

# RECENT DEVELOPMENTS IN INDIANA TORT LAW

PAUL S. KRUSE\*  
LARRY L. MORRIS AND HEATHER D. BOYLE\*\*  
KATHERINE M. MOORE\*\*\*

This Article discusses noteworthy case law developments in Indiana tort law during the survey period. It is not intended as a comprehensive or exhaustive overview.

## I. NEGLIGENCE

### *A. Principal's Liability for Actions of Independent Contractor*

In *Dow v. Hurst*,<sup>1</sup> the court of appeals reaffirmed that a principal is liable for the actions of its independent contractor if the independent contractor violates a duty imposed by a statute.

A landowner entered into a contract with a timber company for the purchase of timber on his land.<sup>2</sup> The timber company marked the property boundary and hired independent contractors to harvest the timber, run a skidder, and cut trees.<sup>3</sup> The neighboring landowner discovered trees were being harvested from his property and told the timber company not to cut down trees on his property.<sup>4</sup> Despite this warning, more trees were harvested on the neighbor's property, causing substantial damage due to loss of trees, the presence of stumps and tree debris, erosion, and heavy equipment ruts.<sup>5</sup>

The neighboring landowner sued the timber company, alleging trespass and conversion, and seeking treble damages under Indiana's Crime Victim Relief Act.<sup>6</sup> After a bench trial, the trial court found the timber company was liable for its independent contractors' acts and entered judgment in favor of the neighboring landowner.<sup>7</sup>

After analyzing the five exceptions to the general rule that a principal is not

---

\* Partner, Parr Richey Frandsen Patterson Kruse LLP since 1984, with practice focusing on personal injury matters, including extensive experience handling catastrophic damage and wrongful death claims. J.D., *cum laude*, Indiana University Robert H. McKinney School of Law.

\*\* Larry L. Morris is the Administrator for the Court of Appeals of Indiana. J.D., Indiana University Robert H. McKinney School of Law. Heather D. Boyle is the Deputy Senior Law Clerk for Judge Robert R. Altice of the Court of Appeals of Indiana. J.D., Indiana University Robert H. McKinney School of Law.

\*\*\* Associate, Parr Richey Frandsen Patterson Kruse LLP. J.D., *summa cum laude*, Indiana University Robert H. McKinney School of Law.

1. *Dow v. Hurst*, 146 N.E.3d 990 (Ind. Ct. App.), *trans. denied*, 152 N.E.3d 584 (Ind. 2020).

2. *Id.* at 993.

3. *Id.*

4. *Id.*

5. *Id.* at 993-94.

6. *Id.* at 994; *see also* IND. CODE § 34-24-3-1 (2021).

7. *Dow*, 146 N.E.3d at 994-96.

liable for its independent contractors' acts, the court of appeals affirmed the trial court.<sup>8</sup> One of the exceptions provides that a principal is liable for its independent contractors' acts if a law or contract charges the principal with performing a specific duty.<sup>9</sup> In this case, Indiana's Timber Buyers Act<sup>10</sup> imposed a duty on the timber company to not cut or appropriate any unpurchased timber.<sup>11</sup> As such, the timber company was responsible for its independent contractors' acts.<sup>12</sup> The timber company also challenged the sufficiency of the plaintiff's damages evidence, but the court of appeals concluded the trial court's damages award was proper.<sup>13</sup>

### *B. Scope of Employment – Off-Duty Trooper*

In *Burton v. Benner*, the supreme court concluded an off-duty police officer was shielded from personal liability because he was not acting clearly outside the scope of his employment when he was involved in a motor vehicle accident while speeding.<sup>14</sup>

While operating his police vehicle, an off-duty state trooper was involved in an incident with a motorcycle while attempting to pass another vehicle.<sup>15</sup> The trooper was required to follow State-Police-issued guidelines pertaining to the use of his police vehicle, even when off-duty.<sup>16</sup> The motorcyclist sued the trooper and the Indiana State Police, alleging negligence.<sup>17</sup> The trial court entered summary judgment in favor of the trooper, finding the trooper was acting within the scope of his employment while operating his police vehicle and was immune from personal liability under the Indiana Tort Claims Act ("ITCA").<sup>18</sup> The case against the Indiana State Police was allowed to proceed.<sup>19</sup> The court of appeals unanimously reversed, finding that reasonable jurors could disagree as to whether the trooper was acting within the scope of his employment when the accident occurred.<sup>20</sup>

The supreme court affirmed the trial court and concluded the trooper could not be held personally liable for the accident.<sup>21</sup> The court considered ITCA, which "provides substantial immunity for conduct within the scope of the employee's

---

8. *Id.* at 996-97.

9. *Id.* at 996.

10. IND. CODE §§ 25-36.5-1-1 to -18.

11. *Dow*, 146 N.E.3d at 996-97.

12. *Id.* at 997.

13. *Id.* at 999-1000.

14. *Burton v. Benner*, 140 N.E.3d 848 (Ind. 2020).

15. *Id.* at 850.

16. *Id.*

17. *Id.* at 850-51.

18. *Id.* (citing IND. CODE §§ 34-13-3-0.1 to -25 (2021)).

19. *Id.* at 851.

20. *Id.*

21. *Id.* at 853.

employment.”<sup>22</sup> To be held personally liable under ITCA, a government employee must have acted “clearly” outside the scope of their employment.<sup>23</sup> In this case, the trooper followed the “vast majority” of state police procedures for operating his police vehicle while off duty, including maintaining radio contact, responding to emergencies, carrying a firearm, and conforming to a certain dress code.<sup>24</sup> The trooper’s activities also benefitted his employer, as he provided a police presence on the roads and could respond to nearby emergencies.<sup>25</sup> Noting the standard “clearly outside” the scope of employment was a “high bar”, the court determined the trooper was not clearly acting outside the scope of his employment when the accident occurred, even if he was speeding.<sup>26</sup>

### *C. Scope of Employment – Healthcare Worker*

In *SoderVick v. Parkview Health System*,<sup>27</sup> a healthcare provider’s employee accessed and shared the patient’s medical records with her spouse. The trial court’s entry of summary judgment in favor of the healthcare provider was improper, as there were questions of fact as to whether the employee’s actions fell within the scope of her employment.<sup>28</sup>

During a patient’s appointment, a healthcare provider’s employee accessed the patient’s chart, and immediately texted her husband to share the information, including some false information.<sup>29</sup> When the healthcare provider learned of the potential HIPAA violation, it terminated the employee and notified the patient about the disclosure of her protected health information.<sup>30</sup>

The patient sued the healthcare provider, alleging vicarious liability and other negligence claims.<sup>31</sup> The trial court ultimately granted the healthcare provider’s summary judgment motion on all counts, finding it was not vicariously liable because the employee’s conduct was unauthorized and did not serve a legitimate business purpose.<sup>32</sup> The patient appealed the trial court’s ruling as to only the respondeat superior claim.<sup>33</sup>

In analyzing the respondeat superior standard, the court of appeals explained the employee’s conduct must “be incidental to the conduct authorized” or further the employer’s business to an appreciable extent in order to subject the healthcare

---

22. *Id.* at 852 (quoting *Bushong v. Williamson*, 790 N.E.2d 467, 472 (Ind. 2003)).

