

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Sharon Wilson and Matthew  
Wilson, as Personal  
Representatives of the Estate of  
Harold Wilson, Deceased,  
*Appellants-Plaintiffs,*

v.

Bedford Police Department,  
*Appellee-Defendant*

December 21, 2023

Court of Appeals Case No.  
23A-CT-1430

Appeal from the Lawrence Circuit  
Court

The Honorable Nathan G. Nikirk,  
Judge

Trial Court Cause No.  
47C01-2301-CT-111

**Memorandum Decision by Judge Crone**  
Judges Riley and Mathias concur.

**Crone, Judge.**

## **Case Summary**

- [1] Sharon Wilson and Matthew Wilson, as personal representatives of the Estate of Harold Wilson, deceased (the Estate), filed a wrongful death complaint against the Bedford Police Department (BPD) alleging that BPD was negligent and liable for Harold's death. BPD filed a motion to dismiss the complaint, claiming, among other things, that BPD is immune from liability pursuant to the law enforcement immunity provision of the Indiana Tort Claims Act (ITCA), Indiana Code Section 34-13-3-3(8)(a). The trial court agreed and dismissed the complaint. The Estate appeals, arguing that the law enforcement immunity provision is inapplicable. We disagree and affirm.

## **Facts and Procedural History**

- [2] On April 19, 2022, at approximately 4:06 a.m., BPD Officer Michael Bell was driving eastbound on 16th Street in Lawrence County, an eastbound one-way street, near the intersection of I Street, when he observed a vehicle driving the wrong way/westbound on 16th Street. Officer Bell activated the emergency lights of his fully marked patrol vehicle and initiated a traffic stop. Officer Bell, assisted by BPD Officer Nicholas Crulo, spoke with the driver, eighty-nine-year-old Harold, and explained the reason for the traffic stop. While speaking with Harold, the officers determined that Harold was without a cell phone, disabled or handicapped, and could not tell them the time, date, or even where he was. The officers were able to determine that Harold was trying to get to Seymour. After questioning Harold, the officers requested EMTs to come to the scene to evaluate him. An ambulance arrived, and EMTs evaluated Harold but

determined that he was not in need of medical attention. The BPD officers contacted nursing homes in the area, Harold's emergency contact person, and the Jackson County Sheriff's Department to try to gather more information about Harold, but they were unsuccessful. Officers thereafter provided Harold with directions to Seymour and permitted him to leave the scene in his vehicle at approximately 6:11 a.m.

[3] At around 6:00 p.m. the following day, the Indiana State Police recovered Harold's body from a creek near State Road 39 in northeastern Washington County. His body was located a short distance from his vehicle. Harold died of "environmental hypothermia and cold-water immersion." Appellants' App. Vol. 2 at 31.

[4] The Estate filed a complaint against BPD alleging that Officers Bell and Crulo, acting within the course and scope of their employment with BPD, "knew, or should have known, that inaction on their part could lead to harm for [Harold]" and that Harold died "[b]ecause of the negligence" of BPD. *Id.* at 30-31. BPD filed a motion to dismiss the complaint pursuant to Indiana Trial Rule 12(B)(6) for failure to state a claim upon which relief may be granted. Specifically, BPD alleged that dismissal was appropriate on three grounds: (1) immunity from liability pursuant to Indiana Code Section 34-13-3-3(a)(8); (2) common law immunity; and (3) BPD is not the proper party/defendant. Following a hearing, the trial court granted the motion to dismiss. Specifically, the trial court concluded that BPD was immune from liability pursuant to the ITCA and dismissed the complaint. This appeal ensued.

## Discussion and Decision

[5] The Estate appeals the trial court’s dismissal of its complaint pursuant to Indiana Trial Rule 12(B)(6). We review de novo the trial court’s grant or denial of a motion to dismiss based on Indiana Trial Rule 12(B)(6). *Veolia Water Indianapolis, LLC v. Nat’l Tr. Ins. Co.*, 3 N.E.3d 1, 4-5 (Ind. 2014), *aff’d on reh’g*, 12 N.E.3d 240. Our supreme court has explained,

A motion to dismiss under Rule 12(B)(6) tests the legal sufficiency of a complaint: that is, whether the allegations in the complaint establish any set of circumstances under which a plaintiff would be entitled to relief. When evaluating the trial court’s grant or denial of a Rule 12(B)(6) motion, this Court accepts as true the facts alleged in the complaint, and should not only consider the pleadings in the light most favorable to the plaintiff, but also draw every reasonable inference in favor of the non-moving party. We affirm the trial court’s grant of the motion only when it is apparent that the facts alleged in the challenged pleading are incapable of supporting relief under any set of circumstances.

