



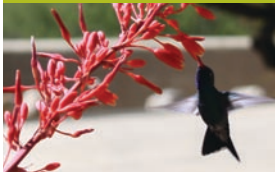
trial victory
why marry
mayhem reigns
summer drowning
kss-law happenings

5.11

at issue: pool safety

with Current Issues

thinking
Connecting our Community



KSS Obtains Complete Trial Victory

— Matt Schmidt

Dev Sethi and Jim Dyer recently obtained a complete plaintiff's verdict in *Beatty v. Oro Valley Hospital, LLC*, a medical malpractice trial. After a six day trial on the liability issue, a Pima County jury determined that our client, Mike Beatty, was paralyzed as a result of the hospital's negligence.

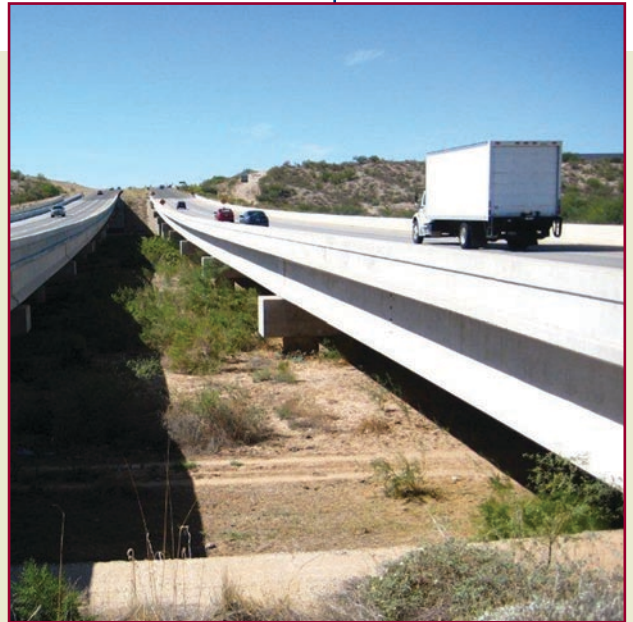
The issue in the case is what duty does a hospital have to safely discharge a patient who has been given morphine, a powerful narcotic. The jury decided that in Mike's case, the hospital had a duty to take certain steps to see that he was safely discharged. Specifically, that Mike had a ride home. Unfortunately for Mike and his family, the hospital's failures have left him in a wheelchair for the rest of his life.

Mike went to Oro Valley Hospital around midnight on a December night suffering from severe abdominal pain. Soon after arriving, Mike was given morphine. Eventually, he was diagnosed with a kidney stone and readied for discharge. There is a dispute about what happened next. But everyone agrees that Mike's wife and his two young children were on their way to pick him up around 3:00am, when the hospital allowed him to walk out its front doors, alone.

About 300 yards from the hospital, Mike fell from a bridge spanning a wash running under Tangerine Rd. He was found hours later when a passerby, hearing his screams, called 911.

At trial, the hospital nurse who treated Mike, testified that the standard of care required that Mike have a ride home at discharge and required that the hospital take reasonable steps to see that he actually got a ride home. Neither happened in Mike's case.

In order to streamline the trial and manage the expenses of trial, the liability and damages issues were separated. Now that we have prevailed on the liability issue, later this summer we will have a damages only trial.



In pure darkness, Mike Beatty fell from this bridge while under the influence of morphine.

Your partner making wrong — right again.™

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happenings

Matt Takes His Oath

Matt Schmidt, along with his wife, Maggie, and several other recent bar admittees, were sworn in as members of the Arizona Bar in a small ceremony in the Court of Appeals' Division Two courtroom. Supreme Court Justice John Pelander officiated and administered the oath. In recent years the State Bar has moved away from a large swearing in event, and we are glad Matt and some of his classmates, and their families, could take the oath with Justice Pelander.



Justice Pelander swears in Matt Schmidt and other new admittees.

New Leadership at the Children's Museum

After two years as President of the Children's Museum Tucson, Dev Sethi's term has come to an end. The past two years have seen dramatic growth in attendance, new and renewed exhibits and a sustainable garden whose vegetables will show up on the table at Janos' Downtown Kitchen+Cocktails. The Children's Museum is a 2011 beneficiary of Angel Charity for Children. Angel Charity's generous \$230,000 gift will allow the Children's Museum to install an all new and interactive exhibit focused on science, technology, engineering and math exploration.

If you are a golfer, check out the Children's Museum's Annual Father's Day Golf Tournament complete with special staycation rates!

www.childrensmuseumtucson.org



Ron DuBois Joins KSS

Ron DuBois is a 2010 graduate of the University of Arizona Rogers College of Law. Ron passed the Bar Examination in October and has joined our team of standout paralegals. Ron is from Australia and has a fondness for rugby, reviewing medical records and Sonoran hot dogs.

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The lawyers of KSS have over 100 years combined expertise in personal injury, products liability, medical malpractice, and governmental liability cases. Most of our cases are referred to us by other attorneys, and we have paid over \$10 million in referral fees to these lawyers in the last three years alone.



Why Marry? Is Marriage still Relevant in the 21st Century

— Ted Schmidt

Time Magazine recently reported that its survey showed an increasing number of Americans choosing cohabitation over marriage. “Going to the expense and formality of a wedding doesn’t change our love or commitment to each other. Why jinx a good thing? Why marry?” is the common retort when folks are asked why they don’t tie the knot.

While it may be true that marriage does not magically assure a blissful lifetime together, there are many reasons under the law why marriage remains an important institution for couples who truly care about each other.

What if You Die?

