RECENT DEVELOPMENTS IN INDIANA TORT LAW

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This Article discusses noteworthy case law developments in Indiana tort law during the survey period. It is not intended as a comprehensive or exhaustive overview.

I. NEGLIGENCE

A. Contributory Negligence of Student

In *Murray v. Indianapolis Public Schools*, the Indiana Supreme Court found that a student who left school to engage in criminal activity failed to exercise reasonable care for his own safety and was contributorily negligent.[1]

A high school student was murdered after leaving school grounds without permission and through an unmonitored school exit.[2] The student left school to either engage in a firearms deal or buy marijuana.[3] The student's estate filed a wrongful death action against the school corporation, alleging negligence for failing to properly supervise and monitor students during school hours.[4] The school claimed immunity under the Indiana Tort Claims Act and that the student was contributorily negligent.[5] The trial court granted the school's motion for summary judgment.[6] In a split decision, the court of appeals reversed, concluding the school was not entitled to immunity and there remained questions of fact concerning the student's contributory negligence.[7]

The supreme court affirmed the trial court and determined as a matter of law the student was contributorily negligent.[8] Because the lawsuit was filed against a governmental entity, the common-law doctrine of contributory negligence

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1. Murray v. Indianapolis Pub. Sch., 128 N.E.3d 450, 453 (Ind. 2019).
2. *Id.* at 452.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* at 452-53.

applied instead of the Comparative Fault Act.[9] A person is contributorily negligent if his conduct "falls below the standard to which he should conform for his own protection and safety."[10] Absent special circumstances, children over the age of fourteen are charged with exercising the standard of care of an adult.[11] Because the student was sixteen and no special circumstances existed, the student was charged with exercising the reasonable care an adult would.[12] The student failed to exercise reasonable care for his safety by leaving school to engage in criminal activity, and the court determined the student was contributorily negligent as a matter of law.[13]

B. Breach of Duty – Sudden Medical Emergency

In *Denson v. Estate of Dillard*,[14] the court of appeals determined there is no breach of duty if where a sudden incapacity brought about by a medical condition was not reasonably foreseeable.

A passenger was severely injured when the driver of the vehicle in which she was riding had a heart attack and crashed into a house.[15] The passenger sued the driver's estate, and the estate argued the driver was not liable because he was faced with a sudden medical emergency.[16] The trial court entered summary judgment in favor of the estate, concluding the sudden medical emergency negated the element of breach in the plaintiff's negligence claim.[17] The court of appeals affirmed.[18]

The court explained that, generally, breach is a question for the fact-finder, but can be decided as a matter of law if the undisputed facts lead to one inference or conclusion.[19] The court decided the case using general negligence principles and declined to address the parties' arguments as to whether Indiana should formally recognize a "sudden medical emergency" affirmative defense.[20] Because the driver had a heart attack and lost consciousness, he could not be found to have acted unreasonably when he lost control of the car.[21]

Therefore, the court needed to determine whether the driver acted unreasonably when he decided to drive at all.[22] The designated evidence showed

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9. *Id.*
10. *Id.* at 453 (quoting Hill v. Hephart, 54 N.E.3d 402, 406 (Ind. Ct. App. 2016)).
11. *Murray*, 128 N.E.3d at 453.
12. *Id.*
13. *Id.*
14. Denson v. Estate of Dillard, 116 N.E.3d 535, 542 (Ind. Ct. App. 2018).
15. *Id.* at 537.
16. *Id.* at 538.
17. *Id.*
18. *Id.* at 542.
19. *Id.* at 539.
20. *Id.* at 539-40.
21. *Id.* at 541.
22. *Id.*

the driver suffered a heart attack one month prior to the accident, but received follow-up care as directed and was released from home health care without any driving restrictions before the collision.[23] The court concluded the driver had no "knowledge of peril" that would cause a reasonable person in his position to change his behavior relating to driving.[24] Accordingly, the court affirmed the entry of summary judgment in favor of the driver's estate.[25]

C. Gun Owner Immunity

In *Nicholson v. Lee*, a minor took a gun from a gun owner's truck and killed another minor.[26] The court of appeals found that a gun owner had statutory immunity from liability,[27] even though his loaded gun was in plain view in his unlocked truck.[28]

A gun owner left his loaded handgun in plain view in his unlocked and unattended truck which was parked in a public area.[29] While walking by, a minor saw the gun and took it home; while showing it to his friend, the gun discharged, killing the friend.[30] The dead child's mother sued the gun owner for negligence.[31] The gun owner filed a motion for judgment on the pleadings, claiming immunity under Indiana Code section 34-30-20-1.[32] The trial court granted the gun owner's motion and the court of appeals affirmed.[33]

Indiana Code section 34-30-20-1 provides, "a person is immune from civil liability based on an act or omission related to the use of a firearm or ammunition for a firearm by another person" if that person obtained the firearm by committing one of several crimes.[34] The child's mother argued the statute did not apply because the gun owner was independently negligent for failing to exercise reasonable care in storing and safekeeping his firearm.[35] The court considered the legislative timing of Indiana Code section 34-30-20-1, which was enacted shortly after the Indiana Supreme Court decided *Estate of Heck ex rel. Heck v. Stoffer*.[36]

