



IN THE
Indiana Supreme Court

Supreme Court Case No. 21S-CT-240

Chad Albert Staat and Julie Staat,
Appellants (Plaintiffs below)

–v–

Indiana Department of Transportation,
Appellee (Defendant below).

Argued: June 23, 2021 | Decided: December 9, 2021

Appeal from the Dearborn Superior Court,
No. 15D01-1405-CT-24

The Honorable Jonathan Neil Cleary, Judge.

On Petition to Transfer from the Indiana Court of Appeals,
No. 20A-CT-1283

Opinion by Justice Goff

Chief Justice Rush and Justices David and Slaughter concur.
Justice Massa concurs in result.

Goff, Justice.

Under Indiana Code section 34-13-3-3, a government entity is “not liable” for a loss or injury resulting from the “temporary condition of a public thoroughfare . . . that results from weather.” Immunity thus requires two things: that the loss or injury result from a condition (1) that is temporary and (2) that is caused by weather. Whereas our decision today in *Ladra v. State* turned on the question of causation, the outcome of this case hinges on whether the condition was “temporary.”

Because the evidence designated by the government here establishes that the weather-induced condition continued to worsen at the time of the accident, and because the plaintiffs failed to raise a reasonable inference to the contrary, we conclude that the condition was temporary and hold the government immune from liability. We thus affirm the trial court’s summary-judgment ruling in the government’s favor.

Facts and Procedural History

Early one morning in the summer of 2012, Chad Staat left home for work, heading eastbound along Interstate 74 (I-74). A storm from the night before had carried over and the rain intensified during Staat’s commute. As he neared mile marker 168, Staat struck a pool of water, causing him to hydroplane, lose control of his vehicle, and strike a tree. Staat sued the Indiana Department of Transportation (INDOT) for his injuries, alleging that the agency’s negligence in the design and maintenance of the highway caused the accident. Staat’s wife, Julie, joined the suit, alleging loss of consortium.

INDOT moved for summary judgment, claiming that the Indiana Tort Claims Act (ITCA) entitled it to immunity against the Staats’ negligent-maintenance claim because the accident resulted from a temporary condition caused by weather. *See* Ind. Code § 34-13-3-3(3) (2011) (or

Subsection (3)).¹ Immunity aside, INDOT also denied liability for negligence, citing its lack of notice of pooling on the interstate. The trial court granted summary judgment for INDOT. The Staats moved to correct error, which the trial court denied.

The Court of Appeals reversed in pertinent part, holding that summary judgment based on weather-related immunity was improper.² *Staat v. Indiana Dep't of Transp.*, 164 N.E.3d 135, 142 (Ind. Ct. App. 2021). The “period of reasonable response” to which the government is entitled had lapsed, the panel reasoned, because the designated evidence supported an inference that the pooling had stabilized by reaching its maximum capacity at some point before the collision. *Id.* at 140. And because INDOT failed to show the accident occurred during its period of reasonable response, the panel explained, INDOT wasn’t entitled to immunity under Subsection (3). *Id.* at 140, 142. The panel also rejected INDOT’s lack-of-notice defense, concluding that the agency failed to designate evidence of its own knowledge of road conditions at the site of the accident. *Id.* at 141.

Judge Tavitias concurred in result, agreeing that there was a genuine issue of material fact but writing separately to reiterate her disagreement with the interpretation of *Catt v. Board of Commissioners of Knox County*, 779 N.E.2d 1 (Ind. 2002), as noted in her *Ladra* dissent. *Staat*, 164 N.E.3d at 142 (Tavitias, J., concurring in result). *See* 162 N.E.3d 1161, 1172–73 (Ind. Ct. App. 2021) (Tavitias, J., dissenting).

INDOT petitioned this Court for transfer, which we granted, vacating the Court of Appeals opinion. *See* Ind. Appellate Rule 58(A).

¹ INDOT also claimed immunity under Indiana Code subsection 34-13-3-3(18), which exempts a government entity from liability “if the claimed loss occurs at least twenty (20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned.” The Staats, however, conceded that immunity applied under this subsection of the ITCA. Appellant’s App. Vol. 2, p. 60.

² The panel summarily affirmed the trial court’s grant of summary judgment on the negligent-design claim, citing the Staats’ concession of immunity. 164 N.E.3d at 138.