23. *Burton*, 140 N.E.3d at 853.

24. *Id.* at 852-53.

25. *Id.* at 853.

26. *Id.*

27. *SoderVick v. Parkview Health Sys., Inc.*, 148 N.E.3d 1124 (Ind. Ct. App. 2020).

28. *Id.* at 1125-26.

29. *Id.* at 1126.

30. *Id.* at 1127.

31. *Id.*

32. *Id.*

33. *Id.*

provider to liability.<sup>34</sup> The majority opinion concluded the employee's conduct in sharing a patient's protected health information was "of the same general nature" as her authorized duties, which involved accessing patient charts.<sup>35</sup> Additionally, the employee's misconduct was intermingled with performing other ordinary, authorized job duties.<sup>36</sup> Finally, the employee used the healthcare provider's equipment in committing the wrongful acts.<sup>37</sup> The court rejected the argument that the employee's conduct was for personal reasons and had no business purpose, finding the employee's "subjective motivation is relevant only as to whether the misconduct furthers the employer's interests, not whether it was incidental to authorized conduct."<sup>38</sup>

Judge Tavitas dissented on grounds that the medical provider designated evidence that its employee had no legitimate business purpose in accessing the patient's chart because the employee was not treating the patient.<sup>39</sup>

*D. Sporting Activities – Activities Considered to be "Sport Activity"*

In *Burdick v. Romano*,<sup>40</sup> the court of appeals held that horseback riding in an arena is a sporting activity, thus requiring a showing of recklessness, as opposed to mere negligence.

A horse trainer went to an arena to train and ride her horse.<sup>41</sup> Another woman was also at the arena with her horse, Sheza; the horse trainer had seen Sheza kick other horses on prior occasions and Sheza's owner warned the horse trainer to stay away from Sheza.<sup>42</sup> A few days later, the two women were riding their horses again.<sup>43</sup> Sheza's owner dismounted and walked away from Sheza to retrieve a barrel.<sup>44</sup> The trainer testified that Sheza spooked, backed up, and kicked the horse trainer.<sup>45</sup> Sheza's owner testified differently and said the horse trainer's injuries had nothing to do with Sheza because the horse trainer fell off her horse Chip.<sup>46</sup>

The horse trainer was seriously injured and sued Sheza's owner for negligence and recklessness in controlling Sheza.<sup>47</sup> Sheza's owner filed two summary judgment motions, which the trial court denied, noting the case

---

34. *Id.* at 1129 (citation omitted).

35. *Id.* at 1130.

36. *Id.*

37. *Id.* at 1130-31.

38. *Id.* at 1132.

39. *Id.* at 1133-35 (Tavitas, J., dissenting).

40. *Burdick v. Romano*, 148 N.E.3d 335 (Ind. Ct. App.), *trans. denied*, 152 N.E.3d 1061 (Ind. 2020).

41. *Id.* at 338.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* at 338-39.

46. *Id.* at 339.

47. *Id.*

involved a “horse-related *sports activity*.”<sup>48</sup> The trial court instructed the jury on incurred risk, inherent risks of equine activities, and sporting event injuries; the trial court declined to give the horse trainer plaintiff’s instructions on premises liability, negligence, duty, and reasonable care.<sup>49</sup> The jury found in the defendant’s favor and the horse trainer appealed.<sup>50</sup>

The court of appeals concluded the trial court read the proper set of instructions to the jury because the horse trainer was engaged in a sporting activity when she was injured.<sup>51</sup> The parties were riding their horses in a training arena and were demonstrating tricks and training techniques associated with the sport of horseback riding.<sup>52</sup> Also, a statute defining “equine activity”<sup>53</sup> did not exclude sporting activities from its definition.<sup>54</sup> Because the injury was caused by a sporting activity, recklessness, not negligence, was the burden of proof to which the defendant was held, and the jury instruction was proper.<sup>55</sup> Concerning the other instructions, the court held the instruction on the inherent risks of equine activities properly stated the law and the incurred-risk instruction was appropriate because the horse trainer knew of Sheza’s tendency to kick other horses and act aggressively.<sup>56</sup>

#### *E. Sporting Activities – Persons Considered to be “Sports Participants”*

In *In re C.G. Minor*,<sup>57</sup> the court of appeals determined a basketball coach was a sports participant because he was acting as a defensive player during a practice drill.

During high school basketball practice, the team coach blocked a shot, causing the basketball to strike another player in the head.<sup>58</sup> The player suffered a concussion and sued the school corporation, but acknowledged she did not believe her coach intentionally struck her with the basketball.<sup>59</sup> The trial court granted the school’s summary judgment motion, finding the player could not establish that the coach was reckless by blocking the shot.<sup>60</sup>

The court of appeals agreed, noting this was a sports-injury case in which the coach breached a duty only if he injured the player intentionally or recklessly,

---

48. *Id.* (emphasis in original).

49. *Id.* at 339-40.

50. *Id.* at 340.

51. *Id.* at 345.

52. *Id.* at 342-43.

53. IND. CODE § 34-6-2-41 (2020).

54. *Burdick*, 148 N.E.3d at 341-42.

55. *Id.* at 343.

56. *Id.* at 343-45.

57. *In re C.G.*, 157 N.E.3d 543 (Ind. Ct. App. 2020).

58. *Id.* at 544-45.

59. *Id.* at 545.

60. *Id.*

because blocking a basketball is ordinary conduct in the sport.<sup>61</sup> The player argued for the first time on appeal that the coach was not a sports participant, that the applicable rule in sports-activity cases did not apply, and the coach and school were liable for negligent conduct.<sup>62</sup> Although this argument was waived, the court of appeals determined the coach was a sports participant because she participated in basketball drills during practice.<sup>63</sup>

#### *F. Negligent Confinement of Animals*

In *Gacsy v. Reinhart*,<sup>64</sup> the court of appeals held that in a claim for negligent confinement of horses, evidence of the horses' prior escape was admissible at trial, because it was directly relevant to the issue of foreseeability.

Horses escaped their confinement and injured a man, who sued the horses' owner for negligent confinement.<sup>65</sup> Before trial, the court granted the horse owner's motion in limine and excluded any evidence or testimony regarding other incidents where the horses escaped.<sup>66</sup> The first trial resulted in a mistrial after the plaintiff's attorney violated the order in limine four times during opening statements.<sup>67</sup> The trial court declined to dismiss the case, but sanctioned the plaintiff's attorney.<sup>68</sup> At the start of the second trial, the plaintiff's attorney stated that, two months before the incident, "[t]he fence found a failure."<sup>69</sup> The trial court found the attorney violated the order in limine again, granted a mistrial, and dismissed the case with prejudice.<sup>70</sup>

The court of appeals reversed the dismissal, reasoning the phrase "found a failure" did not necessarily imply the horses escaped; therefore, the attorney did not violate the order in limine.<sup>71</sup> As to the order in limine itself, the foreseeability of the horses escaping was directly at issue in a negligent confinement claim.<sup>72</sup> Therefore, the court concluded, the fence condition and alleged prior escapes of the horses were directly relevant to the issues and therefore admissible at trial.<sup>73</sup> The court of appeals also directed the trial court to strike the sanctions against the plaintiff's attorney.<sup>74</sup>

---

61. *Id.* at 546-47.

