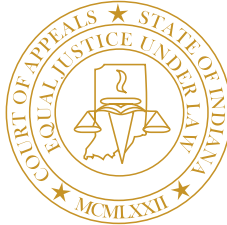


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Bart L. Aiello,
Appellant-Plaintiff

v.

Meridian Title Company and Arsenal Insurance Company,
Appellees-Defendants



May 26, 2026

Court of Appeals Case No.
25A-PL-1653

Appeal from the Hamilton Superior Court
The Honorable Michael A. Casati, Judge

Trial Court Cause No.
29D01-2001-PL-532

Memorandum Decision by Chief Judge Tavit
Judges Weissmann and Foley concur.

Tavitas, Chief Judge.

Case Summary

- [1] After Bart Aiello purchased a property later discovered to be landlocked, he brought claims against the title insurance company, Arsenal Insurance Company (“Arsenal”), and its agent, Meridian Title Company (“Meridian”) (collectively, “Defendants”). The trial court ordered arbitration, and Aiello’s arbitration was successful. The trial court then granted summary judgment to Defendants on Aiello’s punitive damages claim.
- [2] Aiello, pro se, appeals the trial court’s orders and contends that the trial court erred by ordering Aiello’s negligent misrepresentation claim to be arbitrated; by denying Aiello’s motion to sever Meridian from the arbitration; and by granting Defendants’ motion for summary judgment regarding Aiello’s punitive damages claim. We, however, disagree with Aiello’s arguments and affirm the trial court’s judgment.

Issues

- [3] Aiello raises three issues,¹ which we restate as:

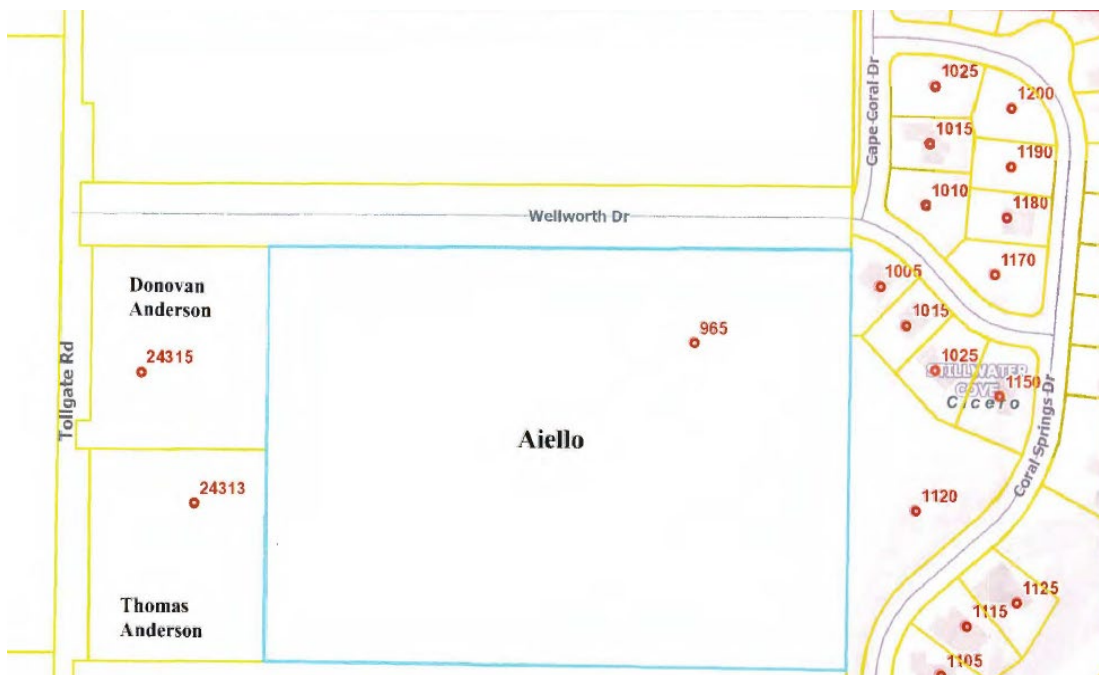
- I. Whether the trial court erred by ordering Aiello’s negligent misrepresentation claim to be arbitrated.

