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# Indiana Court Explains Meaningful Difference Between State & Federal Summary Judgment Standard

This week's installment of the Hoosier Litigation Blog is a short but useful piece for Indiana practitioners. In today's post we take a look at a very meaningful difference between the federal and Indiana state court standard for summary judgment. We do this through the case handed down this past week by the Indiana Court of Appeals: *Kader v. State*.

Many of our readers may think it obvious that Indiana state courts would have different rules than federal courts within Indiana. While this is somewhat true, the actual rules of procedure are not all that different. Indiana's Rules of Trial Procedure are modeled after the Federal Rules of Civil Procedure. Even though the Indiana Trial Rules are modeled on the federal rules, there are a handful of rules that are unique to the Indiana rules; such as T.R. 9.2, T.R. 12(B)(8), and T.R. 13(J) to name a few. The parts that differ are very much the exception in the rules. Indiana law has long recognized that where an Indiana rule is based upon a corresponding federal rule, federal cases can be used to help interpret the Indiana rule. Despite this very useful principle, there are a couple very important distinctions between the way federal courts interpret virtually identical rules.

The most obvious and well-known distinction to civil practitioners is the difference between the standard for Indiana's Rule 12(B)(6) motions to dismiss and the relatively new standard for Federal Rule 12(b)(6) motions to dismiss. A 12(b)(6) motion essentially says that even if the court assumes everything that the plaintiff says is true in the complaint – the document that initiates a case – the plaintiff still cannot succeed on any legal theory. Ever since the Supreme Court of the United States decided the case *Bell Atl. Corp. v. Twombly* in 2008, the standard to survive a Rule 12(b)(6) motion in federal court has been much harsher than the same motion in Indiana state court. This difference was described by the Indiana Supreme Court in a 2008 decision.

> Though this case requires us to apply T.R. 12(B)(6), the parties do not contend that the issue decided in a recent watershed opinion under Fed. R. Civ. P. 12(b)(6) is at stake. In *Twombly*, . . . [t]he Supreme Court overruled its precedent, *Conley v. Gibson*, which had established the "no set of facts" standard used for 50 years to determine whether a complaint should be dismissed for failure to state a claim. The new federal rule is that, to survive a motion to dismiss, a complaint must contain factual allegations "enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true." Even though not joined here, we mention this issue because of the avalanche of cases addressing it—our research of the Westlaw and LEXIS databases indicates that Twombly has already been cited approximately 10,000 times.

Consequently, Indiana has not adopted the new federal approach to Rule 12(b)(6).

A much less well-known difference is a bit more technical, but no less important. The two most common methods for defeating a case before it can reach trial is to seek its dismissal under Rule 12(B)(6) or to seek summary judgment under Rule 56. While the language between Federal Rule 56 and Indiana Trial Rule 56 are different, they still follow the same general procedures. Summary judgment looks at the factual record developed through the discovery process and seeks to decide whether there are any factual disputes that require a trial to determine the application of law. If there are no factual disputes, then the court can decide the case on summary judgment. Because this is so often used to deprive a person from having a jury hear the case, it is disfavored and the "nonmoving party" has the benefit of a presumption in its favor. This means that the moving party has an initial burden to overcome in order to be awarded summary judgment.

Where the crux of the matter rests is in the initial burden upon the moving party. As the court points out in the very first sentence of the opinion, this case is "a

textbook example of the differences between the Indiana and federal summary judgment standards[.]" In Indiana, the burden on the moving party is much heavier. "The initial burden is on the movant to 'designate sufficient evidence to foreclose the nonmovant's reasonable inferences and eliminate any genuine factual issues.'" That is, the party seeking to end the case by summary judgment must actually rebut any potential arguments of the other side even before the other side has to make a single argument. Once the moving party meets this burden, then the burden shifts to the nonmoving party to demonstrate the "existence of a genuine issue for trial on each challenged element of the cause of action."

The Federal Rule 56 approach is markedly different. In federal court, the movant need only "inform the court of the basis of the motion and identify relevant portions of the record 'which it believes demonstrate the absence of a genuine issue of material fact.'" Once this is done, the nonmoving party has the same burden as it does in Indiana state court. The key difference is that in Federal court the moving party does not need to actually develop and rebut the arguments that would be made by the nonmoving party before it can shift the burden.

Because the federal standard is much more favorable to disposing cases on summary judgment, it is much more likely for a case to be determined on summary judgment in federal courts than it is in an Indiana state court. Rightly or wrongly, it is perceived as an almost impossibility to obtain summary judgment in Indiana state courts. One need only review the weekly appeals court decisions to see that summary judgment decisions still exist in state courts, but anyone with experience litigating in both federal and Indiana state courts recognizes the dramatic difference in likelihood of success on a Rule 56 motion.

Join us again next time for further discussion of developments in the law.

**Sources**


- *Kader v. State*, ---N.E.2d---, No. 33A01-1302-CT-72, 2013 WL 6500017 (Ind. Ct. App. Dec. 11, 2013).
- *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).
- *State v. Am. Family Voices, Inc.*, 898 N.E.2d 293, 296 n.1 (Ind. 2008).
- *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

- Ind. Trial Rule 12(B)(6).
- Ind. Trial Rule 56.
- Fed. R. Civ. P. 12(b)(6).
- Fed. R. Civ. P. 56.