MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christine Cosme and Roy Cosme,

Appellants-Plaintiffs,

v.

March 8, 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

Debora A. Warfield Clark,[1]
Dan Churilla, d/b/a/ Churilla Insurance, and Erie Insurance Exchange,

Appellees-Defendants.

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

[1] In a letter dated September 27, 2017, Roy and Christine Cosme (collectively, "the Cosmes") were notified by Erie Insurance Exchange ("Erie") that their automobile insurance policy would be canceled at 12:01 a.m. on November 1, 2017, if they failed to submit paperwork excluding their then-nineteen-year-old son, whose driver's license had been suspended by the Bureau of Motor Vehicles ("BMV"), from their insurance policy. A representative for the Cosmes' insurance agent recommended that they submit the requested paperwork to Erie, but the Cosmes chose not to. Their insurance was canceled

[1] 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."

on November 1, 2017. On November 4, 2017, the Cosmes were involved in an automobile accident ("the Accident"), after which they submitted a claim to Erie. Erie denied the claim on the basis that the Cosmes' insurance policy had been canceled and was not in effect at the time of the Accident.

[2] The Cosmes subsequently filed suit against the other driver involved in the Accident, Erie, and their insurance agent Dan Churilla d/b/a Churilla Insurance ("Churilla"). At the conclusion of the Cosmes' case-in-chief, Churilla and Erie (collectively, "Appellees") moved for judgment on the evidence. The trial court granted these motions. The Cosmes filed a motion to correct error and demand for a new trial, which was denied by the trial court. On appeal, the Cosmes contend that the trial court abused its discretion by denying their motion to correct error, arguing that judgment on the evidence was not appropriate. Concluding otherwise, we affirm.

Facts and Procedural History

[3] Beginning on August 27, 2016, Erie provided insurance coverage to the Cosmes under Erie Automobile Insurance Policy No. Q08-2715138 ("the Policy"), with the Cosmes listed as the named insureds. On August 27, 2017, the Policy automatically renewed and, pursuant to the renewals terms, was to be in effect for a one-year period ending August 27, 2018. At the time of the renewal, the Cosmes' then-nineteen-year-old son Broyce and then-seventeen-year-old daughter Brynn were listed as additional drivers on the Policy.

[4] Broyce had been arrested on February 9, 2017, after a Hobart police officer had pulled over and found marijuana inside a vehicle in which Broyce had been riding. Although Broyce had been a backseat passenger in the vehicle, not the driver, the incident resulted in a suspension of Broyce's driver's license. In the Spring of 2017, Broyce received a letter from the BMV informing him that his driver's license had been suspended. Broyce contacted the BMV and learned that certain records obtained by the BMV had wrongly indicated that he had been the driver of the vehicle at the time of his arrest and that he had "failed to show proof of insurance." Tr. Vol. II p. 34.

[5] The Cosmes submitted a change request that was to take effect on July 1, 2017, "[a]t which time the system automatically ran" the listed insureds', including Broyce's, motor-vehicle reports ("MVR"). Broyce's MVR revealed the following:

> Broyce's license is suspended. MVR revealed suspension 4/26/17 failure to file insurance, bureau, suspension 2/9/17 failure to provide proof of insurance to bureau (currently suspended), 2/9/17 drug possession, vehicle operator/MISD, 3/22/17 SPD 86/70 sent driver exclusion emailed to agent for Broyce Cosme.

Tr. Vol. II p. 229. Erie underwriter Megan Malena testified that "[d]rivers with a suspended license are not eligible [for coverage] with Erie, nor are they legally allowed to be driving a vehicle; therefore it's [Erie's] policy to request a driver exclusion" for an insured who has a suspended license. Tr. Vol. II p. 231.

