



IN THE
Court of Appeals of Indiana

Mahari Mrach Oukbu and Nitsihiti Abraham
Appellants-Plaintiffs,

v.

Amazon, et. al.,
Appellees-Defendants.

September 27, 2024

Court of Appeals Case No.
24A-CT-254

Appeal from the Hamilton Superior Court
The Honorable David K. Najjar, Judge

Trial Court Cause No.
29D05-2308-CT-7700

Opinion by Chief Judge Altice
Judge Bailey concurs.
Judge Mathias concurs with separate opinion.

Altice, Chief Judge.

Case Summary

- [1] This negligence action arises from an incident on September 2, 2022, where Mahari Mrach Oukbu was struck by an oncoming vehicle after Oukbu stepped out of his tractor-trailer truck onto a county road. Oukbu was en route to a fulfillment center operated by Amazon Inc. and owned by CF Mount Comfort DST (collectively, Amazon) to deliver goods to the center.
- [2] Oukbu filed a complaint against Amazon on April 24, 2023, alleging negligent maintenance, design, and control of the fulfillment center's entrances. Oukbu further alleged that Amazon knew that the layout of its entrances and lack of lighting and signage on its premises routinely endangered arriving truck drivers by causing them to become confused and exit their trucks on the public road across from the facility. Nitsihiti Abraham—Oukbu's wife—also brought a loss of consortium claim that arose from the circumstances.
- [3] Amazon filed a motion for judgment on the pleadings pursuant to Ind. Trial Rule 12(C), arguing that Oukbu's allegations failed to establish that Amazon owed a duty to him and that any negligence on Amazon's part was not the proximate cause of Oukbu's injuries. Following a hearing, the trial court granted Amazon's motion, concluding that Amazon did not owe Oukbu a duty under Indiana law.
- [4] Oukbu appeals, arguing that granting Amazon's motion for judgment on the pleadings was error because he sufficiently alleged that Amazon had a duty to

protect him from being struck by a third-party motorist. We reverse and remand for further proceedings consistent with this opinion.

Facts & Procedural History¹

[5] The facts, as set forth in Oukbu’s complaint, are as follows: In late August 2022, Amazon contacted Oukbu, an independent contractor/truck driver, about delivering goods to its Greenfield fulfillment center. The fulfillment center has three entrances that are accessible from County Road 300 North that runs along the south side of the center. When a motorist approaches from the west on County Road 300 North, he encounters two entrances to the facility along the north side of the county road that are marked with “no truck” signs. *Appellants’ Appendix Vol. II* at 47. There was no signage posted at either of the two entrances to inform incoming truck drivers as to where they were expected to enter the premises. The third entrance when approaching from the west is the one to be used by delivery drivers, and it is about 500 feet east of the fulfillment center building.

[6] In the pre-dawn hours of September 2, 2022, Oukbu approached the fulfillment facility from the west on County Road 300 North to make a delivery. After encountering the second “no trucks” entrance, Oukbu became confused, as he

¹ We heard oral argument in this case and in *Kaur v. Amazon, et. al*, No. 23A-CT-02059, which presents the same issue, on August 20, 2024, in the Indiana Court of Appeals courtroom at the Indiana Statehouse. We commend counsel on the excellent quality of their written and oral advocacy. We hand down this case contemporaneously with *Kaur*.

could not discern any other entrances serving the facility. As a result, Oukbu stopped his truck in the middle lane of County Road 300 North, a bi-directional turn lane, across from the fulfillment center, to determine where he could access the premises. This was Oukbu's first trip to the fulfillment facility, and Amazon had not provided him with any instructions as to where to enter the premises. Amazon only gave Oukbu the facility's address and a delivery time.

[7] Immediately after Oukbu stepped out of his truck and onto the road, he was struck and severely injured by a vehicle driven by an eastbound motorist, Bruce Gibson. At the scene of the crash, Gibson told a Greenfield police officer that "you see these truck drivers all the time stopping and getting out here." *Id.* at 51. Additionally, an Amazon employee who witnessed the accident told investigating police officers that "Amazon sees lost truck drivers get out of their trucks at that spot every day." *Id.* at 52-53.

