

HOOSIER LITIGATION BLOG

www.PavlackLawFirm.com

May 20

2016



by: Colin E. Flora
Associate Civil Litigation Attorney

Indiana: When Is Municipality Liable for Dangerous Traffic Intersections?

As promised, after last week's jaunt into the esoteric issue of citing unpublished decisions, this week we return to developing law. As always seems to be true, when a week goes by where I'm left in the desert of uninteresting cases, the following week the heavens burst open and pour a flood upon us. With a great many to choose from, let us settle on one for now. If next week is less enticing, then we shall look back and fill our intellectual buckets with one of the other enticing decisions.

This week, we look to the fascinating issue of under what circumstances can a municipality be held liable for a car wreck at a dangerous intersection. For that, we look to the Court of Appeals of Indiana: *Jones v. Hancock County Board of Commissioners*. The facts are fairly straightforward. A seventeen year old driver who received her license two days earlier, came to a stop at a two-way intersection where a sign beneath the stop sign noted that cross-traffic does not stop. On the uninhibited road was a truck, travelling between ten and fifteen miles in excess of the posted speed limit. As the truck approached the intersection, a different car crossed passed through the intersection. At the same time, the young driver "inched up a little bit past the stop sign to look both ways." According to a witness, the truck just barely missed the first car but did hit the car with the young driver, causing the

truck to roll several times, killing the truck driver in the process. This case was brought by the estate of the deceased truck driver against the county due to the dangerous nature of the intersection.

The driver's estate alleged:

the Board and Highway Department owed a duty to [the driver] to protect the users of Hancock County roadways from dangerous conditions on the roadways and to exercise reasonable care in installing proper traffic control devices, that they breached their duty "by failing to properly and diligently monitor traffic accidents in Hancock County starting in 2008, including traffic accidents occurring at the Intersection," that they breached their duty "by failing to properly and diligently control traffic at the Intersection through the installation of an alternative traffic control device to the two-way stop which was obviously not properly controlling the Intersection," and that their "failure to monitor and properly control the Intersection were a concurring and proximate cause of serious personal injury and death to [the driver]. . . ."

As this was a case against a state entity, the Indiana Tort Claims Act (ITCA) was implicated. We have previously discussed lawsuits against governmental entities generally. At play here is the issue of immunity under the ITCA. Section 3 of the ITCA sets out a laundry list of reasons why a municipal defendant may be permitted to claim immunity. Before we launch into a discussion of how the immunity analysis works in this case, let us first make sure that we are on the same page about what "immunity" means. For that, let us turn back to the *Jones* case:

Immunity, whether under Indiana common law or the ITCA, assumes negligence but denies liability. A traditional formulation of tort liability requires the plaintiff to establish a duty, breach of that duty, proximate cause, and damages. The Court has said: "In general, it is only after a determination is made that a governmental defendant is not immune under the ITCA that a court undertakes the analysis of whether a common law duty exists under the circumstances." This is generally so because "immunity trumps [a claim of negligence] and bars recovery even where ordinary tort principles would impose liability."

In short, if immunity applies, then it does not matter whether the normal principles of law would attach liability, the defendant cannot be held liable.

We have previously discussed the most common basis for immunity: discretionary function immunity. We first did so in the context of whether a private water company could invoke the immunity, and later in the case of a school shooting. Here, the county argued a different ground for immunity. Discretionary function immunity is subdivision (7) of the statute. The county relied on subdivision (8):

A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

* * * * *

- (7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.
- (8) The adoption and enforcement of or failure to adopt or enforce:
 - (A) a law (including rules and regulations); or
 - (B) in the case of a public school or charter school, a policy;unless the act of enforcement constitutes false arrest or false imprisonment.

The basic argument for the county was that it could not be held liable for the initial decision to make the intersection a two-way stop or for failing to timely make it a four-way stop. (After the accident, the county passed an ordinance to convert the intersection into a four-way stop.) The trial court agreed with the county and granted summary judgment, thereby ending the case. The driver's estate appealed.