62. *Id.* at 547-48.

63. *Id.* at 548.

64. *Gacsy v. Reinhart*, 142 N.E.3d 518 (Ind. Ct. App.), *trans. denied*, 152 N.E.3d 589 (Ind. 2020).

65. *Id.* at 520-21.

66. *Id.* at 521.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* at 521-22.

71. *Id.* at 523.

72. *Id.* at 523-24.

73. *Id.* at 524.

74. *Id.*

## II. DUTY

### *A. Special Duty for Failure to Report – School Resource Officer*

In *Weikart v. Whitko Community School Corp.*,<sup>75</sup> the court of appeals held there was no civil cause of action for a school resource officer's failure to report alleged assaults.

A high school student twice reported to a school resource officer that she was gang raped.<sup>76</sup> The school resource officer, also employed by the town as a police officer, told the student and her parents he had contacted the local sheriffs' departments; in fact, the officer never reported the alleged assaults.<sup>77</sup> Eventually, the officer was criminally charged with failure to make a report and the media reported the charges.<sup>78</sup> As a result, the student and her family suffered great emotional stress, described as "nightmares, emotional trauma, fear, anger, and post-traumatic stress disorder, and has required medication and psychiatric therapy as a result."<sup>79</sup>

The student and her parents sued the school corporation and the town, alleging they were liable for the officer's actions under the doctrine of respondeat superior.<sup>80</sup> The trial court granted the defendants' 12(B)(6) motion to dismiss on grounds there was no civil cause of action for the officer's failure to report.<sup>81</sup>

On appeal, the student and her family conceded there was no private civil cause of action for failure to report; instead, they argued the officer owed the student a special duty as a law enforcement officer.<sup>82</sup> The court of appeals determined they had waived that argument, but also found no special relationship between the student and officer because the student was not an informant.<sup>83</sup>

Judge Crone concurred separately, agreeing the student and her family waived their "special duty" argument.<sup>84</sup> However, he was troubled that the student had no adequate remedy given the officer's actions, and expressed a desire for the current state of the law to change someday.<sup>85</sup>

### *B. Foreseeability of Criminal Attack – No Duty Owed*

In *Cavanaugh's Sports Bar & Eatery v. Porterfield*,<sup>86</sup> a divided supreme court

---

75. *Weikart v. Whitko Cmty. Sch. Corp.*, 134 N.E.3d 484 (Ind. Ct. App. 2019).

76. *Id.* at 485.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 486.

81. *Id.*

82. *Id.*

83. *Id.* at 486-87.

84. *Id.* at 487 (Crone, J., concurring).

85. *Id.* at 488.

86. *Cavanaugh's Sports Bar & Eatery, Ltd. v. Porterfield*, 140 N.E.3d 837 (Ind. 2020).

held that, in determining the foreseeability of a criminal attack, courts should determine if the defendant had reason to know of present and specific circumstances that would cause a reasonable person to recognize the likelihood of imminent harm.

Two men were at a bar until closing time; while walking across the parking lot, they fought with some other bar patrons.<sup>87</sup> One man sustained serious injuries and sued the bar for negligence, alleging the bar owed a duty to protect him because it was located in an area known for criminal activity, the bar patrons had a propensity for criminal activity, and the bar knew of prior fights in the parking lot.<sup>88</sup> The trial court denied the bar's motion for summary judgment and the court of appeals affirmed, finding that fights at closing time are foreseeable to bar owners.<sup>89</sup> The supreme court granted transfer and, in a three-to-two decision, reversed the trial court and directed it to enter summary judgment in favor of the bar.<sup>90</sup> Justices Goff and David dissented.<sup>91</sup>

The court examined the foreseeability component of the duty owed by the bar, considering "the broad type of plaintiff and harm involved."<sup>92</sup> The court again applied the framework it established in *Goodwin v. Yeakle's Sports Bar & Grill*,<sup>93</sup> *Rogers v. Martin*,<sup>94</sup> and their progeny.<sup>95</sup> Considering these cases, the court stated a landowner cannot foresee sudden attacks "without notice of present and specific circumstances that would cause a reasonable person to recognize the risk of an imminent criminal act."<sup>96</sup>

The majority concluded the bar could not foresee a sudden parking lot fight when there was no tension in the bar before the fight.<sup>97</sup> The previous fights at the bar could be evaluated in determining proximate cause but played no role in evaluating the foreseeability component of duty.<sup>98</sup> As such, the bar owed no duty

---

87. *Id.* at 838.

88. *Id.* at 838-39.

89. *Id.* at 839.

90. *Id.* at 839, 844.

91. *Id.* at 844 (Goff, J., dissenting).

92. *Id.* at 839-40 (majority opinion) (quoting *Goodwin v. Yeakle's Sports Bar & Grill, Inc.*, 62 N.E.3d 384, 393 (Ind. 2016)).

93. *Goodwin*, 62 N.E.3d at 384.

94. *Rogers v. Martin*, 63 N.E.3d 316 (Ind. 2016).

95. *See, e.g.*, *Doe v. Delta Tau Delta Beta Alpha Chapter*, No. 1:16-cv-01480, 2018 WL 3375016, at \*4 (S.D. Ind. July 11, 2018); *Rose v. Martin's Super Markets L.L.C.*, 120 N.E.3d 234, 244 (Ind. Ct. App.), *trans. denied*, 129 N.E.3d 775 (Ind. 2019); *Buddy & Pals III, Inc. v. Falaschetti*, 118 N.E.3d 38 (Ind. Ct. App.), *trans. denied*, 124 N.E.3d 60 (Ind. 2019); *Hamilton v. Steak 'n Shake Operations Inc.*, 92 N.E.3d 1166 (Ind. Ct. App.), *trans. denied*, 102 N.E.3d 289 (Ind. 2018); *Certa v. Steak 'n Shake Operations Inc.*, 102 N.E.3d 336 (Ind. Ct. App. 2018); *Cosgray v. French Lick Resort & Casino*, 102 N.E.3d 895, 901 (Ind. Ct. App. 2018); *Powell v. Stuber*, 89 N.E.3d 430, 434 (Ind. Ct. App. 2017).

96. *Porterfield*, 140 N.E.3d at 842.

97. *Id.* at 843.

98. *Id.* at 843-44.



to the injured patron.<sup>99</sup>

Justice Goff and Justice David opined that the majority added new requirements to the foreseeability analysis and focused on the facts of the case instead of considering the broad type of plaintiff and harm.<sup>100</sup> The majority believed the bar owed a duty because it was reasonably foreseeable that a patron could be injured from a fistfight at closing time.<sup>101</sup>

*C. Foreseeability of Criminal Attack – Duty Owed to Congregant*

In *Singh v. Singh*,<sup>102</sup> the court of appeals held that a house of worship owed a duty to its congregant because it had noticed a criminal attack would likely occur during a special day of celebration.