In *Heck*, a man took a handgun from his parents' house and used it to kill a

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23. *Id.*
24. *Id.* at 542.
25. *Id.*
26. Nicholson v. Lee, 120 N.E.3d 192, 193 (Ind. Ct. App. 2019), *trans. denied*.
27. *See* IND. CODE § 34-30-20-1 (2020).
28. *Nicholson*, 120 N.E.3d at 193.
29. *Id.* at 193-94.
30. *Id.* at 194.
31. *Id.*
32. *Id.*
33. *Id.* at 194, 198.
34. *Id.* at 194 (citing IND. CODE § 34-30-20-1 (2020)).
35. *Id.* at 195.
36. *Id.* at 195-96; *see also* Estate of Heck ex rel. Heck v. Stoffer, 786 N.E.2d 265 (Ind. 2003), *disapproved of on other grounds by* Goodwin v. Yeakle's Sports Bar & Grill, Inc., 62 N.E.3d 384, 390-91 (Ind. 2016).

police officer.[37] The supreme court allowed the case to proceed to the jury, finding the man's parents had a duty to safely store and keep their firearm and could be liable to the police officer for neglect of that duty.[38] Indiana Code section 34-30-20-1 was enacted during the next legislative session, which the *Nicholson* court believed was in response to the *Heck* decision.[39] The court concluded the intent of the statute was to "shield gun owners from liability for failing to safely store and keep guns" when the gun was procured by a crime and used to commit a crime.[40] Therefore, the gun owner was immune from liability.[41]

II. PREMISES LIABILITY

A. Duty Owed to Grocery Store Shooting Victim

In *Rose v. Martin's Super Markets LLC*, a grocery store did not owe a duty to protect a customer from being shot because the shooter raised no suspicions prior to the shooting and because the store did not know a customer had been injured until it was too late to offer assistance.[42]

A man entered a grocery store and walked around for forty minutes before pulling out a gun and killing a store employee.[43] The man continued walking around the store and shot a customer twice, killing her.[44] The shooting lasted just over a minute and police arrived within three minutes of the first shot.[45] The customer's estate sued the store, arguing the store had a duty to protect the customer after the shooting began.[46] The trial court granted the store's motion for summary judgment and the court of appeals affirmed.

In analyzing whether the store owed a duty, the court separately considered the timeframes before and after the shooting began.[47] In the first scenario before the shooting began, the court looked to the foreseeability component of duty and considered the broad type of plaintiff and harm.[48] In this case, the broad type of plaintiff was a grocery store customer and the harm was one customer being shot by a third person in the store.[49] The shooter was in the store for forty minutes and

37. *Heck,* 786 N.E.2d at 266-67.

38. *Id.* at 269-70.

39. Nicholson v. Lee, 120 N.E.3d 192, 196 (Ind. Ct. App. 2019).

40. *Id.*

41. *Id.* at 198.

42. Rose v. Martin's Super Mkts. LLC, 120 N.E.3d 234, 244 (Ind. Ct. App. 2019), *trans. denied*.

43. *Id.* at 236.

44. *Id.*

45. *Id.* at 237.

46. *Id.*

47. *Id.* at 239.

48. *Id.* at 240.

49. *Id.* at 240-41.

drew no attention to himself before he started shooting.[50] The store had no knowledge that would lead it to believe a customer would suddenly pull out a gun and begin shooting, so the store owed no duty to the customer prior to the shooting.[51]

Likewise, after the shooting began, the store owed no duty to the customer.[52] While the store knew a customer started shooting, the store did not know a different customer had been injured until after police arrived and it was too late to offer assistance to the injured customer.[53]

B. Foreseeability of Criminal Attack – Duty Owed

In *Buddy & Pals III, Inc. v. Falaschetti*, the court of appeals held a bar owes a duty to protect other patrons from further physical violence by an ejected patron.[54]

After a man was ejected from a bar for fighting, he punched another patron outside the bar's front entrance.[55] The injured patron sued the man and the bar and the bar filed a summary judgment motion, arguing it owed no duty to protect the patron from the ejected patron's criminal act.[56] The trial court denied the motion and the court of appeals affirmed.[57]

The court of appeals applied the supreme court's analysis of *Goodwin v. Yeakle's Sports Bar & Grill, Inc.*[58] to consider whether the criminal attack in front of the bar was foreseeable.[59] Looking at the broad type of plaintiff and harm involved, it was reasonably foreseeable that an ejected bar patron would be involved in a fistfight outside the bar.[60] The court noted what the landowner knew or should have known "is a pivotal consideration in determining foreseeability."[61] Based on the man's actions during and after being ejected, and the bar warning its bouncers the man would try to get back in, the court determined the bar owed a duty to take precautions to protect patrons from further violent attacks by the man.[62]

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50. *Id.* at 242.
51. *Id.* at 242-43.
52. *Id.* at 243-44.
53. *Id.* at 244.
54. Buddy & Pals III, Inc. v. Falaschetti, 118 N.E.3d 38, 43 (Ind. Ct. App. 2019).
55. *Id.* at 40.
56. *Id.* at 40-41.
57. *Id.* at 41, 43.
58. *Id.* at 42; (citing Goodwin v. Yeakle's Sports Bar & Grill, Inc., 62 N.E.3d 384 (Ind. 2016)).
59. *Falaschetti*, 118 N.E.3d at 41-42.
60. *Id.* at 42.
61. *Id.*
62. *Id.* at 43.