Standard of Review

A de novo standard of review applies to a trial court's summary-judgment ruling. *G&G Oil Co. of Indiana, Inc. v. Continental Western Insurance Co.*, 165 N.E.3d 82, 86 (Ind. 2021). To obtain summary judgment, "[t]he movant must designate sufficient evidence to foreclose the nonmovant's reasonable inferences and eliminate any genuine factual issues." *Butler v. City of Peru*, 733 N.E.2d 912, 915 (Ind. 2000). Only then does the burden shift "to the nonmovant to make a showing sufficient to establish the existence of a genuine issue for trial on each challenged element of the cause of action." *Id.*

Discussion and Decision

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 of Knox Cty.*, 779 N.E.2d 1, 3–4 (Ind. 2002) (collecting cases). To meet this duty, the government must "adopt appropriate precautions—including warning of hazardous road conditions or temporarily closing roads—to prevent persons exercising due care from suffering injury." *Bules v. Marshall Cty.*, 920 N.E.2d 247, 250 (Ind. 2010). But, when an injury results from the "temporary condition of a public thoroughfare" caused by weather, the government is "not liable" for that injury. I.C. § 34-13-3-3(3).

Subsection (3) immunity requires two things: that the loss or injury result from a condition (1) that is "temporary" and (2) that is "caused by weather." *Bules*, 920 N.E.2d at 250 (internal quotation marks omitted).

The question of causation asks "whether the loss suffered by the plaintiff was actually the result of weather" or whether it resulted from "some other factor." *Catt*, 779 N.E.2d at 4. The focus of the temporary-versus-permanent inquiry, on the other hand, is whether the government entity "has had the time and opportunity" to remedy the dangerous condition "but failed to do so." *Id.* at 5. In analyzing the former question, the *Catt* Court deemed irrelevant the government's prior negligence in the

design or maintenance of a public thoroughfare and its knowledge of “the frequency with which” a weather-related hazard may have occurred “in the past.” *Id.* Our decision today in *Ladra* reconsidered this analytical restriction. By prohibiting courts from accounting for the government’s prior negligence in the design or maintenance of a public thoroughfare, the rule in *Catt*, we opined, “effectively grants blanket immunity to the state in every circumstance involving inclement weather, leaving injured plaintiffs with virtually no remedy under Subsection (3).” *Ladra v. State*, No. 21S-CT-235, --- N.E.3d --- (Ind. 2021). We acknowledged, however, “the practical importance of government notice and opportunity to respond.” *Id.* “Mindful of these competing interests,” we clarified the rule in *Catt*, holding “that, when the government knows of an existing defect in a public thoroughfare that manifests during recurring weather conditions, and when it has ample opportunity to respond, immunity does **not** apply simply because the defect manifests during inclement weather.” *Id.*

Because the designated evidence establishes that the weather-induced condition here continued to worsen at the time of Staat’s accident, the outcome of this case depends on whether the condition was “temporary.” Our analysis, then, begins by asking whether the government entity “has had the time and opportunity” to remedy the dangerous condition “but failed to do so.” *See* Pt. I, *infra*. After determining that the period of reasonable response here had yet to lapse, we briefly turn to the question of causation, summarily concluding that—with no evidence of prior government conduct contributing to or causing the condition—that condition resulted from weather. *See* Pt. II, *infra*.

I. The condition of I-74 was temporary because of the ongoing storm.

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, 920 N.E.2d at 251. “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.

In *Bules*, we considered in depth the “temporary” prong of Subsection (3). In that case, several days of extreme temperature fluctuations resulted in the flooding of a river and the formation of icy patches on surrounding roads. 920 N.E.2d at 249. The plaintiff sued the county for injuries he sustained when, after failing to immediately notice a high-water sign at the crest of a hill, he crashed his tractor-trailer into a flooded area. *Id.* We held that, “regardless of the alleged inadequacies” in the county’s initial response to the flooding at the accident site, immunity applied because the road condition “had not yet stabilized.” *Id.* at 251. While the river would “eventually” reach a “historic crest,” we observed, the condition “during the hours leading up to the accident” was “still evolving” and, in fact, “continued to worsen.” *Id.* at 249, 251.

Relying on *Bules*, INDOT argues that the “accident was caused by heavy rain, which was a temporary weather condition that was continuing at the time that the accident occurred.” Appellee’s Br. at 15. And because the rain had yet to stabilize or subside, INDOT insists, the period of reasonable response had not yet lapsed, shielding it from liability for Staat’s injuries.

