IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

ALEJANDRO JOSE TORRES CHAVEZ, INDIVIDUALLY; AND
JORGE ROPERO, INDIVIDUALLY,
Plaintiffs/Appellants,

v.

GLENDALE UNION HIGH SCHOOL DISTRICT,
Defendant/Appellee.

No. 2 CA-CV 2024-0128
Filed December 5, 2024

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Maricopa County
No. CV2023016726
The Honorable Danielle J. Viola, Judge

AFFIRMED

COUNSEL

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MEMORANDUM DECISION

Judge Vásquez authored the decision of the Court, in which Presiding Judge O'Neil and Judge Kelly concurred.

V Á S Q U E Z, Judge:

¶1 Alejandro Chavez and Jorge Ropero appeal the superior court's ruling dismissing their personal-injury action against Glendale Union High School District. They argue the court erred by concluding their notice of claim did not comply with Arizona's notice of claim statute. For the following reasons, we affirm.

Factual and Procedural Background

¶2 When reviewing a dismissal for failure to state a claim pursuant to Rule 12(b)(6), Ariz. R. Civ. P., we assume the truth of all well-pleaded factual allegations. *Coleman v. City of Mesa*, 230 Ariz. 352, ¶ 9 (2012). In October 2022, a District school bus collided with Chavez and Ropero's vehicle in a parking lot. Chavez and Ropero sent a notice of claim to the District, alleging the District employee's negligent driving had caused the collision and they were injured in the accident. The notice included a settlement offer. The District never responded, and Chavez and Ropero filed a complaint against the District and other named defendants.[1]

¶3 The District filed a motion to dismiss, alleging Chavez and Ropero's notice of claim had "failed to provide a sum certain" and it was impossible to "ascertain what amount . . . would settle either claimant's claim" because the notice is "unclear as to whether each claimant separately demands $100,000" or "whether they claim a total of $100,000 together." The District additionally alleged Chavez and Ropero had failed to properly serve the claim notice. The superior court dismissed the complaint, concluding that the notice of claim had failed to provide a "sum certain" for which the District could settle and therefore it did not comply with A.R.S. § 12-821.01. Based on this determination, it declined to address the service issue. Chavez and Ropero appealed, and we have jurisdiction under A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

[1]The other named defendants are not parties to this appeal.

Discussion

¶4 Chavez and Ropero argue the superior court erroneously dismissed their complaint by determining they had failed to comply with § 12-821.01's "sum certain" requirement.[2] We review de novo a superior court's dismissal of a complaint under Rule 12(b)(6) and whether a notice of claim complies with § 12-821.01. *Yahweh v. City of Phoenix*, 243 Ariz. 21, ¶ 6 (App. 2017).

¶5 Before suing a public entity in Arizona, claimants must file a notice of claim that strictly complies with the statutory requirements under § 12-821.01. *City of Mesa v. Ryan*, ___ Ariz. ___, ¶ 9, 557 P.3d 316, 319 (2024). One such requirement is that the notice must "contain a specific amount for which the claim can be settled and the facts supporting that amount." § 12-821.01. To satisfy the sum certain requirement, the notice of claim must be "clear and unequivocal" and "include a particular and certain amount of money" that the public entity can pay to settle the claim, along with facts supporting that amount, leaving no room for debate about what the public entity must pay. *City of Mesa*, ___ Ariz. ___, ¶ 10, 557 P.3d at 319 (quoting *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, ¶ 9 (2007)); *see* § 12-821.01(A). This allows the public entity the opportunity to realistically consider the claim, settle it, and budget for the expense. *Deer Valley*, 214 Ariz. 293, ¶ 6; *Yollin v. City of Glendale*, 219 Ariz. 24, ¶ 11 (2008).