[8] On July 6, 2023, Oukbu filed a complaint against Amazon,² alleging that Amazon owed him a duty of reasonable care, and that Amazon breached that duty because the lighting and defective and confusing signage at the fulfillment center created a dangerous condition for delivery drivers. Oukbu alleged that Amazon's signage was confusing because the first two entrances with the no trucks signs were not sufficiently illuminated, and there was no additional signage directing delivery drivers to the proper entrance.

² While Oukbu's complaint included a negligence count against Gibson, he is not a party to this appeal.

[9] After Amazon answered the complaint and denied the allegations, it moved for judgment on the pleadings pursuant to T.R. 12(C). The trial court granted Amazon’s motion on January 4, 2024, concluding that Amazon had no duty to guard against injury to Oukbu from the negligent acts of someone over whom they had no control and when the injury occurred off their premises. In arriving at that result, the trial court rejected Oukbu’s reliance on *Lutheran Hosp. of Ind., Inc. v. Blaser*, 634 N.E.2d 864, 870 (Ind. Ct. App. 1994), where a panel of this court determined that the defendant hospital was liable to the plaintiff for her injuries after a vehicle struck her in the parking lot driveway because the hospital had specifically permitted pedestrians and vehicles to use the “exit” as an entrance to the lot with no safeguards or warnings. The trial court observed that Oukbu did not allege that Amazon created a hazardous condition on its premises and/or that it exerted any control over Gibson or County Road 300 North. In its order, the trial court acknowledged this court’s holding in *Precedent Partners, I, L.P. v. Hulen*, 863 N.E.2d 328, 332-33 (Ind. Ct. App. 2007), where it was determined that the law does not impose a duty on a business to guard against injury to the public from the negligent acts of someone over whom the business has no control and which injury occurs off its premises.

[10] Oukbu now appeals.

Standard of Review

[11] A motion for judgment on the pleadings pursuant to T.R. 12(C) attacks the legal sufficiency of the pleadings. *See Davis v. Ford Motor Co.*, 747 N.E.2d 1146,

1149 (Ind. Ct. App. 2001), *trans. denied*. In reviewing a trial court’s decision on a motion for judgment on the pleadings, we conduct a de novo review. *Murray v. City of Lawrenceburg*, 925 N.E2d 728, 731 (Ind. 2010). We only examine the pleadings and any facts of which we may take judicial notice, with all well-pleaded material facts alleged in the complaint taken as admitted. *Waldrip v. Waldrip*, 976 N.E.2d 102, 110 (Ind. Ct. App. 2012).

[12] The test to be applied when ruling on a T.R. 12(C) motion is whether, in a light most favorable to the non-moving party and “with every intendment regarded in his favor, the complaint is sufficient to constitute *any valid claim*.” *Brugh v. Milestone Contractors*, 202 N.E3d 1091, 1094 (Ind. Ct. App. 2023), *trans. denied* (emphasis added). We will affirm the trial court’s judgment on a T.R. 12(C) motion when it is clear from the face of the pleadings that one of the parties cannot in any way succeed under the operative facts and allegations made therein. *Veolia Water Indianapolis, LLC v. Nat’l Tr. Ins. Co.*, 3 N.E.3d 1, 5 (Ind. 2014).

Discussion and Decision

[13] Oukbu maintains that the trial court erred in granting Amazon’s T.R. 12(C) motion because his complaint sufficiently alleged that Amazon owed a duty to him—its business invitee—to protect him from the foreseeable harm and the dangerous condition that Amazon created, i.e., the defective lighting and signage on its premises. Oukbu further claims that the complaint sufficiently alleged that Amazon knew that the dangerous condition confused truck driver

invitees, causing them to stop and get out of their truck in the road each day. And despite Amazon’s actual knowledge of such dangerous conditions, it “failed to warn its invitees of this latent peril.” *Appellants’ Appendix Vol II* at 50-55, 59-61.