[6] Given Erie's policy combined with Broyce's suspended status, on September 6, 2017, Malena sent a notice to Churilla indicating that Erie would be requesting that the Cosmes sign a form excluding Broyce from coverage under the Policy ("the Exclusion Form"). On September 27, 2017, Erie sent a letter to the Cosmes informing them that Erie would exercise its right to cancel the Policy if they failed to sign the Exclusion Form. The letter stated in relevant part:

> THIS IS A VERY IMPORTANT LETTER. PLEASE READ IT CAREFULLY. YOUR POLICY WILL BE CANCELLED IF YOU DO NOT RESPOND.
>
> Dear Policyholder:
>
> After careful consideration, we find it necessary to inform you that we will not be able to continue your automobile insurance policy unless we are permitted to exclude coverage for the above[-]named individual(s).
>
> If you are agreeable to the exclusion, please sign and date both copies of the enclosed endorsement. Attach one copy to your policy and return the other in the enclosed envelope. The exclusion will be effective on the date you sign the form.
>
> Unless the "No Coverage" form, properly signed and dated, is received in this Home Office in Erie, Pennsylvania by October 28, 2017, this is your notice your policy will cancel effective November 1, 2017.

Ex. Vol. I p. 75 (underlining in original). The letter further stated, "Reason for this action: We are requesting the exclusion of Broyce Cosme because our underwriting information indicates that his license was suspended effective 4/26/17 and is currently suspended." Ex. Vol. I p. 75. The Cosmes received

the letter on or about October 3, 2017. Roy acknowledged that upon receiving the letter, he had read it and had seen that it stated that the Policy would be canceled "effective 12:01 a.m." on November 1, 2017, if Erie did not receive the signed Exclusion Form. Tr. Vol. II p. 105.

[7] Despite being aware of the October 28, 2017 deadline, the Cosmes waited until October 26, 2017—two days before the Exclusion Form was due—before contacting Churilla about the Erie exclusion letter. On that date, Roy spoke with Churilla employee Janine Aguilar and told Aguilar that the BMV had made a mistake in suspending Broyce's driver's license because Broyce had not been driving the automobile at the time he and his friends were arrested. Although Roy had represented to Aguilar that he possessed paperwork showing Broyce's license should not have been suspended and that Broyce would send the paperwork over, Aguilar subsequently learned "that [Broyce] didn't have the paperwork that would [enable her to] keep him with Erie." Tr. Vol. II p. 191. Aguilar recommended that the Cosmes sign the Exclusion Form and work on getting Broyce re-added to the Policy later. Despite recommending that the Cosmes sign the Exclusion Form, Aguilar, citing Roy's claim that the suspension was a mistake, attempted to convince Erie to refrain from canceling the Policy.

[8] On October 27, 2017, Malena spoke to Aguilar and informed her "there were no changes on [Broyce's] MVR." Tr. Vol. II p. 195. Aguilar told Malena that she "didn't have the paperwork from Broyce yet," she had "called [Broyce] and asked him for that paperwork and he was getting it to [her]," and "once [she]

got that paperwork, [she] would … send it to" Malena. Tr. Vol. II p. 195. Also on October 27, 2017, Broyce paid the $250.00 reinstatement fee that was required to be paid to the BMV before his driving privileges could be reinstated.[2] After paying the fee, Broyce attempted to email the receipt showing that he had paid the reinstatement fee to Aguilar, but used the wrong email address. Broyce did not send the email to Aguilar's correct email address until October 30, 2017.

[9] On October 31, 2017, Malena emailed Aguilar and explained that, while Broyce had paid a fee to reinstate his driver's license, reinstatement "doesn't mean [that] the license suspension did not occur." Tr. Vol. II p. 198. Malena further explained that Erie "can cancel midterm for a license suspension during the policy term. It does not have to be currently suspended. The only way that [Erie is] going to reinstate this policy today is with a signed driver exclusion" for Broyce. Tr. Vol. II p. 199. Malena provided one last chance to avoid cancellation, telling Aguilar that if the Cosmes signed and returned the Exclusion Form prior to midnight, the cancellation would not take effect. After speaking to Malena, Aguilar called Roy and left him a voicemail. After also attempting to call Broyce, Aguilar sent an email to Broyce that read, "Hi Broyce, I left messages for both you and your dad on your cell phones but wanted to email as well. The family's auto insurance will cancel at midnight

[2] Notably, although Broyce paid the BMV reinstatement fee in October of 2017, he did not complete the process of having his suspension lifted and deleted from his driving record until November 13, 2017, nearly two weeks after the Policy was canceled.

tonight if we do not receive the signed exclusion form for you." Ex. Vol. I p. 13. Broyce did not read Aguilar's email on October 31, 2017. Likewise, neither Broyce nor Roy listened to Aguilar's voicemail, with Roy acknowledging that he had not listened to the voicemail until November 6, 2017.

