# MEMORANDUM DECISION





ATTORNEY FOR APPELLANT

Michelle A. Cobourn-Baurley
McNeely Law LLP
Shelbyville, Indiana

ATTORNEYS FOR APPELLEE

William J. Beggs
Ryan M. Heeb
Bunger & Robertson
Bloomington, Indiana

IN THE
# COURT OF APPEALS OF INDIANA

Indiana Farm Bureau Insurance, as subrogee of Arel Wood, Jr.,
*Appellant-Plaintiff,*

v.

Kyle Hobson,
*Appellee-Defendant*.

May 19, 2023

Court of Appeals Case No. 22A-PL-2403

Appeal from the Warrick Superior Court

The Honorable Amy Miskimen, Judge

Trial Court Case No. 87D02-2103-PL-465

**Memorandum Decision by Senior Judge Shepard**
Judges Crone and Brown concur.

**Shepard, Senior Judge.**

[1] On November 6, 2020, Kyle Hobson suffered a breakthrough seizure and drove his vehicle off State Road 62 into Arel Wood, Jr.'s barn located at 4100 West State Road 62 near Boonville, Indiana, causing damage to Wood's real and personal property. Indiana Farm Bureau Insurance had insured Wood's property and paid $35,748.21 for the November 6th damages.

[2] Farm Bureau, as Wood's subrogee, sued Hobson for negligence. Hobson claimed there was no breach of his duty because he had suffered from a sudden medical emergency.

[3] The trial court granted summary judgment for Hobson. Concluding that there is a genuine issue of material fact which precludes the entry of summary judgment, we reverse and remand for further proceedings.

## Facts and Procedural History

[4] On March 15, 2021, Farm Bureau filed its complaint against Hobson. Hobson answered the complaint by asserting among his affirmative defenses that he was faced with "a sudden emergency, specifically, a medical emergency, that was not of his making," and was not liable for the damages alleged in the complaint. Appellant's App. Vol. 2, p. 13. Hobson moved for summary judgment, arguing that he could not have breached his duty of care because he suddenly suffered a seizure while driving on November 6th. Farm Bureau responded, arguing that a genuine issue of material fact exists about whether Hobson's actions were reasonable when he continued to drive after he felt the seizure coming on.

After oral argument, the court entered an order granting summary judgment in favor of Hobson. Farm Bureau now appeals.

# Discussion and Decision

## Standard of Review

[5] When reviewing a trial court's grant of a motion for summary judgment, our standard of review is similar to that of the trial court. *Stabosz v. Friedman*, 199 N.E.3d 800 (Ind. Ct. App. 2022), *trans. denied*. "Summary judgment is appropriate only where the moving party has shown that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." *Id.* at 807. "All factual inferences must be construed in favor of the non-moving party, and all doubts as to the existence of a material issue must be resolved against the moving party." *Id.* "Summary judgment is a high bar for the moving party to clear in Indiana." *Id.*

[6] "We will not reweigh the evidence but will liberally construe all designated material in the light most favorable to the nonmoving party to determine whether there is a genuine issue of material fact for trial." *Id.* (quoting *Perkins v. Fillio*, 119 N.E.3d 1106, 1110-11 (Ind. Ct. App. 2019)). "The party who lost at the trial court has the burden to persuade the appellate court that the trial court erred." *Id.* "A trial court's grant of summary judgment is clothed with a presumption of validity." *Id.* And "[a] grant of summary judgment may be affirmed by any theory supported by the designated materials." *Id.*

## Genuine Issue of Material Fact About Breach of Duty

[7] "To prevail on a negligence claim, a plaintiff must establish three elements: (1) a duty owed to the plaintiff by the defendant; (2) a breach of that duty by allowing conduct to fall below the applicable standard of care; and (3) compensable injury proximately caused by the breach of that duty." *Denson v. Estate of Dillard*, 116 N.E.3d 535, 539 (Ind. Ct. App. 2018). "A defendant may obtain summary judgment in a negligence action when the undisputed facts negate at least one element of the plaintiff's claim." *Id.*

[8] "Although the question of breach is usually one for the trier of fact, where the relevant facts are undisputed and lead to but a single inference or conclusion, the court as a matter of law may determine whether a breach of duty has occurred." *Id.* "It is well settled that to avoid being negligent, an actor must conform his conduct to that of a reasonable person under like circumstances." *Id.* (citing RESTATEMENT (SECOND) OF TORTS §283 (1965)). General negligence principles have established that "if the actor is ill or otherwise physically disabled, the standard of conduct to which he [or she] must conform to avoid being negligent is that of a reasonable [person] under like disability." RESTATEMENT (SECOND) OF TORTS §283C (1965).