[14] A negligence claim is established by showing (1) a duty owed by the defendant to conform its conduct to a standard of care arising from its relationship with the plaintiff; (2) a breach of that duty; and (3) an injury proximately caused by the breach of that duty. *City of Indianapolis v. Johnson*, 736 N.E.2d 295, 297 (Ind. Ct. App. 2000). Absent a duty owed to the plaintiff by the defendant, there can be no actionable negligence. *Wiley v. ESG Sec. Inc.*, 187 N.E.3d 267, 272 (Ind. Ct. App. 2022), *trans. denied*.

[15] In premises liability cases, whether a duty is owed depends primarily upon whether the defendant was in control of the premises when the accident occurred. *Rhodes v. Wright*, 805 N.E.2d 382, 385 (Ind. 2004). Generally, a landowner is not liable to its business invitees for the acts of a third-party over whom it had no control, and when the injuries do not occur on the landowner’s property. *State v. Flanigan*, 489 N.E.2d 1216, 1218 (Ind. Ct. App. 1986), *trans. denied*. On the other hand, liability is not limited to the area owned or leased “but extends to adjoining areas which harbor a dangerous condition that is created by the owner’s . . . use of such areas.” *Ember v. B.F.D.*, 490 N.E.2d 764, 773 (Ind. Ct. App. 1986), *trans. denied*. A duty of reasonable care may be extended beyond the business premises “when it is reasonable for invitees to believe the invitor controls premises adjacent to his own or where the invitor

knows his invitees customarily use such adjacent premises in connection with the invitation.” *Id.* at 772. Moreover, a person may not use his land in such a way that would injure the interests of those not on his land, including users of public ways. *Justice v. CSC Transp., Inc.*, 908 F.2d 119, 123 (7th Cir. 1990) (applying Indiana law). When the activities conducted on the business premises affect the risk of injury off the premises, “the landowner may be under a duty to correct the condition or guard against foreeeable injuries.” *Lutheran Hospital*, 634 N.E.2d at 870.

[16] Amazon asserts that our Supreme Court’s opinion in *Reece v. Tyson Fresh Meats, Inc.*, 173 N.E.3d 1031, 1041 (Ind. 2021), controls the outcome here. In *Reece*, a motorcyclist traveling on a public roadway adjacent to Tyson’s property suffered catastrophic injuries after colliding with a motorist. The motorcyclist’s guardian brought an action against the other driver and Tyson, claiming that Tyson was negligent “for allowing grass to grow so high on their property that it blocked the view of the roadway.” *Id.* at 1033. In affirming the trial court’s grant of summary judgment for Tyson, our Supreme Court held that “*under the facts of this case*, Tyson owed no duty to the traveling public. The *visual obstruction* was completely contained on its land and did not visit itself upon the adjacent roadway.” *Id.* at 1041 (emphases added). In so holding, the *Reece* Court adopted a bright line rule, providing that when the condition on the land is contained on the land and does not create a physical intrusion that visits itself on the adjacent roadway, the landowner does not owe a duty to travelers on the roadway. *See id.* at 1034, 1040-41. The *Reece* holding was specifically confined

“to *visual obstructions* that do not come in contact with traveling motorists.” *Id.* at 1041 (emphasis added).

[17] Unlike *Reece*, Oukbu did not allege the presence of tall grass or any other visual obstruction on Amazon’s property. Rather, Oukbu pled facts that Amazon’s duty to him arose from alleged defective lighting and confusing signage at the entrances to the fulfillment center. Moreover, *Reece* involved a landowner’s duty to passing motorists on an adjacent highway, and the Court specifically rejected the argument that such a duty should be the same as that owed to a business invitee. *See id.* at 1040 n.3. In short, *Reece* is not applicable in these circumstances.