While visiting his house of worship, a congregant was stabbed during a dispute between two groups.<sup>103</sup> The congregant sued his assailant and the temple, alleging the temple failed to maintain its premises in a reasonable condition by failing to control the congregation or provide proper security.<sup>104</sup> The temple argued the assailant's actions were unforeseeable and that on several occasions, the temple contracted with the local police department or a private security company to provide security for the temple.<sup>105</sup> The temple also "sen[t] letters to the potential agitators, instructing them not to enter the Temple, and [warning] that any unauthorized entry would be unlawful trespass."<sup>106</sup> The temple claimed it had no knowledge of potential threats of violence and law enforcement was present on the day of the stabbing incident.<sup>107</sup>

The trial court granted the temple's summary judgment motion, finding it was not foreseeable that a violent stabbing would occur in a house of worship.<sup>108</sup> The court of appeals reversed.<sup>109</sup> Although the temple took steps to avoid disturbances by hiring extra security, sending letters to some of its members imploring them to refrain from violence, and having security guards present on the day of the incident, the court of appeals determined the temple had "notice of present and specific circumstances that would cause a reasonable person to recognize the risk of an imminent criminal act, and had reason to recognize the probability or likelihood of looming harm on a special day of celebration at which its change of leadership was to be announced."<sup>110</sup> Thus, the temple owed a duty to its injured

---

99. *Id.*

100. *Id.* at 844-45.

101. *Id.* at 847.

102. *Singh v. Singh*, 155 N.E.3d 1197 (Ind. Ct. App. 2020).

103. *Id.* at 1198.

104. *Id.* at 1199.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 1202.

109. *Id.* at 1209.

110. *Id.* at 1208-09.

congregant.<sup>111</sup>

#### *D. Continuing Duty to Discover Property Defects*

In *Pioneer Retail, LLC v. Jones*,<sup>112</sup> the court of appeals held that businesses have a continuing duty to exercise reasonable care in discovering defects or dangerous conditions on their property, even if they have contracted work to another company.

A management company contracted with a snow removal company to clear snow, ice, and other debris from property rented by a grocery store.<sup>113</sup> One day, a patron slipped and fell on a snowy and/or icy sidewalk outside the store.<sup>114</sup> The patron sued the property owner, management company, grocery store, and snow removal company.<sup>115</sup> The grocery store argued it owed no duty of care to the patron because the landlord was solely responsible for maintaining the sidewalk.<sup>116</sup> The trial court denied the grocery store and patron's cross-motions for summary judgment.<sup>117</sup> At trial, the jury found the grocery store to be 25% at fault and the other defendants collectively 75% at fault, and awarded damages to the patron.<sup>118</sup>

The grocery store appealed the trial court's summary judgment ruling, arguing it owed no duty to the patron because it exercised no control over the area where she fell.<sup>119</sup> The court of appeals affirmed the trial court, explaining the grocery store was a business entity and owed an active and continuing duty to exercise reasonable care to discover defects or dangerous conditions on the premises.<sup>120</sup>

#### *E. Natural Land Condition – No Duty Owed to Traveling Public*

In *Reece v. Tyson Fresh Meats, Inc.*,<sup>121</sup> the court of appeals held a landowner whose tall grass did not encroach on the roadway did not owe a duty of care to the traveling public.

While traveling southbound, a man waved to an eastbound driver to enter an intersection.<sup>122</sup> Afterward, the motorist turned and then executed a U-turn such that he was traveling eastbound.<sup>123</sup> The motorist struck and severely injured a

---

111. *See id.*

112. *Pioneer Retail, LLC v. Jones*, 150 N.E.3d 662 (Ind. Ct. App. 2020).

113. *Id.* at 663-64.

114. *Id.* at 664.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.* at 664-65.

119. *Id.* at 665.

120. *Id.* at 665-66.

121. *Reece v. Tyson Fresh Meats, Inc.*, 153 N.E.3d 1193 (Ind. Ct. App. 2020).

122. *Id.* at 1196.

123. *Id.*

motorcyclist who was traveling southbound (the location where the motorist originally waved another eastbound driver through).<sup>124</sup> The police noted tall grass in the northwest corner of the intersection near a drainage ditch would have limited or prohibited the motorist from seeing the motorcycle.<sup>125</sup> A meatpacking plant was located on the northwest side of the intersection and, for purposes of the appeal, admitted it owned the land in question.<sup>126</sup>

The motorcyclist's guardian sued the motorist, who was ninety-two years old and unable to recall the accident.<sup>127</sup> In his interrogatory answers, the motorist indicated his view of the intersection was blocked by tall grass.<sup>128</sup> The guardian filed an amended complaint against the state, county, and the meatpacking plant.<sup>129</sup> Eventually, only the claim against the meatpacking plant remained, and the trial court granted the plant's summary judgment motion, concluding the meatpacking plant owed no duty to a member of the traveling public.<sup>130</sup>

The meatpacking plant did not challenge the guardian's allegation that the grass blocked the view at the intersection.<sup>131</sup> Instead, it argued that if a natural condition is wholly contained within a parcel of property, the owner owes no duty to a driver on an adjacent street.<sup>132</sup> The court considered other cases in which landowners did owe a duty to the traveling public due to smoke<sup>133</sup> and traffic jams<sup>134</sup> arising from the use of their land.<sup>135</sup> The court distinguished artificial conditions like smoke, traffic jams, and vegetation planted by humans from a natural condition, like the natural growth of vegetation, such as weeds.<sup>136</sup> With regard to a natural condition, a landowner generally is not liable unless the landowner has actual knowledge of a dangerous natural condition.<sup>137</sup> Here, the tall grass was confined to the meatpacking plant's property, and the guardian did not allege the tall grass encroached on the roadway.<sup>138</sup> As such, the meatpacking plant did not owe a duty to the traveling public.<sup>139</sup>

The court of appeals also rejected the guardian's argument regarding assumption of duty; although a former employee mowed the ditch twice a month until he retired, he ceased mowing the ditch more than two years before the

---

124. *Id.*

125. *Id.* at 1196-97.

126. *Id.* at 1197, 1200.

127. *Id.* at 1196-97.

128. *Id.* at 1197.

129. *Id.*

130. *Id.* at 1197-98.

131. *Id.* at 1200.

132. *Id.*

133. *See Pitcairn v. Whiteside*, 34 N.E.2d 943 (Ind. App. 1941).

134. *See Holiday Rambler Corp. v. Gessinger*, 541 N.E.2d 559 (Ind. Ct. App. 1989).

135. *Reece*, 153 N.E.3d at 1200-01.

136. *Id.* at 1201.

137. *Id.*

138. *Id.* at 1202-03.