¹ Aiello initially raised a fourth issue but later abandoned it. Accordingly, we do not address the issue.

- II. Whether the trial court erred by denying Aiello’s motion to sever Meridian from the arbitration.
- III. Whether the trial court erred by granting Defendants’ motion for summary judgment regarding Aiello’s punitive damages claim.

Facts

[4] On April 17, 2015, Aiello and his wife, Kimberly Aiello, purchased vacant land on Wellworth Road in Hamilton County (“Property”) for \$230,000. A demonstrative map of the properties at issue here follows:



Appellees’ Joint App. Vol. II p. 98.

[5] Meridian, as agent for Arsenal, issued an ALTA Owner’s Policy of title insurance (“Policy”) to Aiello. The Policy provided insurance in the amount of

\$230,000 and stated: “This Policy insures You against actual loss, including any costs, attorney’s fees and expenses provided under this Policy. . . .” Appellees’ Joint App. Vol. II p. 10. The covered risks insured under the Policy included: “11. You do not have actual vehicular and pedestrian access to and from the land, based upon a legal right.” *Id.* The Policy defined “We/Ours/Us” as “Arsenal Insurance Corporation.” *Id.* at 11.

[6] The Policy also provided:

11. ARBITRATION

a. If permitted in the state where the land is located You or We may demand arbitration.

b. The law used in the arbitration is the law of the state where the Land is located.

* * * * *

e. The arbitration shall be binding on both You and Us. The arbitration shall decided [sic] any matter in dispute between You and Us.

f. The arbitration award may be entered as a judgment in the proper court.

Id. at 13.

[7] Aiello later learned that the Property was landlocked because Wellworth Drive was not a public access road. Rather, Wellworth Drive was a private drive

owned by a homeowners' association. Aiello filed a notice of claim with Arsenal under the Policy. Defendants were unable to reach an agreement with the homeowners' association that satisfied Aiello. Accordingly, Arsenal retained separate counsel to initiate a declaratory judgment action against the homeowners' association and neighboring property owners on Aiello's behalf to obtain legal access to the Property ("Declaratory Judgment Action"). The Declaratory Judgment Action asserted claims for an implied easement by prior use and an implied easement by necessity.

[8] In January 2020, while the Declaratory Judgment Action was pending, Aiello² filed the instant complaint against Defendants. Aiello alleged that Defendants "agreed to insure Plaintiffs against any loss sustained by Plaintiffs by reason of any defect or defects in the title of the insured" to the Property; "Defendants did not exercise reasonable care in searching the records to ascertain the lack of access, or the Defendants negligently and willfully failed to disclose to Plaintiffs the lack of access"; Defendants materially breached "the express contract of insurance"; and Plaintiffs sustained damages of \$230,000. Appellant's App. Vol. II pp. 21-22. In addition to compensatory damages and attorney fees, Aiello requested "exemplary and punitive damages." *Id.* at 22.

[9] In December 2020, Defendants filed a motion to compel arbitration, which the trial court granted in April 2021. The trial court compelled arbitration on "all

² Aiello's wife, Kimberly Aiello, was originally a party to these proceedings, but she was later dismissed. For simplicity, we refer only to Aiello as the plaintiff in the proceedings.

