IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-CT-435

Judy Reece, as Guardian of Walter Reece, and Judy Reece,

Appellants

–v–

Tyson Fresh Meats, Inc., and Tyson Foods, Inc.,

Appellees

Argued: April 29, 2021 | Decided: September 21, 2021

Appeal from the Wayne Superior Court
No. 89D01-1508-CT-38
The Honorable Jay L. Toney, Special Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 20A-CT-214

Opinion by Chief Justice Rush

Justices Massa and Slaughter concur.
Justice Goff concurs in result with separate opinion in which Justice David joins.

Rush, Chief Justice.

Indiana common law has long required a landowner to use reasonable care to prevent injury to the motoring public on adjacent highways from "unreasonable risks" of the landowner's creation. Though this duty is well established, defining its scope has posed challenges.

Today, we examine and synthesize decades of caselaw to determine whether the duty applies when a condition on the land imposes a visual obstruction but is confined to the land. Court of Appeals panels have reached divergent answers to that question, and we now firmly endorse the position from *Sheley v. Cross*, 680 N.E.2d 10, 13 (Ind. Ct. App. 1997), *trans. denied*. Under these circumstances, there is no duty.

Here, the tall grass that inhibited drivers' views was wholly contained on the property of Tyson Fresh Meats, Inc., and Tyson Foods, Inc. ("Tyson"). Accordingly, Tyson owed no duty to the motoring public to avoid creating or maintaining the particular visual obstruction and therefore, could not be negligent. Thus, summary judgment in favor of Tyson was appropriate, and we affirm.

Facts and Procedural History

One August evening, 92-year-old Harold Moistner pulled his car out into an intersection and collided with a motorcycle operated by Walter Reece. Walter suffered catastrophic injuries.

After the accident, a deputy observed tall grass on the northwest corner of the intersection that "would have limited or prohibited" Moistner's view of Walter traveling. The grass grew in a ditch on Tyson's property, and the ditch had been dredged and cleaned at various times. At the time of the collision, the grass didn't extend onto the road.

Judy Reece, Walter's wife and guardian, sued Moistner and later amended her complaint to add Tyson and others as defendants. Ultimately, after settlement of claims regarding two of the defendants and dismissal of the State as a party, Tyson was left as the sole defendant with

a single claim asserted against it: negligence for "allow[ing] grass to grow so high on their property that it blocked the view of the roadway."

Tyson moved for summary judgment, which the trial court granted after a hearing. Reece appealed, and a divided Court of Appeals affirmed. *Reece v. Tyson Fresh Meats, Inc.*, 153 N.E.3d 1193, 1204 (Ind. Ct. App. 2020). The majority held that, because the grass was wholly contained on Tyson's property, there was no duty to the traveling public. *Id.* at 1202–03. Senior Judge Baker dissented. Citing Indiana precedent, he argued that certain factual issues had to be resolved before determining Tyson's duty—that is, "questions of the population density of the area at the intersection as well as whether Tyson exercised the requisite reasonable care in maintaining the vegetation on its property." *Id.* at 1204 (Baker, Sr. J., dissenting in part).

We now grant transfer to address whether, under the circumstances, Tyson owed a duty to nearby motorists.[1] Ind. Appellate Rule 58(A).

Standard of Review

Here, the trial court granted Tyson summary judgment on Reece's negligence claim based on a determination that no duty was owed. In reviewing summary judgment, we use the same standard as the trial court: summary judgment is appropriate only when the designated evidence shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).

Generally, the court decides as a matter of law whether a duty exists; and a judicial determination "is unnecessary where the element of duty has 'already been declared or otherwise articulated.'" *Rogers v. Martin*, 63 N.E.3d 316, 321 (Ind. 2016) (quoting *N. Ind. Pub. Serv. Co. v. Sharp*, 790 N.E.2d 462, 465 (Ind. 2003)). However, in some circumstances, the

[1] We summarily affirm the Court of Appeals on the evidentiary and voluntary-assumption-of-duty issues. Ind. Appellate Rule 58(A)(2).

factfinder must determine a preliminary factual issue before the trial court can determine whether a duty of care exists. *Patterson v. Seavoy*, 822 N.E.2d 206, 212 (Ind. Ct. App. 2005).