[10] The Cosmes did not sign the Exclusion Form prior to midnight on October 31, 2017. Accordingly, as the initial letter from Erie had indicated, the Policy was canceled at 12:01 a.m. on November 1, 2017.

[11] On November 4, 2017, the Cosmes' van, which was being driven at the time by Roy, was rear-ended by Debora Warfield Clark. On November 6, 2017, the Cosmes received written notification from Erie that the Policy had been canceled effective November 1, 2017. Roy subsequently confirmed the cancellation with Aguilar. Despite being notified that the Policy had been canceled on November 1, 2017, the Cosmes submitted a claim under the Policy for damages stemming from the Accident. In a letter to the Cosmes' representative dated November 30, 2017, Erie denied coverage for the Accident on the grounds that the Policy had not been in effect at the time of the Accident.

[12] The Cosmes initiated the underlying lawsuit on March 20, 2018, alleging claims against Warfield Clark, Churilla, and Erie. On March 11, 2020, the Cosmes filed an amended complaint in which they asserted a claim of negligence against Warfield Clark, a claim of "breach of contract and negligence" against

Erie and Churilla, and a claim of bad faith against Erie. Appellants' App. Vol. II p. 57. The Cosmes also requested declaratory judgment against and punitive damages from Erie and Churilla.

[13] A jury trial commenced on June 13, 2022. On June 15, 2022, following the conclusion of the Cosmes' case-in-chief, Appellees moved for judgment on the evidence. The trial court granted Appellees' motions and entered final and appealable judgment in favor of Appellees. On July 13, 2022, the Cosmes filed a motion to correct error and demand for a new trial. On August 1, 2022, the trial court issued an order denying the Cosmes' motion, finding that

> [t]he Court remains unpersuaded that any of the evidence presented at trial would allow reasonable people to differ that the choice by the plaintiff, Roy Cosme, not to remove Broyce Cosme as a driver under the policy to avoid cancellation of the policy after being timely advised to do so obviated all claims for damage under any theory of recovery against Churilla and Erie.

Appellants' App. Vol. II p. 184.

Discussion and Decision

[14] The Cosmes appeal from the denial of their motion to correct error. "[W]e review the trial court's decision for an abuse of discretion." *Bruder v. Seneca Mortg. Servs., LLC*, 188 N.E.3d 469, 471 (Ind. 2022). "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law." *Id.*

[15] In arguing that the trial court abused its discretion in denying their motion to correct error, the Cosmes assert that the trial court erred in granting Appellees' motions for judgment on the evidence. Indiana Trial Rule 50(A) provides that "[w]here all or some of the issues in a case … are not supported by sufficient evidence or a verdict thereon is clearly erroneous as contrary to the evidence because the evidence is insufficient to support it, the court shall withdraw such issues from the jury and enter judgment thereon[.]"

> The purpose of a motion for judgment on the evidence is to test the sufficiency of the evidence presented by the nonmovant. A motion for judgment on the evidence should be granted only when there is a complete failure of proof because there is no substantial evidence or reasonable inference supporting an essential element of the claim. Likewise, judgment on the evidence is proper if the inference intended to be proven by the evidence cannot logically be drawn from the evidence without undue speculation. But if there is evidence that would allow reasonable people to differ as to the result, then judgment on the evidence is improper.
>
> …
>
> [T]he grant or denial of a Trial Rule 50 motion is within the broad discretion of the trial court and will be reversed only for an abuse of discretion. When we review a trial court's ruling on such a motion, we use the same standard as the trial court: we must consider only the evidence and reasonable inferences most favorable to the non-moving party. When, as in this case, the trial court denies the motion and declines to intervene, it is not the province of this Court to do so unless the verdict is wholly unwarranted under the law and the evidence.