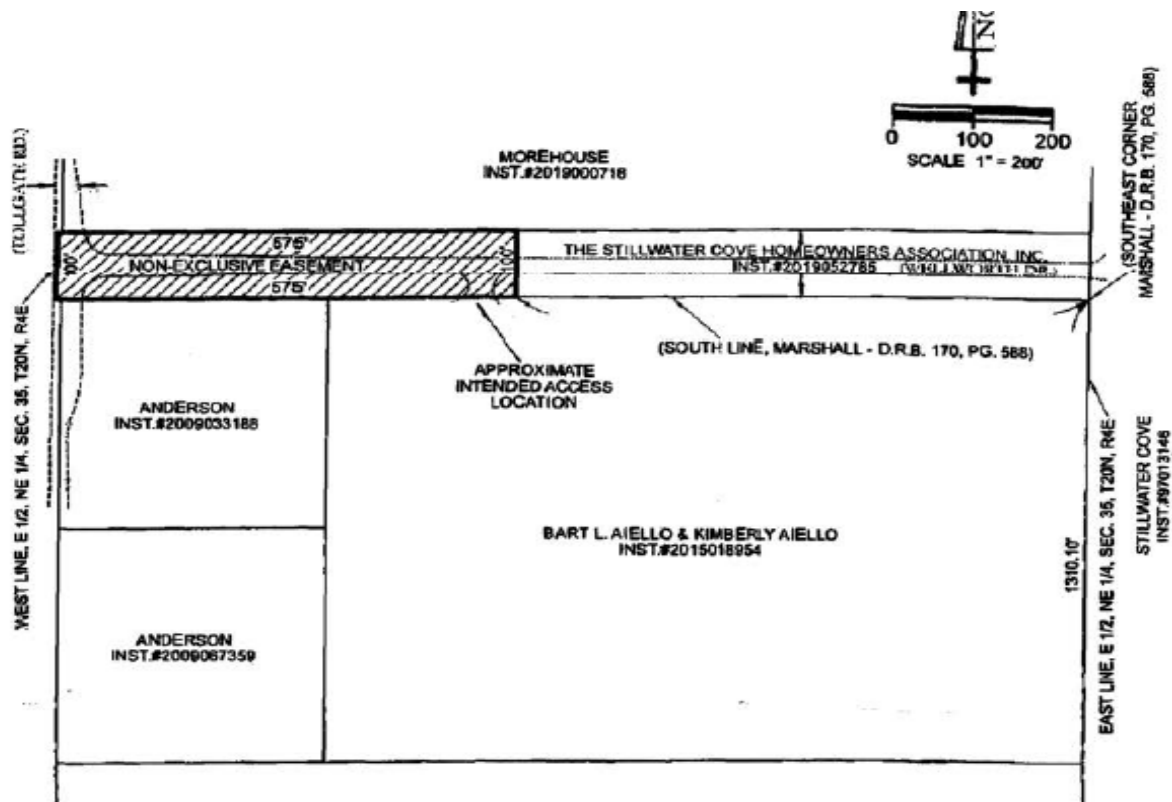
claims, except those requesting exemplary or punitive damages, which shall be reserved for the Trial Court.” Appellant’s App. Vol. II p. 15. The trial court also stayed the matter pending completion of the arbitration. Aiello also filed a motion to sever Meridian from the arbitration, which the trial court denied.

[10] In October 2021, the homeowners’ association granted Aiello a “non-exclusive easement for ingress and egress” over Wellworth Drive to Tollgate Road, “over and across the real estate” of the homeowners’ association.³ Appellees’ Joint App. Vol. II p. 106. A demonstrative map of the easement follows:

³ The easement provided:

The purpose of this Easement is to permit Grantee ingress and egress to/from the Benefitted Parcel onto and across the Burdened Parcel to/from Tollgate Road. It is understood that Grantee will construct a driveway/path consistent with the present layout and construction of Wellworth Drive to access Wellworth Drive from the Benefitted Parcel. The Parties agree that there shall only be one driveway/path and access point from the Benefitted Parcel onto the Burdened Parcel, which shall be located between 510’ and 560’ from the centerline of Tollgate Road, as more specifically shown and identified as the “Approximate Intended Access Location” on Exhibit “A” hereto. There shall be no other drives, paths, driveways, sidewalks, and/or access points onto the Burdened Parcel from the Benefitted Parcel. The parties agree that this Easement is for ingress and egress purposes only.