Discussion and Decision

Under Indiana common law, one who owns or occupies land has a duty to the traveling public on adjacent highways to exercise reasonable care to prevent injury to travelers from "unreasonable risks" the owner or occupier creates. *Pitcairn v. Whiteside*, 109 Ind. App. 693, 700, 34 N.E.2d 943, 946 (1941). Today, we examine Indiana precedent to clarify what types of land uses or conditions implicate this duty in cases where motorists claim their views were obstructed.

Tyson aligns itself with the Court of Appeals majority and argues that, as a matter of law, it owed no duty to passing motorists because the tall grass—the alleged unreasonable risk—was confined to its property. Reece disagrees and asserts, as did the dissent, that issues of fact remain before a court can determine whether the grass implicated Tyson's duty to the traveling public. *Reece*, 153 N.E.3d at 1204 (Baker, Sr. J., dissenting in part).

Both parties cite various Indiana cases to support their respective positions, revealing a measure of tension concerning duty in this context. To clarify any confusion, we adopt the bright-line rule the Court of Appeals announced in *Sheley*: landowners owe a duty to passing motorists on adjacent highways not to create "hazardous conditions that visit themselves upon the roadway"; but when a land use or condition that may impose a visual obstruction is "wholly contained on a landowner's property, there is no duty to the traveling public." 680 N.E.2d at 13.

Here, the tall grass in the ditch was indisputably confined to Tyson's property, and because that visual obstruction did not intrude on the public right of way, Tyson did not owe a duty to the traveling public. Given the applicable bright-line principle, there is no need to determine preliminary factual questions, such as whether the grass was an artificial or natural condition, or how dense the population in the area was.

We begin by examining relevant Indiana caselaw addressing a landowner's duty to traveling motorists. Seeing how this duty has been treated over time is critical to understanding why we explicitly adopt *Sheley*'s rule today.

I. Indiana precedent persuades us to adopt a bright-line rule: when visual obstructions are wholly confined to the land, a landowner owes no duty to the motoring public.

Both Tyson and Reece present defensible positions on the duty issue, understandably leading to the split decision below. Precedent has touched upon various aspects of landowners' duty to nearby motorists: harms physically intruding upon the roadways, the lack of duty to continually inspect the land's perimeter, third parties' versus agents' negligence, situations involving a landowner's trees in densely populated areas, a land's artificial versus natural conditions, and conditions confined to the land. Some of those cases use broad language to support narrow holdings, while others conflict with one another. Yet, despite any inconsistencies, our common law has always sought to delicately balance owners' property rights with the motoring public's safety—without imposing undue or unreasonable burdens on either. We now trace the meandering evolution of Indiana law in this area over the past eighty years to the bright-line rule that we adopt today.

The line of cases begins with *Pitcairn*, in which one car rear-ended another near a railroad. 109 Ind. at 696–97, 34 N.E.2d at 945. One driver sued the railroad's operators for negligence, alleging that they started a fire, which led to smoke "gather[ing] upon" the adjacent highway and obscuring passing motorists' view. *Id.* at 697, 34 N.E.2d at 945.

The Court of Appeals rejected the operators' argument that the smoke was a "mere condition, the creation of which was not negligence," holding instead that the railroad had a duty "to refrain from the creation or maintenance of any condition **upon** their right of way which subjected the traveling public, using public highways in the vicinity of such right of

way, to unreasonable risks or conditions that were unnecessarily dangerous." *Id.* at 700–01, 34 N.E.2d at 946–47 (emphasis added). The court explained,

> The occupier of land abutting on or adjacent to, or in close proximity of, a public highway, owes a duty to the traveling public to exercise reasonable care to prevent injury to travelers upon the highway from any unreasonable risks created by such occupier, which he had suffered to continue after he knew, or should have known, of their existence, in cases where such occupier could have taken reasonable precautions to avoid harm to such travelers.

Id. at 700, 34 N.E.2d at 946.

Given its facts, *Pitcairn* definitively established a duty for owners or occupiers of land to prevent dangerous conditions originating on the land from intruding upon the roadway. But other language from *Pitcairn*, like the quote above, can be read more broadly—arguably imposing the duty even where the unreasonable risks are confined to the land. *See also id.* (noting that "[t]he traveling public is entitled to make free use of highways and streets" and that an owner of land adjacent to roadways "has no right to so use the property occupied by him as to interrupt or interfere with the exercise of such right by creating or maintaining a condition that is unnecessarily dangerous").

