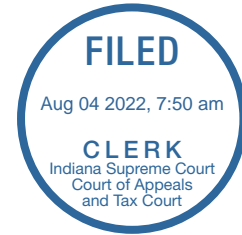


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

James E. Ayers
Wernle, Ristine & Ayers
Crawfordsville, Indiana

ATTORNEYS FOR APPELLEES

Anthony W. Overholt
Maggie L. Smith
Frost Brown Todd LLC
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

John Kader,
Appellant-Plaintiff,

v.

Marion County Sheriff, in his
official capacity, and the Marion
County Sheriff's Department,
Appellees-Defendants

August 4, 2022

Court of Appeals Case No.
21A-PL-2197

Appeal from the Marion Superior
Court

The Honorable Patricia C.
McMath, Magistrate

Trial Court Cause No.
49D02-1701-PL-662

Crone, Judge.

Case Summary

- [1] An inmate at the Indiana State Prison in Michigan City filed a negligence claim against the Marion County Sheriff, in his official capacity, and the Marion County Sheriff's Department (collectively the Sheriff's Department) after he was injured while trying to enter a transport van meant to take him back to prison following his appearance at a Marion County court hearing. The trial court granted summary judgment in favor of the Sheriff's Department, concluding that it was immune from liability under the Indiana Tort Claims Act (ITCA). The inmate, John Kader, now appeals the trial court's entry of summary judgment in favor of the Sheriff's Department on his negligence claim. We reverse and remand.

Facts and Procedural History

- [2] In January 2015, Kader was incarcerated at the Indiana State Prison in Michigan City when he was required to attend a pretrial hearing in Marion County. Kader was placed in the temporary custody of the Sheriff's Department and transported to Indianapolis and housed in the Marion County Jail prior to the pretrial hearing. Following Kader's court appearance, on January 8, 2015, Sheriff's Department Deputy Ernest Wesley was assigned to transport Kader back to Michigan City. Pursuant to the Sheriff's established transportation policies, inmates who were being transported would have their feet shackled and their wrists handcuffed with "a chain around their waist and then the chain that was going around their waist would go through this box ... inside the handcuffs" so that "they were all secure[.]" Appellant's App. Vol. 2 at 190.

[3] Deputy Wesley drove the transport van into the jail garage to pick up inmates. The van had been parked outside the night before in subzero temperatures. Deputy Wesley exited the van and walked to the back. He directed Kader to step up into the van. The van had a “metal grid going lower than the bumper, like a little step.” *Id.* at 95. Kader saw that ice had accumulated on the step, so he asked for assistance from Deputy Wesley because his hands and feet were restrained, and he had no way to balance himself while stepping onto the icy surface. Deputy Wesley refused to give assistance. As Kader stepped up and put weight onto the foot that was on the step, he slid and fell forward, hitting his head on the steel bench in the van. After striking the bench, he continued to fall, hitting his head again on the floor of the van.

[4] Deputy Wesley summoned medical assistance for Kader. Kader was taken back inside the jail, where a nurse “checked him out for a good hour, hour and a half.” *Id.* at 192. She cleaned up the blood on his temple, applied a Band-Aid, and gave him pain medication for headache. The nurse cleared him for transport back to Michigan City, and Kader was subsequently loaded into the van and began the trip to Michigan City. As the van was nearing Lebanon, Kader began feeling sweaty and nauseous, and the other inmate in the van alerted Deputy Wesley that Kader did not look well. Deputy Wesley pulled over on the side of the road and contacted the Marion County Jail for instructions on how to proceed. Deputy Wesley and the other transport officer took Kader to the Boone County Jail to be seen by medical personnel. Kader

was evaluated and treated by a nurse and again released for transport back to Michigan City.

- [5] Kader filed a tort claim notice on July 2, 2015. On January 5, 2017, Kader filed his complaint for negligence against the Sheriff's Department. Specifically, Kader alleged that the Sheriff's Department was negligent "in directing him to negotiate the icy step without support and while he was unable to take hold of any support or to assist or prevent his fall from the obvious icy condition of the van's step[.]" *Id.* at 13.¹ The Sheriff's Department filed a motion for summary judgment in September 2020 alleging that it was immune from liability based upon the law-enforcement immunity provision of the ITCA, Indiana Code Section 34-13-3-3(8). Following a hearing, the trial court granted summary judgment in favor of the Sheriff's Department. This appeal ensued.