*Id.* (cleaned up).

[6] In granting BPD’s 12(B)(6) motion to dismiss the Estate’s negligence claim, the trial court concluded that BPD was immune from liability pursuant to Indiana Code Section 34-13-3-3(a)(8), which is commonly referred to as the law enforcement immunity provision of the ITCA. That section provides that “[a] governmental entity or an employee acting within the scope of the employee’s employment is not liable if a loss results from the following: ... [t]he adoption and enforcement of or failure to adopt or enforce a law (including rules and

regulations), unless the act of enforcement constitutes false arrest or false imprisonment.” Ind. Code § 34-13-3-3(a)(8).

[7] “Whether the ITCA imparts immunity to a governmental entity is a question of law for the court to decide.” *Schon v. Frantz*, 156 N.E.3d 692, 699 (Ind Ct. App. 2020) (quoting *Lee v. Bartholomew Consol. Sch. Corp.*, 75 N.E.3d 518, 525 (Ind. Ct. App. 2017)). “The party seeking immunity bears the burden of proving that its conduct falls within the provisions of the ITCA.” *Id.* Because the ITCA is in derogation of the common law, it must be strictly construed against limitations on a claimant’s right to bring suit. *Schoettmer v. Wright*, 992 N.E.2d 702, 706 (Ind. 2013). Indeed, our supreme court continues to emphasize the principle that “governmental liability for tortious conduct is the rule while immunity is the exception.” *Ladra v. State*, 177 N.E.3d 412, 416 (Ind. 2021).

[8] Immunity under the ITCA assumes negligence but denies liability. *Hopkins v. Indianapolis Pub. Schs.*, 183 N.E.3d 308, 314 (Ind. Ct. App. 2022), *trans. denied*. ““The purpose of immunity is to ensure that public employees can exercise their independent judgment necessary to carry out their duties without threat of harassment by litigation or threats of litigation over decisions made within the scope of their employment.”” *Savieo v. City of New Haven*, 824 N.E.2d 1272, 1275 (Ind. Ct. App. 2005) (quoting *Bushong v. Williamson*, 790 N.E.2d 467, 472 (Ind. 2003)), *trans. denied*. As noted first in *Quakenbush v. Lackey*, 622 N.E.2d 1284 (Ind. 1993), and then in *Mullin v. Municipal City of South Bend*, 639 N.E.2d 278 (Ind. 1994), the immunity provided by Indiana Code Section 34-13-3-3(a)(8) “extends well beyond” traditional law enforcement activities such as arrest and

pursuit of suspects by police. *Mullin*, 639 N.E.2d at 283. For purposes of Indiana Code Section 34-13-3-3(a)(8), “enforcement” has been more broadly defined as “those activities in which a government entity or its employees compel or attempt to compel the obedience of another to laws, rules or regulations, or sanction or attempt to sanction a violation thereof.” *Savio*, 824 N.E.2d at 1275 (quoting *Miller v. City of Anderson*, 777 N.E.2d 1100, 1104 (Ind. Ct. App. 2002), *trans. denied* (2003)).

[9] Accordingly, immunity has been found in various circumstances involving the enforcement and non-enforcement of laws as well as acts or omissions of law enforcement officers taken or occurring within their law enforcement capacity and within their entity’s “purpose or operational power.” *St. Joseph Cnty. Police Dep’t v. Shumaker*, 812 N.E.2d 1143, 1149 (Ind. Ct. App. 2004) (citing *King v. Ne. Sec., Inc.*, 790 N.E.2d 474, 483 (Ind. 2003)), *trans. denied* (2005). For example, immunity has been found where a law enforcement officer was alleged to have been negligent in failing to make an arrest that would have prevented a murder. *Severson v. Bd. of Trs. of Purdue Univ.*, 777 N.E.2d 1181, 1202 (Ind. Ct. App. 2002), *trans. denied* (2003). Immunity has been found for failure to enforce the law when an inmate was negligently released on a lower bond than what had been ordered by the trial court. *St. Joseph Cnty. Police Dep’t*, 812 N.E.2d at 1151. Moreover, an example that seems particularly applicable here, a law enforcement officer was found to be immune against a negligence claim based upon the officer’s failure to take a person into custody to prevent that person from committing suicide. *Savio*, 824 N.E.2d at 1275-76.