But this Court interpreted *Pitcairn* narrowly in *Blake v. Dunn Farms, Inc.*, 274 Ind. 560, 413 N.E.2d 560 (1980), while also supplying some guidance on a landowner's duty to traveling motorists generally. In *Blake*, a driver on a highway hit a horse and suffered injuries; the driver then sued the landowner–corporation, arguing, in part, that it negligently allowed a fence to fall into disrepair. *Id.* at 563, 413 N.E.2d at 562.

This Court determined that the farm corporation owed no duty—the horse belonged to a subtenant of the farm's tenant; the farm had no knowledge of the fence's bad condition and had no reason to inspect its condition; and under the lease, the tenant was responsible for property upkeep, including fencing. *Id.* at 565–66, 413 N.E.2d at 563–64. In so

deciding, the Court "agree[d]" with *Pitcairn* but emphasized that the facts of the case were markedly different—because "[h]ere, the owner of the property had no relationship to the agency causing the problem." *Id.* at 566, 413 N.E.2d at 564. In other words, when a dangerous condition visits itself upon the highway, *Blake* requires courts to look at the landowner's role in causing that condition. *Id.* Perhaps most notably, this Court pointed out that holding otherwise would impose "a duty on a property owner to continually inspect the perimeters of his property, particularly along an adjacent highway, to make sure that dangerous conditions do not arise for those traveling on the highway." *Id.* at 566–67, 413 N.E.2d at 564.

Blake thus recognized *Pitcairn*'s limits while also explaining that it would be overly burdensome for a landowner to constantly examine a property's boundaries that are near roadways. *Id.*

After *Blake*, the Court of Appeals decided two cases involving *Pitcairn*'s application to dangerous conditions visiting themselves upon a roadway. These cases demonstrate how the scope of a landowner's duty to the traveling public on adjacent highways began to get muddled.

In *Snyder Elevators, Inc. v. Baker*, motorists were injured on streets outside a grain elevator when its customers' trucks obscured the motorists' view of an intersection. 529 N.E.2d 855, 856–57 (Ind. Ct. App. 1988), *trans. denied*.

Relying on *Pitcairn*, the panel determined the grain elevator owed the motorists no duty. *Id.* at 858–59. Rather, a landowner owes the public a duty only when "the defendant has maintained a hazardous condition or conducted some activity on the premises, beyond the mere fact of operating a business, which causes the off-premises injury." *Id.* at 858 (citing *Pitcairn*, 109 Ind. App. at 693, 34 N.E.2d at 943). And the long lines outside the business premises were just the result of more customers than normal, not how the elevator operated its business. *Id.* at 858–59. Thus, *Snyder* concluded that businesses have no duty "to guard against injury to the public from the negligent acts of a customer over which the business has no control and which injury occurs off the business's premises." *Id.* at 859.

Snyder established a seemingly bright-line rule: there's no duty imposed on a business in favor of traveling motorists if (1) the injury does not occur on the business's land and (2) the negligent acts were by a third party the business doesn't control. But a case decided shortly after *Snyder* demonstrates that rule was not straightforward in its application.

That case—*Holiday Rambler Corp. v. Gessinger*—likewise involved a vehicle accident. 541 N.E.2d 559 (Ind. Ct. App. 1989). There, a corporation–landowner's employee caused a collision while leaving work. *Id.* at 560–61. The Court of Appeals considered whether the corporation, as an owner of property adjacent to a public highway, owed nearby motorists a duty "to reduce the number of driveways exiting from the . . . plant onto [the highway], to stagger the quitting time of defendant's employees or to otherwise take precautions so as to control the conduct of, or otherwise protect third persons traveling on the public highway." *Id.* at 561.

In a split opinion, the Court of Appeals rejected the corporation's argument that it had no duty. *Id.* at 561–62. Rather, relying on *Pitcairn* and *Blake*, the majority concluded that "the owner of land adjacent to a highway owes the duty to the traveling public to prevent injury to travelers upon the highway from any unreasonable risks created by the property's dangerous condition which the landowner knew or should have known about." *Id.* at 562. The majority noted that the landowner had "a relationship to the agency causing the problem," as the corporation allowed hundreds of employees to exit each day onto a state road, from four driveways, and with no established traffic pattern. *Id.*

The dissent, on the other hand, saw the majority opinion as "a departure from precedent limiting the duty of a landowner to protect members of the public at large." *Id.* at 564–65 (Hoffman, J., dissenting). The dissent believed that a landowner's duty to exercise ordinary care in managing its property extended to persons on an adjacent highway only if "the physical harm caused to the persons outside the land is a result of dangerous activities conducted on the land." *Id.* at 565.

