

[Summerfield v. Superior Court \[Brief\] \(1985\)](#) ^[1]

By: Heathcotte, Brock Keywords: [Fetus](#) ^[2]

Court: Supreme Court of Arizona

Citation: *Summerfield v. Superior Court*, 698 P.2d 712 (Ariz. 1985)

Status as current law: Probable

Value as precedent: Low

Case significance:

Arizona joined the majority of states that recognized [wrongful death](#) ^[4] claims on behalf of a [viable](#) ^[5] [fetus](#) ^[6], regardless of whether the child was [born alive](#) ^[7] or died in the [womb](#) ^[8] by expanding the definition of “person” to include a [viable](#) ^[5] [fetus](#) ^[6].

Case Summary:

- Facts—Baby Girl Summerfield was stillborn allegedly because of medical malpractice by defendants James Colleen, MD, and Richard Lott, MD.
- Law—Arizona Revised Statutes §12-611 stated in part, “When death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action to recover damages in respect thereof, then, and in every such case, the person who would have been liable if death had not ensued shall be liable to an action for damages.”
- Ruling—The word “person” in Arizona’s [wrongful death](#) ^[4] statute included in its scope a [viable](#) ^[5] [fetus](#) ^[6] that was stillborn. The trial court’s order dismissing the [wrongful death](#) ^[4] claim was reversed.

Quotes:

“This evidence of an overall legislative policy of compensation and protection militates in favor of construing the [wrongful death](#) ^[4] statute to give parents a remedy when their [viable](#) ^[5] child is negligently killed. It also seems more sensible to permit recovery by the survivors of a [viable](#) ^[5] [fetus](#) ^[6] than to impose an artificial cutoff by permitting recovery if the injured child survives or is [born alive](#) ^[7] and then dies, but prohibiting recovery for anyone if the [viable](#) ^[5] child fails to survive through the moment of delivery. Such a narrow construction of ‘person’ would not only deny compensation to the survivors, but would also run contrary to an apparent legislative objective of providing protection for the [fetus](#) ^[6].” 698 P.2d 721

“The majority finds no logic in the premise that if the [viable](#) ^[5] infant dies immediately before birth it is not a ‘person’ but that if it dies immediately after birth it is a ‘person.’ We take note, further, that the magic moment of ‘birth’ is no longer determined by nature. The advances of science have given the doctor, armed with drugs and scalpel, the power to determine just when ‘birth’ shall occur. We believe that the common law now recognizes that it is the ability of the [fetus](#) ^[6] to sustain life independently of the mother’s body that should determine when tort law should recognize it as a ‘person’ whose loss is compensable to the survivors. We acknowledge, of course, that this, too, is an artificial line, difficult at times to determine. It is not possible to draw any line without being arbitrary to some extent. Nevertheless, we believe that with regard to the issue of recognizing a loss to the survivors, [viability](#) ^[9] is a less arbitrary and more logical point than the moment of birth. The moment of [viability](#) ^[9] may be difficult to prove in those few cases where that moment and the tortious [sic] injury are temporally close. We do not believe, however, that a just remedy should be denied in all cases simply because proof may be difficult in a few.” 698 P.2d 722

This case cites to these authorities:

Dietrich v. Inhabitants of Northampton, 138 Mass. 14 (1884)

A [fetus](#) ^[6] is part of its mother and thus a child does not have standing to sue for injuries suffered in the [womb](#) ^[8].

Bonbrest v. Kotz, 65 F.Supp. 138 (D.D.C. 1946)

A lawsuit may be maintained for injuries caused to a [viable](#) ^[5] [fetus](#) ^[6] that was later [born alive](#) ^[7].

Roe v. Wade ^[10], 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973)

The word “person” in the US Constitution does not include a [fetus](#) ^[6].

This case was cited in:

Jeter v. Mayo Clinic Arizona, 211 Ariz. 386, 121 P.3d 1256 (2005)

The word “person” in Arizona’s [wrongful death](#) ^[4] statute does not include an [in vitro](#) ^[11] [frozen embryo](#) ^[12].

