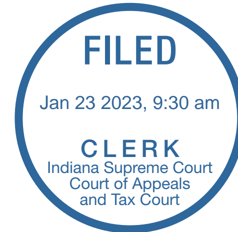
MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEYS FOR APPELLANTS

Theodore E. Rokita
Attorney General of Indiana

Natalie F. Weiss
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

State of Indiana and the Indiana Department of Transportation

Appellants-Defendants,

v.

The Estate of Joseph W. Quick, Sr, Cathleen Quick, Joseph Quick, and Jason Quick,

Appellees-Plaintiffs.

January 23, 2023

Court of Appeals Case No. 22A-CT-1359

Appeal from the St. Joseph Circuit Court

The Honorable John E. Broden, Judge

Trial Court Cause No. 71C01-1611-CT-514

Mathias, Judge.

[1] The State and the Indiana Department of Transportation (collectively, "the State") bring this interlocutory appeal from the St. Joseph Circuit Court's denial

of their motion for summary judgment. The State raises a single issue for our review, namely, whether the trial court erred when it denied the motion for summary judgment. We reverse and remand with instructions for the trial court to grant the State's motion.

Facts and Procedural History

[2] On November 18, 2014, at about 4:30 in the morning, Joseph W. Quick, Sr. was driving his vehicle eastbound on U.S. 20 near mile marker 74 in St. Joseph County. At the time, heavy snowfall and high winds were occurring, making for "whiteout" conditions. Appellant's App. Vol. 2, p. 45. Cole Keller, another motorist, collided into the rear of Quick's vehicle at that location. Quick exited his vehicle to inspect the damage and check on Keller. As he was outside his vehicle, a third motorist, Rasean Adams, struck Quick. Quick was thrown into a nearby snowbank.

[3] Paramedics responded to the scene, but they were slowed by the inclement weather and poor driving conditions. When they arrived, they located Quick's vehicle, but they could not immediately find Quick due to the poor visibility. About forty minutes after having first received the accident report from dispatch, paramedics located Quick "in [a] snow embankment." *Id.* at 114. Quick was hypothermic and had an "obvious open skull fracture to [his] forehead and top of head." *Id.* at 115. The paramedics were able to transport Quick to a nearby hospital. However, he died from his injuries on December 18.

[4] Quick's Estate and surviving family members sued the State for failing to maintain the road in a reasonably safe condition, causing Quick's injuries and death. Thereafter, the State moved for summary judgment. Among other theories, the State argued that it was entitled to immunity as a matter of law because Quick's injuries resulted from "[t]he temporary condition of a public thoroughfare . . . that result[ed] from weather." Ind. Code § 34-13-3-3(3) (2014). The trial court denied the State's motion, but it certified its order for interlocutory appeal, which we accepted.

Standard of Review

[5] The State appeals the trial court's denial of its motion for summary judgment. As our Supreme Court has made clear,

> [w]e review summary judgment de novo, applying the same standard as the trial court: "Drawing all reasonable inferences in favor of . . . the non-moving parties, summary judgment is appropriate 'if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (quoting T.R. 56(C)). "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Id.* (internal citations omitted).
>
> The initial burden is on the summary-judgment movant to "demonstrate [ ] the absence of any genuine issue of fact as to a determinative issue," at which point the burden shifts to the non-movant to "come forward with contrary evidence" showing an

> issue for the trier of fact. *Id.* at 761-62 (internal quotation marks and substitution omitted). And "[a]lthough the non-moving party has the burden on appeal of persuading us that the grant of summary judgment was erroneous, we carefully assess the trial court's decision to ensure that he was not improperly denied his day in court." *McSwane v. Bloomington Hosp. & Healthcare Sys.*, 916 N.E.2d 906, 909-10 (Ind. 2009) (internal quotation marks omitted).

Hughley v. State, 15 N.E.3d 1000, 1003 (Ind. 2014) (omission and some alterations original to *Hughley*).

[6] We initially note that neither Quick's Estate nor his surviving family members has filed an appellee's brief in this appeal. Thus, the State's burden on appeal is to show prima facie error. *Salyer v. Washington Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020). Prima facie error means "at first sight, on first appearance, or on the face of it." *Id.* (quotation marks omitted).

The Trial Court Erred When It Denied the State's Motion for Summary Judgment.

[7] The State is immune from the claims of Quick's Estate and surviving family members. As our Supreme Court has explained:

> Indiana has long held that the government "has a common law duty to exercise reasonable care and diligence to keep its streets and sidewalks in a reasonably safe condition for travel." *Catt[v. Bd. of Comm'rs]*, 779 N.E.2d [1,] 3-4 [(Ind. 2002)] (collecting cases). But, under Subsection (3) of the Indiana Tort Claims Act (ICTA or Act), a government entity, or a government employee acting within the scope of employment, enjoys immunity from liability for an injury or loss resulting from the "temporary

> condition of a public thoroughfare" or roadway "that results from weather." Ind. Code § 34-13-3-3(3) (2016).

Ladra v. State, 177 N.E.3d 412, 415 (Ind. 2021). Further:

> Subsection (3) immunity, we've held, "extends to all claims caused by [a] condition during the period of reasonable response, whether the alleged injury occurred early or late in that period." *Gary Cmty. Sch. Corp. v. Roach-Walker*, 917 N.E.2d 1224, 1228 (Ind. 2009). This period extends "at least until the condition is stabilized and the responses are completed." *Bules[v. Marshall Cty.]*, 920 N.E.2d [247,] 251 [(Ind. 2010)]. "Lack of notice of the condition and the demands of responding to other emergencies bear on the opportunity to remedy" the condition. *Roach-Walker*, 917 N.E.2d at 1227.

Staat v. Ind. Dep't of Transp., 177 N.E.3d 427, 431 (Ind. 2021) (first alteration original to *Staat*).

[8] Here, the undisputed designated evidence demonstrates that the unsafe road condition was the snow and ice on the roadway and the low visibility that resulted from the ongoing snowstorm. There is no dispute that the unsafe road conditions were temporary and due to the weather. There is also no dispute that Quick's injuries were sustained during the State's period of reasonable response to that weather, and that the weather had not stabilized by the time paramedics did respond to Quick's accident. Accordingly, the State is not liable as a matter of law. *See* I.C. § 34-13-3-3(3) (2014). Indeed, we agree with the State that the undisputed designated evidence here "is exactly the type of situation the weather-related[-]condition immunity was designed to protect the State

against." Appellant's Br. at 12. Thus, we reverse the trial court's denial of the State's motion for summary judgment, and we remand with instructions for the court to grant the State's motion.

[9] Reversed and remanded.

Robb, J., and Foley, J., concur.