[9] In *Denson*, a case relied on by Hobson, the undisputed facts showed that a driver suffered a sudden and unexpected heart attack such that he was rendered unconscious before losing control of and crashing the car he was driving, leading to his death and his passenger's severe injuries. When considering what

a reasonable person's duty in that situation should be, we turned to the Restatement's language, observing that "an automobile driver who suddenly and quite unexpectedly suffers a heart attack does not become negligent when he loses control of his car and drives it in a manner which would otherwise be unreasonable; but one who knows that he is subject to such attack may be negligent for driving at all." *Denson*, 116 N.E.3d at 541 (quoting RESTATEMENT (SECOND) OF TORTS §283C cmt. c.)).

[10] As Judge Crone wrote for our Court, summary judgment was appropriate as a matter of law because that driver could not "be found to have acted unreasonably after he suffered the attack and was rendered unconscious." *Denson*, 116 N.E.3d at 541. However, the inquiry then turned to whether the driver's "sudden physical incapacity was reasonably foreseeable such that a reasonably prudent person in his position would not have risked driving." *Id.* In *Denson*, we held that a prima facie showing had been made by the driver's estate—medical evidence that the driver had been cleared to drive and there were no abnormalities in the driver's present heart condition—such that there was no genuine issue of material fact about whether the risk he took by driving was reasonable or that the heart attack was reasonably foreseeable. *Id.*

[11] Here, Hobson invites us to skip the initial inquiry and focus on his diligence in following his doctor's orders, taking his medications as directed, and getting the appropriate amount of sleep. He also emphasizes that his physicians cleared him to drive and that he had not had a seizure in the five years prior to the November 6th accident. While this behavior is both responsible and

commendable, this information is pertinent to the second portion of the analysis.

[12] Instead, we must first examine whether Hobson's medical emergency was "sudden and imminent" such that he cannot be found to be negligent because there was no time for deliberation or action. In *Denson*, we were asked to decide that same question. The undisputed facts there showed that the driver "suddenly declared that he was not feeling well and immediately slumped over and passed out. Because Dillard's foot was on the accelerator when he passed out, the vehicle sped up, went off the left side of the road and crashed into a house." 116 N.E.3d at 537.

[13] Unlike *Denson*, the facts here are in dispute. Hobson's deposition testimony was that he had "a seizure" and "[o]nce a seizure happens, you lose consciousness, and you lose all control of your body." Appellant's App. Vol. 2, pp. 46, 52. He further agreed with a question's premise that "there was absolutely nothing [he] could do to stop the car or get off the road." *Id.* at 52.

[14] On the other hand, Warrick County Sheriff's Deputy Derek Miller responded to the scene of the accident, and stated in his affidavit[1] as follows:

---

[1] The record reflects that there was a motion to strike the crash report prepared by law enforcement. Appellant's App. Vol. 2, p. 6. However, the record is unclear as to the status of the trial court's ruling on the same. *Id.* (order granting); (order filed July 26, 2022, vacating order granting motion to strike). There is no motion to strike as to Deputy Miller's affidavit, merely mention of the fact that it was a supplemental designation that was tardy. Appellee's Br. p. 13.

> 6. Mr. Hobson told me he was driving northbound on State Road 61 north of Roeder Rd. when he felt a seizure coming on.
>
> 7. Mr. Hobson told me before he could pull over the seizure started and the next thing he was in a barn in his truck.

*Id.* at 98.

[15] Farm Bureau also designated a map depicting the location where Roeder Road intersects with State Road 61, and the location of Wood's barn off of State Road 62, some *five miles* from the location Hobson told Deputy Miller he felt the seizure coming on. Even without the additional markings, the map also reflects that Hobson would have had to successfully execute two left turns before leaving the road on State Road 62 and crashing into Wood's barn.


Appellant's Reply Br. p. 5; Appellant's App. Vol. 2, p. 83 (Plaintiff's Ex. 1).

[16] Additionally, in footnote four of Hobson's brief, he states the following:

> *It is disputed whether or not Mr. Hobson felt the seizure coming on prior to the accident occurring.* Mr. Hobson testified that he does not feel seizures coming on and Dr. Ilagan opined that you cannot feel

> seizures about to occur. Mr. Hobson acknowledges, however, that, for the purpose of summary judgment and this appeal, this issue will be construed in favor of Indiana Farm Bureau Insurance. This fact is also rendered immaterial because the undisputed evidence is that Mr. Hobson did not have any time to react to any alleged feeling of a seizure coming on before he lost consciousness.

Appellee's Br. p. 16, n. 4. (emphasis added, internal citations omitted).

[17] Given Hobson's concession that there is a factual dispute about whether Hobson felt the seizure coming on prior to the accident, and the conflicting designated evidence in the record, we cannot agree with the trial court's decision to grant summary judgment in favor of Hobson. Therefore, we reverse the court's decision and remand.

## Conclusion

[18] Because there is a genuine issue of material fact concerning both whether Hobson felt the seizure coming on and had time for deliberation and action prior to the accident, we reverse and remand this matter for further proceedings on the merits.

[19] Reversed and remanded.

Crone, J., and Brown, J., concur.