Appellees’ Joint App. Vol. II p. 108.



Id. at 111. The Declaratory Judgment Action was then dismissed with prejudice in November 2021.⁴

[11] Aiello’s claims in the instant matter against Defendants proceeded to arbitration, which concluded in July 2024. The arbitrator found that: (1) Defendants were “in breach of contract under the terms of the Policy”; and (2) as for the negligent misrepresentation claim, Defendants breached their duty “to show Wellworth Drive was a private road.” Appellees’ Joint App. Vol. II

⁴ The arbitrator later found: “That [the] easement limits Claimants to one driveway off Wellworth Drive and prohibits Claimants from using the full frontage of the Property. It also effectively prevents them from subdividing the tract as was their original plan.” Appellees’ Joint App. Vol. II p. 154. The arbitrator further found that Aiello’s consent to the dismissal with prejudice was not obtained.

pp. 156-57. Aiello was awarded \$345,000 for the breach of contract claim and \$39,698 for the negligent misrepresentation claim, with both amounts to be paid by Meridian and Arsenal jointly and severally.

[12] On January 28, 2025, Aiello filed a “Brief in Support of the Awarding of Punitive Damages.” Defendants then filed a motion for summary judgment regarding Aiello’s punitive damages claim. Defendants argued, in part, that: (1) punitive damages are not generally recoverable in breach of contract actions; (2) negligence is not a basis for awarding punitive damages; (3) Aiello did not bring a claim of breach of the duty of good faith and fair dealing; and (4) Aiello failed to demonstrate a basis for punitive damages.⁵ In response, Aiello argued that Defendants acted in bad faith when Arsenal’s counsel allegedly pressured Aiello into settling the claim and when counsel hired by Defendants for the Declaratory Judgment Action stipulated to the dismissal of the action without Aiello’s consent. Aiello did not file a designation of evidence. On June 6, 2025, the trial court granted Defendants’ motion for summary judgment and denied Aiello’s request for punitive damages. Aiello now appeals.

⁵ In support of their motion for summary judgment, Defendants designated: the Policy, Aiello’s notice of claim, a retracement survey, letters to Aiello from Arsenal, Aiello’s response dated November 19, 2018, the Declaratory Judgment Action complaint, a cross-claim filed in the Declaratory Judgment Action, the non-exclusive easement, the order on Defendants’ motion to compel arbitration, Aiello’s demand for arbitration, and the arbitrator’s award.

Discussion and Decision

[13] Aiello proceeds pro se, and we, therefore, reiterate that “a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented.” *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). “This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so.” *Picket Fence Prop. Co. v. Davis*, 109 N.E.3d 1021, 1029 (Ind. Ct. App. 2018) (citing *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016)), *trans. denied*. ““We will not become an advocate for a party or address arguments that are inappropriate or too poorly developed or expressed to be understood.”” *Id.* (quoting *Basic*, 58 N.E.3d at 984).

I. Arbitration of Negligent Misrepresentation Claim

[14] Aiello first argues that the trial court erred by compelling arbitration on his negligent misrepresentation claim. Aiello contends that the negligent misrepresentation claim is “a distinct and separate claim not covered by the arbitration clause in the Policy.” Appellant’s Br. p. 15. According to Aiello, the tort claim “did not arise from the failure to fulfill the obligations of Arsenal with respect to the Policy.” *Id.* at 16.

[15] We note, however, that, in response to Defendants’ motion to compel arbitration, Aiello argued: (1) no agreement established that Aiello agreed to arbitration; (2) the arbitration clause relied upon by Defendants did not include Meridian; (3) Defendants waived their claim for arbitration; and (4) the

negligence claim was not subject to arbitration because it included a request for punitive damages. Aiello argued that the negligence claim was not subject to arbitration simply because it included a request for punitive damages; Aiello did not argue, as he does now, that the negligent misrepresentation claim was not covered by the arbitration clause. Because Aiello did not make this argument to the trial court and raises it for the first time on appeal, this argument is waived. *Evergreen Shipping Agency Corp. v. Djuric Trucking, Inc.*, 996 N.E.2d 337, 340 (Ind. Ct. App. 2013); *Mid-States Gen. & Mech. Contracting Corp. v. Town of Goodland*, 811 N.E.2d 425, 438 n.2 (Ind. Ct. App. 2004) (“An appellant who presents an issue for the first time on appeal waives the issue for purposes of appellate review.”).

