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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 09/22/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

CHRISTOPHER AUSTIN and SHAWN ) No. 1 CA-CV 10-0554  
AUSTIN, )  
) DEPARTMENT E  
Plaintiffs/Appellants, )  
) **MEMORANDUM DECISION**  
v. ) (Not for Publication -  
) Rule 28, Arizona Rules  
STATE OF ARIZONA; ARIZONA ) of Civil Appellate  
DEPARTMENT OF JUVENILE ) Procedure)  
CORRECTIONS; and MICHAEL BRANHAM, )  
Director of the Arizona )  
Department of Juvenile )  
Corrections, )  
)  
Defendants/Appellees. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CV2008-013625

The Honorable Sam J. Myers, Judge

**AFFIRMED**

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By Gary L. Lassen  
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Tempe

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By James B. Bowen, Assistant Attorney General  
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**O R O Z C O**, Judge

¶1 Christopher Austin and Shawn Austin<sup>1</sup> (Appellants) appeal the trial court's grant of summary judgment in favor of the State of Arizona, the Arizona Department of Juvenile Corrections and Michael Branham<sup>2</sup> (collectively, the State) on three claims of negligence. For the following reasons, we affirm.

### FACTS AND PROCEDURAL BACKGROUND<sup>3</sup>

¶2 Shawn Austin was a sixteen-year-old detainee at the Adobe Mountain School facility within the Arizona Department of Juvenile Corrections (ADJC) when he was the victim of unlawful sexual contacts with a Juvenile Corrections Officer<sup>4</sup> (the JCO). The encounters occurred between August and early October 2007, when Shawn left the facility. In November 2007, Shawn's parole

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<sup>1</sup> Christopher Austin originally filed this action on behalf of his son, Shawn, who was a juvenile at the time. Shawn Austin was added as a party when he turned eighteen years of age.

<sup>2</sup> The State removed this case to the United States District Court for the District of Arizona. Before the case was remanded to superior court, Kellie Warren, Deputy Director for the Arizona Department of Juvenile Corrections, was dismissed as a party because she was never served with the amended complaint.

<sup>3</sup> The Statement of Facts in Appellants' opening brief does not contain any citations to the record as required by Arizona Rule of Civil Appellate Procedure 13.a.4. Accordingly, we disregard the facts set forth in the opening brief and rely on the State's statement of facts and our own review of the record for our recitation of the facts. See *State Farm Mut. Auto Ins. Co. v. Arrington*, 192 Ariz. 255, 257 n.1, 963 P.2d 334, 336 n.1 (App. 1998).

<sup>4</sup> The JCO was never a party to this action.

officer discovered letters exchanged between Shawn and the JCO. ADJC launched an investigation and the JCO admitted to three sexual encounters. She was subsequently arrested and charged with five counts of unlawful sexual conduct. The JCO pled guilty to two felony counts of solicitation to commit unlawful sexual conduct with a person in custody.

¶13 Appellants filed a complaint in superior court, alleging the State was: (1) negligent *per se* for failing to protect the minor from sexual misconduct; (2) negligent in hiring and supervising the JCO; and (3) vicariously liable for the JCO's illegal conduct.

¶14 Appellants filed a Motion for Partial Summary Judgment on the negligence *per se* claim. The State responded by filing a Cross-Motion for Summary Judgment, arguing Appellants could not meet their burden of proof on the negligence elements of breach, causation, or damages. In addition, the State argued the complaint should be dismissed on immunity grounds because Appellants provided no evidence that the State knew or should have known the JCO had a propensity to have inappropriate relationships with juveniles.

¶15 The trial court found no genuine issue of material fact and that the State was entitled to judgment as a matter of law. Specifically, the trial court held the State was entitled to statutory immunity pursuant to Arizona Revised Statutes (A.R.S.)

section 12-820.05.B (2003) because the negligence claims arose out of the JCO's felonious conduct and no reasonable finder of fact could conclude the State knew of or should have known of the JCO's propensity for unlawful sexual conduct.

¶16 Appellants timely appealed. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution and pursuant to A.R.S. § 12-2101.B (2003).

## DISCUSSION

### A. Standard of Review

¶17 We review the trial court's grant of summary judgment *de novo* and view the evidence and reasonable inferences in the light most favorable to the party against whom judgment was granted. *Desert Mountain Props Ltd. P'ship v. Liberty Mut. Fire Ins. Co.*, 225 Ariz. 194, 214, ¶ 87, 236 P.3d 421, 441 (App. 2010). Summary judgment is appropriate if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(c)(1). We will affirm the granting of summary judgment "if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990).

**B. Statutory Immunity**

¶18 Section 12-820.05.B provides: "A public entity is not liable for losses that arise out of and are directly attributable to an act or omission determined by a court to be a criminal felony by a public employee unless the public entity knew of the public employee's propensity for that action." We review *de novo* the trial court's application of A.R.S. § 12-820.05.B. See *Thomas v. Thomas*, 203 Ariz. 34, 36, ¶ 7, 49 P.3d 306, 308 (App. 2002).

¶19 The JCO was a public employee of the ADJC when she had an inappropriate sexual relationship with then-sixteen-year-old Shawn. She subsequently pled guilty to two felony counts of solicitation to commit unlawful sexual conduct with a person in custody. Because the JCO was a public employee who committed a felony and Appellants' claims arise out of the JCO's criminal sexual conduct, Appellants must show that the ADJC knew of the JCO's propensity to engage in illegal sexual conduct. A.R.S. § 12-820.05.B. Appellants have not alleged any prior felonies committed by the JCO or submitted any evidence that would demonstrate her propensity to engage in inappropriate sexual relationships with minors. In fact, the only evidence in the record relating to the JCO's character was that she successfully

passed an extensive criminal background check and completed her ADJC training.

¶10 Appellants rely on a 2004 Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C.A. § 1997 *et seq.*, report prepared by the Department of Justice, which found a general pattern of improper contacts among detainees and corrections officers occurring between 2001 and 2003. Appellants argue the violations contained in the CRIPA report continued to occur during the time of the events in this case and that the report provides the requisite knowledge of propensity. However, the CRIPA report does not provide any evidence of the State's knowledge of a problem with this particular JCO, as she was not employed by ADJC during the time frame covered by that report. Likewise, Appellants' general reference to "news reports and public information" concerning sexual abuse of minors by ADJC staff does not provide evidence of knowledge on the part of the State with regard to this JCO.

¶11 Based on the information in the record concerning the JCO's character, no reasonable jury could conclude the State knew the JCO had a propensity to engage in inappropriate sexual relationships. Pursuant to A.R.S. § 12-829.05.B, the State cannot be liable without such knowledge. Thus, the State is entitled to statutory immunity on Appellants' negligence claims.

¶12 Finally, Appellants argue that the harm Shawn suffered did not arise out of the JCO's criminal conduct but from a breach of the State's duty to provide a safe and therapeutic environment. We disagree. The harm that Shawn suffered was directly related to the actions of the JCO. Appellants do not direct us to anything in the record that indicates the State's conduct caused the harm that Shawn suffered.<sup>5</sup>

**CONCLUSION**

¶13 For the foregoing reasons, we affirm the trial court's grant of summary judgment.

/S/

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PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

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DIANE M. JOHNSEN, Presiding Judge

/S/

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ANN A. SCOTT TIMMER, Judge

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<sup>5</sup> Because we find the State is entitled to immunity, we need not address Appellants' other arguments.