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IN THE COURT OF APPEALS OF INDIANA

Chad Albert Staat, et al.,
Appellants-Plaintiffs,

v.

Indiana Department of Transportation,
Appellee-Defendant.

January 28, 2021

Court of Appeals Case No. 20A-CT-1283

Appeal from the Dearborn Superior Court

The Honorable Jonathan N. Cleary, Judge

Trial Court Cause No. 15D01-1405-CT-24

Bailey, Judge.

Case Summary

[1] Chad Staat ("Chad") and Julie Staat ("Julie") (collectively, the "Staats") sued the Indiana Department of Transportation ("INDOT") alleging tort liability in connection with a single-vehicle collision that occurred on I-74 while it was raining. The Staats alleged that the collision was caused by an accumulation of water on the road and that INDOT was liable because it was responsible for designing and maintaining I-74. INDOT moved for summary judgment, claiming it was (1) immune from liability for any alleged defect in the design of I-74 and (2) otherwise immune from liability because the collision was caused by a temporary road condition due to the weather. INDOT argued that, even if not immune, INDOT could not be liable for negligence because it lacked notice of puddling on I-74. The trial court granted INDOT's motion and denied the Staats' ensuing motion to correct error. The Staats now appeal, arguing that the trial court improvidently granted summary judgment in favor of INDOT.

[2] We affirm in part, reverse in part, and remand for further proceedings.

Facts and Procedural History

[3] On May 30, 2014, the Staats filed a complaint against INDOT. The Staats alleged that Chad was driving on I-74 when his vehicle struck an accumulation of water and hydroplaned, causing the vehicle to leave the roadway and strike a tree. The Staats alleged that INDOT was responsible for the design and

maintenance of I-74 and was ultimately liable for injuries Chad sustained from the collision and a loss of consortium Julie suffered as a result of the collision.

[4] INDOT moved for summary judgment. In a memorandum, INDOT argued that it was immune from liability for any alleged defect in the design of I-74. INDOT also argued that it was statutorily immune from liability related to the maintenance of I-74 because any puddling was a "temporary" road condition caused by the weather. In support of its argument regarding weather-related immunity, INDOT designated evidence that it rained the evening before the collision and was still raining when Chad lost control of the vehicle. INDOT also argued that, even if it was not entitled to immunity, summary judgment was proper because it lacked notice of the road condition. In asserting that it lacked notice, INDOT cited to Chad's deposition testimony that, before the day of the collision, Chad had not seen standing water on that stretch of I-74.

[5] At a hearing on INDOT's motion, the Staats conceded that INDOT could not be liable for a design defect. As to weather-related immunity, the Staats argued that INDOT had not demonstrated that the road condition was "temporary" because INDOT failed to designate evidence "about whether the condition had stabilized." Tr. Vol. 2 at 14. The Staats ultimately argued that INDOT failed to show that it was entitled to weather-related immunity. The trial court took the matter under advisement and later granted INDOT's motion for summary judgment. Thereafter, the Staats unsuccessfully moved to correct error.

[6] The Staats now appeal.

Discussion and Decision

[7] Prevailing on a negligence claim requires fulfilling three elements: "(1) duty owed to plaintiff by defendant; (2) breach of duty by allowing conduct to fall below the applicable standard of care; and (3) compensable injury proximately caused by defendant's breach of duty." *Goodwin v. Yeakle's Sports Bar & Grill, Inc.*, 62 N.E.3d 384, 386 (Ind. 2016) (quoting *King v. Ne. Sec., Inc.*, 790 N.E.2d 474, 484 (Ind. 2003)). In negligence cases, summary judgment is rarely appropriate. *Rhodes v. Wright*, 805 N.E.2d 382, 387 (Ind. 2004). This is because negligence cases are "particularly fact sensitive," governed by an objective standard best applied by a fact-finder "after hearing all of the evidence." *Id.*

[8] Summary judgment is nonetheless proper "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C). The party moving for summary judgment bears the initial burden of "making a prima facie showing that there is no issue of material fact and that it is entitled to [a] judgment as a matter of law." *Burton v. Benner*, 140 N.E.3d 848, 851 (Ind. 2020). "The burden then shifts to the non-moving party to show the existence of a genuine issue." *Id.* We review the grant or denial of summary judgment *de novo*, construing all factual inferences and resolving all doubts in favor of the non-moving party. *Bules v. Marshall Cnty.*, 920 N.E.2d 247, 250 (Ind. 2010).