Arizona is a community property state. That means property acquired by those who are legally married is owned equally unless they expressly state otherwise in writing when acquiring the property. Thus, if one spouse dies, even without a will, the surviving spouse already has an undivided one half interest in all the property that was acquired during the marriage. Without a properly drafted will giving your significant other this property, he or she may very well be out of luck keeping both real and personal property that is in your name after your death.

Likewise, if your death is caused by the carelessness of another, your significant other has no right to bring a wrongful death claim and recover for the lost income, love, society and companionship caused by the negligence. Arizona does not recognize common law marriages unless the common law marriage was consummated in a state that does recognize them. If you want your partner to have a right to recover compensation for your loss from the insurance company insuring the person causing your death, you better get hitched.

“Going to the expense and formality of a wedding doesn’t change our love or commitment to each other. Why jinx a good thing? Why marry?”

What if You and Your Partner Have Kids?

If you are not married and you are the father of a child but not married to the mother, in order to be legally recognized as the child’s father you must jump through a number of hoops in a timely manner in order to have any adoption rights should something happen to the mother. Similarly, should you and your partner go separate ways, in order for the father to have custody and parenting rights his paternity must be established.

Additionally, if the father dies due to someone else’s negligence, unless paternity has been

established the children may very well be prevented from recovering for the lost income, support, love, companionship and society of their deceased father under Arizona’s wrongful death laws.

What if You Split Up?

If you and your partner decide to go separate ways, an unmarried mom cannot obtain child support unless she can first prove paternity. This can get messy, convoluted and expensive.

Likewise, an unmarried dad has no right to custody or visitation of his kids unless he timely proves paternity.

Similarly, an unmarried partner has no right to spousal maintenance (alimony) no matter how long the couple lived together before splitting up. Additionally, as when one partner dies, property rights can be very difficult to sort out, sometimes taking years.

“I do” or “I don’t”

As the title to the 1955 movie says, “Love is a Many Splendored Thing” indeed. But love alone does not provide the protection, security and financial well-being of that special someone in your life. So before you choose the Bohemian approach to the most significant relationships in your life be sure you are comfortable with the serious legal ramifications to being bound to one another only by your love.

why marry?

Prevent Summer Drowning

— Jim Dyer

According to the Children's Safety Network, the leading cause of death of Arizona children ages one to four is drowning and the Center for Disease Control ranks Arizona second the nation for child drowning. Virtually all child drowning can be prevented by taking simple precautions.

First, and most important, is constant direct adult supervision. If a pool is anywhere nearby, taking your eyes off of a toddler for 2 seconds can result in tragedy. Even if your kids are older, drowning prevention requires that you keep a constant eye on them when they are in or around any pool, even a public pool with a lifeguard.

Second, there must be an adequate barrier around any pool, spa, or hot tub. State law and local ordinances require barriers five feet high with openings no larger than 4 inches in diameter. Gates and doors with pool access must be self locking.

Third, swimming classes for your children and CPR classes for you and your children will help keep your kids safe.

Virtually all child drowning can be prevented by taking simple precautions.



*Be safe at the pool this Summer.
And use sunscreen!*



Mayhem Reins

— Dev Sethi

“How’s business?” A common question in almost every setting. Recently, though, we have found ourselves talking not about the cases we are working on, but instead about all too tragic cases that have no solution.

Whether it is the sluggish economy and tough jobs picture in southern Arizona, our proximity to the border, or just an increasing and unexplained irresponsibility, too often we must tell clients that because of inadequate or absent insurance coverage there is simply nothing much we can do to help them.

We have all seen the rise in minimum coverage auto insurance carriers whose advertisements blanket our streets and airways. In Arizona, you are required to have \$15,000 in insurance coverage to drive legally. That’s all. That number hasn’t changed in decades and isn’t likely to any time soon.

A driver can go to any number of carriers and pick up state minimum coverage. The only motivation to buy more – and pay for more – coverage is to protect something valuable. If you have no job, or are living paycheck to paycheck, rent a home and have little, if anything to lose, there is no good reason to purchase anything other than the minimum the law requires.

And more and more we are investigating cases only to find that the at-fault driver has no insurance. None. Worse, they often exchange incorrect or simply fake insurance information after a collision.

So what can you do to protect yourself? First, purchase as much underinsured and uninsured coverage as you can. This coverage, which you buy from your own car insurance company, protects you when you are hit and hurt by an irresponsible driver. If that driver does not have enough insurance to take care of your medical bills, lost wages and other needs, your own coverage will kick in. This coverage, often referred to as UM/UIM coverage, is relatively inexpensive. You should make sure your UM/UIM limits equal your liability limits.

Second, if someone hits you, make sure you take pictures. Not just of the damage, but also of the other driver’s insurance card, driver’s license, license plate and VIN – often found inside the driver’s side windshield. This won’t guarantee coverage. But it will give you more information to search for coverage from the driver and, potentially, vehicle owner, if you get bogus information at the scene.

Be safe – and smart – out there.

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We are dedicated to providing the strongest representation for our clients in a wide range of cases involving serious injury or death. And we appreciate the opportunity to work with referring lawyers from Arizona and around the country. We appreciate the trust those lawyers have in allowing us to assist their clients. We welcome the chance to talk. If you have a case to discuss or simply want to know more about us, please give us a call.

Are you interested in our thinking? If you would like to be added or removed from our mailing list for the KSS newsletter, please contact Bea Flesher at 520.545.1674 or bflesher@kss-law.com.

Our Attorneys: Burt Kinerk, Ted Schmidt, Jim Dyer, Dev Sethi, Matt Schmidt
Exclusively representing individuals in significant injury and wrongful death matters.

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