DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JOSEFA GARCIA, a single woman and NARESHA MEZA, a minor,	)	1 CA-CV 09-0566
	)	DEPARTMENT D
Plaintiffs-Appellants,	)	
	)	**MEMORANDUM DECISION**
v.	)	
	)	
THE STATE OF ARIZONA, a public entity; ALHAMBRA ELEMENTARY SCHOOL DISTRICT NO. 86, a division of the State of Arizona; RAYLENE JOHNSON and JOHN DOE JOHNSON, husband and wife,	)	(Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)
Defendants-Appellees.	)	

Appeal from the Superior Court in Maricopa County

Cause No. CV 2009-003697

The Honorable Jeanne M. Garcia, Judge

AFFIRMED

The Law Office of Howard Schwartz — Phoenix
by Howard Schwartz
and
Law Offices of David L. Abney — Phoenix
by David L. Abney
Attorneys for Appellants

Turley, Swan, Childers, & Torrens, P.C.
by Christopher J. Bork
Michael J. Childers
Attorneys for Appellees — Phoenix

W E I S B E R G, Judge

¶1 Josefa Garcia and her minor daughter, Naresha Meza, ("Garcia") were injured in a collision with a school bus from the Alhambra Elementary School District. After submitting a notice of claim, Garcia filed suit against the school district and bus driver. The superior court, however, dismissed her complaint on the ground that she had not adequately complied with the notice of claim statute. For reasons that follow, we affirm the superior court's judgment.

BACKGROUND

¶2 The collision between the school bus and Garcia's vehicle occurred on February 6, 2008 in Phoenix, Arizona. On February 13, Garcia filed a Notice of Claim[1] on her own behalf.

[1]The statute governing notices of claim , A.R.S. § 12-821.01.A (2003), provides:

> Persons who have claims against a public entity or a public employee shall file claims with the person or persons authorized to accept service for the public entity or public employee as set forth in the Arizona rules of civil procedure within one hundred eighty days after the cause of action accrues. The claim shall contain facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed. The claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount. Any claim which is not filed within one hundred eighty days after the cause of action accrues is barred and no action may be maintained thereon.

The form directed her to describe the facts and circumstances surrounding her claimed injuries or damages and to identify the nature and extent of the damages and injuries. Garcia stated that the school bus driver turned in front of her and that Garcia and her daughter went to Maryvale Hospital and was "still under the care of doctors. Will forward medical spending regarding all injury & bills." Garcia also stated that her car was in the body shop and that she had a rental. In response to a question of the amount for which the claim could be settled, she wrote: "Estimate of vehicle $13,705.54 + rental car. Bodily injury $250,000."

¶3 In addition, Garcia submitted a claim form for her daughter but instead of describing the facts said: "See Josefa Garcia['s] form" and added: "Minor still under Dr.['s] care. Will forward medical spending on the injuries." Garcia stated that the claim could be settled for "$100,000." At some point, Garcia retained counsel.

¶4 On April 9, 2008, an adjuster for the Arizona School Risk Retention Trust, Inc. ("Trust") wrote to counsel for Garcia and her daughter. Although he had received both claim forms, the adjuster stated that he "did not have any support[ing] documentation to back up [the] demand for the bodily injury sustained by your clients. Without specific information as to the injuries, this claim cannot be evaluated properly." He

asked Garcia's attorney to "*forward the necessary medical documentation and out of pocket costs for review*" as well as Garcia's automobile insurance policy number and the name of her insurance agent. (Emphasis added.) He noted a Kelly Blue Book value for the vehicle of $4,500 and offered to pay $21 per day for the rental car for a total of $5,100.

¶5 On April 22, the adjuster again wrote to counsel and stated that he had settled the storage and rental car costs in the amount of $2,099.55. Accepting a valuation supplied by opposing counsel, the adjuster made an offer for the vehicle's property damage in the amount of $6,687.50. He enclosed a release "for the property portion of the claim."

¶6 In February 2009, Garcia and Meza filed a complaint for medical costs and other damages against the school district and bus driver. Defendants filed a motion to dismiss alleging that the notice of claim forms "failed to provide facts supporting the amount for which they were willing to settle their bodily injury claims." Defendants argued that despite an offer to forward medical bills and documentation of their injuries, Garcia never did so.

¶7 The superior court treated the motion as one for summary judgment in light of the attachments to the motion to

dismiss.[2] It agreed that *Backus v. State*, 220 Ariz. 101, 106-07, ¶ 23, 203 P.3d 499, 504-05 (2009), had adopted a subjective standard when considering the adequacy of facts supporting a claim but concluded that Garcia had provided "no facts whatsoever to support the claim for bodily injuries." Furthermore, the court observed that "Plaintiffs themselves recognized that they needed to provide more than a mere reference to a trip to the hospital and being under a doctor's care because they promised to forward the medical records." The court granted the motion and dismissed the complaint.

¶8 We have jurisdiction of the appeal pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

DISCUSSION

¶9 We review de novo the grant of summary judgment and independently determine whether any genuine issues of material fact exist or the court erred in application of the law. *Eller Media Co. v. City of Tucson*, 198 Ariz. 127, 130, ¶ 4, 7 P.3d 136, 139 (App. 2000). We view the evidence and reasonable inferences from it in the light most favorable to the nonmoving

[2]The Defendants attached copies of the completed Notice of Claim forms and correspondence between the adjuster and Plaintiffs' counsel. *See* Ariz. R. Civ. P. 12(b) (if a party filing a motion to dismiss presents matters outside the pleadings and the court does not exclude those matters, "the motion shall be treated as one for summary judgment"); *Vasquez v. State*, 220 Ariz. 304, 308, ¶ 8, 206 P.3d 753, 757 (App. 2008) (notice of claim, as exhibit to motion to dismiss, triggered application of Rule 12(b)).

parties. *Andrews v. Blake*, 205 Ariz. 236, 240, ¶ 12, 69 P.3d 7, 11 (2003). But, we review de novo the construction of applicable statutes. *N. Valley Emerg'cy Specialists, L.L.C. v. Santana*, 208 Ariz. 301, 303, ¶ 8, 93 P.3d 501, 503 (2004).