C. Duty Owed to Food Truck Patron

In *Linares v. El Tacarajo & U-Pull-and-Pay, LLC*, a divided panel of the court of appeals determined a salvage yard owed no duty to patrons of a food truck because it was not reasonably foreseeable the food truck would explode on the salvage yard's premises.[63]

A food truck occasionally sold food from a salvage yard's parking lot.[64] The salvage yard did not inquire whether the food truck was licensed to sell food or had fire safety procedures in place.[65] In its line of business, the salvage yard often came into contact with flammable materials left in cars and stored those materials in a flame-retardant cabinet to promote safety.[66] One day, the food truck suddenly exploded and injured a customer.[67] The fire department determined the explosion occurred when a food truck employee opened a can of gasoline too close to the grill.[68]

The customer sued the food truck and the salvage yard, arguing the salvage yard failed to monitor or inspect the food truck, failed to determine if the food truck was properly licensed, and failed to study the food truck's safety procedures.[69] The trial court granted the salvage yard's motion for summary judgment and the court of appeals affirmed.[70]

The court analyzed the foreseeability element of duty—"whether there is some probability or likelihood of harm that is serious enough to induce a reasonable person to take precautions to avoid it."[71] The broad type of plaintiff was a business patron and the broad type of harm was the likelihood that an independent food truck would explode and catch fire on the premises of that business due to a food truck employee's error.[72] Although the salvage yard should possibly have taken more interest in the food truck on its premises, it owed no duty to protect the food truck's patrons from the food truck exploding.[73] The customer also argued the salvage yard and food truck were engaged in a joint venture, but the court of appeals found no evidence supporting such a claim.[74]

Judge Kirsch dissented, noting the salvage yard trained its employees on handling flammable materials but did not investigate the food truck's use of

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63. Linares v. El Tacarajo & U-Pull-And-Pay, LLC, 119 N.E.3d 591, 600 (Ind. Ct. App. 2019), *trans. denied*.

64. *Id.* at 594.

65. *Id.* at 595.

66. *Id.* at 594.

67. *Id.* at 595.

68. *Id.*

69. *Id.*

70. *Id.* at 596, 601.

71. *Id.* at 597 (quoting Goodwin v. Yeakle's Sports Bar & Grill, Inc., 62 N.E.3d 384, 392 (Ind. 2016)).

72. *Id.* at 599.

73. *Id.* at 600.

74. *Id.* at 600-01.

flammable materials.[75] He believed this case was fact sensitive and should be heard by a jury.[76]

C. Duty Owed for Injury Cause by Domestic Animals

In *Perkins v. Fillio*, the court of appeals determined there were questions of fact concerning whether the owner of a domestic animal took reasonable precautions to protect her invitees from injury.[77]

A woman owned land where she kept various animals.[78] While in Florida, she asked her half-brother to care for the animals.[79] When a goat became sick, the landowner's half-brother called a friend, Perkins, who had experience with farm animals.[80] While trying to check on the goat, Perkins was headbutted by a ram and fell, breaking her arm or wrist.[81] Perkins sued the landowner for negligence and both parties moved for summary judgment.[82] The trial court entered summary judgment in favor of the landowner, finding she did not violate a duty of care to Perkins.[83] The court of appeals reversed.[84]

Perkins argued the landowner was required to take precautionary measures to ensure the ram did not injure invitees.[85] The court acknowledged a landowner owes the highest duty to protect invitees and, in Indiana, the owner of a domestic animal is not liable for injuries the animal causes unless the animal had dangerous propensities that were known or should have been known to the owner.[86] Knowledge of an animal's dangerous propensities refers to the type of animal, not whether that specific animal has exhibited dangerous tendencies.[87] Because rams, as a class of animals, have dangerous tendencies in certain circumstances, there was a genuine issue of material fact concerning whether the woman took reasonable precaution to protect invitees on her land from injury.[88]

Perkins also made a claim for negligent entrustment and supervision, which the court rejected because the woman's half-brother was not her employee and she had no knowledge of his capability to exercise reasonable care.[89] Finally, the court rejected Perkins' claim of vicarious liability because it was raised for the

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75. *Id.* at 602.
76. *Id.*
77. Perkins v. Fillio, 119 N.E.3d 1106, 1114 (Ind. Ct. App. 2019).
78. *Id.* at 1109.
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.* at 1110.
84. *Id.* at 1115.
85. *Id.* at 1111.
86. *Id.* at 1111-12 (quoting Forrest v. Gilley, 570 N.E.2d 934, 935 (Ind. Ct. App. 1991)).
87. *Id.* at 1112.
88. *Id.* at 1113.
89. *Id.* at 1113-14.

first time on appeal and because Perkins did not claim the half-brother was negligent.[90]