Drendall L. Off., P.C. v. Mundia, 136 N.E.3d 293, 303–04 (Ind. Ct. App. 2019) (internal citations and quotations omitted), *trans. denied*.

[16] The Indiana Supreme Court has held that a review of whether a trial court erred in granting a motion for judgment on the evidence "requires both a quantitative and a qualitative analysis." *Purcell v. Old Nat. Bank*, 972 N.E.2d 835, 840 (Ind. 2012) (internal quotation omitted).

> Evidence fails quantitatively only if it is wholly absent; that is, only if there is no evidence to support the conclusion. If some evidence exists, a court must then proceed to the qualitative analysis to determine whether the evidence is substantial enough to support a reasonable inference in favor of the non-moving party.
>
> Qualitatively, evidence fails when it cannot be said, with reason, that the intended inference may logically be drawn therefrom; and this may occur either because of an absence of credibility of a witness or because the intended inference may not be drawn therefrom without undue speculation. The use of such words as substantial and probative are useful in determining whether evidence is sufficient under the qualitative analysis. Ultimately, the sufficiency analysis comes down to one word: reasonable.

Id. (cleaned up).

[17] In granting Appellees' motions for judgment on the evidence, the trial court found as follows:

> The evidence presented by the Cosmes[] in their case fails both quantitatively and qualitatively. Erie did not breach its contract of insurance with the Cosmes and neither Erie nor Churilla

breached their duties of good faith and fair dealing. Erie sent a notice to the Cosmes that their insurance policy would be cancelled thirty days after the date of the notice if Broyce Cosme were not removed from the policy as an insured driver. Roy Cosme did not wish to do so. He wanted to expunge Broyce Cosme's false suspended license, the reason given for the notice, to prevent him from losing coverage. Churilla advised him that the only sure way to insure [*sic*] no cancellation of the policy was to remove Broyce from the policy and work on reinstating him or obtaining other insurance for him later. The Cosmes had ample time to do so. They chose not to do so. The policy was cancelled and no coverage was afforded for the wreck with the uninsured motorist Warfield Clark. Although Churilla continued to work with them to prevent the cancellation and, even after cancellation, lobbied for coverage with Erie to cover the Warfield Clark wreck, their efforts to prevent the cancellation and cover the wreck were unsuccessful. Erie, on their part, never wavered from their position that the Cosmes had to remove Broyce as an insured driver in order to avoid cancellation. The policy gave them the right to do so based upon the information in their possession.

The Cosmes' punitive damages claim also fails. The evidence presented demonstrated that the Cosmes did not prove their punitive damages by clear and convincing evidence. There is no question of fact that reasonable people would not differ that Churilla's and Erie's conduct was not grossly negligent, wanton or willful, malicious, fraudulent or oppressive.

In a nutshell, according to the testimony of Roy Cosme, the Cosmes received the thirty-day notice, they contacted Erie, Erie referred them to their agent, Churilla, whose employee, Janine Aguilar, advised him that to avoid cancellation of the policy, he needed to execute the form removing Broyce as a driver under the policy. This fulfilled Churilla's duty of good faith and fair dealing. The Cosmes chose not to do so. This decision, notwithstanding what Churilla or Erie did or did not do or what

> the Cosmes' expert opined as to what they should have done or should not have done, brought about all the troubles that flowed from the unanticipated wreck with the uninsured Warfield Clark.

Appellants' App. Vol. II pp. 132–33.

I. Churilla

[18] With respect to Churilla, the Cosmes argue that the trial court erred in finding that they did not present sufficient evidence to prove their negligence claim. In making this argument, the Cosmes assert that the trial court erred in finding that they failed to establish that (1) Churilla assumed an additional duty to them, (2) a special relationship existed between them and Churilla that would give rise to a duty, or (3) a special duty should be imposed because Churilla counseled them.