According to the dissent, that exception depends upon two conditions: a relationship between the landowner and the agency causing the problem

on the adjacent property; and the landowner maintaining a hazardous condition or conducting some activity on its property, beyond the mere fact of operating a business, which caused the injury on the adjacent property. *Id.* (first citing *Blake*, 274 Ind. at 566, 413 N.E.2d at 564; then citing *Snyder*, 529 N.E.2d at 858). The dissent disagreed that the requisite relationship existed between the landowner and the problem; rather, it saw no condition maintained or activity conducted by the landowner "beyond the mere fact of operating a business." *Id.*

Soon after the *Holiday Rambler* split undoubtedly called into question the reach of the *Pitcairn* duty, the Seventh Circuit acknowledged that the controlling Indiana law was less than clear.

In *Justice v. CSX Transportation, Inc.*, a man was killed when a train hit his truck. 908 F.2d 119, 121 (7th Cir. 1990). The man's estate sued the owner of land adjoining the tracks. *Id.* The landowner had placed several railroad cars close to the crossing, but all within the landowner's property, obstructing the tracks' view of anyone who approached. *Id.*

The Seventh Circuit addressed "whether a landowner has a tort duty to prevent visual obstructions on his property to the user of a public way." *Id.* at 122. Noting that this was a matter of Indiana common law, the Seventh Circuit pointed out that "[u]nfortunately there are no Indiana cases on point" and "the analogous Indiana cases that the parties cite are all over the lot." *Id.* The circuit court ultimately predicted that this Court would hold "that a landowner's duty of care extends to avoiding the creation of visual obstacles that unreasonably imperil the users of adjacent public ways, even if the obstacle is wholly on his land and merely blocks the view across it." *Id.* at 124.

In two ways, *Justice* took an expansive view of Indiana law. First, it extended the duty announced in *Pitcairn*, since the railroad cars obstructing motorists' view of the tracks in *Justice* didn't physically go onto the adjacent highway, as the *Pitcairn* smoke did. Moreover, its analysis invoked the Restatement (Second) of Torts, under which "courts traditionally deny liability for physical harm to persons outside the land caused by **natural** conditions on the land." *Id.* at 123 (emphasis added) (citing Restatement (Second) of Torts, § 363(1)). In doing so, *Justice*

seemingly distinguished between natural and artificial conditions on the land.

Shortly after *Justice*, this Court likewise addressed the Restatement (Second) of Torts section 363, in a case involving a natural condition on land. But, despite broad language in this Court's opinion, a close look reveals that its holding was confined to situations **only** involving trees.

In *Valinet v. Eskew*, a tree fell from the landowner's property onto the car of a traveling motorist. 574 N.E.2d 283, 284 (Ind. 1991). In imposing a duty on the landowner, this Court adopted Restatement (Second) of Torts section 363, which provides as follows:

> (1) Except as stated in Subsection (2), neither a possessor of land, nor a vendor, lessor, or other transferor, is liable for physical harm caused to others outside of the land by a natural condition of the land.
>
> (2) A possessor of land in an urban area is subject to liability to persons using a public highway for physical harm resulting from his failure to exercise reasonable care to prevent an unreasonable risk of harm arising from the condition of trees on the land near the highway.

Id. at 285 (quoting Restatement (Second) of Torts, § 363 (Am. L. Inst. 1965)).