III. PRODUCT LIABILITY

A. Component Manufacturer Duty to Install Safety Features

In *Brewer v. PACCAR, Inc.*, the supreme court held that a manufacturer who produces a component part with only one reasonably foreseeable use has no duty to install safety features if the final manufacturer declined the safety features or if the component part can be used safely without safety features when integrated into the final product.[91]

PACCAR manufactures glider kits, which is a component part that becomes an operable semi-truck after an engine, transmission, and exhaust system are installed by the buyer.[92] The glider kits have a forty-foot blind spot directly behind the semi, but the glider kits do not come with safety features—like a rear-view window, backup alarm, camera, or flashers—to alleviate blind-spot dangers.[93] PACCAR sold a glider kit to a transport company who finished assembling the semi.[94] A driver was backing up a semi equipped with a glider kit when he pinned a man between the rear of the semi and a trailer.[95] The man died from his injuries and his widow filed a wrongful death products liability action, asserting a claim of defective design.[96]

PACCAR filed a motion for summary judgment, arguing it owed no duty to install safety features because it manufactured a component part that was not unreasonably dangerous.[97] The trial court granted PACCAR's motion for summary judgment. The court of appeals reversed, finding a question of fact as to whether it was reasonable for PACCAR to put a product lacking safety features into the stream of commerce.[98]

On transfer, the supreme court considered whether PACCAR, as a manufacturer of a component part, owed a duty to install safety features.[99] Under Indiana's Products Liability Act, a component-part manufacturer can be liable if it places an unreasonably dangerous product with a defective condition into the stream of commerce.[100] But a component-part manufacturer has no duty to install safety features if the component part can be used for a variety of uses and the

90. *Id.* at 1114.
91. Brewer v. PACCAR, Inc., 124 N.E.3d 616, 620 (Ind. 2019).
92. *Id.* at 619.
93. *Id.* at 620.
94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.* at 621.
99. *Id.* at 621-22.
100. *Id.* at 621.

manufacturer cannot reasonably know "whether and how safety features should be included."[101] In those cases, any duty to install safety features falls on the final manufacturer.[102] When there is only one reasonably foreseeable use for a component part, the component-part manufacturer owes no duty to install safety features if "(1) the final manufacturer was offered the safety features and declined them; or (2) the component part, once integrated, can be used safely without those safety features."[103]

Because the glider kit had only one reasonably foreseeable use, the court considered whether PACCAR met either of the two requirements to support an entry of summary judgment.[104] It determined that PACCAR failed to show that it offered, and the transport company rejected the allegedly necessary safety features.[105] Similarly, PACCAR failed to show that the glider kit can be safely used without such safety features.[106] Summary judgment was therefore inappropriate.[107]

Finally, the court considered the sophisticated-user defense and held it should be available in design-defect claims but is a question to be resolved by the fact-finder.[108] This defense exempts a manufacturer from providing warnings if the user is or should be aware of potential dangers.[109] Factors to be considered by the fact-finder in evaluating a sophisticated-user defense include "the nature, complexity, and associated dangers of the integrated product; the dangers posed by a lack of safety features; and the user's ability to include the safety features."[110]

B. Bilingual Warnings

In *Crawfordsville Town & Country Home Center, Inc. v. Cordova*, the court of appeals determined that if a manufacturer's warnings are sufficient, there is no duty to provide additional warnings, including bilingual warnings.[111]

Three men were hired to paint the exterior wall of a restaurant.[112] The men spoke limited English and could not read English.[113] The men rented an aerial lift and pressure washer, and the rental department manager told them in English how to use the lift and showed them the operator's manual and warning labels, which

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101. *Id.* at 622.
102. *Id.*
103. *Id.*
104. *Id.* at 622-23.
105. *Id.*
106. *Id.*
107. *Id.*
108. *Id.* at 626-27.
109. *Id.* at 626.
110. *Id.* at 627.
111. 119 N.E.3d 119, 131 (Ind. Ct. App. 2019), *trans. denied*.
112. *Id.* at 121.
113. *Id.*

were written in English.[114] The men did not request this information in Spanish.[115] The operator's manual and warning labels instructed users, with diagrams, to avoid power lines and not use the lift within ten feet of a high-voltage power line.[116] At the jobsite, the men had trouble operating the lift and the rental manager came to fix the problem.[117] While working, one man, Cordova, was electrocuted and suffered serious injuries.[118]

Cordova sued the rental company, which later filed a motion for summary judgment, contending it owed no duty to Cordova and was not the proximate cause of his injuries.[119] The trial court denied the motion, but the court of appeals reversed.[120] The court considered Indiana Supreme Court precedent[121] that held a seller's duty to warn is discharged if the product has not been modified and the seller provided the buyer with the manufacturer's warning of the danger at issue.[122] Cordova argued Town & County was required to provide bilingual warnings because his English was limited, and that Town & Country was required to warn him after it became aware of where the lift was being used.[123]

The court applied *Rushford* and concluded Town & Country had no duty to provide bilingual or other additional warnings to Cordova.[124] The manufacturer's warnings were clearly visible on the aerial lift and were adequate, and the seller had no duty to provide warnings in another language.[125]