[19] The Cosmes assert that their proffered evidence is sufficient to support the reasonable inference that Churilla owed them a duty of care and negligently breached that duty. Generally, "an insurance agent or broker who undertakes to procure insurance for another is an agent of the proposed insured, and owes the proposed insured a duty to exercise reasonable care, skill, and good faith diligence in obtaining the insurance." *Brennan v. Hall*, 904 N.E.2d 383, 386 (Ind. Ct. App. 2009). In this case, the evidence presented in the Cosmes' case-in-chief supported only one reasonable conclusion, *i.e.*, that Churilla exercised reasonable care, skill, and good faith diligence in its interactions with the Cosmes.

[20] Churilla initially aided the Cosmes in obtaining the Policy, which was successfully renewed after the first year. After Malena discovered that Broyce's driver's license was suspended, Aguilar worked as a go-between for the Cosmes and Erie and attempted to convince Erie to refrain from cancelling the Policy. Although Aguilar clearly and repeatedly recommended that the Cosmes should sign the Exclusion Form and then subsequently work to get Broyce re-added to the Policy, she nevertheless worked up until the cancellation on the Cosmes' behalf to try to convince Erie to refrain from canceling the policy. The fact that her attempts were ultimately unsuccessful, without more, is not enough to support a reasonable inference that Aguilar failed to exercise reasonable care, skill, or good faith diligence on behalf of the Cosmes. In the days leading up to the cancellation, Aguilar communicated or at least attempted to communicate with the Cosmes on numerous occasions. Even on the day before the Policy was to be canceled, Aguilar made multiple attempts to reach the Cosmes and Broyce to inform them that the Policy would, in fact, be cancelled if the Cosmes did not sign the Exclusion Form by midnight.

[21] The entirety of the evidence supports the trial court's determination that Churilla advised the Cosmes that the only sure way to ensure "no cancellation of the policy was to remove Broyce from the policy." Appellants' App. Vol. II p. 132. We agree with the trial court that under the circumstances, this recommendation satisfied the duty owed to the Cosmes by Churilla. Even if the Cosmes had sufficiently argued that Churilla assumed a special duty to them by counseling them on what they should do, the evidence overwhelmingly

indicates that Churilla satisfied this special duty by clearly and repeatedly counseling them that the only way to avoid cancellation of the Policy was to sign the Exclusion Form. The fact that the Cosmes chose not to do so does not create a reasonable inference of fault by Churilla. The record clearly and overwhelmingly demonstrates that the Cosmes' complained of injury did not result from any act of Churilla but rather by their own choice to reject Churilla's advice. It is unclear from the Cosmes' arguments on appeal what more Churilla could have reasonably done for them under the circumstances. As such, based on the record before us, we cannot say that the trial court abused its discretion in finding that the Cosmes failed to present sufficient evidence to qualitatively prove their claim against Churilla.

II. Erie

[22] With respect to Erie, the Cosmes argue that the trial court erred in finding that they could not bring their breach of contract claims against Erie because no contract existed between the Cosmes and Erie on November 4, 2017. They also argue that the trial court erred in finding that they did not put forth sufficient evidence to support a reasonable inference that Erie breached its duty of good faith and fair dealing.

A. Breach of Contract Claim

[23] "To prevail on a claim for breach of contract, the plaintiff must prove the *existence of a contract*, the defendant's breach of that contract, and damages resulting from the breach." *Haegert v. Univ. of Evansville*, 977 N.E.2d 924, 937

(Ind. 2012) (emphasis added). In claiming that Erie breached the parties' contract, the Cosmes alleged that

> 55. [Erie] breached [its] contractual duties … utterly and wholly and without excuse and further were negligent and at fault in failing to comport their professional behavior with the standard of care recognized in like professionals.
>
> 56. As a direct, proximate, foreseeable, and consequential result of said breach, the Cosmes have sustained damages and injuries under Indiana Law.

Appellants' App. Vol. II p. 57. In making its motion for judgment on the evidence, Erie argued that "to the extent there is an independent claim of negligence brought against Erie directly, that is not permissible under Indiana law." Tr. Vol. III p. 159. Erie further argued that the breach of contract claim should be dismissed because

> [t]here's no evidence by any of the parties that they were under any impression that that contract was still enforced at the time of that accident. They weren't paying a premium at the time of the accident. The premium had been refunded. They had issued a new policy on November 7th.

Tr. Vol. III p. 159.