In adopting this section, this Court noted two things: first, courts found landowners liable when they actually knew of a dangerous natural condition, regardless of its location; and second, some courts had imposed a duty on landowners in more heavily populated areas to inspect their trees to allay the risk of harm to passing motorists. *Id.* at 285. For both of those propositions, this Court cited several cases from other jurisdictions, all of them involving trees and no other types of natural conditions, as

well as comment e to the Restatement section,[2] which likewise addresses only trees. *Id.*

The Court further explained,

> We agree that the differing duties placed on owners of land with respect to differing demographics is correct. . . . Whether the land is in an area of sufficient population density to invoke the rule requires a factual consideration of such factors as land use and traffic patterns. Also, whether the landowner exercised the requisite reasonable care will require the fact finder to weigh the seriousness of the danger against the ease with which it may be prevented. As this Court has previously held, a landowner need not continually inspect his property for natural dangers. *Blake v. Dunn Farms, Inc.* (1980), 274 Ind. 560, 566, 413 N.E.2d 560, 564. However, under some circumstances, fulfilling a landowner's duty to passing motorists might reasonably require periodic inspections to be sure that the premises do not endanger those lawfully on the highway.

Id. at 285–86.

While this language, in isolation, could be read as applying to all natural conditions, *Valinet*'s holding applies only to situations involving trees, given both the facts of the case and the authority cited.

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[2] Comment e to Restatement (Second) of Torts section 363 states in full,

> *Trees.* The rule stated in Subsection (2) is an exception which has developed as to trees near a public highway. It requires no more than reasonable care on the part of the possessor of the land to prevent an unreasonable risk of harm to those in the highway, arising from the condition of the trees. In an urban area, where traffic is relatively frequent, land is less heavily wooded, and acreage is small, reasonable care for the protection of travelers on the highway may require the possessor to inspect all trees which may be in such dangerous condition as to endanger travelers. It will at least require him to take reasonable steps to prevent harm when he is in fact aware of the dangerous condition of the tree.

Restatement (Second) of Torts, § 363 cmt. e (Am. L. Inst. 1965).

Fundamentally, this Court recognized a general rule that landowners owe no duty to traveling motorists on an adjacent highway for physical harm and **also** an exception for trees in populated areas, with the factual issue of population density potentially precluding summary judgment on the duty element. *Id.*

At this point, there were ample Indiana cases on a landowner's duty to passing motorists on adjacent highways. But none had addressed whether Indiana would adopt the Seventh Circuit's approach regarding artificial conditions that are confined to the land—and if so, how to define "artificial."

These questions finally arose in *Spears v. Blackwell*, 666 N.E.2d 974 (Ind. Ct. App. 1996), *trans. denied*, in which a traveling motorist sued the owner of the land adjacent to the highway, claiming that the height of vegetation on the property created a visual obstacle, causing a car accident. *Id.* at 976.

The *Spears* panel framed the issue as whether the landowner owed motorists a duty of care to maintain vegetation to protect them from harm that could result from the vegetation's condition. *Id.* at 976–77. The Court of Appeals synthesized the relevant caselaw: citing *Valinet*, it noted that a landowner generally doesn't owe a duty to protect the adjacent motoring public from harm that could result from natural conditions of the land. *Id.* at 977 (citing *Valinet*, 574 N.E.2d at 283). But the panel determined, citing *Holiday Rambler* and *Pitcairn*, that there's a duty regarding the land's artificial conditions that the landowner knew or should have known about. *Id.* at 977 (cleaned up).

The panel then explained what could and could not be considered a natural condition. *Id.* It first noted that a natural condition includes "land that was not changed by any acts of humans, including the possessor or any predecessors in interest"; "a condition that is not in any way the result of human activity"; "natural growth of vegetation, such as weeds, on land that is not artificially made receptive to them"; and "soil that has not been cultivated, graded or otherwise disturbed." *Id.* (cleaned up).

The panel then noted that "vegetation that humans plant" is not a natural condition, regardless of whether it's "inherently harmful or

become[s] so only because of subsequent changes due to natural forces," nor is vegetation that "grows on land only because it has been plowed, even if no one planted or cultivated the vegetation." *Id.* (cleaned up). But the panel also observed that "'natural condition' does not mean that human activity may not have ever affected an area" and rather, "[t]he human activity may be so remote in time, or so minimal in effect, that what may have begun as an artificial condition becomes a natural condition." *Id.* at 978 n.4.