- [16] Waiver notwithstanding, Aiello’s argument fails. We review an appeal from the grant of a motion to compel arbitration de novo. *Brumley v. Commonwealth Bus. Coll. Educ. Corp.*, 945 N.E.2d 770, 774-75 (Ind. Ct. App. 2011). Indiana Code Section 34-57-2-1(a) provides: “A written agreement to submit to arbitration is valid, and enforceable, [sic] an existing controversy or a controversy thereafter arising is valid and enforceable, except upon such grounds as exist at law or in equity for the revocation of any contract.” “The party seeking to compel arbitration must demonstrate the existence of an enforceable arbitration agreement and that the disputed matter is the type of claim that is intended to be arbitrated under the agreement.” *Precision Homes of Indiana, Inc. v. Pickford*, 844 N.E.2d 126, 130 (Ind. Ct. App. 2006), *trans. denied*. “Whether the parties agreed to arbitrate any disputes is a matter of contract

interpretation, and most importantly, a matter of the parties' intent.” *Id.* at 130-31.

- [17] The arbitration clause here covered “**any matter in dispute** between You and Us.” Appellees’ Joint App. Vol. II p. 13 (emphasis added). The clause did not differentiate between breach of contract actions and tort actions, and all of Aiello’s claims relate to Defendants’ failure to discover that the Property was landlocked. The arbitration clause clearly and unambiguously provided for arbitration of both Aiello’s breach of contract claim and his negligent misrepresentation claim. Accordingly, the trial court did not err by compelling arbitration of the negligent misrepresentation claim.

II. Motion to Sever Meridian from Arbitration

- [18] Next, Aiello argues that the trial court erred by denying his motion to sever Meridian from the arbitration. Aiello’s motion to sever argued that the Policy did not include Meridian in the arbitration provisions and, thus, the claims against Meridian should not have been submitted to arbitration. This argument was merely a request for the trial court to reconsider its earlier ruling that the claims against Defendants were subject to arbitration. Accordingly, we review this argument in the same manner that we review an appeal from the grant of a motion to compel arbitration—*de novo*. *Brumley*, 945 N.E.2d at 774-75.

- [19] As noted earlier, the arbitration clause here covered “any matter in dispute between You and Us.” Appellees’ Joint App. Vol. II p. 13. The Policy defined “We/Ours/Us” as “Arsenal Insurance Corporation.” *Id.* at 11. Aiello, thus,

argues that the arbitration clause applies only to Arsenal, not to Meridian.⁶

Aiello contends that Meridian “was never a party to the Policy and, therefore, was not covered by the arbitration clause therein.” Appellant’s Br. p. 19.

[20] Meridian, however, argues that Aiello has taken contrary positions in this litigation as to whether Meridian is a party to the Policy and, thus, is barred from contesting the applicability of the arbitration provision to Meridian under the doctrine of judicial estoppel. “Judicial estoppel is a judicially created doctrine that seeks to prevent a litigant from asserting a position that is inconsistent with one asserted in the same or a previous proceeding.” *Ne. Rural Elec. Membership Corp. v. Wabash Valley Power Ass’n, Inc.*, 56 N.E.3d 38, 43 (Ind. Ct. App. 2016), *trans. denied*. “Judicial estoppel is not intended to eliminate all inconsistencies; rather, it is designed to prevent litigants from playing ‘fast and loose’ with the courts. The primary purpose of judicial estoppel is not to protect litigants but to protect the integrity of the judiciary.” *Id.* “The basic principle of judicial estoppel is that, absent a good explanation, a party should not be permitted to gain an advantage by litigating on one theory and then pursue an incompatible theory in subsequent litigation.” *Id.* at 44. “Judicial estoppel only applies to intentional misrepresentation, so the dispositive issue supporting the