IV. NUISANCE

A. Industrial Site Nuisance—Statute of Limitations

In *Elkhart Foundry & Machine Co., Inc. v. City of Elkhart Redevelopment Commission for City of Elkhart*, the court of appeals held that persistent contamination at a former industrial site is not a continuing nuisance that tolls the six-year statute of limitations.[126]

Elkhart Foundry operated an iron foundry in Elkhart for many years until it went out of business.[127] The City of Elkhart looked into purchasing the site and

114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.* at 123.
118. *Id.* at 125.
119. *Id.*
120. *Id.* at 120, 126.
121. *See* Ford Motor Co. v. Rushford, 868 N.E.2d 806 (Ind. 2007).
122. *Crawfordsville Town & Country Home Center, Inc.*, 119 N.E.3d at 128.
123. *Id.* at 130.
124. *Id.*
125. *Id.*
126. 112 N.E.3d 1123, 1132 (Ind. Ct. App. 2018), *trans denied*.
127. *Id.* at 1125.

in 2007 learned it was contaminated.[128] The City eventually purchased the site in 2010 and began remediation efforts.[129]

In 2016, the City brought an environmental legal action ("ELA") against the Foundry, a "mini-CERCLA" claim under Indiana Code section 13-25-4 *et seq.*, and a common-law nuisance claim.[130] The trial court granted the Foundry's summary judgment motion on the mini-CERCLA and nuisance claims.[131] The Foundry appealed the summary judgment ruling on the ELA and the City cross-appealed on the mini-CERCLA and nuisance claims.[132] The court of appeals affirmed.[133]

The analysis of the court of appeals largely dealt with the applicable statutes of limitations for each claim. The court determined the applicable statute of limitations for an ELA claim is ten years,[134] not six years.[135] The court conducted a detailed analysis, considering earlier court of appeals cases and the history of the ELA statute.[136] The mini-CERCLA statutes did not authorize the City to bring a claim for its remediation costs and damages.[137] As for the nuisance claim, the City agreed the six-year statute of limitations under Indiana Code section 34-11-2-7(3) applied, but argued the contamination was a "continuing nuisance" creating a new statute of limitations as long as the nuisance continued.[138] The court explained that with a continuing nuisance, each activity is a new and separate injury giving rise to a new cause of action.[139] But to file a timely action, the activity itself must be ongoing less than six years before suit is filed.[140] Because the Foundry ceased operations and therefore ceased the activity causing contamination more than six years before suit was filed, the City's nuisance claim was untimely.[141]

B. Farmland Nuisance—Right to Farm Act

In *Himsel v. Himsel*,[142] the court of appeals held that landowners did not have an actionable claim against neighboring farmers because the Right to Farm Act

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128. *Id.*
129. *Id.*
130. *Id.*
131. *Id.*
132. *Id.*
133. *Id.* at 1132.
134. *See* IND. CODE § 34-11-2-11.5.
135. *Elkhart Foundry & Mach. Co., Inc*, 112 N.E.3d at 1126; *see also* IND. CODE § 34-11-2-7(3) (2020).
136. *Elkhart Foundry & Mach. Co., Inc.*, 112 N.E.3d at 1126-28.
137. *Id.* at 1129-30.
138. *Id.* at 1131.
139. *Id.*
140. *Id.* at 1132.
141. *Id.*
142. 122 N.E.3d 935 (Ind. Ct. App. 2019), *trans. denied*.

("RFTA") prohibited such a claim.

A family purchased farmland in the 1990s and consistently used the land for crops until 2013, when the family wanted to begin raising hogs.[143] The Hendricks County Commissioners approved rezoning the farmland for that purpose and the family obtained permits and constructed a concentrated animal-feeding operation ("CAFO").[144] The family created a company, 4/9 Livestock, which purchased the land and operated the CAFO.[145] The area surrounding the farmland is dominated by agricultural uses, including crops and raising livestock.[146] The plaintiffs lived in the immediate vicinity of the farmland and sued for nuisance, negligence, and trespass, claiming extreme noxious odors emanating from the farmland reduced their quality of life, daily activities, and property values.[147] After extensive briefing and a motion to correct error, the trial court entered summary judgment in the defendants' favor on all claims.[148] The court of appeals affirmed.[149]

The court of appeals addressed the applicability of RTFA,[150] which limits the circumstances under which agricultural operations may be subject to nuisance claims.[151] The essence of RTFA is to protect farmers from those who move to an established agricultural area, are offended by ordinary farm smells and activities, and file a nuisance action.[152] RTFA provides in part that an agricultural operation is not a nuisance if it has continuously been in operation for over a year, provided "there is no significant change in the type of operation" and the "operation would not have been a nuisance at the time the agricultural . . . operation began."[153]

The plaintiffs argued the CAFO would have been a nuisance when farming originally began on the farmland in the 1940s, but the court disagreed.[154] Because agricultural use, including raising livestock, dominated the area surrounding the plaintiffs' properties, the plaintiffs could not complain about the defendants' farm use changing from crops to a CAFO.[155] Additionally, the court noted the defendants had to overcome significant administrative hurdles, such as obtaining rezoning of the farm and building permits from the County and IDEM before they could operate a CAFO.[156] The plaintiffs were provided due process and an opportunity to challenge the CAFO throughout the administrative process and did