Before the trial court, the estate argued that it was not basing its claim on the failure to pass a four-way stop ordinance. Instead, the estate argued that liability stemmed from the failure to monitor the intersection and failure to place a warning sign. On appeal, the court agreed with the dichotomy, finding merit in both the position of the county and that of the estate. As to the issue of whether the county *could be* found liable for not establishing a four-way stop, the court affirmed summary judgment. Nevertheless, the court reinstated the estate's claim in part on the failure to monitor and warn aspect.

To understand the court's decision to reverse the summary judgment in part, we must look to a case from 2001: *Board of Commissioners of the County of Harrison v. Lowe*. Factually *Lowe* is remarkably similar. Basically, the only

difference between *Lowe* and *Jones* was that it was the driver crossing the intersection instead of a driver in the intersection that brought suit. The driver in *Lowe* argued that the county “negligently failed to mark and sign the intersection.” As in *Jones*, the county argued that it was immune. To that end, the *Lowe* court held that the county was immune “immune for its failure to adopt ordinances to erect or change the placement of stop signs.” Importantly, for immunity as to stop signs, it did not matter whether the county actually knew the intersection was dangerous.

The analysis did not stop there, however. The *Lowe* court then turned to whether the county could be liable for failing to erect warning signs. There, the court held that because the county had not actually sought summary judgment on the failure to post warning signs issue, it had not carried its burden on defeating that aspect of the claim and was not entitled to summary judgment. The same result was ultimately reached in *Jones*, but would be flippant for that to be the takeaway. The real takeaway is that there is a difference between the design of the regulatory signs, such as stop signs, and warning signals. Stop signs and other regulatory signs require the passage of ordinances, which then triggers the immunity. Warning signs, however, do not require an ordinance. Because the warning signs could be erected without the passage of an ordinance, the burden was on the county to defeat this claim under typical tort law, not under the immunity provided by the ITCA.

To summarize, an Indiana municipality cannot be held liable for a car accident on the basis that the intersection should have had different regulatory signs to control the movement of traffic. A municipality may, however, be liable for failing to post warning signs at dangerous points in a roadway. Exactly what circumstances will permit liability for failure to provide warning signs is not answered by *Jones* or its predecessor, *Lowe*. Each of those cases merely found that it was an issue for the jury because the respective county had not sought summary judgment on any grounds other than the ordinance immunity. Put simply, if the action does not require an ordinance, then the municipality cannot invoke subdivision (8) to avoid liability.

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

Sources

- *Jones v. Hancock Cty. Bd. of Comm’rs*, ---N.E.3d---, No. 30A01–1506–CT–543, 2016 Ind. App. LEXIS 163 (Ind. Ct. App. May 20, 2016) (Brown, J.).

- *Bd. of Comm'rs of Harrison Cty. v. Lowe*, 753 N.E.2d 708, 710 (Ind. Ct. App. 2001) (Brook, J.), *trans. denied*, 774 N.E.2d 504 (Table) (Ind. 2002).
- Indiana Tort Claims Act, codified at Ind. Code ch. 34-13-3.
- Colin E. Flora, *Filing Claims Against the State Government*, HOOSIER LITIG. BLOG (Aug. 17, 2012).
- Colin E. Flora, *Indiana Supreme Court: Private Water Company Cannot Invoke Sovereign Immunity*, HOOSIER LITIG. BLOG (Feb. 7, 2014).
- Colin E. Flora, *Indiana Court Examines Discretionary Function Immunity After Middle School Shooting Case*, HOOSIER LITIG. BLOG (May 23, 2014).

***Disclaimer:** The author is licensed to practice in the state of Indiana. The information contained above is provided for informational purposes **only** and should not be construed as legal advice on any subject matter. Laws vary by state and region. Furthermore, the law is constantly changing. Thus, the information above may no longer be accurate at this time. No reader of this content, clients or otherwise, should act or refrain from acting on the basis of any content included herein without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue.