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IN THE
COURT OF APPEALS OF INDIANA

Donnell Goston, Sr., et al.,
Appellants-Plaintiffs,

v.

State of Indiana, et al.,
Appellees-Defendants.

June 17, 2022

Court of Appeals Case No.
21A- CT-2484

Appeal from the Marion Superior Court

The Honorable Kurt Eisgruber, Judge

Trial Court Cause No.
49D06-0910-CT-46723

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Plaintiff, Donnelle Goston, Sr. (Goston), individually and on behalf of his minor children, D.G. Jr. and Do.G. (collectively, Children), appeals the trial court's summary judgment in favor of Appellees-Defendants, State of Indiana, *et al.*, on Goston's Complaint that the Department of Child Services (DCS) had been negligent in failing to notify him of its assessment into the allegations of abuse and neglect as to Children.

[2] We affirm.

ISSUES

[3] Goston presents this court with five issues on appeal, two of which we find dispositive and which we restate as:

(1) Whether the trial court abused its discretion by allowing DCS to file its third successive motion for summary judgment; and

(2) Whether Indiana Code section 31-33-18-4, which requires DCS to notify parents of an assessment into the abuse or neglect of their children, confers a private right of action.

FACTS AND PROCEDURAL HISTORY

[4] Twins D.G. Jr. and Do.G. were born on August 2, 2006, to Alexandra Snyder (Snyder) and Goston. Snyder and Goston were not married, and Snyder held primary physical custody while Goston had parenting time with Children.

Although Children spent considerable time with both parents, they primarily lived in Hendricks County with Snyder and Snyder's husband.

[5] The first suspected incidents of abuse against Do.G. were documented as early as October 2006. That month, the child was treated for skull and facial injuries, subdural hematomas, and bruising. Treating physicians at Riley Hospital determined that Do.G. had "multiple subdural hematomas of different ages." (Appellant's App. Vol. IV, p. 9). A few weeks later, following another incident, Riley Hospital performed a CT scan of Do.G., which revealed brain atrophy, constant fluid collection on the brain, and a shrinking outer layer of the brain. On March 25, 2008, DCS received a report of potential neglect or abuse involving Do.G. after he was admitted to Clarian West Medical Center with subdural hematomas, marks on his head, and dehydration. Despite the doctors' assessment that Do.G.'s injuries were the result of "non-accidental head trauma," DCS, after an investigation and interviews of family members, found the report unsubstantiated by determining that Do.G. was a "head banger." (Appellant's App. Vol. III, p. 153; App. Vol. IV, p. 7).

[6] Like his twin brother, the first suspected incidents of abuse occurred early in D.G. Jr.'s life. In October 2006, when he was barely two months old, D.G. Jr. was diagnosed with an enlarged head circumference and bilateral chronic subdural hematomas. His condition at the time was "extremely suspicious for abusive head trauma." (Appellant's App. Vol. III, p. 145). On June 4, 2008, D.G. Jr. was taken to Riley Hospital with bleeding subdural hematomas and swelling and pressure on his brain. Surgeons removed a portion of the child's

skull to alleviate the pressure building on his brain. After the surgery, D.G. Jr. remained in a medically-induced coma for several days. A neurosurgeon indicated that these injuries were the result of non-accidental trauma. After investigating his injuries, DCS substantiated the abuse and removed both Children from Snyder's care. A Child in Need of Services (CHINS) case was opened. Because of the abuse he endured early in life, D.G. Jr., now fifteen years old, resides in a facility which provides him with the round-the-clock care he requires for paraplegia, cerebral palsy, post-traumatic amnesia, and cortical deafness and blindness (*i.e.*, he is wholly unresponsive to auditory or visual stimuli). Despite the fact that throughout their infancy Children had regular interactions with hospitals, law enforcement agencies, and DCS and its county agencies, it is uncontested that on June 4, 2008, DCS, for the first time, contacted Goston about either of Children's injuries that were previously reported to DCS as neglect or abuse.

[7] On October 9, 2009, Goston filed his Complaint, alleging negligence against the State of Indiana, DCS, the Hendricks County Department of Child Services, the City of Plainfield, the City of Indianapolis, Snyder, Snyder's husband, Snyder's father, Snyder father's girlfriend, Clarian West Medical Center, Methodist Hospital, and Riley Hospital. At this point in the proceedings, State of Indiana, DCS, and the Hendricks County Department of Child Services are the only remaining defendants. On January 6, 2010, the City of Indianapolis filed a motion for summary judgment, in which DCS joined as a co-defendant on January 21, 2010. The City's motion argued that Indiana Code chapter 31-

33-8, *et seq.*, which provides for the investigation of reports of suspected child abuse or neglect, did not establish a private cause of action. On March 31, 2010, the trial court granted the City's motion, but vacated its summary judgment a month later, on April 29, 2010. Meanwhile, Goston moved for and filed an amended Complaint on March 26, 2010, with a second amended Complaint for damages filed on May 13, 2011.

[8] On March 12, 2015, DCS filed a motion for summary judgment and supporting memorandum, arguing that Indiana Code chapter 31-33-8 *et seq.* did not confer a private right of action, and that DCS was immune under the third-party provision of the Indiana Torts Claims Act (ITCA), codified in Indiana Code section 34-13-3-3(10). The trial court denied DCS' motion for summary judgment on July 17, 2015.

[9] On February 8, 2021, DCS filed a third motion for summary judgment and memorandum in support thereof. Specifically, DCS moved for a finding based on four different grounds: (1) DCS is immune from liability under three separate immunity provisions of the ITCA: discretionary immunity, third-party immunity, and judicial proceeding immunity; (2) DCS is immune from liability pursuant to Indiana Code section 31-33-6-1 for its investigation of the claims of child abuse; (3) DCS satisfied its duty owed to Goston and Children; and (4) there is no private cause of action pursuant to Indiana Code chapter 31-33-8 *et seq.* On October 21, 2021, the trial court granted DCS' motion. Recognizing DCS' previously filed motions for summary judgment, the trial court only "addresse[d] the issues not previously brought" and concluded, as a matter of

law, that (1) DCS was immune from liability pursuant to discretionary function immunity of ITCA, Ind. Code § 34-13-3-3(7); (2) DCS was immune from liability based on judicial proceeding immunity for creating a report of child abuse, I.C. §34-13-3-3(6); and (3) DCS is immune from liability pursuant to judicial proceeding immunity because DCS participated in the CHINS proceeding, I.C. § 31-33-6-1(1)&(4). (Appellant's App. Vol. II, p. 33).

[10] Goston now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[11] In reviewing a trial court's ruling on summary judgment, this court stands in the shoes of the trial court, applying the same standards in deciding whether to affirm or reverse summary judgment. *First Farmers Bank & Trust Co. v. Whorley*, 891 N.E.2d 604, 607 (Ind. Ct. App. 2008), *trans. denied*. Thus, on appeal, we must determine whether there is a genuine issue of material fact and whether the trial court has correctly applied the law. *Id*. at 607-08. In doing so, we consider all of the designated evidence in the light most favorable to the nonmoving party. *Id*. at 608. A fact is 'material' for summary judgment purposes if it helps to prove or disprove an essential element of the plaintiff's cause of action; a factual issue is 'genuine' if the trier of fact is required to resolve an opposing party's different version of the underlying facts. *Ind. Farmers Mut. Ins. Group v. Blaskie*, 727 N.E.2d 13, 15 (Ind. Ct. App. 2000). The party appealing the grant of summary judgment has the burden of persuading

this court that the trial court's ruling was improper. *First Farmers Bank & Trust Co.*, 891 N.E.2d at 607.

[12] We observe that, in the present case, the trial court entered findings of fact and conclusions of law thereon in support of its judgment. Generally, special findings are not required in summary judgment proceedings and are not binding on appeal. *AutoXchange.com. Inc. v. Dreyer and Reinbold, Inc.*, 816 N.E.2d 40, 48 (Ind. Ct. App. 2004). However, such findings offer a court valuable insight into the trial court's rationale and facilitate appellate review. *Id*.

II. *Successive Motions for Summary Judgment*

[13] In challenging the trial court's summary judgment, Goston first disputes the timeliness and successive nature of DCS' third motion for summary judgment. Focusing on the parties' agreed-upon case management plan, entered pursuant to Marion County Local Rule LR49-TR16 207(B), Goston contends that the trial court failed to enforce its pretrial order when DCS filed its third motion for summary judgment after the approved deadline for dispositive motions had expired, making the motion "procedurally improper" and untimely. (Appellant's Br. p. 36).

[14] A case management plan is a comprehensive pretrial order governing the disposition of the case, "and such order when entered shall control the subsequent course of action, unless modified thereafter to prevent manifest injustice." *Daub v. Daub*, 629 N.E.2d 873, 875 (Ind. Ct. App. 1994). "The law is well settled that a pretrial order shall control the proceedings once it is

entered." *Chacon v. Jones-Schilds*, 904 N.E.2d 286, 289 (Ind. Ct. App. 2009) (citing *Daugherty v. Robinson Farms, Inc.*, 858 N.E.2d 192, 198 (Ind. Ct. App. 2006), *trans. denied*. Here, the case management plan approved by the trial court was entered in conformity with Marion County's local rules of court and set, in pertinent part, the "dispositive motion deadline" for December 15, 2020, with "[a]ll pretrial motions, including Motions in Limine and Proposed Jury Instructions," to be "filed on or before April 5, 2021." (Appellant's App. Vol III, pp. 159-60). Characterizing DCS' summary judgment motion as dispositive, Goston maintains that the third summary judgment motion filed on February 8, 2021, missed the December 15, 2020, deadline by almost two months. However, without further clarifying the difference between a dispositive motion and a pretrial motion, it is disputed whether DCS' motion was filed after the applicable deadline. *See, e.g., McMahan v. Snap on Tool Corp.*, 478 N.E.2d 116,123 (Ind Ct App. 1985) (characterizing a motion for summary judgment as a pretrial motion).

[15] Nevertheless, without having to decide whether the summary judgment motion should be characterized as a dispositive motion or a pretrial motion, we observe that the case management plan was entered in conformity with Marion County Local Rule of Court LR49-TR16 207(B). The Indiana Trial Rules specifically authorize the making and amending of local rules of court:

> Courts may regulate local court and administrative district practice by adopting and amending in accordance with this Rule local and administrative district rules not inconsistent with—and

> not duplicative of—these rules of Trial Procedure or other Rules of the Indiana Supreme Court.

Ind. Trial Rule 81. These rules of procedure promulgated by our supreme court are binding on all Indiana courts, and no court "can circumvent the rules and thereby avoid their application" by enacting an inconsistent local rule. *GF v. St. Catherine hospital*, 124 N.E. 3d 76, 83 (Ind. Ct. App. 2019), *trans. denied*. In this light, a motion for summary judgment is governed by Trial Rule 56, which specifies that, unlike the parties' agreement pursuant to the local rule, "[a] party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, *at any time*, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." T.R. 56(B) (emphasis added).

[16] A local rule which is inconsistent with the Trial Rules is deemed to be without force and effect. *Id.* In *State v. Bridenhager*, 279 N.E.2d 794, 796 (Ind. 1972), our supreme court clarified the test for determining when a procedural rule enacted by statute is inconsistent with the trial rules:

> To be "in conflict" with our rules ..., it is not necessary that the statutory rules be in direct opposition to our rule, so that but one could stand per se. It is only required that they be incompatible to the extent that both could not apply in a given situation.

In *Armstrong*, this court held that the same test would apply to a local rule alleged to be inconsistent with the trial rules. *Armstrong v. Lake*, 447 N.E.2d 1153, 1154 (Ind. Ct. App. 1983); *see also G.F.,* 124 N.E. 3d at 83. Furthermore,

when two rules cover the same subject matter and one does so generally when the other does so specifically, the more specific rule prevails. *Daugherty v. Robinson Farms, Inc.*, 858 N.E.2d 192, 197 (Ind. Ct. App. 2006), *trans. denied*.

[17] We recognize that Local Rule 207(B) applies to all motions filed with the Marion County trial court, whereas the requirements of T.R. 56 only apply to summary judgment motions—and therefore is the more specific rule. As Local Rule 207(B) does not specify whether a summary judgment motion should be considered a pretrial motion or a dispositive motion with respect to a filing deadline, and the trial court did not indicate that DCS' motion for summary judgment was not deemed timely filed, we find that, under these circumstances, the more specific T.R. 56(B), according to which a motion for summary judgment can be filed at any time, takes precedence over Local Rule 207(B). As a result, DCS' motion for summary judgment was timely filed.

[18] In addition to the timeliness of the motion, Goston also challenged the successive nature of DCS' summary judgment motion. Relying on *Rotec v. Murray Equip.*, 626 N.E.2d 537, 538 (Ind. Ct. App. 1983) for the proposition that "once a trial court has ruled upon a summary judgment motion, the proper method to raise the same issues would be a motion for reconsideration," Goston maintains that DCS "neither moved for reconsideration nor appealed the trial court's 2010 or 2015 orders denying summary judgment." (Appellant's Br. p. 20). Specifically, Goston points out that in 2010, the trial court denied DCS' first motion for summary judgment requesting statutory immunity under Ind. Code § 31-33-8 *et seq.*, while in 2015, the trial court denied its second

motion for summary judgment alleging statutory immunity under I.C. §§ 31-33-8, *et seq*. and I.C. § 34-13-3-3(10). Our review of the trial court's current order indicates that the trial court was aware of DCS' previous motions and expressly noted that "[t]his [c]ourt does not relitigate those issues, but addresses the issues not previously brought by" DCS. (Appellant's App. Vol. II, p. 33). Our own analysis of DCS' successive motions and the trial court's current order confirms that the trial court granted summary judgment to DCS on grounds not previously raised by DCS. Accordingly, DCS' third motion for summary judgment was timely and properly before the trial court.

III. *Private Cause of Action*

[19] Goston's chief theory of liability on summary judgment and on appeal is that DCS violated Indiana Code section 31-33-18-4 (the Notice Statute), which mandates:

> Whenever a child abuse or neglect investigation is conducted under this article, the department shall give verbal and written notice to each parent, guardian, or custodian of the child that:
>
> (1) the reports and information described under section 1 of this chapter relating to the child abuse or neglect investigation; and
> (2) if the child abuse or neglect allegations are pursued in juvenile court, the juvenile court's records described under [I.C. Ch] 31-39;
>
> are available upon the request of the parent, guardian, or custodian except as prohibited by federal law.

While it is undisputed that DCS conducted multiple investigations of child abuse with respect to Children, it is also uncontested by DCS that at no point was Goston notified of the reports and information resulting from these investigations until June 4, 2008. Neither DCS nor the trial court ever directly responded to Goston's contention that DCS breached its duty of notifying him of the investigations, preferring to resolve this claim based on statutory immunity grounds instead. For the first time in these proceedings, DCS now tackles Goston's allegation head-on—not by disputing that a violation of the Notice Statute occurred—but by arguing that Goston cannot assert a private right of action for such violation. Because the issue is supported by the record, it is appropriate for our review since "[w]e may affirm the trial court's grant of summary judgment upon any basis supported by the record." *Boushehry v. City of Indianapolis*, 931 N.E.2d 892, 895 (Ind. Ct. App. 2010).

[20] "When a civil tort action is premised upon a violation of a duty imposed by statute, the initial question to be determined by the court is whether the statute in question confers a private right of action." *Borne ex rel. Borne v. Nw. Allen Cnty. Sch. Corp.*, 532 N.E.2d 1196, 1203 (Ind. Ct. App. 1989), *trans. denied*. To prevail on his negligence claim, plaintiff must show that DCS (1) owed him a duty, (2) breached that duty, and (3) the breach proximately caused his damages. *Putnam Cnty. Sheriff v. Price*, 954 N.E.2d 451, 453 (Ind. 2011). Goston does not allege DCS breached a common law duty, such as the duty to use reasonable care; rather, he contends DCS breached a statutory duty to notify a parent of the availability of a child abuse report—a duty not recognized

at common law. *Cf. J.A.W. v. Roberts,* 627 N.E.2d 802, 813 (Ind. Ct. App. 1994) (finding that there was no common law duty to report child abuse, and that the "[L]egislature has declined to codify a civil cause of action against an adult who knowingly fails to report alleged child abuse") (Rucker, J.), *abrogated on other grounds by Holt v. Quality Motor Sales, Inc.*, 776 N.E.2d 361 (Ind. Ct. App. 2002), *trans. denied*. Because Goston alleges DCS breached a statutory duty, we must determine whether the Legislature intended the Notice Statute to confer a private right of action. *Borne*, 532 N.E.2d at 1203.

[21] To answer this question, we must look to the language of the statute and the Legislature's intent. "The determination of whether a civil cause of action exists begins with an examination of Legislative intent." *Roberts v. Sankey*, 813 N.E.2d 1195, 1198 (Ind. Ct. App. 2004), *trans. denied*. "[A] private cause of action generally will be inferred where a statute imposes a duty for a particular individual's benefit but will not be where the Legislature imposes a duty for the public's benefit." *Blanck v. Ind. Dep't of Corr.*, 829 N.E.2d 505, 509 (Ind. 2005) (*citing Americanos v. State,* 728 N.E.2d 895 (Ind. Ct. App. 2000), *trans. denied*). But even where a duty benefits an individual, we will not infer a private right of action unless that appears to be the Legislature's intent. *See id.* And Indiana courts have rarely concluded the Legislature intended to confer a private right of action. *See, e.g., id.*; *Borne*, 532 N.E.2d at 1203.

[22] In *Doe #1 v. Ind. Dep't of Child Servs.*, 81 N.E.3d 199, 202 (Ind. 2017), Doe sued DCS after he reported suspected child abuse and DCS, in violation of I.C. § 31-33-18-2 which limits access to such reports, disclosed Doe's report to the

suspected perpetrator. Our supreme court concluded that Doe's action could not proceed as the statute did not confer a private cause of action. *Id*. at 204. In its analysis, the court compared the statute with the statute at issue in *Borne*, which imposed a duty on individuals to report child abuse. *Id*. at 202. While the statute in *Borne*, "would undeniably have benefited the particular child-abuse victim," the *Borne* court refused to infer a private cause of action as "the statute's primary thrust was helping children in general" and was part of the "Reporting and Investigation of Child Abuse and Neglect" scheme, which identifies five purposes all revolving around helping children in general:

> (1) encourage effective reporting of suspected or known incidents of child abuse or neglect;
>
> (2) provide effective child services to quickly investigate reports of child abuse or neglect;
>
> (3) provide protection for an abused or a neglected child from further abuse or neglect;
>
> (4) provide rehabilitative services for an abused or a neglected child and the child's parent, guardian, or custodian; and
>
> (5) establish a centralized statewide child abuse registry and an automated child protection system.

I.C. § 31-33-1-1 (2008); *Id*. at 204. Finding that the statute in *Borne* and the statute at issue in *Doe #1* were "both part of the 'Reporting and Investigation of Child Abuse and Neglect' scheme, the *Doe #1* court noted, in line with *Borne's* reasoning, that protecting people from having their identity disclosed when reporting child abuse encourages such reporting and thereby helps children. *Id*. The court observed that the General Assembly's mission, expressed in the

statutory scheme, is to decrease the number of Indiana's child abuse and neglect cases through reporting and the incidental benefit of confidential reporting does not change this goal. *Id.* As such, the court concluded that, although the General Assembly is aware that "[c]hild-abuse reporters are DCS' eyes and ears on the front lines of the fight to protect children," no private cause of action is available to enforce the confidentiality of the reporting, and "separation of powers requires us to leave that decision to the Legislature, rather than make it ourselves under the guise of statutory interpretation." *Id*.

[23] In her concurring opinion in *F.D. v. Ind. Dep't of Child Servs*, 1 N.E 3d 131, 143 (Ind. 2013) (Rush J., concurring in part, dissenting in part), Chief Justice Rush addressed the issue the *F.D.* majority failed to tackle: "whether plaintiffs have a private right of action [under the Notice Statute]—the very issue plaintiffs presented on transfer."[1] Analyzing relevant case law, Chief Justice Rush concluded, "Without some indication that the Legislature intended to imply a private cause of action, I would not infer one." *Id*. We agree.

[24] As in *Borne* and *Doe #1*, the Notice Statute at issue here, I.C. § 31-33-18-4, is part of the child-centered framework of Article 31, the 'Reporting and Investigation of Child Abuse and Neglect' scheme, which intends to create a more effective, efficient, and accessible system to deal with the issue of child

[1] On appeal from the trial court, a divided panel of this court had concluded that the Notice Statute did not infer a private cause of action. *See F.D. v. Ind. Dep't of Child Servs*, 973 N.E.1186 (Ind. Ct. App. 2012) (Crone, J. concurring in part, dissenting in part), *vacated on transfer*.

abuse and neglect for the public's benefit as a whole, not just a particular individual's benefit. "[W]hen the legislative purpose is general in nature, the mere fact that the statutory language refers to a class of people does not create a private cause of action." *Americanos*, 728 N.E.2d at 898. The Notice Statute is designed to alert parents of potential allegations of abuse with the overall aim to encourage effective child protection and services to protect the alleged victims. Thus, when noncustodial parents, such as Goston, learn their children are involved in an assessment of abuse or neglect, the parents are in a better position to protect their children. "[A] private cause of action will generally be inferred where a statute imposes a duty for a particular individual's benefit but will not be where the Legislature imposes a duty for the public's benefit." *Blanck*, 829 N.E.2d at 509. Given that the Legislature did not explicitly create a private cause of action and the intent of the Notice Statute is to benefit the public generally by protecting alleged victims of abuse, we again refuse to create a private right of action where one does not exist. Therefore, the trial court did not err in granting summary judgment to DCS.

[25] This is not meant to suggest that we condone the way that this matter was handled by DCS. We sympathize with Goston and understand his frustration of not being timely notified, as was DCS' mandate. However, our Legislature has not afforded a private right of action in these situations, so we must hold accordingly.

CONCLUSION

[26] Based on the foregoing, we hold that the trial court did not err in granting summary judgment to DCS.

[27] Affirmed.

[28] May, J. and Tavitas, J. concur