[24] It is undisputed that Erie was contractually obligated to provide insurance coverage to the Cosmes up until the cancellation of the Cosmes' insurance policy on November 1, 2017. This fact is of little importance, however, because the question at issue is not whether Erie had ever entered into a contractual

relationship with the Cosmes but rather whether the Cosmes provided sufficient evidence to support a reasonable inference that a valid contract existed between the parties on November 4, 2017, *i.e.*, the date of the Accident. The Cosmes point to their expert Elliott Flood's testimony in support of their claim on appeal that they presented sufficient evidence during trial from which one could reasonably infer that Erie had failed "to comport their professional behavior with the standard of care recognized in like professionals." Appellants' App. Vol. II p. 57. However, the record clearly reveals that Flood's opinion was largely, if not entirely, based upon an error in the documentation that was initially provided to him for review prior to trial outlining the Policy's effective dates. While testifying under oath, Flood acknowledged that the Policy's effective dates were wrong in these initial documents. Flood further acknowledged that a claim would not be covered if there was no insurance policy in effect at the time of the underlying accident.

[25] Indiana Code section 27-7-6-4 provides, in relevant part, that an insurer may cancel an insurance policy if "[t]he driver's license … of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been denied or has been under suspension or revocation during the policy period." Thus, given that Broyce's driver's license had been suspended, Erie had a legal reason to cancel the Policy.

[26] The cancellation notice sent by Erie in on September 27, 2017, and received by the Cosmes in early October, clearly stated that the Policy would be canceled as

of 12:01 a.m. on November 1, 2017, unless the Cosmes submitted the requested Exclusion Form. The Cosmes acknowledged that they had received the cancellation notice, and their evidence clearly indicates that they had been aware that Erie intended to cancel the Policy on November 1, 2017, if they had not submitted the signed Exclusion Form by then. The evidence is also clear that the Cosmes had not completed the requested Exclusion Form before November 1, 2017. As such, we conclude that the evidence relating to cancellation overwhelmingly and entirely establishes that, despite being given notice that their policy would be terminated if they did not submit the requested Exclusion Form and the recommendation from their agent that they do so, the Cosmes did not complete the requested Exclusion Form and, as a result, the Policy was canceled as of 12:01 a.m. on November 1, 2017.

[27] "When a contract is terminated, neither party owes any further duties or obligations to the other." *Orthodontic Affiliates, P.C. v. Long*, 841 N.E.2d 219, 222 (Ind. Ct. App. 2006). Stated differently, there is no liability for an insurance company stemming from an accident in which the injured would-be claimant was no longer insured by the company on the date of the collision. *See Am. Std. Ins. Co. of Wis. v. Rogers*, 788 N.E.2d 873, 880 (Ind. Ct. App. 2003) (providing that because the cancellation of the insurance policy was effective as of January 8, 1998, it was clear that the driver was no longer insured on the date of the March 4, 1998 traffic accident). As such, it cannot be said that the Cosmes' intended inference, *i.e.*, that the Policy was in effect at the time of the

Accident, can logically be made from the evidence presented during their case-in-chief. *See Purcell*, 972 N.E.2d at 840.

B. Bad Faith

[28] In *Erie Insurance Co. v. Hickman by Smith*, 622 N.E.2d 515, 519 (Ind. 1993), the Indiana Supreme Court recognized that "a cause of action for the tortious breach of an insurer's duty to deal with its insured in good faith is appropriate." While the Court did not determine the precise extent of that duty, it made the following general observations: "[t]he obligation of good faith and fair dealing with respect to the discharge of the insurer's contractual obligation includes the obligation to refrain from (1) making an unfounded refusal to pay policy proceeds; (2) causing an unfounded delay in making payment; (3) deceiving the insured; and (4) exercising any unfair advantage to pressure an insured into a settlement of his claim." *Id.* The Court noted that "in most instances, tort damages for the breach of the duty to exercise good faith will likely be coterminous with those recoverable in a breach of contract action." *Id.* The Court held that

> a good faith dispute about the amount of a valid claim or about whether the insured has a valid claim at all will not supply the grounds for a recovery in tort for the breach of the obligation to exercise good faith. This is so even if it is ultimately determined that the insurer breached its contract.