Immunity

[9] In seeking summary judgment, INDOT argued that it was immune from liability for any defect in the design of I-74 as well as liability related to the maintenance of the roadway. We note that the Staats conceded below that INDOT is immune from liability for any alleged design defect. We therefore affirm the grant of summary judgment as to all claims regarding design defects.

[10] Turning to INDOT's remaining claim of immunity, "[t]he negligence of a defendant 'is not relevant if it is immune.'" *F.D. v. Ind. Dep't of Child Servs.*, 1 N.E.3d 131, 136 (Ind. 2013) (quoting *Catt v. Bd. of Comm'rs of Knox Cnty.*, 779 N.E.2d 1, 5 (Ind. 2002)). That is because immunity "assumes negligence but denies liability." *Putnam Cnty. Sheriff v. Price*, 954 N.E.2d 451, 453 (Ind. 2011). Whether a party has immunity "is a matter of law for the courts to decide," with the party seeking immunity "bear[ing] the burden of establishing the immunity." *Bules*, 920 N.E.2d at 250. Where the evidence "allow[s] multiple reasonable conclusions as to an element triggering . . . immunity, then the governmental [entity] has failed to establish its immunity." *Gary Cmty. Sch. Corp. v. Roach-Walker*, 917 N.E.2d 1224, 1226 (Ind. 2009); *see Bules*, 920 N.E.2d at 250 (noting that the entity is not entitled to immunity if the evidence "permits conflicting reasonable inferences as to material facts" that bear on immunity).

[11] The parties do not dispute that INDOT is a governmental entity that has a duty to maintain public thoroughfares, including the pertinent stretch of I-74. This duty requires the adoption of "appropriate precautions—including warning of

hazardous road conditions or temporarily closing roads—to prevent persons exercising due care from suffering injury." *Bules*, 920 N.E.2d at 250. Critically, however, a governmental entity is immune from liability "if a loss results from . . . [t]he temporary condition of a public thoroughfare . . . that results from weather." Ind. Code § 35-13-3-3(3). For this type of weather-related immunity to apply, the loss must result "from a condition that is **both** 'temporary' and 'caused by weather.'" *Bules*, 920 N.E.2d at 250 (emphasis added). Although the Indiana Code does not define "temporary" in this context, our Supreme Court has explained that immunity applies during the "window of reasonable response" to the road condition. *Id.* at 251; *see also Catt*, 779 N.E.2d at 5 ("The focus of whether the condition is [temporary or] permanent is whether the governmental [entity] has had the time and opportunity to remove the obstruction[.]"). The window of reasonable response lasts "at least until the condition is stabilized and the responses are completed." *Bules*, 920 N.E.2d at 251. In other words, where a road condition "continue[s] to worsen"—*i.e.*, where the condition is "still evolving"—the condition has not stabilized and so the governmental entity cannot be liable for negligence. *Id.*

[12] Our Supreme Court articulated and applied the foregoing standard in *Bules*, where "unusual temperature fluctuation caused the Yellow River to flood surrounding areas," resulting in icy patches on public thoroughfares. *Id.* at 249. Marshall County responded "by placing warning signs and closing some roads and salting and sanding others[.]" *Id.* Amid these response efforts, a collision occurred. *Id.* The collision led to a lawsuit in which the plaintiffs alleged that

Marshall County was liable for negligently responding to the road condition, including negligent placement of warnings. *Id.* at 249-51. In examining the issue of immunity, the Indiana Supreme Court noted that, on the day of the collision, the Yellow River "eventually reached a historic crest." *Id.* at 249. The Court observed that the "'period of reasonable response' last[ed] at least until the condition stop[ped] worsening"—in that case, "when the Yellow River crested." *Id.* at 251. Thus, because the collision had occurred before that point, *i.e.*, when the condition still "continued to worsen," the Court determined that Marshall County was entitled to governmental immunity. *Id.* In sum, our Supreme Court's immunity analysis turned on undisputed designated evidence that "[t]he condition caused by the weather—the flooding of the Yellow River and the subsequent icing near the flooding—had not yet stabilized." *Id.*

[13] We begin by echoing the concerns recently expressed in *Ladra v. State*, No. 20A-CT-1418 (Ind. Ct. App. Jan. 27, 2021), which involved similar facts, *i.e.*, puddling on the interstate during rain. In evaluating whether immunity applied, this Court observed that *Catt* and its progeny have "remove[d] any ability for the court to consider INDOT's knowledge regarding the frequency at which conditions caused by weather arise in determining whether a condition is temporary or whether the result is truly from the weather or the failure to take some action prior to the weather event." *Ladra*, slip op. at 13 n.7. We agree with *Ladra* that the current analytical framework "not only allows for the State to be negligent, it encourages it" by giving the State "no incentive to attempt to

implement remedial or preventative measures regarding such conditions." *Id.* In any case, we are bound by this precedent and will proceed to apply it.

[14] Here, INDOT sought summary judgment by focusing on the immunity statute applied in *Bules*. INDOT designated evidence showing that it had been raining the night before the collision and that it was still raining when Chad's vehicle hydroplaned around 5:54 a.m. INDOT focused on Chad's deposition testimony that the rainfall had progressed from moderate rainfall to heavy rainfall while he drove along I-74. INDOT maintains that the "accident was caused by heavy rain, which was a temporary weather condition that was continuing at the time that the accident occurred," and it "had not had the appropriate time to respond." Br. of Appellee at 15.[1] Put differently, INDOT argues that any accumulation of water on I-74 was due to ongoing inclement weather and the road condition had not stabilized by the time of the collision.

[15] At the hearing on INDOT's motion for summary judgment, the Staats distinguished the facts in *Bules*, noting that, in that case, the Yellow River "grows, it grows, it grows, it's cresting on the day of the accident, continuing to cause the condition" but, here, "if water puddles on Interstate 74, then

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[1] INDOT refers to a temporary weather condition. However, the statute is concerned with whether the road condition **caused by the weather** was temporary. *See* I.C. § 35-13-3-3(3) (conferring immunity "if a loss results from . . . [t]he temporary condition of a public thoroughfare . . . that results from weather"). Although our Supreme Court refers at times to temporary weather conditions, it is clear from the Court's analysis that the proper focus is whether "[t]he condition caused by the weather . . . had not yet stabilized." *Bules*, 920 N.E.2d at 251; *see also Catt*, 779 N.E.2d at 5 ("The focus of whether the condition is permanent is whether the governmental [entity] has had the time and opportunity to remove the obstruction[.]").

reasonable minds understand it doesn't mean [the puddle is] going to get bigger. It will get smaller maybe when it quits raining[.] . . . We've all seen puddles and we know that puddles fill up and they can't go any further[.]" Tr. Vol. 2 at 10-11. Thus, according to the Staats, INDOT's designated evidence supports a reasonable inference that, by the time of the collision, the puddle condition had stabilized by filling to a maximum-possible volume. It follows that, without designated evidence establishing whether or when the road condition stabilized, the evidence does not establish that the collision occurred within the period of reasonable response. On appeal, the Staats renew this line of argument, asserting that INDOT failed to designate evidence showing that "the roadway condition was stabilized one way or the other[.]" Br. of Appellant at 8.

[16] We agree with the Staats that INDOT failed to show its entitlement to weather-related immunity. Although the designated evidence indicates that it had been raining for quite some time and that rainfall increased around the time of the collision, the evidence supports a reasonable inference that a puddle had formed at some point before the collision, with new rainfall displacing the puddled water. In other words, the designated evidence supports a reasonable inference that the road condition stabilized well before the collision. Moreover, we disagree with INDOT's contention that it was within the window of reasonable response because "it was continuing to rain, and in fact was raining hard at the time of the accident." Br. of Appellee at 14. Indeed, INDOT designated no evidence that it is unable to place warnings or close roads during moderate or

even heavy rainfall. *See Catt*, 779 N.E.2d at 5 (noting that the pertinent inquiry is whether the governmental entity lacked the time and opportunity to respond).