⁶ This Court has noted that “[a]n issuing [title insurance] agent may, in accordance with an agency contract, wear ‘two hats,’ one as an agent to issue or sell title insurer’s insurance policies, and the other as a settlement agent to conduct closings on his or her own behalf.” *Fid. Nat. Title Ins. Co. v. Mussman*, 930 N.E.2d 1160, 1167 (Ind. Ct. App. 2010), *trans. denied*. Here, the Policy specifically provided that Meridian was Arsenal’s agent in issuing the title insurance policy. The present dispute centers around Meridian’s actions as agent in issuing the title insurance policy, not its actions as a settlement agent.

application of judicial estoppel is the bad-faith intent of the litigant subject to estoppel.” *Id.*

[21] In his complaint, Aiello alleged that both Arsenal and Meridian were liable for breach of contract. Specifically, Aiello alleged: (1) “Plaintiffs and Defendants entered into an express contract of insurance whereby Defendants agreed to insure Plaintiffs against any loss sustained by Plaintiffs by reason of any defect or defects in the title of the insured to certain real property . . . ,” Appellees’ Joint App. Vol. II p. 3; (2) “Defendants did materially breach the express contract of insurance in that, on demand, Defendants failed to pay Plaintiffs’ losses sustained by Plaintiffs as a result of the defects in title to the above-described real property,” *id.*; and (3) “As a result of Defendants[‘] breaches, negligence or willful conduct, Plaintiffs sustained damages in the amount of \$230,000.” *Id.* at 4.

[22] Aiello did not differentiate between the conduct of Meridian and Arsenal and repeatedly alleged that Meridian had breached the Policy. Now, in order to avoid arbitration with Meridian, Aiello contends that Meridian is not a party to that same contract of insurance and is not subject to the arbitration clause. Aiello may not simultaneously benefit from the Policy’s terms to claim breach of contract and also disclaim its arbitration provision. Accordingly, we agree with Meridian and conclude that Aiello is judicially estopped from claiming that Meridian is not subject to the arbitration provision.

III. Summary Judgment Regarding Punitive Damages

- [23] Next, Aiello challenges the trial court's grant of summary judgment to Defendants on Aiello's claim for punitive damages. "Whether a party may recover punitive damages is usually a question of fact for the fact finder to decide; but it may be decided as a matter of law." *Williams v. Younginer*, 851 N.E.2d 351, 358 (Ind. Ct. App. 2006), *trans. denied*.
- [24] "We review summary judgment decisions de novo, and Trial Rule 56(C) supplies the framework." *Cave Quarries, Inc. v. Warex LLC*, 240 N.E.3d 681, 684 (Ind. 2024). "The moving party is entitled to summary judgment only if the evidence it designates in support of its motion '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.'" *Id.* at 684-85 (quoting Ind. Trial Rule 56(C)). The purpose of summary judgment is to withdraw issues from the jury only when there are no genuine material factual issues for the jury to decide. *Id.* at 685. "Summary judgment is available when the nonmovant cannot prove its claim based on the undisputed evidence[.]" *Id.*
- [25] The summary judgment movant has the burden of making a *prima facie* showing that there is no genuine issue of material fact and that it is entitled to 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 which must then show the existence of a genuine issue of material fact. *Id.* On appellate review, we resolve "[a]ny doubt as to any facts or inferences to be drawn therefrom . . . in favor of the non-moving party." *Id.*

[26] “We limit our review to the materials designated at the trial level.” *Gunderson v. State, Ind. Dep’t of Nat. Res.*, 90 N.E.3d 1171, 1175 (Ind. 2018). We note that Aiello failed to designate evidence in response to Defendants’ motion for summary judgment. Trial Rule 56(C) provides: “Summary judgment shall not be granted as of course because the opposing party fails to offer opposing affidavits or evidence, but the court shall make its determination from the evidentiary matter designated to the court.”

