

COURT OF APPEALS OF ARIZONA, DIVISION ONE

Houston v. Penzone

No. 1 CA-CV 25-0511 (Ariz. Ct. App. June 25, 2026) · No. No. 1 CA-CV 25-0511 · Decided June 25, 2026

SUMMARY

The Arizona Court of Appeals affirmed the denial of Brian Houston’s motion to certify a class in a false-light action concerning the Maricopa County Sheriff’s publication of booking photographs and personal information without a presumption-of-innocence disclaimer. The court held that false-light claims require plaintiff-specific facts concerning whether the publication constituted a major misrepresentation and would cause serious offense to a reasonable person in the plaintiff’s position. Because Houston failed to satisfy the commonality and typicality requirements of Arizona Rule of Civil Procedure 23, the court did not reach the Rule 23(b) requirements and rejected his discovery argument as waived and futile.

CASE DETAILS

COURT	Court of Appeals of Arizona, Division One
WRITING FOR THE COURT	D. Andrew Gaona; Presiding Judge David B. Gass; Judge Anni Hill Foster
JURISDICTION	Arizona Court of Appeals, Division One
DECIDED	June 25, 2026
DOCKET	No. 1 CA-CV 25-0511
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the superior court's denial of Houston's motion to certify a putative class asserting a false-light tort claim.
STANDARD OF REVIEW	Class-certification decisions are reviewed for abuse of discretion; underlying legal questions are reviewed de novo.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Brian Houston v. Paul Penzone, Other defendants/appellees

TOPICS

- class actions
- civil procedure
- appellate procedure
- standard of review
- invasion of privacy

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the superior court applied the correct legal standard in determining that the false-light claim required plaintiff-specific facts.
2. Whether Houston satisfied the commonality and typicality requirements of Arizona Rule of Civil Procedure 23(a).
3. Whether Houston satisfied either Rule 23(b)(1) or Rule 23(b)(3).
4. Whether the superior court erred by denying class certification without allowing Houston to conduct discovery.

HOLDINGS

1. A false-light claim under Restatement (Second) of Torts § 652E requires plaintiff-specific facts to establish both a major misrepresentation concerning the plaintiff's character, history, activities, or beliefs and whether serious offense could reasonably be expected to be taken by a reasonable person in the plaintiff's position. The objective reasonable-person standard does not make the claim automatically suitable for class treatment.
2. Houston failed to establish commonality and typicality because he could not show that the Sheriff's publication placed every putative class member in an actionable false light or that all class members suffered the same injury.
3. Because Houston failed to satisfy Rule 23(a), the court did not need to review the superior court's separate determinations under Rule 23(b)(1) and (b)(3).
4. The superior court did not err by denying class certification without permitting discovery because Houston raised the discovery request too late and additional discovery could not cure the fundamental problem that false-light proof requires plaintiff-specific facts.

KEY QUOTATIONS

“Because proving this element of false light requires plaintiff-specific facts, the superior court correctly denied Houston’s motion to certify a class. We affirm.” (¶3)

“The “reasonable person” standard for a false light claim thus remains objective, but defining the relevant “reasonable person” requires the fact finder to consider the plaintiff’s circumstances before applying the objective standard.” (¶19)

“Houston failed to prove commonality or typicality because he can’t prove the Sheriff’s publication put any other person in an actionable “false light,” let alone that all “class members have suffered the same injury” (or any injury at all).” (¶24)

FACTUAL BACKGROUND

In January 2022, Phoenix police arrested Brian Houston for assault and transferred him to the Maricopa County Sheriff's custody. The Sheriff posted Houston's booking photograph, birthdate, and other personal information on its Mugshot Lookup website for approximately three days without stating that Houston had not been convicted and was presumed innocent. A third party republished the information, and prosecutors later dismissed the charges. Houston sought to represent a class of people booked into the Maricopa County jail system whose booking photographs and identifying information were similarly published.

PROCEDURAL HISTORY

Houston filed a putative class action in Maricopa County Superior Court based on the Sheriff's publication of booking photographs and personal information without a disclaimer of presumed innocence. The superior court dismissed his public-records and Arizona Mugshot Act claims, stayed the state constitutional claim, and denied his motion to certify a class on the false-light claim for failure to satisfy Arizona Rule of Civil Procedure 23(a) and 23(b). Houston appealed before the Sheriff answered and before he sought discovery. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Godbehere v. Phoenix Newspapers, Inc., 162 Ariz. 335 (1989)
- Houston v. Maricopa County, 116 F.4th 935, 939, 947 (9th Cir. 2024)
- Ferrara v. 21st Century North America Insurance Co., 245 Ariz. 377, 380-81 ¶¶ 6-10 (App. 2018)
- Godbey v. Roosevelt School District, 131 Ariz. 13, 16 (App. 1981)
- Noohi v. Johnson & Johnson Consumer Inc., 146 F.4th 854, 863 (9th Cir. 2025)
- Amchem Products, Inc. v. Windsor, 521 U.S. 591, 614-15 (1997)
- ESI Ergonomic Solutions, LLC v. United Artists Theatre Circuit, Inc., 203 Ariz. 94, 98 n.2 (App. 2002)
- Pinder v. 4716 Inc., 494 F. Supp. 3d 618, 629 (D. Ariz. 2020)
- Canas v. Bay Entertainment, LLC, 252 Ariz. 117, 122 ¶¶ 22-25 (App. 2021)
- Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 351 (2011)
- Parsons v. Ryan, 754 F.3d 657 (9th Cir. 2014)
- Arnold v. Arizona Department of Health Services, 160 Ariz. 593 (1989)
- Taig v. Currey, No. 9:21-CV-80391-RLR, 2022 WL 18539319 (S.D. Fla. June 28, 2022)
- Westin Tucson Hotel Co. v. State Department of Revenue, 188 Ariz. 360, 364 (App. 1997)