139. *Id.* at 1203.

accident.<sup>140</sup>

Judge Baker dissented in part, finding there were questions of fact rendering summary judgment inappropriate, such as the population density of the area and whether the meatpacking plant exercised reasonable care in maintaining vegetation on its property.<sup>141</sup>

#### *F. Duty of Confidentiality – Medical Provider*

In *Henry v. Community Healthcare System Community Hospital*,<sup>142</sup> the court of appeals held medical providers owe patients a common-law duty of confidentiality.

A patient received medical treatment, including x-rays, from a hospital.<sup>143</sup> A hospital employee showed her spouse the patient's x-rays.<sup>144</sup> The hospital employee's spouse happened to be the patient's employer, and the spouse/employer showed the x-rays to the patient/employee.<sup>145</sup> The patient sued the hospital, alleging it breached a duty to protect the privacy, security, and confidentiality of her health records.<sup>146</sup>

The hospital filed a motion to dismiss, which the trial court treated as a motion for judgment on the pleadings.<sup>147</sup> The trial court granted the motion and dismissed the complaint with prejudice on grounds Indiana does not recognize an actionable claim for the tort of private disclosure of public facts and the patient had no private cause of action for a HIPAA<sup>148</sup> violation.<sup>149</sup>

The court of appeals unanimously reversed, recognizing the “age-old” duty of confidentiality medical providers owe their patients and the ethical rules governing the medical profession.<sup>150</sup> While HIPAA does not provide a private right of action, it can be used to establish the standard of care in a negligence action.<sup>151</sup> Under Indiana's liberal notice-pleading standard, the patient sufficiently pleaded a negligence action, and it was improper for the trial court to dismiss the case.<sup>152</sup>

---

140. *Id.* at 1203-04.

141. *Id.* at 1204 (Baker, J., dissenting in part).

142. *Henry v. Cmty. Healthcare Sys. Cmty. Hosp.*, 134 N.E.3d 435 (Ind. Ct. App. 2019).

143. *Id.* at 436.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. 42 U.S.C. § 1320d (2020).

149. *Henry*, 134 N.E.3d at 436-37.

150. *Id.* at 437-38.

151. *Id.* at 437.

152. *Id.* at 438-39.

## III. MEDICAL MALPRACTICE

*A. Interpretation of “Health Care” in Medical Malpractice Act*

In *Strickholm v. Anonymous Nurse Practitioner*,<sup>153</sup> the court of appeals examined the issue of what constitutes “health care” under Indiana’s Medical Malpractice Act and denied the defendant provider’s summary judgment motion.

A patient received treatment and medication from a nurse practitioner for high blood pressure.<sup>154</sup> The nurse practitioner asked the patient to return for blood pressure checks.<sup>155</sup> At a follow-up visit, a licensed practical nurse (“LPN”) checked the patient’s blood pressure and relayed the results to the doctor.<sup>156</sup> The nurse practitioner reviewed the LPN’s report but did not recommend further follow up; the doctor, however, advised that another blood pressure check was needed in one to two weeks.<sup>157</sup> A week after his appointment, the patient went to the emergency room with an altered mental state, was diagnosed with hyponatremia, and was admitted to the hospital.<sup>158</sup> The next day, the patient suffered a heart attack and survived, but suffered cognitive impairment.<sup>159</sup>

The patient filed a proposed complaint against the nurse practitioner with the Indiana Department of Insurance.<sup>160</sup> The nurse practitioner argued the complaint was untimely as she last provided treatment to the patient more than two years before suit was filed.<sup>161</sup> The trial court granted the nurse practitioner’s motion for summary judgment.<sup>162</sup>

On appeal, the issue was whether the nurse practitioner’s review of the LPN’s report constituted “health care” under Indiana’s Medical Malpractice Act, which defines health care as “an act or treatment performed or furnished, or that should have been performed or furnished, by a healthcare provider for, to, or on behalf of a patient during the patient’s medical care, treatment, or confinement.”<sup>163</sup> The court of appeals determined there was a question of fact as to whether the nurse practitioner provided “health care” to the patient by reviewing and approving the LPN’s report.<sup>164</sup> If reviewing the LPN’s report constituted “health care,” the patient’s complaint was timely filed.<sup>165</sup> The court of appeals reversed and

---

153. *Strickholm v. Anonymous Nurse Practitioner*, 136 N.E.3d 264 (Ind. Ct. App. 2019).

154. *Id.* at 266.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* at 266-67.

162. *Id.* at 267.

163. *Id.* (quoting IND. CODE § 34-18-2-13 (2021)).

164. *Strickholm*, 136 N.E.3d at 270.

165. *Id.* at 269-70.

remanded the case to the trial court.<sup>166</sup>

*B. Applying the One Satisfaction Rule to Statutory Damages Cap*

In *Batchelder v. Indiana University Health Care Associates, Inc.*,<sup>167</sup> the court of appeals held that under the one-satisfaction rule, the total damages in a case must be calculated before taking into account any setoffs.

After a person was rendered paraplegic in a collision, a radiologist misread the person's x-rays and failed to diagnose him with a cervical spine fracture.<sup>168</sup> The patient sought a second opinion from another provider, who diagnosed the spine fracture and performed neurosurgery.<sup>169</sup> Several months later, the patient died shortly after filing suit against the other motorist.<sup>170</sup> The motorist eventually settled the case for \$1.25 million.<sup>171</sup> A few months after the settlement, the patient's estate filed a wrongful death complaint against the radiologist, and the medical review panel found the radiologist deviated from the standard of care.<sup>172</sup> The radiologist moved for summary judgment, arguing that Indiana's Medical Malpractice Act<sup>173</sup> caps damages at \$1.25 million, which the estate obtained from the other motorist.<sup>174</sup> The estate argued its settlement with the driver should be deducted from the total value of the case, not deducted from the statutory cap.<sup>175</sup> The trial court agreed with the provider and granted its summary judgment motion.<sup>176</sup>

On appeal, the court examined the "one satisfaction rule" that applies when multiple defendants' actions cause a single injury to the plaintiff and prevents a plaintiff from receiving more than one full recovery.<sup>177</sup> In such cases, if a judgment is entered against one defendant, the amount of the judgment is offset by the settlement amount, if any, paid by the other defendant.<sup>178</sup> In this case, the appellate court held a court should first establish the overall value of the case and then determine any applicable setoffs.<sup>179</sup> The appellate court determined the trial court erred by applying the setoff without first determining the value of the case

---

166. *Id.* at 270.

167. *Batchelder v. Ind. Univ. Health Care Assocs., Inc.*, 148 N.E.3d 1116 (Ind. Ct. App. 2020).

168. *Id.* at 1118.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. IND. CODE § 34-18-14-3 (2021).

174. *Batchelder*, 148 N.E.3d at 1118.

175. *Id.*

176. *Id.*

177. *Id.* at 1120, 1123-24.

178. *Id.* at 1120 (citing *Palmer v. Comprehensive Neurologic Servs., P.C.*, 864 N.E.2d 1093, 1099 (Ind. Ct. App. 2007)).