The Staats distinguish this case from *Bules*. The Court in that case, they note, “had before it evidence that is not present here: clear designated evidence that the weather conditions [i.e., flooding and icing] . . . had not stabilized.” Resp. to Trans. at 7. Here, by contrast, they argue, regardless of the ongoing rain, INDOT “designated no evidence to show that the roadway condition was stabilized one way or the other.” *Id.* To the contrary, they insist, a roadway depression, as with “any vessel, even a natural vessel,” has “a maximum volume,” beyond which any further rainwater dissipates, and the condition no longer worsens. OA at 28:14–28:36.

While we agree with the Staats that a condition may stabilize even when the weather that caused that condition has yet to subside, that did not happen here. By limiting the “condition of the public thoroughfare” to

a puddle on the roadway, the Staats interpret the phrase too narrowly. While it may have been true that the volume of the **puddle** had stabilized, that was only part of the condition of I-74 at the time of the accident.

Here, INDOT designated evidence that the ongoing rain created flooded roadway conditions, not just a single large puddle. What's more, the pooled water wasn't the only relevant "condition of the thoroughfare." Staat testified that the heavy rain resulted in low visibility. As it started raining "a lot harder" during his commute, he had to give the road "total focus." Appellant's App. Vol. 2, pp. 28, 29–30. In fact, it was raining so hard that Staat "was afraid to stop or pull over because of low visibility." *Id.* at 30. In short, evidence that the storm was worsening provides substantial support for the trial court's determination that the conditions of the road—flooding and lack of visibility—had not yet stabilized.

These facts favor a finding that the condition is temporary even more than those in *Bules*. While the weather event in *Bules* lasted for days and there was no indication that it was accelerating, 920 N.E.2d at 250, the weather event here—an ongoing rainstorm—had begun the night before and the intensity had increased. And due to the condition of the thoroughfare, Staat believed that it would not be safe to pull over to the side of the road in the downpour. The warning that Staat argues INDOT should have provided would not only require INDOT employees to pull to the side of the road, it would also require them to leave the relative safety of their vehicle to place a sign during the rainstorm. We cannot demand that INDOT endanger its employees while a heavy rainstorm causes low visibility.

Once INDOT showed that there was no genuine issue of fact, the Staats had the opportunity to meet their own burden to "make a showing sufficient to establish the existence of a genuine issue." *Butler*, 733 N.E.2d at 915. But rather than relying on any evidence, the Staats simply argue that the puddle **may** have stabilized by reaching its maximum capacity. While our summary-judgment standard requires us to make inferences in favor of the nonmoving party, those inferences must be "reasonable," not mere "conjecture or speculation." *Owens Corning Fiberglass Corp. v. Cobb*, 754 N.E.2d 905, 910 (Ind. 2001).

Because INDOT employees could not safely warn motorists of possible flooding, the trial court properly found that the condition was temporary.³

II. The condition of I-74 resulted from the weather rather than from the government’s conduct.

In deciding whether Subsection (3) applies to a particular claim, the “relevant inquiry is whether the loss suffered by the plaintiff was actually the result of weather or some other factor.” *Catt*, 779 N.E.2d at 4. The Staats allege that the government’s failure to “maintain the roadway and warn motorists” of the pooling water “caused the accident.” Resp. to Pet. to Trans. at 8. In opposition to summary judgment, the Staats argued that the duty to maintain the roadway includes the duty to warn motorists of unsafe conditions or temporarily close the road. So, both claims for failure to maintain the roadway and warn motorists relate to the time during the weather event itself, not, as in *Ladra*, to alleged negligent conduct that occurred prior to the weather event. The duty to warn doesn’t arise during the period of reasonable response. *Roach-Walker*, 917 N.E.2d at 1228. Because we determine that the period of reasonable response had not elapsed, we find that the condition was a result of the weather.

Conclusion

Because the evidence designated by INDOT establishes that the temporary condition had continued to worsen at the time of the accident, and because the Staats’ mere speculation that the pooling **may** have stabilized despite the ongoing inclement weather fails to raise “conflicting reasonable inferences,” we conclude that the trial court properly granted summary judgment in favor of INDOT.

³ We note that the trial court didn’t make findings of fact and conclusions. We, therefore, do not know if the trial court found that the condition was temporary on these grounds. But “we may affirm a trial court’s judgment on any theory supported by the evidence.” *Ratliff v. State*, 770 N.E.2d 807, 809 (Ind. 2002).

Affirmed.

Rush, C.J., and David and Slaughter, JJ., concur.
Massa, J., concurs in result.

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