143. *Id.* at 939.
144. *Id.* at 939-40.
145. *Id.*
146. *Id.* at 941.
147. *Id.* at 938, 941.
148. *Id.* at 941.
149. *Id.*
150. IND. CODE § 32-30-6-9 (2020).
151. Himsel v. Himsel, 122 N.E.3d 935, 942 (Ind. Ct. App. 2019).
152. *Id.* at 943.
153. *Id.* at 942; *see also* IND. CODE § 32-30-6-9(d) (2020).
154. Himsel v. Himsel, 122 N.E.3d 935, 943-44 (Ind. Ct. App. 2019).
155. *Id.* at 944.
156. *Id.*

not have an actionable nuisance claim.[157]

As for the nuisance claim, the court found no designated evidence the farm was negligently operated.[158] Finally, the court characterized the trespass claim as an "artful" attempt to alternatively plead the nuisance claim; the trespass claim was also barred by RTFA.[159] The plaintiffs also presented several as-applied constitutional challenges to RTFA, which the court found unavailing.[160]

V. PROCEDURE

A. Expert Testimony Not Required

In *Martin v. Ramos*,[161] the court of appeals held expert medical testimony concerning causation of injuries need not be presented if the injuries are not complex and a layperson would be able to understand causation.

A plaintiff who was injured in a collision filed a notice of claim in small claims court.[162] After a bench trial, the trial court found the defendant driver to be at fault, but awarded the plaintiff no damages.[163] The trial court determined the plaintiff needed an expert medical opinion to establish causation of his injuries and failed to meet his burden of proof.[164] The trial court denied plaintiff's motion to correct error, the plaintiff appealed, and the court of appeals reversed.[165]

The court of appeals noted that parties in a small claims action bear the same burden of proof as in a regular civil action, but the small claims rules relax the formality of the proceedings.[166] The court explained expert medical testimony is not always required in personal injury cases if a layperson can "readily understand the causation."[167] For objective injuries, the party's testimony may be sufficient; but for a "complicated medical question," such as the aggravation of a pre-existing injury, expert testimony is required because a layperson cannot understand causation.[168]

It was error for the trial court to find as a matter of law the plaintiff failed to present evidence concerning causation.[169] At trial, the plaintiff testified he had increased pain after the collision and submitted medical records that included a

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157. *Id.*
158. *Id.* at 944-45.
159. *Id.* at 945.
160. *Id.* at 945-50.
161. 120 N.E.3d 244 (Ind. Ct. App. 2019).
162. *Id.* at 246-47.
163. *Id.* at 246.
164. *Id.* at 248.
165. *Id.*
166. *Id.* at 249.
167. *Id.*
168. *Id.* at 250.
169. *Id.* at 252.

diagnosis.[170] The plaintiff was a competent witness to testify regarding his pain and expert testimony was not required in order for plaintiff to meet his burden of proof on causation.[171] Because the trial court's conclusion was contrary to the evidence, the court of appeals reversed.[172]

B. Preferred Venue

In the consolidated cases of *Morrison v. Vasquez* and *Indiana University Health Southern Indiana Physicians, Inc. v. Noel*, the supreme court held the preferred venue for a corporate defendant lies in the county where the defendant's principal offices are located, not the county where the registered agent is located.[173]

In both cases, the plaintiffs filed lawsuits in Marion County because one of the defendants had its agents registered in Marion County.[174] In Morrison's case, the defendants were granted a change of venue to the location of the incident, which the court of appeals affirmed. In Noel's case, the trial court denied the defendants' request to change venue to the county of their principal place of business, which the court of appeals affirmed.[175] The Indiana Supreme Court accepted transfer and consolidated the cases to address these disparate opinions.[176]

Indiana Trial Rule 75(A) lists the preferred venues for initiating a suit, including the "county where [] the principle office of a defendant organization is located."[177] Previously, in *American Family Insurance Co. v. Ford Motor Co.*,[178] the court held that a foreign corporation's principal office was the location of the corporation's registered agent in Indiana.[179] Later, the court of appeals applied the same rule in *CTB, Inc. v. Tunis*[180] and held the registered agent's location for a domestic corporation also provided a county of preferred venue.[181]

The court analyzed *American Family* in conjunction with Ind. Code section 23-1-24-1, as amended in 2018.[182] It determined that it made little sense to apply the rule from *American Family* to domestic corporations, because domestic corporations have a principal office in Indiana.[183] The court noted changes to

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170. *Id.* at 251-52.

171. *Id.* at 252.

172. *Id.*

173. Morrison v. Vasquez, 124 N.E.3d 1217, 1219 (Ind. 2019).

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*; *see also* IND. R. TRIAL P. 75(A)(4).

178. Am. Family Ins. Co. v. Ford Motor Co., 857 N.E.2d 971, 972 (Ind. 2006).

179. 124 N.E.3d at 1219.

180. CTB, Inc. v. Tunis, 95 N.E.3d 185, 189 (Ind. Ct. App.), *trans. denied*, 102 N.E.3d 288 (Ind. 2018).

181. 124 N.E.3d at 1220.