Discussion and Decision

- [6] Kader appeals the trial court's entry of summary judgment in favor of the Sheriff's Department. This Court recently explained our summary judgment standard of review as follows:

We review a summary judgment ruling *de novo*, applying the same standard as the trial court. The moving party bears the initial burden of making a *prima facie* showing that there are no genuine issues of material fact and that it is entitled to judgment

¹ We agree with the Sheriff's Department that this is Kader's sole claim and that he specifically abandoned any claim, to the extent he ever asserted one, regarding any alleged failure by the Sheriff's Department to provide him proper medical care.

as a matter of law. Summary judgment is improper if the moving party fails to carry its burden, but if it succeeds, then the nonmoving party must come forward with evidence establishing the existence of a genuine issue of material fact. We construe all factual inferences in favor of the nonmoving party and resolve all doubts as to the existence of a material issue against the moving party. Our review is limited to those facts designated to the trial court. Issues of statutory construction present questions of law, which we review de novo. We are not bound by the trial court's findings of fact and conclusions thereon, which merely aid our review by providing us with a statement of reasons for the trial court's actions.

Ind. Univ. v. Thomas, 167 N.E.3d 724, 731 (Ind. Ct. App. 2021) (alterations, citations, and quotation marks omitted).

- [7] It is well settled that the duty of a custodian of inmates is “to exercise reasonable care to preserve the life, health, and safety of the person in custody.” *Sauders v. Cnty. of Steuben*, 693 N.E.2d 16, 18 (Ind. 1998). In granting summary judgment in favor of the Sheriff's Department on Kader's negligence claim, the trial court concluded that the Sheriff's Department was immune from liability pursuant to Indiana Code Section 34-13-3-3(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(8).

[8] “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, 418 (Ind. 2021).

[9] Immunity under the ITCA assumes negligence but denies liability. *Hopkins v. Indianapolis Pub. Sch.*, 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.

[10] As noted by the Sheriff’s Department, 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), our supreme court made clear that the immunity provided by Indiana Code Section 34-13-3-3(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(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.” *Savieo*, 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)). 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, 1151 (Ind. Ct. App. 2004) (citing *King v. Northeast Sec., Inc.*, 790 N.E.2d 474, 482 (Ind. 2003)), *trans. denied* (2005).

[11] For example, corrections officers were found to be immune from tort liability because they were “acting within the scope of their employment in enforcing laws, rules or regulations pertaining to the standards and procedures for the operation of the correctional facilities” when they placed an allegedly defamatory memorandum in a prisoner’s file. *Ind. Dep’t of Correction v. Stagg*, 556 N.E.2d 1338, 1342 (Ind. Ct. App. 1990), *trans. denied* (1991). Immunity has also 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, 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.

[12] The Sheriff's Department argues that law-enforcement immunity applies here "because restraining inmates—shackling feet and placing a handcuff box on hands—while transporting them for court hearings are all within the scope of the Sheriff's operational power and purpose in adopting and enforcing laws, rules and regulations[,]” and that Kader's "claims here are directly aimed at the Sheriff's enforcement of the rules and policies requiring [Kader] to be restrained ... while being transported.” Appellees' Br. at 21-22. This argument misses the mark.

[13] As a general matter, we acknowledge that the Sheriff's Department is mandated to "take care of the county jail and the prisoners there” and that to do so the Department must "develop and maintain a manual of policies and procedures that shall guide the operation of the jail.” Ind. Code § 36-2-13-5(a)(7); 210 Ind. Admin. Code 3-1-2(c). Moreover, some of these policies address transporting prisoners to and from the jail. *See* 210 Ind. Admin. Code 3-1-13(a)(15) ("Each sheriff shall establish the jail's policies and procedures for security and control.... The manual shall include, but not be limited to the following ... Transportation of inmates.”).

[14] Still, we cannot agree with the Sheriff's Department that Kader's negligence claim is predicated upon the "enforcement" of its inmate-transportation policies and procedures against him. Indeed, the allegation here is not that the Sheriff's Department was negligent in restraining Kader in compliance with its policies for transport. Rather, the alleged negligence is Deputy Wesley's failure to assist Kader's entrance into the van under the circumstances. There is no suggestion that there was any departmental policy precluding Deputy Wesley from assisting Kader. The decision to force a shackled prisoner to enter the van without assistance while faced with an obvious hazardous situation was a discretionary decision made by the deputy but not controlled by any departmental policy. In other words, simply because transport of inmates was within the Sheriff's Department's "purpose or operational power" does not mean that every discretionary act or omission taken within those broad parameters is insulated from liability as a matter of law. Contrary to the trial court's conclusion, Deputy Wesley's acts or omissions here are not what we would consider "the very essence of law enforcement" to which immunity applies. Appealed Order at 7.

[15] Under the circumstances, we conclude that law-enforcement immunity does not apply and that the trial court erred in entering summary judgment for the Sheriff's Department on that basis. Therefore, we reverse the entry of summary judgment and remand for further proceedings.

[16] Reversed and remanded.

Vaidik, J., and Altice, J., concur.