is available by appeal.

Substantive law: A law (statute or rule) that creates, defines, or regulates rights, duties, obligations, and causes of action (for example, lawsuits or administrative actions) that can be enforced by law.

Trial de novo: A new trial on the case, conducted as if there had been no trial or other fact-finding, as by an arbitrator, before.

ISSUES:

A. Whether the compulsory arbitration statute, [A.R.S. § 12-133](#), is procedural, not substantive, and thus subject to judicial control under the Arizona Constitution.

B. Whether the Fast Trial and Alternative Resolution (“FASTAR”) pilot program violates [Article 3 of the Arizona Constitution](#) by altering or diminishing the substantive, statutory right to appeal to the court of appeals.

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