[10] Based upon the undisputed facts here, we conclude, as a matter of law, that Officers Bell and Crulo, and thus BPD, are immune from liability pursuant to the ITCA for their presumed negligent actions or omissions.<sup>1</sup> The officers were unquestionably engaged in their law enforcement capacity when they initiated a traffic stop of Harold's vehicle after witnessing him violate Indiana traffic laws by driving the wrong way on a one-way street.<sup>2</sup> The officers continued in this capacity as they sought medical attention for Harold in a clear attempt to assess his condition. The officers' subsequent decision to release Harold from the scene rather than taking him into custody either for violating that traffic law or out of concern for his safety was a further action clearly taken within their law enforcement purpose. As this Court has noted, "police are expected not only to enforce the criminal laws but also to aid those in distress, abate hazards from materializing, and perform an infinite variety of other tasks calculated to enhance and maintain the safety of communities." *Harness v. Schmitt*, 924 N.E.2d 162, 166 (Ind. Ct. App. 2010) (citing *Fair v. State*, 627 N.E.2d 427, 431 (Ind.1993)); *see also* Ind. Code § 36-8-3-10 (enumerating powers and duties of local police departments). In short, regardless of how we might view the propriety of the decisions made here, we conclude that the BPD officers were involved in the enforcement or nonenforcement of the law and/or their law

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<sup>1</sup> The complaint specifically alleges that both officers were employees of BPD and acting within the course and scope of their employment at "the time of this incident." Appellants' App. Vol. 2 at 29.

<sup>2</sup> Indiana Code Section 9-21-8-9 provides that "[a] vehicle shall be driven upon a roadway designated and signposted for one-way traffic only in the direction designated." With some exceptions that would be inapplicable here, a violation of this subsection constitutes a class A infraction. Ind. Code § 9-21-8-49.

enforcement duties when they exercised their independent judgment and released Harold from the scene of the traffic stop. This is the very essence of law enforcement to which immunity pursuant to Indiana Code Section 34-13-3-3(a)(8) applies.

[11] The Estate suggests that law enforcement immunity is inapplicable because the complaint does not specifically allege that the officers were negligent in failing to enforce a law or in performing or failing to perform their law enforcement duties. Rather, the complaint alleges that the officers “failed to exercise reasonable care in the performance of a duty” that they “voluntarily assumed as to [Harold] by the nature of the relationship” they “created.” Appellants’ Br. at 9. This is a distinction without a difference. As already noted, the officers were unquestionably acting within their law enforcement capacity when they came into contact with Harold and “assumed” or “created” a relationship with him. It is the officers’ acts or omissions of enforcement (the failure to take Harold into custody or render him further assistance) that occurred in the midst of this relationship that form the basis for the Estate’s negligence claim. As such, we



find that BPD is entitled to statutory immunity as a matter of law. The trial court properly granted BPD’s motion to dismiss.<sup>3</sup>

[12] Affirmed.

Riley, J., and Mathias, J., concur.

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<sup>3</sup> Because we find statutory immunity dispositive, we need not address the trial court’s determination that dismissal was also appropriate on common law immunity grounds. “In general, it is only after a determination is made that a governmental defendant is not immune under the ITCA that a court undertakes the analysis of whether a common law duty exists under the circumstances.” *Veolia*, 3 N.E.3d at 5 (quoting *Benton v. City of Oakland City*, 721 N.E.2d 224, 232 (Ind. 1999)). BPD further moved to dismiss the complaint on grounds that BPD was not the proper defendant. *See* Ind. Code §§ 36-1-2-11, -23, and 36-1-4-3 (local governmental “units,” meaning counties, municipalities (cities or towns), or townships, have power to sue and be sued); *City of Peru v. Lewis*, 950 N.E.2d 1, 4 (Ind. Ct. App. 2011) (the “department” of a city is merely a vehicle through which government fulfills its policy functions and is not a governmental entity unto itself), *trans. denied*. The trial court agreed that BPD was not the proper defendant but determined that amendment of the complaint to name the proper party – the City of Bedford – would have been futile, as it would “not change the circumstances as plead.” *Appealed Order at 2; see Est. of Bichler by Ivy v. Bichler*, 183 N.E.3d 316, 323 (Ind. Ct. App. 2022) (“[I]f the plaintiff has named the wrong defendant, the remedy is to name the right defendant, not to dismiss the claim.”) (citing Ind. Trial Rule 15(C)).