

# MEMORANDUM DECISION ON REHEARING

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# IN THE COURT OF APPEALS OF INDIANA

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Christine Cosme and Roy  
Cosme,  
*Appellants-Plaintiffs,*

v.

May 22, 2023

Court of Appeals Case No.  
22A-CT-1897

Appeal from the Lake Superior  
Court

The Honorable John M. Sedia,  
Judge

Trial Court Cause No.  
45D01-1803-CT-39

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Deborah A. Warfield Clark,<sup>1</sup>  
Dan Churilla, d/b/a Churilla  
Insurance, and Erie Insurance  
Exchange,  
*Appellees-Defendants.*

**Memorandum Decision on Rehearing by Judge Bradford**  
Judges May and Mathias concur.

**Bradford, Judge.**

[1] In this case, we concluded that the trial court had not abused its discretion in denying the motion to correct error filed by Roy and Cristine Cosme (collectively, “the Cosmes”) following the trial court’s entry of judgment on the evidence in favor of Erie Insurance Exchange (“Erie”) and Dan Churilla, d/b/a Churilla Insurance (“Churilla”). The Cosmes have petitioned for rehearing, again arguing that judgment on the evidence was inappropriate and noting a factual error in paragraph 30 of our March 8, 2023 memorandum decision. While we do not change our ultimate conclusion that the trial court did not abuse its discretion in denying the Cosmes’ motion to correct error, we grant

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<sup>1</sup> Warfield Clark does not participate in the instant appeal. However, pursuant to Appellate Rule of Procedure 17(A), “[a] party of record in the trial court ... shall be a party on appeal.”

the Cosmes' petition for rehearing for the limited purpose of correcting the factual error found in paragraph 30 of our prior decision.

[2] In our original memorandum decision, we stated in paragraph 30 that their son Broyce's driver's license, which had previously been suspended by the Bureau of Motor Vehicles ("BMV"), had not been reinstated until November 13, 2017. However, as the Cosmes point out, the record establishes that Broyce's driver's license had actually been reinstated on October 28, 2017. Our error in stating the date on which Broyce's driver's license had been reinstated, however, does not change the fact that, despite the Cosmes' assertion that Broyce's license suspension had been unwarranted, it is undisputed that Broyce's driver's license had been suspended at the time Erie sent the cancellation notice on September 27, 2017. Further, while Broyce's driver's license had been reinstated on October 28, 2017, after he had paid a reinstatement fee to the BMV, the suspension was not expunged from his record until November 13, 2017. In communication between Erie and Janine Aguilar, a representative for Churilla, Erie acknowledged that Broyce had paid the reinstatement fee and his license had been reinstated but indicated that reinstatement did "not mean that the license suspension did not occur." Ex. Vol. I p. 13.

[3] The record clearly states that Broyce's driver's license had been suspended prior to Broyce taking the necessary steps to get his driver's license reinstated and the suspension wiped from his record. The suspension was not wiped from Broyce's driving record until it was expunged on November 13, 2017, nearly two weeks after Erie had canceled the insurance policy at issue. Given that

Indiana law requires drivers on Indiana roadways to have a valid driver's license, we do not believe that one could reasonably infer that Erie could provide coverage for Broyce for the period during which his driver's license was suspended. *See generally* Ind. Code § 9-24-1-1 (providing that an individual must have a valid driver's license or permit to operate a motor vehicle upon a public roadway). As such, the fact that Broyce successfully had his driving privileges reinstated on October 28, 2017, rather than November 13, 2017, has no bearing on the validity of Erie's September 27, 2017 cancellation notice because Broyce's license was in fact suspended on that date. Notably, the expungement of Broyce's suspension did not come until after notice and cancellation of the policy by Erie.

[4] We therefore grant the Cosmes' petition for rehearing for the limited purpose of correcting our factual error regarding the date on which Broyce's driver's license was reinstated. We affirm our initial memorandum decision in all other respects.

May, J., and Mathias, J., concur.