179. *Id.* at 1123.

and whether the settlement entirely satisfied the estate's damages.<sup>180</sup> The court of appeals reversed the entry of summary judgment.<sup>181</sup>

#### IV. PROCEDURE

##### *A. Admissibility of Non-physician Expert Causation Opinion*

In *Riley v. St. Mary's Medical Center of Evansville*,<sup>182</sup> the court of appeals held a non-physician healthcare provider with sufficient expertise could offer expert opinions when the causation issue was not complex.

A patient complained of intense right arm pain as a radiologic technician injected contrast dye in preparation for a CT scan.<sup>183</sup> A second technician injected contrast dye into the patient's left arm, and the patient experienced no problems.<sup>184</sup> Later that day, the patient's right arm swelled until her skin broke open.<sup>185</sup> The patient required surgery and following surgery, needed a wound vac and weeks of home health care.<sup>186</sup> The patient continued to experience arm pain and other issues such as problems gripping.<sup>187</sup>

The patient filed a medical malpractice complaint against the hospital, alleging the first radiologic technologist was negligent.<sup>188</sup> The hospital filed a summary judgment motion and designated the medical review panel's opinion.<sup>189</sup> In response, the patient's designated evidence included the affidavit of a radiologic technologist who opined the first radiologic technician did not comply with the standard of care when injecting contrast dye into the patient's right arm.<sup>190</sup> The hospital argued a radiologic technologist was not qualified to give an expert opinion on causation.<sup>191</sup>

The trial court granted the hospital's summary judgment motion, but the court of appeals reversed.<sup>192</sup> Generally, non-physician healthcare providers are not qualified to give expert opinions on medical causation.<sup>193</sup> However, a non-physician healthcare provider may render an expert opinion if the provider "has sufficient expertise, as provided in Rule 702(a), with the factual circumstances

---

180. *Id.* at 1123-24.

181. *Id.* at 1124.

182. *Riley v. St. Mary's Med. Ctr. of Evansville, Inc.*, 135 N.E.3d 946 (Ind. Ct. App. 2019), *trans. denied*, 143 N.E.3d 953 (Ind. 2020).

183. *Id.* at 948-49.

184. *Id.* at 949.

185. *Id.*

186. *Id.* at 949-50.

187. *Id.* at 950.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.* at 950, 954-55.

193. *Id.* at 952.

giving rise to the claim and the patient's injuries."<sup>194</sup> In this case, the patient's expert set forth his qualifications, explained that he reviewed the patient's medical records, and opined that, given his education, training, and skills, the first radiologic technician deviated from the standard of care.<sup>195</sup> The court of appeals concluded the issue of causation was not complex and the patient's expert was qualified to render an expert opinion, and for these reasons reversed the trial court's decision.<sup>196</sup>

### *B. Prospective Juror Bias*

In *Clark v. Mattar*,<sup>197</sup> the trial court erred by failing to strike a prospective juror for cause when the prospective juror expressed unwillingness to assess non-economic damages in a medical malpractice action.

A patient died from complications following bariatric surgery, and the patient's estate filed a medical malpractice action against the provider.<sup>198</sup> The medical review panel unanimously concluded the provider deviated from the standard of care, which was a factor in the patient's resulting damages.<sup>199</sup> During voir dire, a prospective juror repeatedly stated he did not want to serve on the jury and did not think he could put a dollar amount on non-economic damages.<sup>200</sup> The trial court denied the estate's request to strike the juror for cause, so the Estate used its final peremptory challenge to strike the juror.<sup>201</sup> The estate also identified the juror on which it would have used its peremptory challenge had the court struck the other juror for cause.<sup>202</sup>

At trial, the jury found in favor of the provider.<sup>203</sup> The court of appeals determined the trial court abused its discretion in denying the Estate's motion to strike the juror for cause.<sup>204</sup> A divided supreme court reversed the trial court and remanded the case for a new trial.<sup>205</sup> The trial court found the juror was just unwilling to serve, but the supreme court explained the trial court and the attorneys for both sides have a joint responsibility to rehabilitate a juror if issues arise about a juror's fitness to serve.<sup>206</sup> Here, the attorney's efforts to rehabilitate the juror were met with equivocal answers.<sup>207</sup> As such, the trial court should have

---

194. *Id.* (citation omitted).

195. *Id.* at 952-53.

196. *Id.* at 954.

197. *Clark v. Mattar*, 148 N.E.3d 988 (Ind. 2020).

198. *Id.* at 989.

199. *Id.*

200. *Id.* at 989-90.

201. *Id.* at 990.

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.* at 994.

206. *Id.* at 991-92.

207. *Id.* at 992-93.



struck the prospective juror for bias.<sup>208</sup> Because the estate was prejudiced by having to use its final peremptory challenge on a juror who should have been stricken for cause, the supreme court remanded the case for a new trial.<sup>209</sup>

Justice Massa concurred in part and dissented in part.<sup>210</sup> He agreed the juror should have been stricken for cause but opined a new trial was a disproportionate remedy because the biased juror never served on the jury.<sup>211</sup> He expressed the view that Indiana should follow the analogous federal rule, in which a new trial is not warranted if the biased juror was stricken using a peremptory challenge.<sup>212</sup>

Justice Slaughter also dissented, finding the trial court did not abuse its discretion in denying the plaintiff's motion to strike the juror because there was evidence in the record to support striking or not striking the juror.<sup>213</sup>

### *C. Trial Rule 12(B)(6) Pleading Standard*

In *Anonymous Physician 1 v. White*,<sup>214</sup> the court of appeals examined a disturbing case involving a doctor using his own sperm to impregnate a patient and reiterated that a complaint need only plead sufficient facts to put a reasonable person on notice as to why the plaintiff sues.

A patient entered into a contract with a physician in which she would be artificially inseminated with donor sperm.<sup>215</sup> Unbeknownst to the patient, the doctor used his own sperm and the patient gave birth to his son.<sup>216</sup> Years later, when the patient and her son learned of the doctor's actions, they filed a complaint alleging breach of contract and tort claims.<sup>217</sup> The son argued he was a third-party beneficiary of his mother's contract, and the trial court denied the doctor's motion to dismiss upon its finding the son significantly benefitted from the contract by being born.<sup>218</sup> The trial court also found the son stated actionable tort claims.<sup>219</sup>

The court of appeals affirmed, explaining that under Indiana's notice pleading requirements, a complaint need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief."<sup>220</sup> Taking the allegations of the complaint as true, the son stated an actionable claim for breach of contract.<sup>221</sup>

---

208. *Id.* at 993.

209. *Id.* at 994.

210. *Id.* (Massa, J., concurring in part and dissenting in part).

211. *Id.*

212. *Id.* at 994-95.

213. *Id.* at 995-96 (Slaughter, J., dissenting).

214. *Anonymous Physician 1 v. White*, 153 N.E.3d 272 (Ind. Ct. App. 2020).

215. *Id.* at 275.

216. *Id.*

217. *Id.*

218. *Id.* at 275-76.

219. *Id.* at 276.

220. *Id.* at 277, 283 (citation omitted).