¶10 Section 12-821.01(A) provides that "[p]ersons who have claims against a public entity or a public employee shall file claims . . . within one hundred eighty days after the cause of action accrues." Furthermore, "[t]he claim shall *contain facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed*. The claim shall *also contain a specific amount* for which the claim can be settled *and the facts supporting that amount*." (Emphasis added.) Finally, "[a]ny claim which is not filed within one hundred eighty days after the cause of action accrues is barred."

¶11 In two claims against the State for the wrongful deaths of inmates due to the withholding of medical care, our supreme court analyzed the requirement that facts must support the amount claimed. *Backus*, 220 Ariz. at 103, ¶¶ 2-5, 203 P.3d at 501. The court noted that it desired to "give effect to an entire statutory scheme" and to "advance the overarching policy of holding a public entity responsible for its conduct." *Id*. at 104, ¶¶ 9-10, 203 P.3d at 502. Thus, the statute was intended to permit a public entity "'to investigate and assess

liability,'" to allow for the possibility of settlement without litigation, and "'to assist the public entity in financial planning and budgeting.'" *Id*. at ¶ 10 (quoting *Deer Valley Unif. Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 295 ¶ 6, 152 P.3d 490, 492 (2007).

¶12 But, if a public entity were to challenge the factual foundation for the dollar amount sought, two negative and unintended results might occur. *Id*. at 106, ¶ 19, 203 P.3d at 504. First, given the limited time for filing a notice of claim and a lawsuit as well a claimant's ignorance of "what facts a public entity will regard as sufficient in a particular case," a claimant might lose a legitimate claim before a court could resolve the dispute. *Id*. at ¶ 20. Second, even if a court found sufficient factual support, the parties would have incurred expense and delay in the auxiliary litigation, contrary to the legislative goal of resolving claims without litigation. *Id*. at ¶ 21.

¶13 The court noted that the statute mandates facts "sufficient to permit" the public entity to evaluate liability, but does not similarly require facts "sufficient" to support the amount claimed, citing *Havasupai Tribe v. Arizona Board of Regents*, 220 Ariz. 214, 225, ¶ 40, 204 P.3d 1063, 1074 (App. 2008). *Id*. at 106, ¶ 22, 203 P.3d at 504. Thus, if the

legislature had meant to demand facts "sufficient" to support the amount claimed, it could have said so. *Id*.

¶14 Finally, the court concluded that each claimant knows which facts he regards as supportive of the amount claimed, and accordingly complies with the statute

> by providing the factual foundation that [he] regards as adequate to permit the public entity to evaluate the specific amount claimed. This standard does not require . . . an exhaustive list of facts; *as long as a claimant provides facts to support the amount claimed, he has complied with the . . . statute,* and courts should not scrutinize [his] description of facts to determine the 'sufficiency' of the factual disclosure.

Id. at 106-07, ¶ 23, 203 P.3d at 504-05. The court also observed that when claimants are represented, competent counsel "will encourage the inclusion of sufficient information in claim letters to allow the public entity to evaluate and possibly settle the claim." *Id*. at 107, ¶ 27, 203 P.3d at 505.

¶15 As the superior court pointed out in this case, however, Garcia provided no facts to support the amount claimed. She stated that she and her daughter had been in a collision and had sought medical care, that care was continuing, and that she would forward her medical expenses at a later date. Neither Garcia nor her counsel ever forwarded any information about the type, extent, or severity of her injuries; of the type or extent of the treatment received; or of the costs incurred. Moreover,

the Trust's adjuster had requested additional information before expiration of the 180-day period in order to evaluate the personal injury claims but still no information was forthcoming. Thus, the Trust was unable to consider the claims with an eye to fulfilling the statutory purposes of making a settlement offer or of budgeting for the possibility of significant claim-related expenses.

¶16 Garcia nevertheless contends that because she provided sufficient facts to support her demand for property damage and a rental car, her notices were sufficient. Based on the factual support she provided, the Defendants agreed to her demands and paid for those particular damages, just as the statute intended. But Garcia fails to explain why those facts are sufficient support for claiming a total of $350,000 in personal injuries. Furthermore, Garcia asserts that because she "subjectively regarded" the notices she filed as adequate, *Backus* compels a finding that they indeed were adequate. But when Garcia failed to provide any facts supporting her claim for personal injury to herself and her daughter, she did not satisfy the statute. We also note that Garcia did not regard her notices as adequate without more because both notices explicitly stated that she would forward information about the personal injuries and medical bills.

CONCLUSION

¶17 Accordingly, we affirm the superior court's grant of summary judgment to the Defendants and the dismissal of Garcia's complaint, because no facts had been asserted that, even if construed in a light most favorable to Garcia, supported the personal injury claims. Further, we deny Garcia's request for attorney's fees and costs.

/s/_____
SHELDON H. WEISBERG, Judge

CONCURRING:

/s/_____
MICHAEL J. BROWN, Presiding Judge

/s/_____
JON W. THOMPSON, Judge