[17] Ultimately, INDOT failed to designate evidence establishing that the collision occurred during the window of reasonable response. We therefore conclude that summary judgment based on weather-related immunity is improper. *See Bules*, 920 N.E.2d at 250 (noting that if the evidence "permits conflicting reasonable inferences as to material facts" bearing on immunity, the party "has failed to establish its immunity"); *cf. Roach-Walker*, 917 N.E.2d at 1228-29 (determining that the defendant failed to establish that the condition of a sidewalk was temporary—and therefore failed to establish weather-related immunity—where there was "no indisputable evidence establishing whether [the plaintiff] fell on an isolated ice patch that resulted from temporary cold that morning, or on a sheet of ice that had been there for days, or something else").[2]

Negligence

[18] Regardless of immunity, INDOT contends that summary judgment was proper "because it had no notice of pooling water on the roadway[.]" Br. of Appellee at 7. INDOT points out that where there is "neither actual nor constructive knowledge of the dangerous condition 'so that [the] reasonably prudent person would [not] have been alerted to action, then there is no negligence.'" *Id.* at 17

[2] Having concluded that INDOT failed to show its entitlement to weather-related immunity, we need not address the Staats' remaining arguments regarding this issue.

(quoting *Ka v. City of Indianapolis*, 954 N.E.2d 974, 977 (Ind. Ct. App. 2011)). INDOT argues that because it was not aware of puddling on I-74, it could not have breached its duty to adopt precautions regarding the road condition and therefore could not be liable to the Staats. *See Bules*, 920 N.E.2d at 250 (noting that the duty to maintain public thoroughfares requires "adopt[ing] appropriate precautions—including warning of hazardous road conditions or temporarily closing roads—to prevent persons exercising due care from suffering injury").

[19] INDOT has provided little evidentiary support for its claim of lack of notice. Indeed, it appears that INDOT exclusively relies on a portion of Chad's deposition testimony in which Chad stated that, before the day of the collision, he had never seen standing water on the pertinent stretch of I-74. Yet, evidence that one person lacked knowledge of puddling along I-74 is not evidence that INDOT—a governmental entity—lacked actual or constructive knowledge of puddling. Because INDOT failed to designate evidence regarding its own knowledge about pertinent road conditions on I-74, we cannot say that INDOT demonstrated its entitlement to summary judgment due to a lack of notice.

[20] Furthermore, even if INDOT had demonstrated a lack of actual knowledge, the appropriate inquiry is whether INDOT knew or **should have known** about the road condition. *See generally, e.g.*, Restatement (Third) of Torts: Phys. & Emot. Harm § 3 (Am. Law. Inst. 2010) ("A person acts negligently if the person does not exercise reasonable care under all the circumstances."). In claiming that it lacked constructive knowledge of puddling, INDOT directs us to *Schmitt v. City of Evansville*, 868 N.E.2d 1127 (Ind. Ct. App. 2007). However, that case is

readily distinguishable because, there—unlike here—the alleged condition was "underground, not subject to observation." *Schmitt*, 868 N.E.2d at 1129; *cf. Roach-Walker*, 917 N.E.2d at 1228 (discussing, in a different context, the existence of a dangerous condition "in an area that is, or should be, regularly patrolled"). Ultimately, whether INDOT knew or should have known of puddling on I-74 is an issue that must be resolved by a fact-finder. *See N. Ind. Pub. Serv. Co. v. Sharp*, 790 N.E.2d 462, 466 (Ind. 2003) (noting that whether an act or omission amounts to a breach of a duty is "generally a question of fact").

[21] All in all, because INDOT did not demonstrate its entitlement to weather-related immunity and because material factual issues remain as to breach, we conclude that the court improvidently granted summary judgment. Although we affirm the grant of summary judgment as to design immunity, we otherwise reverse the grant of summary judgment and remand for further proceedings.

[22] Affirmed in part, reversed in part, and remanded for further proceedings.

Robb, J., concurs.
Tavitas, J., concurs in result with separate opinion.

Chad Albert Staat, et al.,
Appellants-Plaintiffs,

v.

Indiana Department of Transportation,
Appellee-Defendant.

Court of Appeals Case No. 20A-CT-1283

Tavitas, Judge, concurring in result.

[23] I respectfully concur in result. I agree that genuine issues of material fact preclude summary judgment here. I write separately only to note my disagreement with the interpretation of *Catt v. Bd. of Comm'rs of Knox Cty.*, 779 N.E.2d 1 (Ind. 2002), as noted by my dissent in *Ladra v. State*, No. 20A-CT-1418 (Ind. Ct. App. Jan. 27, 2021).