221. *Id.* at 277-78.

As to the negligence claim, the doctor argued he could not have owed the son a duty of care before the son was conceived.<sup>222</sup> The court of appeals again emphasized that under a Trial Rule 12(B)(6) motion to dismiss, the only consideration is whether the complaint allegations, taken as true, gave the son an actionable claim.<sup>223</sup> The court rejected the doctor's characterization that the son's negligence claim was a claim for "wrongful life," because the son alleged physical and emotional damages and did not allege the injury was his life.<sup>224</sup>

#### *D. Tort Claims Notice*

In *City of Columbus v. Londeree*,<sup>225</sup> the court of appeals held that a woman and her husband's claims were barred by failure to comply with the Indiana Tort Claims Act<sup>226</sup> because the City of Columbus ("City") took no action to mislead and did not investigate the claim.

A woman was injured after falling in an icy parking lot of a youth organization's facility.<sup>227</sup> The woman filed an incident report with the youth organization and later called the City and was told that it did not receive the incident report.<sup>228</sup> A few weeks later, the City informed the woman its insurance company would contact her.<sup>229</sup> When a call from an insurance company came, the woman believed she was speaking to the City's insurer, but actually was speaking with the youth organization's insurer.<sup>230</sup> The youth organization denied fault, but believed the City might be at fault because it provided snow removal services to the youth organization—but did not relay this information to the woman until after the notice deadline.<sup>231</sup> As a result, neither the woman nor her husband timely served a tort claim notice on the City.<sup>232</sup>

The woman sued the youth organization and the City for personal injuries and her husband alleged a loss of consortium claim.<sup>233</sup> The City filed a motion for summary judgment, arguing the woman and husband's claims were barred for failure to comply with the Indiana Tort Claims Act.<sup>234</sup> The trial court agreed the husband's loss of consortium claim was barred because he made no attempt to

---

222. *Id.* at 278.

223. *Id.* at 280.

224. *Id.* at 280-81.

225. *City of Columbus v. Londeree*, 145 N.E.3d 827 (Ind. Ct. App. 2020).

226. IND. CODE §§ 34-13-3-0.1 to -25 (2021).

227. *Londeree*, 145 N.E.3d at 830.

228. *Id.*

229. *Id.*

230. *Id.* at 830-31.

231. *Id.* at 831; IND. CODE § 34-13-3-8(a) (2020) ("[A] claim against a political subdivision is barred unless notice is filed . . . within one hundred eighty (180) days after the loss occurs.").

232. *Londeree*, 145 N.E.3d at 831.

233. *Id.*

234. *Id.*

serve written notice on the City.<sup>235</sup> However, the trial court determined the woman's claim could proceed because there were questions of fact as to her understanding of the relationship between the youth organization and the City, and whether her reliance was reasonable.<sup>236</sup>

Considering only the City's actions, the court of appeals directed the trial court to enter summary judgment in favor of the City on all claims.<sup>237</sup> The City did not investigate the claim or acquire "actual knowledge" to fulfill the purpose of the Tort Claim Act notice provision.<sup>238</sup> Further, the City had no control over what the youth organization's insurer told the woman.<sup>239</sup> Similarly, the husband was required to file a tort claim notice but failed to do so, so his claim was also barred.<sup>240</sup>

## V. DAMAGES

### *A. Jury Instruction – Mitigation of Damages*

In *Humphrey v. Tuck*,<sup>241</sup> the supreme court held that "only a scintilla" of evidence is required to support a jury instruction on mitigation of damages.

A motorist was involved in a collision with a truck.<sup>242</sup> After the collision, the motorist found a shard of glass in his eye, experienced severe eye irritation and vision changes, and was treated at a local hospital the next day.<sup>243</sup> An ophthalmologist diagnosed him with a pituitary tumor and warned he would go blind if the tumor was not treated.<sup>244</sup> The motorist returned home and the tumor was removed a few weeks later.<sup>245</sup> The neurosurgeon said a sudden event could trigger a rapid increase in the size of the tumor.<sup>246</sup> Four months later, the motorist was evaluated by another doctor for hormonal imbalance, but did not immediately fill his prescribed medication due to financial constraints.<sup>247</sup> When he began taking the medication, it made him very nauseous.<sup>248</sup> His doctor instructed him to stop taking the medicine and to schedule an appointment to find an alternative.<sup>249</sup> The motorist waited for over a year to start receiving hormone

---

235. *Id.* at 831-32.

236. *Id.*

237. *Id.* at 837.

238. *Id.* at 835.

239. *Id.*

240. *Id.* at 837.

241. *Humphrey v. Tuck*, 151 N.E.3d 1203 (Ind. 2020).

242. *Id.* at 1205.

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.* at 1205-06.

248. *Id.* at 1206.

249. *Id.*

injections and his symptoms greatly improved.<sup>250</sup>

The motorist sued the truck driver and the truck driver's employer, alleging the collision caused his pre-existing tumor to swell.<sup>251</sup> At trial, the defendants argued the motorist failed to mitigate his damages and asked for a jury instruction on failure to mitigate damages.<sup>252</sup> The trial court gave the instruction over the motorist's objection and the jury rendered a verdict for the motorist.<sup>253</sup> The motorist appealed and the court of appeals reversed and ordered a new trial, finding there was insufficient evidence to warrant the jury instruction.<sup>254</sup>

The supreme court affirmed both the trial court's decision to give the instruction and the verdict.<sup>255</sup> Citing Indiana's constitutional guarantee of the right to a jury trial, the court determined a party seeking a particular jury instruction need only produce "a scintilla" of evidence as to each element of the claim or defense.<sup>256</sup> Here, the motorist sought damages for symptoms caused by his surgery, but there was evidence the motorist ignored his doctor's advice, which aggravated or prolonged his symptoms.<sup>257</sup> Additionally, at trial the motorist complained of continued vision problems, but had not filled the prescription for glasses given to him a year earlier.<sup>258</sup> It was proper for the jury to decide the extent of injuries caused by the defendants' negligence and the extent to which the motorist failed to mitigate his damages.<sup>259</sup>

#### *B. Damages for Diminution in Value of Personal Property*

In *Shield Global Partners-G1 v. Forster*,<sup>260</sup> the court of appeals held damages for diminution in value are recoverable if repairing an item of property does not restore the item to its pre-incident fair market value.

A Chevy Silverado truck was damaged during a collision.<sup>261</sup> Before the collision, the leased truck was appraised with a fair market value of \$36,550; after the collision, two appraisers determined the value of the truck had diminished by \$4,020.45 and \$7,400, respectively.<sup>262</sup> The claim was assigned to a company, which sued the at-fault driver and sought damages for the diminished value of the

---

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.* at 1210.

256. *Id.* at 1207 (internal quotation marks omitted).

257. *Id.* at 1208-09.

258. *Id.* at 1209-10.

259. *Id.* at 1210.

260. *Shield Glob. Partners-G1, LLC v. Forster*, 141 N.E.3d 1269 (Ind. Ct. App.), *trans. denied*, 152 N.E.3d 589 (Ind. 2020).