[27] We first address whether punitive damages were allowable with respect to Aiello’s breach of contract claim. “It is well settled that a breach of contract claim may not lead to an award of punitive damages.” *Sheaff Brock Inv. Advisors, LLC v. Morton*, 7 N.E.3d 278, 288 (Ind. Ct. App. 2014), *trans. denied*. “Rather, only if the claimant proves that the conduct of the breaching party independently establishes the elements of a common law tort for which punitive damages are allowed may the claimant receive punitive damages.” *Id.* Accordingly, Aiello was not entitled to punitive damages for his breach of contract claim, and the trial court properly granted summary judgment as to any punitive damages related to the breach of contract claim.

[28] “Furthermore, proof that a tort was committed does not necessarily establish the right to punitive damages.” *Williams*, 851 N.E.2d at 358 (citing *Erie Ins. Co. v. Hickman by Smith*, 622 N.E.2d 515, 520 (Ind. 1993)). “Punitive damages may be awarded only if there is clear and convincing evidence that defendant ‘acted with malice, fraud, gross negligence, or oppressiveness which was not the result of a mistake of fact or law, honest error or judgment, overzealousness, mere

negligence, or other human failing.’” *Id.* Thus, mere negligence in failing to discover the landlocked nature of the Property will not support a punitive damages award; rather, Aiello was required to demonstrate malice, fraud, gross negligence, or oppressiveness in the failure to discover the landlocked nature of the Property. Aiello, however, designated no evidence to support such a claim and makes no argument on appeal regarding such a claim. Accordingly, the trial court properly granted summary judgment on the punitive damages request related to the negligent misrepresentation claim.

[29] On appeal, Aiello argues that he was entitled to punitive damages based upon an insurer bad faith claim. An insurer that “acts in bad faith toward its insured may be liable for punitive damages.” *Baldwin v. Standard Fire Ins. Co.*, 269 N.E.3d 1197, 1204 (Ind. 2025). “Though punitive damages are prohibited ‘in a breach of contract action,’ a bad-faith claim is ‘an independent tort for the breach of the insurer’s obligation to exercise good faith . . . upon which punitive damages may be based.’” *Id.* (quoting *Hickman*, 622 N.E.2d at 520).

[30] Aiello, however, did not raise a bad faith claim in his complaint and, in fact, admits that he did not link “his claim for punitive damages to a claim of insurer bad faith” until he filed his January 2025 brief in support of awarding punitive damages.⁷ Appellant’s Br. p. 21. “A claim that is not pleaded cannot be

⁷ Aiello argues that Defendants waived this argument by failing to file an answer. But Aiello cites no authority for the proposition that the failure to file an answer allows Aiello to raise claims not pleaded in the complaint.

presented for the first time in a motion for summary judgment.” *Pearman v. Stewart Title Guar. Co.*, 108 N.E.3d 342, 349 (Ind. Ct. App. 2018), *trans. denied*. Nor is there any indication that Defendants impliedly consented to trying the newly raised issue of bad faith. *See id.* To the contrary, when Aiello first raised the issue of bad faith in his January 2025 brief, Defendants filed a motion for summary judgment and argued that Aiello had not pleaded a claim of insurer bad faith. *See id.* Given Aiello’s failure to properly raise a bad faith claim, the trial court properly granted Defendants’ motion for summary judgment regarding Aiello’s claim for punitive damages.

Conclusion

[31] The trial court properly ordered Aiello’s claims to be arbitrated and properly denied Aiello’s motion to sever Meridian from the arbitration. Further, the trial court properly granted Defendants’ motion for summary judgment regarding Aiello’s punitive damages claim. Accordingly, we affirm.

[32] Affirmed.

Weissmann, J., and Foley, J., concur.

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