Id. at 520. "On the other hand, for example, an insurer which denies liability knowing that there is no rational, principled basis for doing so has breached its duty." *Id.*

[29] In making their bad faith claim against Erie, the Cosmes alleged that Erie had had a duty to deal with good faith with them and had breached that duty. For its part, Erie asserts that "[b]ecause there was no contractual relationship in place between Erie and [the Cosmes] at the time of [the Accident], [the Cosmes] failed to present sufficient evidence on their claim for breach of the duty of good faith and fair dealing." Appellee Erie's Br. p. 19. The Indiana Supreme Court has indicated that the duty to act in good faith exists between an insurer and its insured "because they are in privity of contract." *Hickman*, 622 N.E.2d at 519. As such, based on the evidence presented in the Cosmes' case-in-chief, Erie could not have been found to have breached its duty by denying the Cosmes' claim resulting from the Accident because there was no contractual relationship in place between the Cosmes and Erie at the time of the Accident.

[30] Furthermore, to the extent that the Cosmes allege on appeal that they presented evidence that would allow a reasonable person to find that Erie had canceled the Policy in bad faith, we conclude otherwise. The Cosmes argue that Erie should not have attempted to exclude Broyce from the Policy because Roy had told Churilla that Broyce's driver's license had been erroneously suspended. However, regardless of whether the suspension was warranted, it is undisputed that Broyce's driver's license was suspended at the time Erie sent the

cancellation notice and also on the date that Erie ultimately canceled the Policy. In fact, Broyce's driver's license was not reinstated until November 13, 2017, nearly two weeks after Erie had canceled the Policy. 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).

[31] Again, the Cosmes were notified that the Policy would be canceled on November 1, 2017, if they did not sign the Exclusion Form; they did not do so; and the Policy was canceled. The evidence presented during the Cosmes' case-in-chief clearly outlines why the Policy was canceled and, despite the Cosmes' assertion to the contrary, would not support a reasonable inference that Erie simply "didn't want Broyce on" the Policy. Appellants' Br. p. 35. Based on the record before us, we cannot say that the trial court abused its discretion in finding that the Cosmes had failed to present sufficient evidence to qualitatively prove their claim that Erie had acted in bad faith.

III. Punitive Damages

[32] The Cosmes also contend that the trial court erred in finding that they had not presented sufficient evidence to prove that they were entitled to receive punitive damages from Churilla and Erie. At the outset, we note that

> [t]here is no cause of action for punitive damages. Punitive damages are a remedy, not a separate cause of action. Successful pursuit of a cause of action for compensatory damages is a prerequisite to an award of punitive damages. There is no freestanding claim for punitive damages apart from the underlying cause of action.

Crabtree ex rel. Kemp v. Est. of Crabtree, 837 N.E.2d 135, 137–38 (Ind. 2005) (internal citation and quotation omitted). Furthermore, punitive damages are generally "not allowed in a breach of contract action." *Miller Brewing Co. v. Best Beers of Bloomington, Inc.*, 608 N.E.2d 975, 981 (Ind. 1993). The Indiana Supreme Court has held that "[i]n order to recover punitive damages in a lawsuit founded upon a breach of contract, the plaintiff must plead and prove the existence of an independent tort of the kind for which Indiana law recognizes that punitive damages may be awarded." *Id.* at 984.

[33] In requesting punitive damages, the Cosmes alleged as follows:

> 59. The foregoing acts of [Erie and Churilla] were willful, wanton, reckless, and the result of malice, fraud, gross negligence and/or oppressiveness.
>
> 60. The Cosmes are entitled to recover punitive damages, in an amount approximately determined by the trier of fact, to punish [Erie and Churilla] and to deter them from engaging in similar future conduct.

Appellants' App. Vol. II pp. 57–58. However, as has been borne out above, the Cosmes did not allege any meritorious tort claims against either Erie or

Churilla. As such, we agree with the trial court that the Cosmes could not prove that they were entitled to an award of punitive damages.

[34] The judgment of the trial court is affirmed.

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