261. *Id.* at 1270.

262. *Id.*

truck.<sup>263</sup> Following a bench trial, the trial court held that Indiana does not recognize a claim for “inherent diminished value” of a vehicle involved in a collision.<sup>264</sup> The court also found the plaintiff presented no evidence that the value of the vehicle decreased after it was repaired, so the repair cost was the appropriate measure of damages.<sup>265</sup>

On appeal, the plaintiff argued that damages for diminished value are recoverable if an item’s fair market value has decreased despite being fully repaired.<sup>266</sup> The defendant countered that there is no diminished value if an item is fully repaired.<sup>267</sup> The trial court characterized the claim as “stigma of defect” damages, but the court of appeals determined that this misapplied an earlier case on this subject.<sup>268</sup> Applying *Wiese-GMC, Inc. v. Wells*, the court of appeals held that diminished value damages are recoverable if repairing the item does not restore the item to its fair market value prior to the event.<sup>269</sup> The court of appeals also found that there was evidence the truck had a reduced fair market value after being repaired.<sup>270</sup>

## VI. MISCELLANEOUS

### A. Good Samaritan Law

In *McGowen v. Montes*,<sup>271</sup> the court of appeals held that the definition of “emergency care” under Indiana’s Good Samaritan Law extends to asking a person involved in an accident if they need help and is not limited to rendering medical treatment or first aid.

During the early morning hours, and in heavy fog, a semi-driver noticed a heavily damaged truck in a ditch on the side of the road.<sup>272</sup> The semi-driver saw a man wandering around near the damaged truck, so the semi-driver applied his brakes, checked for traffic behind him, and rolled down his window to talk to the man and call 911.<sup>273</sup> Meanwhile, a woman coming from the opposite direction noticed the truck and semi stopped in the road, and activated her hazard lights.<sup>274</sup> The woman noticed an oncoming vehicle and flashed her high beams, “rolled

---

263. *Id.*

264. *Id.*

265. *Id.* at 1270-71.

266. *Id.* at 1271-72.

267. *Id.* at 1272.

268. *Id.*; see *Wiese-GMC, Inc. v. Wells*, 626 N.E.2d 595, 599 (Ind. Ct. App. 1993) (explaining different ways to calculate property damages).

269. *Shield Global Partners*, 141 N.E.3d at 1272.

270. *Id.*

271. *McGowen v. Montes*, 152 N.E.3d 654 (Ind. Ct. App. 2020).

272. *Id.* at 656.

273. *Id.*

274. *Id.*

down her window, waved her arms, and yelled” to warn the driver (Montes).<sup>275</sup> Montes collided with the semi without braking.<sup>276</sup> Another vehicle traveling behind Montes saw the semi and stopped without incident.<sup>277</sup> All of this happened within fifteen to thirty seconds of the semi-driver stopping.<sup>278</sup>

Montes and the semi driver sued each other for their respective injuries.<sup>279</sup> The semi-driver and his employer moved for summary judgment, arguing that they were immune from liability under Indiana’s Good Samaritan Law (“GSL”).<sup>280</sup> Montes filed a cross-motion for summary judgment based upon the applicability of the GSL.<sup>281</sup> The trial court concluded as a matter of law that the semi-driver, at the time of the collision, was rendering emergency care within the scope of the GSL, but there were questions of fact as to whether the semi-driver was grossly negligent for stopping in the road.<sup>282</sup> All of the parties appealed.<sup>283</sup>

The court of appeals analyzed the GSL, noting the statute must be strictly construed because it “limits a claimant’s right to bring suit.”<sup>284</sup> Montes argued that the semi-driver was not providing emergency care and there was no emergency when the semi-driver stopped.<sup>285</sup> While “emergency care” is not defined in the GSL or case law, the statute distinguishes between medical treatment and other forms of emergency assistance, focusing on the element of gratuitousness.<sup>286</sup> The court reasoned that the semi-driver was seeking to arrange medical treatment for the man when he stopped his semi, and the statute was not limited to rendering medical care or first aid.<sup>287</sup> The accident scene also qualified as an emergency under the GSL because the man appeared to be injured or drunk.<sup>288</sup> Finally, the court determined as a matter of law the semi-driver was not guilty of gross negligence or willful/wanton misconduct for stopping; the semi-driver was traveling under the speed limit, activated his brake lights, did not see vehicles behind him, and had stopped for only a few seconds before Montes struck him.<sup>289</sup>

---

275. *Id.*

276. *Id.*

277. *Id.* at 656-57.

278. *Id.* at 656.

279. *Id.* at 657.

280. *Id.*; *see also* IND. CODE § 34-30-12-1 (2021).

281. *McGowen*, 152 N.E.3d at 657.

282. *Id.*

283. *Id.*

284. *Id.* at 658.

285. *Id.* at 659.

286. *Id.* at 659-60.

287. *Id.*

288. *Id.* at 660.

289. *Id.* at 660-62.

*B. Accommodation Request for Emotional Support Animal*

In *Furbee v. Wilson*,<sup>290</sup> the court of appeals held that a landlord was entitled to know a tenant's disability and disability-related need for a support animal before making a decision on the tenant's request for an accommodation.

A tenant asked her landlord if she could have an emotional support animal at her apartment and provided the landlord with a letter from her therapist.<sup>291</sup> The letter indicated the tenant had a disability but did not identify the disability or any symptoms of it.<sup>292</sup> The landlord asked the tenant for additional information, including consent for her therapist to provide limited information to the landlord.<sup>293</sup> The tenant did not provide additional information and was evicted after refusing to remove a cat from her apartment.<sup>294</sup>

The Indiana Civil Rights Commission sued the landlord, arguing the landlord violated the Indiana Fair Housing Act ("IFHA")<sup>295</sup> by failing to accommodate the tenant's request for an emotional support animal.<sup>296</sup> The trial court denied the landlord's summary judgment motion, finding that the landlord's request for additional information sought information to which the landlord was not entitled.<sup>297</sup>

The court of appeals reversed, explaining the IFHA affords landlords an opportunity to conduct a "meaningful review" to determine if an accommodation is required.<sup>298</sup> In this case, the court determined the landlord was entitled to know the tenant's disability and disability-related need for a support animal.<sup>299</sup> Even if the landlord's request was overbroad, the tenant was not absolved from providing the required information, without which the landlord could not conduct a meaningful review.<sup>300</sup> Therefore, the trial court should have granted the landlord's summary judgment motion.<sup>301</sup>

---

290. *Furbee v. Wilson*, 144 N.E.3d 801 (Ind. Ct. App. 2020).

291. *Id.*

292. *Id.*

293. *Id.* at 804-05.

294. *Id.* at 805.

295. IND. CODE §§ 22-9.5-1-1 to 22-9.5-11-3 (2021).

296. *Furbee*, 144 N.E.3d at 805.

297. *Id.* at 805-06.

298. *Id.* at 807.

299. *Id.* at 808.

300. *Id.* at 809.

301. *Id.*