182. *Id.* at 1220.

183. *Id.*

Indiana's business corporation law no longer tied a corporation's principal place of business to its registered agent.[184] Also, filing suit in the county where the registered agent is located is inconsistent with the purpose of the preferred venue rule if the registered agent is that county's only tie to the case.[185] The court also noted the new statute was procedural and could be retroactively applied.[186]

Justice Slaughter dissented, agreeing the outcome was sensible, but opining the best way to effectuate policy change was to amend the trial rules instead of "reinterpreting them by judicial fiat with retroactive application."[187]

C. Summary Judgment Standard

In *Tutino v. Rohr-Indy Motors Inc.*, the court of appeals held that summary judgment may be granted if disputed evidence does not create a genuine issue of *material* fact.[188]

A woman had her vehicle serviced after receiving a recall notice involving the vehicle's airbags.[189] The manufacturer sent a service bulletin to its service providers explaining that all vehicles involved in the recall needed to be inspected, but only a very small number of vehicles would need to have the airbag inflator replaced.[190] The service technician inspected the vehicle, verified the woman's airbag was not one that had been recalled, and reinstalled the airbag.[191] The woman questioned whether the service technician actually performed an inspection because there were no fingerprints on her dusty dashboard and her car was parked in the same spot after the inspection was finished.[192]

A few months later, the woman was seriously injured in a collision when her airbag failed to deploy.[193] Two weeks after the collision, the woman received another recall notice from the manufacturer for the same airbag issue.[194] That recall was issued by the manufacturer two months before the collision.

The woman sued the service provider, alleging the provider was negligent when performing the recall service and also by failing to inform her of the recall issued two months before her collision.[195] The trial court granted the service

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184. *Id.* at 1220-21.

185. *Id.* at 1221.

186. *Id.* at 1222.

187. *Id.* (Slaughter, J., dissenting).

188. Tutino v. Rohr-Indy Motors Inc., 127 N.E.3d 248, 249 (Ind. Ct. App.), *trans. denied*, 138 N.E.3d 949 (Ind. 2019).

189. *Id.* at 250.

190. *Id.*

191. *Id.*

192. *Id.* at 250-51.

193. *Id.* at 251.

194. *Id.*

195. *Id.*

provider's motion for summary judgment and the court of appeals affirmed.[196]

The court explained the determinative issue in the case was whether the service provider was responsible for the airbag failing to deploy during the collision.[197] While the parties' experts had some disagreements, they agreed the recall work did not involve anything that would impact whether the airbag deployed.[198] Rather, the recall addressed additional injury that could be caused after the airbag deployed.[199] Because the experts' disagreements were unimportant to the determinative issue in the case, the disagreements did not create a genuine issue of *material* fact.[200] The court also found that the service provider had no duty to warn the woman about the second recall.[201]

VI. MISCELLANEOUS

A. Defamation

In *Pack v. Truth Publishing Co.*, the court of appeals held that a fired public school teacher had no defamation claim against a newspaper where the article was connected to a public issue and was written in good faith with a reasonable basis in law and fact.[202]

A public high school teacher was terminated after parents, students, and faculty complained about his demeanor, class materials, and professionalism.[203] The teacher filed a federal lawsuit against the school corporation, alleging he was terminated because he is atheist.[204] A local newspaper reporter sought and was given the School Board's findings pursuant to Indiana's Access to Public Records Act.[205] The newspaper published an article that stated the teacher was fired for "insubordination, immorality and incompetence," although the word "incompetence" was not included as one of the School Board's grounds for firing the teacher.[206] The newspaper was asked to remove the word incompetence from its article but declined to do so.[207]

The teacher sued the newspaper for defamation, claiming the article incorrectly challenged his competence as a teacher.[208] The newspaper filed a motion to dismiss, which the trial court treated as a motion for summary

196. *Id.*
197. *Id.* at 254.
198. *Id.*
199. *Id.*
200. *Id.*
201. *Id.* at 256.
202. Pack v. Truth Publ'g Co., 122 N.E.3d 958, 960 (Ind. Ct. App. 2019).
203. *Id.*
204. *Id.* at 962.
205. *Id.*
206. *Id.*
207. *Id.*
208. *Id.* at 962-63.

judgment.[209] Summary judgment was entered in favor of the newspaper under Indiana's anti-SLAPP statutes and the court of appeals affirmed.[210]

The court examined Indiana's Anti-SLAPP statutes, which create an affirmative defense and apply "'to an act in furtherance of' a person's 'right of . . . free speech . . . in connection with a public issue or an issue of public interest.'"[211] The affirmative defense applies if the moving party shows the act or omission complained of is:

> (1) an act or omission of that person in furtherance of the person's right of . . . free speech . . . in connection with a public issue; and
> (2) an act or omission taken in good faith and with a reasonable basis in law and fact.[212]

The court found the article was connected to a public issue important to the local community because the article intended to inform the community of the teacher's federal lawsuit alleging religious discrimination.[213] Similarly, the article had a reasonable basis in law and fact and was taken in good faith because in preparing the article, the newspaper spoke to the teacher and his attorney, relied on the School Board's findings, and relied on the teacher's court filings.[214] The word "incompetence" was a fair characterization of why the School Board terminated the teacher's employment and was not reckless.[215] Finally, the teacher argued the School Board's findings were confidential, but the court disagreed because the teacher included the School Board's findings in his lawsuit against the school corporation.[216]

B. Right of Publicity

In *Daniels v. FanDuel, Inc.*,[217] the supreme court held that online fantasy sports operators who use the names and likenesses of college student-athletes without their consent do not violate Indiana's right of publicity statute because such information has newsworthy value.