[18] We find the facts and circumstances in this case more akin to those in *Lutheran Hospital*. In that case, the plaintiff—Blaser—was a hospital visitor who was struck by a vehicle in the hospital’s parking lot driveway. The evidence established that the parking lot was located across the street from the hospital and when Blaser was struck, “she was walking up the driveway of the parking lot.” 634 N.E.2d at 867.

[19] The hospital appealed a jury award in Blaser’s favor, contending that the trial court erred when it found that the hospital had a duty to Blaser when she was struck by a car in the parking lot’s driveway, “a right-of-way over which [the hospital] allege[d] it did not control and only had a duty to maintain.” *Id.* at 868. A panel of this court rejected the hospital’s argument and determined that it owed a duty to Blaser beyond the boundaries of its premises because it

created a dangerous condition on its property, that pedestrians gravitated to and were not discouraged from using. *See id.* at 869-70.

[20] In arriving at this result, the *Lutheran Hospital* Court noted the following:

- There was a circular drive in front of the hospital building with a well-lit canopied entrance and a guard booth.

- The exit driveway to the parking lot across the street was directly across from the building’s entrance.

- The hospital encouraged pedestrians to use the exit lane of the parking lot by crossing the public roadway mid-block, rather than at the marked crosswalks.

- There was a guardhouse on the parking lot side of the road with an arrow pointing into it—though it was only meant to be an entrance for delivery trucks. The public had no way of knowing this until they were pulling into the exit driveway or were right alongside it.

[21] In examining these facts, the *Lutheran Hospital* Court determined that the hospital’s funneling of pedestrian and vehicular traffic into the driveway of the parking lot “*created a dangerous condition that the hospital was either cognizant of or should have reasonably foreseen.*” *Id.* at 869 (emphasis added). Additionally:

By allowing pedestrians and automobiles to use the ‘exit’ driveway as an entrance to the parking lot without adequate safeguards or warning to either, Lutheran used its premises, the parking lot, in such a way to affect the risk of injury of its invitees off its premises, the ‘exit’ driveway. Because Lutheran knew the

manner in which its invitees, both pedestrians and drivers, customarily used the driveway of the ‘exit’ in connection with its invitation, it is under a duty to correct the dangerous conditions and guard against foreseeable injuries.

Id. at 870. The *Lutheran Hospital* Court also pointed out that the hospital knew of the danger because it had “assured the city engineer that it would discourage people from using the canopy entrance doors as an entry and exit to the hospital.” *Id.* Nothing had been done, however, “towards this end or to direct pedestrians to the crosswalks.” *Id.*

[22] Similar to the circumstances in *Lutheran Hospital*, Oukbu pled facts demonstrating that Amazon knew or should have known that truck drivers attempting to enter its premises were confused about where to enter to make their deliveries. Indeed, the fulfillment center’s confusing layout, signage, and lack of lighting often prompted arriving truck drivers to exit their trucks on the county road in hopes of learning where and how to enter the facility. Moreover, Oukbu’s allegations demonstrate that the incident was foreseeable to Amazon because Gibson—the driver of the other vehicle—told investigating police officers that truck drivers routinely stop where Dhillon was struck and “get out” of their trucks because they were confused and did not know where to enter the fulfillment center. *Appellant’s Appendix Vol. II* at 34. Additionally, an Amazon employee told investigating officers that he sees lost truck drivers get out of their trucks at that location “every day.” *Id.* at 35.

[23] Given these circumstances, Oukbu sufficiently alleged in his complaint that Amazon used its premises in a manner that harbored a dangerous condition off its own premises, i.e., on the county road, that affected the risk of injury to others. And in accordance with the reasoning advanced in *Lutheran Hospital*, Oukbu properly alleged that Amazon had a duty to provide a “safe and suitable means of ingress and egress,” including a “warning of or protection from danger. . . .” *Lutheran Hospital*, 634 N.E.2d at 869. Put another way, Oukbu pled facts that Amazon’s lack of signage and its failure to direct delivery drivers where to enter the fulfillment center created confusion and a dangerous condition.