¶6 Here, the notice of claim stated that "Mr. Torres and Mr. Ropero, in their sole and separate right, demand One-Hundred Thousand and 00/100 Dollars ($100,000.00), inclusive of special and general damages, to resolve their claims on an amicable basis." Chavez and Ropero

[2]Chavez and Ropero request that we "address the service of process decision." They argue the superior court's decision not to address the service issue "affected a substantial right" and "prevented a judgment from which an appeal might have been taken," and, therefore, we have jurisdiction under § 12-2101(A)(3). But the court's determination that the notice of claim issue was dispositive did not "prevent judgment"; in fact, it resulted in a judgment. And had we determined the court erred in its notice of claim ruling, remand would have been required for the court to address the service issue. *See Mirchandani v. BMO Harris Bank, N.A.*, 235 Ariz. 68, ¶ 15 (App. 2014). We therefore decline to address the service issue, as it is not properly before us. *See id.; Farmers Ins. Co. v. Norden*, 25 Ariz. App. 296, 299 (1975) (appellate court's review is limited to those issues on which superior court has ruled).

argue the phrase "sole and separate right" has an "unmistakable meaning" and leads to only "one possible" interpretation: that they would "separately settle their claims for $100,000 each."

¶7 In response to the District's motion to dismiss, Chavez and Ropero argued that "[t]he entire point of using the words 'sole and separate' was to make it abundantly clear that the $100,000.00 settlement demand applied to *each* [of them], individually and not to the entire claim." In an effort to support this argument and eliminate any ambiguity in their position, Chavez and Ropero introduced the concept of community property, asserting that they are "not a joint couple . . . seeking a claim under a community property rubric." Paradoxically, this explanation only serves to illustrate the ambiguity in the offer.

¶8 As they did below, the District contends that the term "sole and separate right" indicates that Chavez and Ropero were designating that the settlement amount "to resolve their claims" was their individual property, free from any community property claims. Chavez and Ropero counter that this is not a fair interpretation because it assumes "they intended a meaningless preamble that had no relevance" to the District's acceptance of their offer. Indeed, classifying the settlement amount as either community or separate property would be immaterial to the District's acceptance. But it remains a reasonable interpretation that Chavez and Ropero intended by that language to foreclose any argument that the amount should be considered community property, entitling their spouses to share in the settlement. *See Hefner v. Hefner*, 248 Ariz. 54, ¶ 9 (App. 2019) ("[T]he non-injured spouse must establish the amount of the personal-injury settlement to which the community is entitled—if any."). Consequently, we reject Chavez and Ropero's argument that "'[s]ole and separate right' is simply a more specific and emphatic way to say 'each.'" We now turn to how this affects the stated settlement demand.

¶9 If we were to accept Chavez and Ropero's argument that the phrase "sole and separate right" indicated that they were acting individually and asserting their own separate interests, a reasonable interpretation is that they were each demanding $100,000 to settle their own claims. The emphasis on individual rights, combined with the plural "claims," could suggest that each claim requires its own compensation, and therefore the District would have to pay $200,000 to settle the lawsuit.

¶10 However, if "sole and separate right" were indicating the characterization of the settlement award, then a reasonable interpretation would be that they were jointly demanding a total of $100,000 to settle both

of their claims together. This is supported by the singular amount specified and the absence of a qualifier such as "each" or "per person"—either of which, if included, would have alleviated any ambiguity "that they were separately claiming $100,000." Moreover, the use of the phrase "to resolve their claims" implies a mutual agreement to settle all matters together. Under this interpretation, the District reasonably could understand that paying the total sum of $100,000 would resolve the lawsuit. We therefore agree with the superior court that the notice of claim did not provide a sum certain that would have allowed the District to evaluate the lawsuit in order to effect settlement. *See City of Mesa*, ___ Ariz. ___, ¶ 10, 557 P.3d at 319.

¶11 Chavez and Ropero nonetheless cite *Jones v. Cochise County*, 218 Ariz. 372, ¶ 14 (App. 2008), to support their position that, although their notice of claim may initially be unclear and require careful reading, we should apply a more lenient approach to avoid "elevating form over substance." We decline this invitation because *Jones* has no application here. The issue in *Jones* was whether language in the notice of claim "that the attorney would *recommend* that his clients settle for" a sum certain was sufficient to establish that Jones would actually accept a settlement for the amount stated. *Id.* ¶ 8 (emphasis added). In this case, the language leads to more than one reasonable interpretation because, as Chavez and Ropero concede, it was "somewhat ambiguous." The superior court did not err in finding the notice of claim failed to state a specific amount for which the claim could be settled, and, therefore, Chavez and Ropero are barred from maintaining their lawsuit. *Id.* ¶ 6 (citing *Deer Valley*, 214 Ariz. 293, ¶ 6).

Disposition

¶12 For the foregoing reasons, we affirm the superior court's order dismissing Chavez and Ropero's complaint against the District.