Defendants, online fantasy sports operators FanDuel, Inc. and DraftKings, Inc., operate fantasy sports leagues.[218] Participants pay a fee to access player names, images, and performance statistics and assemble a fantasy sports team of

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209. *Id.* at 963.
210. *Id.* at 963-64, 969.
211. *Id.* at 964 (citing IND. CODE § 34-7-7-1(a) (2019)).
212. 122 N.E.3d at 964 (citing IND. CODE § 34-7-7-5 (2019)).
213. *Id.* at 965.
214. *Id.* at 966-67.
215. *Id.* at 967.
216. *Id.* at 968.
217. Daniels v. FanDuel, Inc., 109 N.E.3d 390, 390 (Ind. 2018).
218. *Id.* at 392.

real-life athletes to compete against other participants' teams.[219] Certain participants win cash prizes based on their fantasy team's performance.[220]

Three collegiate student-athletes filed a class-action lawsuit alleging the defendants violated their right of publicity by using the athletes' names and likenesses without their consent.[221] The case was removed to federal court and dismissed; the plaintiffs appealed to the Seventh Circuit, which certified the following question to the Indiana Supreme Court—"Whether online fantasy-sports operators that condition entry on payment, and distribute cash prizes, need the consent of players whose names, pictures, and statistics are used in the contests, in advertising the contests, or both."[222]

Indiana's right of publicity statute[223] provides "a person may not use an aspect of a personality's right of publicity for a commercial purpose . . . without having obtained previous written consent."[224] However, there are several exceptions to the consent requirement, including where the material "has political or newsworthy value" or concerns a matter of "public interest."[225]

The court did not examine the "public interest" exception but concluded the newsworthy value exception applied.[226] The statute does not list any restrictions on who publishes or uses the material.[227] Although the phrase "political or newsworthy value" is ambiguous, the court found several compelling reasons to determine the term "newsworthy" is broad and includes the names and likenesses of college student athletes.[228] First, the court considered the presumption the legislature does not intend to change the common law unless it does so explicitly and analyzed the evolution of the right of publicity.[229] Second, a broad interpretation of the word "newsworthy" would likely avoid First Amendment free speech challenges.[230] The court likened the use of players' names, images, and statistics in fantasy sports newspaper and website publications and determined the fantasy sports operators did not need consent to use the players' information.[231]

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219. *Id.*
220. *Id.*
221. *Id.*
222. *Id.*
223. IND. CODE § 32-36-1-8(a) (2020).
224. 109 N.E.2d at 391-92.
225. *Id.* at 393; *see also* IND. CODE § 32-36-1-1 (2020).
226. *Id.* at 394.
227. *Id.*
228. *Id.*
229. 109 N.E.3d at 395-96.
230. *Id.* at 396.
231. *Id.* at 396, 398.

C. Medical Malpractice Settlements

In *Wallen v. Hossler*,[232] the court of appeals held a medical malpractice plaintiff is not required to accept a qualified healthcare provider defendant's settlement offer that equals the statutory cap.

A patient died after being misdiagnosed by her medical providers.[233] Her estate filed a medical malpractice complaint and offered to settle with the provider for $250,000, the statutory cap, to be able to pursue a claim against the Indiana Patient's Compensation Fund ("the Fund").[234] Several years later, a few weeks before the scheduled trial, the doctor-defendant offered a $250,000 settlement with several conditions that were unacceptable to the Estate.[235] Based on offering the cap, the doctor asked the trial court to remove him from the case and substitute the Fund as the defendant.[236] The trial court granted the doctor's motion, but the court of appeals reversed.

The Estate argued it was not required to accept a conditional settlement offer and the jury should determine if the doctor committed two acts of malpractice, which would permit a capped recovery of $500,000.[237] The parties disagreed on the interpretation of the phrase "agreed to settle" contained in medical malpractice cap statute.[238] The court explained the statute sets out the procedure by which a plaintiff can pursue excess damages from the Fund after settling with the provider.[239] An offer is not a settlement agreement and the court concluded the Estate was not required to settle with the doctor.[240] The court also concluded, as a matter of law, the doctor committed only one act of malpractice.[241]

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232. Wallen v. Hossler, 130 N.E.3d 138 (Ind. Ct. App. 2019), *trans. denied*.
233. *Id.* at 141.
234. *Id.* at 141-42.
235. *Id.* at 142.
236. *Id.*
237. *Id.* at 144.
238. *Id.* at 145; *see also* IND. CODE § 34-18-15-3 (2020).
239. *Id.* at 146.
240. Wallen, 130 N.E.3d at 146-47.
241. *Id.* at 147-48.