[24] In addition to the rationale advanced in *Lutheran Hospital*, we also find Restatement (Third) of Torts, § 54 (2012) (Section 54) instructive. Section 54 provides that

(a) The possessor of land has a duty of reasonable care for *artificial conditions or conduct on the land that poses a risk of physical harm to persons or property not on the land.*

(b) For natural conditions on land that pose a risk of physical harm to persons or property not on the land, the possessor of the land

(1) has a duty of reasonable care if the land is commercial;
otherwise

(2) has a duty of reasonable care only if the possessor knows of the risk or if the risk is obvious.

(c) Unless Subsection (b) applies, a possessor of land adjacent to a public walkway has no duty under this Chapter with regard to a risk posed by

the condition of the walkway to pedestrians or others if the land possessor did not create the risk.

(Emphasis added).

[25] While not specifically adopted in Indiana—yet accepted in other jurisdictions—Section 54 pertains to the duty of reasonable care for conduct on one’s land that creates risks to those not on the premises. For example, in *Bradford v. Universal Const. Co., Inc.*, 644 So.2d 864, 866 (Ala. 1994), it was held that a landowner’s duty extends beyond the premises where the land abuts public ways or sidewalks, and ordinary care requires that the owner not perform any affirmative act that will create an unsafe condition in the public way fronting his property.³

[26] Here, Oukbu alleged that Amazon controlled the way that delivery drivers enter the premises and that it placed an artificial hazard, i.e., the “no trucks” signage on its premises. Oukbu also pled facts establishing that Amazon had direct knowledge of the hazard it created and that it took no action to provide

³ See also *Stephens v. Bashas’ Inc.*, 186 Ariz. 427, 430 (Ct. App. 1996) (holding that a delivery driver struck by a passing vehicle while waiting on an adjacent street to enter the owner’s premises to deliver goods was a business invitee to whom the owner owed a duty to maintain its premises in a reasonably safe condition, including the obligation to provide reasonably safe means of ingress and egress); *Ollar v. Spakes*, 601 S.W.2d 868, 870 (Ark. 1980) (when an owner or operator of a business learns or should have learned of a dangerous condition existing adjacent to his property and fails to attempt to correct the condition or warn the invitees of such danger, he is liable for negligence); *Fleming v. Garnett*, 646 A.2d 1308, 1313 (Conn. 1994) (owner of a commercial driveway adjacent to public road owed a duty to passing motorists because he realized or should have realized that tractor trailers exiting his property and entering the highway via neighboring driveway would temporarily block both lanes of traffic); *Langen v. Rushton*, 360 N.W.2d 270, 274 (Mich. Ct. App. 1984) (shopping center owner owed a duty in developing and maintaining the facility, including the parking lot and exits, to consider risks to motorists on adjacent highways); *Boggs ex rel. Boggs v. Lay*, 164 S.W.3d 4, 17 (Mo. App. E.D. 2005) (observing that a duty is imposed on a property owner that artificially creates, through negligence, or affirmative action, a condition on the public road that makes passage unsafe), *trans. denied*.

instructions for its approaching truck drivers. In short, Oukbu’s complaint was sufficient to demonstrate that Amazon owed a duty of reasonable care to Oukbu, and that Amazon’s actions—or inactions—created a condition that made passage unsafe on the abutting public road.

[27] For these reasons, we conclude that the trial court erred in granting Amazon’s motion for judgment on the pleadings. We therefore reverse and remand this cause to the trial court for further proceedings consistent with this opinion.

[28] Reversed and remanded.

Bailey, J., concurs.

Mathias, J., concurs with separate opinion.

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Mathias, Judge, concurring.

[29] I write separately only to say that I would adopt the Restatement (Third) of Torts § 54 (2012) to resolve the issues presented in this case, and I urge our colleagues on the Supreme Court to do so.