MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Brandon Hall
Greene & Schultz
Bloomington, Indiana

ATTORNEY FOR APPELLEE

Matthew L. Hinkle
Coots Henke & Wheeler, P.C.
Carmel, Indiana

IN THE COURT OF APPEALS OF INDIANA

Todd Blakeney,
Appellant-Plaintiff,

v.

City of Covington,
Appellee-Defendant

September 26, 2023

Court of Appeals Case No. 23A-CT-381

Appeal from the Fountain Circuit Court

The Honorable Stephanie S. Campbell, Judge

Trial Court Cause No. 23C01-2011-CT-336

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

[1] Todd Blakeney was shocked into unconsciousness by a live electric wire while repairing his employer's faulty cable line. Blakeney sued the City of Covington (City) for negligence, alleging City allowed the electric line to be placed dangerously close to the cable line on City's utility pole. City moved for summary judgment, claiming it owed no duty to Blakeney because he was an experienced line repairman aware of the potential hazards of electrical lines. The trial court granted summary judgment to City, and Blakeney appeals. Finding City owed no duty to Blakeney under these circumstances, we affirm.

Facts

[2] On the day he was electrocuted, Blakeney was working as a technician for a cable company seeking to cure an internet outage. The cable company rented space for its service lines on utility poles owned by City, which operated a local electrical utility.

[3] Blakeney used an aerial lift twice to view the broken cable line. His first trip up to the line was uneventful. Blakeney immediately noted, however, that the broken cable line was unusually close to the City's electrical line. The distance between the two lines—allegedly, less than two feet—may have been half as much as utility regulations required. City and Blakeney disagree as to who is to blame for that.

[4] Blakeney discussed his observations with other colleagues and gathered the material he needed for the repair. Blakeney and his colleagues agreed they

would avoid all four of the non-cable lines on the pole, as any of the lines could be dangerous. Blakeney did not contact City before making the repair. On other occasions, he had requested the utility take security precautions—such as placing an insulated "blanket" over the lines—before he proceeded with repairs.

[5] Blakeney used the aerial lift again to reach the broken line, but this trip ended differently. While holding a new cable that reached a few inches above his protective helmet, Blakeney somehow contacted the electrical line. Blakeney does not remember what happened, but he was electrocuted and lost consciousness. He awoke on the floor of the aerial lift.

[6] Blakeney sued City for negligence. City moved for summary judgment, arguing it owed no duty to Blakeney. The trial court granted City's motion for summary judgment, leading to this appeal by Blakeney.

Discussion and Decision

[7] Blakeney contends the trial court erroneously granted summary judgment because material questions of fact exist as to whether City owed him a duty of care. When reviewing a summary judgment ruling, we apply the same standard as the trial court. *Johnson v. Harris*, 176 N.E.3d 252, 255 (Ind. Ct. App. 2021). The moving party bears the burden of showing that there are no genuine issues of material fact and it is entitled to judgment as a matter of law. *Fox v. Barker*, 170 N.E.3d 662, 665 (Ind. Ct. App. 2021). Summary judgment is improper if the moving party fails to meet this burden, or, if it does, the nonmoving party establishes a genuine issue of material fact. *Id.* We construe all factual

inferences in the nonmoving party's favor. *Id.* However, we construe all doubts as to the existence of a material issue against the moving party. *Id.*

[8] To prevail on his claim of negligence, Blakeney must prove: 1) a duty owed by City to him; 2) breach of that duty; and 3) compensable injury proximately caused by City's breach of duty. *Brown v. City of Indianapolis*, 113 N.E.3d 244, 249 (Ind. Ct. App. 2018). "Absent a duty there can be no negligence or liability based upon the breach." *Goodwin v. Yeakle's Sports Bar & Grill*, 62 N.E.3d 384, 386 (Ind. 2016). And whether a duty exists is a question of law. *Id.* at 386-87. We conclude that City owed no duty to Blakeney under these circumstances as a matter of law.

[9] As the parties agree, an electrical utility in Indiana owes no duty to a person using the utility's pole if that person "knows or should know of the danger inherent in such work unless the danger comes from some malfunction of which the person would have no reason to be aware." *Cox v. N. Ind. Pub. Serv. Co.*, 848 N.E.2d 690, 696 (Ind. Ct. App. 2006). Blakeney contends City had a cognizable duty under *Cox.* And if no duty exists under *Cox*, Blakeney alternatively asserts a premises liability theory under which he claims a duty exists. We reject both arguments.

I. No Duty Under *Cox*

[10] Blakeney characterizes the abnormally short spacing between the cable line and the electrical line as a "malfunction" under *Cox*. He also alleges that City moved the cable line to its unsafe location, thereby creating a hazard of which

he was unaware. But the City owes no duty to Blakeney under *Cox* because the undisputed evidence shows Blakeney was keenly aware of the dangers of having the electrical line so close to the cable line on which he was working.

[11] Blakeney admitted that before he was injured, he noticed the spacing between the cable line and the electrical line was "exceptionally close, more than I had ever seen." Appellant's App. Vol. II, p. 49. He also observed that the utility pole was shorter than any he had seen and that the four power lines above the cable line were uninsulated and therefore potentially dangerous. *Id.* at 49-50.

[12] Additionally, Blakeney knew from his training that he should treat utility lines, including any lines on the utility pole above the cable line, as "potentially hot" and "potential hazards." *Id.* at 42, 45, 51. He also had been trained to "keep [his] distance" from the electrical lines and just avoid them. *Id.* at 43, 51. Blakeney had a close look at the lines during his first, uneventful trip up to the lines on the aerial lift.

[13] Thus, even if City moved the cable line and thereby caused the unsafe spacing from the electrical line, City would not have owed Blakeney a duty under *Cox* because Blakeney: (1) knew of the danger in working on City's utility pole; and (2) was aware of the alleged "malfunction." *Cox,* 848 N.E.2d at 696.

II. Premises Liability

[14] We also reject Blakeney's alternative argument that City owed him a duty under a premises liability theory. Without any citation to supporting authority, Blakeney argues that when an electrical utility pole owner leases space on the

pole to a non-electrical utility, the lessee's utility worker becomes akin to an invitee or licensee. Blakeney then notes the varying standards of care that a landowner owes invitees and licensees, including the duty to warn a licensee of any latent danger on the premises of which the landowner has knowledge. *See Rhoades v. Heritage Invs.*, *LLC*, 839 N.E.2d 788, 791 (Ind. Ct. App. 2005).

[15] Although Blakeney acknowledges that City had no duty to warn him of the uninsulated and energized electrical lines, he claims the City owed him a duty to abide by applicable safety regulations, to warn of latent defects, and "to give written notice and coordination with fellow utilities of any discrepancy in compliance with the applicable regulations." Appellee's Br., p. 14. He cites no statutes or appellate decisions that bolster this claim.

[16] By failing to offer any supporting authority, Blakeney has waived this premises liability argument. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring Appellant's Brief to contain "the contentions of the appellant on the issues presented, supported by cogent reasoning" and citations to the authorities and statutes). We will not serve as an advocate for a party or address arguments that are too poorly developed to be understood. *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016).

[17] As City owed no duty to Blakeney, Blakeney cannot prove that City was negligent. We therefore affirm the trial court's entry of summary judgment for City.

Riley, J., and Bradford, J., concur.