The *Spears* panel pointed to evidence that shrubs and a rock garden had once been in the area where the tall weeds were growing; a cornfield had existed in the vicinity of the weeds when the landowner first acquired the property; and at least once before the accident, the area had been mowed. *Id.* at 978. The Court of Appeals determined that this was enough to create a genuine issue of material fact precluding summary judgment as to whether the vegetation was a natural condition. *Id.*

Spears thus held that there is a duty on the part of a landowner to protect traveling motorists on an adjacent highway from a visually impairing artificial condition, even if that condition is wholly contained on the property. But the decision's discussion of what constitutes an artificial condition on the land revealed that the line between artificial and natural was not well defined. And, often, there may be a question of fact as to whether a condition is truly artificial—an issue that needed to be resolved before a court could impose the duty on a landowner.

But the *Spears* artificial–natural dichotomy was quickly—though not explicitly—abandoned by another panel in *Sheley*, 680 N.E.2d at 10. There, the Court of Appeals evaluated whether "owners of land at [an] intersection, negligently planted crops on their land such that a motorist's view of oncoming traffic at this intersection was impaired." *Id*. at 11. Citing *Spears*, the *Sheley* panel noted that the planting of vegetation by humans is an artificial condition. *Id.* at 12 n.4 (citing *Spears*, 666 N.E.2d at 977). Yet, drawing on *Pitcairn*, *Holiday Rambler*, *Blake*, *Snyder*, and *Valinet*, the Court of Appeals held, "[T]o the extent a landowner owes a duty to travelers on an adjacent roadway, that duty is limited to refraining from creating hazardous conditions that visit themselves upon the roadway.

Where an activity is wholly contained on a landowner's property, there is no duty to the traveling public." *Id.* at 13. Thus, for the *Sheley* panel, the determining factor in deciding whether a duty was owed was whether the condition, or visual obstruction, was confined to the land—not whether that condition was artificial or natural. *Id.*

Despite announcing a rule at odds with *Spears*, the *Sheley* panel did not note the conflict between the two cases. To be sure, had the *Sheley* panel been presented with the facts from *Spears*—that is, potentially artificial vegetation contained on the land—it would have found no duty under its bright-line rule and accordingly affirmed summary judgment for the landowner. But, as explained above, the *Spears* panel had held that a factual question **precluded** summary judgment, as a reasonable trier of fact could have determined that the vegetation was artificial, thus imposing a duty on the landowner. 666 N.E.2d at 978. In other words, though clearly significant in *Spears*, the artificial–natural distinction was of no import in *Sheley*.

We are thus tasked with determining the correct approach for conditions that do not intrude on the public right-of-way but rather are visual obstructions contained wholly on the land. *Spears* requires differentiating between artificial and natural conditions, with the former imposing a duty on the landowner and the latter not. But making this distinction is far from straightforward. For example, *Spears* noted that a natural condition includes "land that was not changed by any acts of humans, including the possessor or any predecessors in interest" and "a condition that is **not in any way** the result of human activity"—but, at the same time, that "'natural condition' does not mean that human activity may not have ever affected an area" because the "activity may be so remote in time, or so minimal in effect." *Id*. at 977 (cleaned up).

That standard is unworkably malleable. Would mowing native vegetation render its condition artificial? Or is that minimal-enough human activity for the plants to retain their natural state? What about trees planted twenty-five years ago? How about a hundred years? When does human activity become so remote in time that a once-artificial condition reverts to a natural one?

Sheley's bright-line rule, on the other hand, lends itself to easy application. If the visually obstructing activity—artificial or natural—is completely contained on the land, then no duty is imposed on the landowner to traveling motorists on adjacent roadways. *Sheley*, 680 N.E.2d at 13.

It is also the most logical extension of Indiana precedent, particularly this Court's decision in *Blake,* in which one of the negligence claims was based on the landowner's alleged failure to maintain a fence, an obviously artificial condition. *Blake*, 274 Ind. at 563, 413 N.E.2d at 562. This Court expressed that it would be too onerous to impose a duty on "a property owner to continually inspect the perimeters of his property, particularly along an adjacent highway, to make sure that dangerous conditions do not arise for those traveling on the highway." *Id.* at 566–67, 413 N.E.2d at 564. *Sheley*'s rule is harmonious with *Blake*'s, while *Spears* would demand the inspection duty that *Blake* explicitly disavowed.[3]

Thus, we now expressly adopt the rule announced in *Sheley*: a landowner owes a duty to passing motorists on an adjacent highway to not create "hazardous conditions that visit themselves upon the roadway." 680 N.E.2d at 13. But when a land use or condition that may impose a visual obstruction is "wholly contained on a landowner's property, there is no duty to the traveling public." *Id.* To the extent that *Spears* and other case authority conflict with this rule, we disapprove them.

