

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 02/28/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

BRIDGET O'BRIEN SWARTZ, BRIAN J. ) No. 1 CA-CV 11-0337  
THEUT, as co-guardians ad litem )  
for the minor, E.C., ) DEPARTMENT B  
)  
Plaintiffs/Appellants, ) Maricopa County  
) Superior Court  
v. ) No. CV2008-014406  
)  
JAMES E. VIEH; CAMPANA, VIEH & ) **DECISION ORDER**  
LOEB, P.L.C., an Arizona limited )  
liability company, )  
)  
Defendants/Appellees. )  
\_\_\_\_\_ )

This appeal came on for oral argument on February 21, 2012, before Presiding Judge Diane M. Johnsen and Judges Donn Kessler and Peter B. Swann.

Bridget O'Brien Swartz and Brian Theut ("Appellants") were appointed as guardians *ad litem* for the minor child, E.C., following settlements in a medical malpractice action against the doctor and hospital that delivered E.C. After the settlement proceeds were collected and apportioned, Appellants sued Vieh alleging that Vieh negligently handled the medical malpractice suit, committed legal malpractice by charging unreasonable fees and structuring an inadequate settlement, and

breached his conservatorship duties by seeking to enrich himself at the expense of E.C.

The trial court granted Vieh's motions for summary judgment on all the claims except the allegation that Vieh was negligent in failing to establish a special needs trust. A jury later returned a verdict in favor of Vieh on that claim. Vieh filed a statement of costs to which Appellants objected, asserting that they were immune from money-judgments as quasi-judicial actors acting within their quasi-judicial capacities. The trial court entered judgment for Vieh for \$5,559.53 against Swartz and Theut "jointly and severally." Appellants timely appealed.<sup>1</sup> We have jurisdiction under A.R.S. § 12-2101(A)(1).

Pursuant to Ariz. R. Civ. P. 17(i), "A guardian or next friend shall not be personally liable for costs, unless by special order of the court." Under the rule, Appellants cannot be held personally liable for the costs because the judgment contains no language or findings to indicate that it is a "special order." At oral argument, Appellee conceded that the judgment cannot be enforced against Appellants personally.

---

<sup>1</sup> E.C.'s estate is not a party to this appeal, and was not represented at oral argument. We express no view as to the estate's liability for costs.

Because the judgment can be read to impose personal liability on Appellants, we vacate it and remand for proceedings consistent with this decision.

/s/

---

PETER B. SWANN, Judge