We stress two points, however. First, our holding in no way prevents the General Assembly or local legislative bodies from enacting statutes or ordinances to impose a duty on landowners to refrain from creating or maintaining visual obstructions on land adjacent to highways in favor of

[3] At oral argument, and for the first time, Reece explicitly argued that a landowner's duty to passing motorists on an adjacent highway should be the same as a landowner's duty to a business invitee. This Court already rejected such an argument in *Blake*, emphasizing that "[a] particular landowner does not invite all persons using the highway for their own purposes to make that use or traverse that part of the highway adjacent to his own property." 274 Ind. at 567, 413 N.E.2d at 564. We decline Reece's invitation to revisit this issue.

the motoring public. We hold only that Indiana common law imposes no such duty. Second, our holding is confined to visual obstructions that do not come in contact with traveling motorists, and it does not address situations where a motorist comes **in contact** with a condition that is wholly contained on the land. *See generally Ind. Limestone Co. v. Scaggs*, 672 N.E.2d 1377, 1381 (Ind. Ct. App. 1996) (recognizing a duty upon owners of land adjacent to roadways to not "endanger . . . passage by excavations or other hazards so close to the road"), *trans. denied*.

We now decide whether, under the expressly adopted *Sheley* rule, Tyson owed a duty to Reece.

II. Because the visual obstruction was wholly contained on the land, Tyson owed no duty to the motoring public.

It's undisputed that the tall grass, the alleged dangerous condition, was confined to Tyson's land and did not encroach upon the roadway. Thus, summary judgment was appropriate for Tyson, as the condition that imposed a visual obstruction was "wholly contained" on Tyson's property, and so, under the circumstances, Tyson owed no duty to traveling motorists. *Sheley*, 680 N.E.2d at 13.

And, as explained above, there are no factual issues that need to be resolved before making this duty determination. While there is some evidence that the tall grass was an artificial condition due to dredging and grading of the land, the artificial–natural distinction is irrelevant in this context. Likewise, while the question of population density may be relevant in situations involving trees not contained on the land, *Valinet*'s holding was confined to that specific land condition. *See* 574 N.E.2d at 285.

Conclusion

Under the facts of this case, Tyson owed no duty to the traveling public. The visual obstruction was completely contained on its land and did not

visit itself upon the adjacent roadway. Accordingly, we affirm the trial court's grant of summary judgment for Tyson.

Massa and Slaughter, JJ., concur.
Goff, J., concurs in result with separate opinion in which David, J., joins.

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Goff, J., concurring in result.

I agree with the Court that the law in this area has become more confusing than it needs to be. And I agree that the Court's new test yields the correct result in this case. But I cannot support abandoning the common law to adopt a bright-line rule that denies recovery to **all travelers** injured because a property owner obstructs visibility so long as the obstruction is entirely within the owner's property. While such a rule may yield predictable results, that predictability comes at the cost of depriving our trial court judges of discretion to make the opposite call, even when justice demands it. And, absent action from our General Assembly, a patchwork of inconsistent local regulations may develop, thereby leading to **less** predictability.

Therefore, if we diverge from the law as it stands, I would adopt the rule that the Seventh Circuit anticipated in *Justice v. CSX Transportation, Inc*. In that case, a motorist's view was obstructed by railroad cars situated entirely on private property. 908 F.2d 119, 121 (7th Cir. 1990). In an opinion by Judge Posner, the panel awarded relief to the motorist. Relying on the Restatement (Second) of Torts in the absence of controlling Indiana case law, the panel ultimately concluded that a landowner has a duty of care to avoid "creating visual obstacles that unreasonably imperil the users of adjacent public ways, even if the obstacle is wholly on his land and merely blocks the view across it." *Id*. at 122–23, 124.

In my view, the rule articulated in *Justice* is the more practical solution, allowing our trial court judges to sensibly balance a landowner's right to peaceful enjoyment of private property against the public's interest in safe travel on public roads. But, even under this rule, the Reeces' claim falls short because they failed to designate evidence that could show the tall grass unreasonably imperiled travelers. Therefore, I concur in result.

David, J., joins.