

Harold E. Williams, as the personal representative of the Estate of Arnetia Williams, and Beverly Stamper (collectively, Williams) appeal the grant of partial summary judgment to the Fayette County Board of Commissioners and the Fayette County Highway Department (Fayette County) in Williams' lawsuit against Fayette County. Williams raises the following issues:

- I Did the trial court err in concluding that Fayette County was immune, under Ind. Code 34-4-16.5-3(3), for negligent failure to make their roads reasonably safe for motorists despite notice of the hazardously icy condition of the road and opportunity to remedy that condition?
- II Did the trial court err in concluding that Fayette County, despite notice of the hazardously icy condition of their road and opportunity to remedy the condition, owed the appellants no private duty to exercise reasonable care to remedy that condition?

We affirm.

This case was resolved by summary judgment. Our standard of review is well-established. The reviewing court faces the same issues that were before the trial court and follows the same process. Greathouse v. Armstrong (1993), Ind., 616 N.E.2d 364, 366. Although the party appealing from the grant of summary judgment has the burden of persuading the court that the grant of summary judgment was erroneous, the reviewing court carefully scrutinizes the trial court's decision to assure that the party against whom summary judgment was entered was not improperly prevented from having its day in court. *Id.*

Summary judgment is appropriate only if the pleadings and evidence sanctioned by Indiana Trial Rule 56(C) show 'there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.'

Even if the facts are undisputed, summary judgment is not proper if those undisputed facts 'give rise to conflicting inferences which would alter the outcome.' Bochnowski v. Peoples Federal Sav. & Loan Ass'n (1991), Ind., 571 N.E.2d 282, 285. The burden is on the moving party to prove the non-existence of a genuine issue of material fact. Oelling v. Rao (1992), Ind., 593 N.E.2d 189, 190. If the movant sustains this burden, the opponent may not rest upon the pleadings, but must set forth specific facts showing that there is a genuine issue for trial. T.R. 56(E). If there is any doubt, the motion should be resolved in favor of the party opposing the motion. Oelling, 593 N.E.2d at 190.

Mullin v. Municipal City of South Bend, 639 N.E.2d 278, 280-281 (Ind. 1994).

The evidence reveals that ice accumulated overnight on a bridge in Fayette County, Indiana. At about 5:30 a.m. the next day, Arnetia Williams drove her car onto the bridge. Because of the ice, she lost control of the car, which then collided with another vehicle. Arnetia Williams died from injuries received in the accident. Beverly Stamper, a passenger in the car, sustained injuries in the crash. Stamper and the personal representative of Williams eventually sued Fayette County for negligence with a claim that "their damages were caused by the negligence of the County in breach of its duty to make roads safe for travelers after it had notice of a hazardous condition and opportunity to remedy it."

The trial court granted partial summary judgment to Fayette County. The trial court based its decision, in part, upon the Indiana Tort Claims Act, which states:

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

* * *

(3) the temporary condition of a public thoroughfare which results from the weather,

Ind. Code 34-4-16.5-3. The trial court concluded that no genuine issue of material fact existed on the question of whether the ice on the bridge was a temporary condition which had resulted from the weather.

Williams claims that the trial court should not have granted summary judgment because a genuine issue of material fact still exists for the jury to resolve. Williams quotes the following:

In Walton v. Ramp (1980), Ind.App., 407 N.E.2d 1189, we held that I.C. 34-4-16.5-3 is a codification of a governmental entity's common law duty to exercise reasonable care and diligence to keep its streets and sidewalks in a reasonably safe condition for travel. Under the common law, a governmental entity is not generally liable for injuries caused by defects in sidewalks and streets due to natural accumulation of snow and ice. Id.; City of South Bend v. Fink (1966), 139 Ind.App. 282, 219 N.E.2d 441. However, a city could be held liable under the common law for failure to remove snow and ice if it could be shown that the snow and ice were an obstruction to travel and that the city had an opportunity to remove the snow and ice. Ewald v. City of South Bend (1938), 104 Ind.App. 679, 12 N.E.2d 995. Reflecting these common law principles, I.C. 34-4-16.5-3(3) provides immunity for temporary conditions caused by the weather, but does not provide for immunity when the condition is permanent or not caused by the weather.

Van Bree v. Harrison County, 584 N.E.2d 1114, 1117 (Ind. Ct. App. 1992). Williams contends that Fayette County breached its common law duty to exercise reasonable care and diligence to keep its streets and sidewalks in a reasonably safe condition for travel. Williams claims the designated evidentiary matter supports the inference that the ice was an obstruction to travel and that the city had an opportunity to remove it.

This Court has described the extent of the common law duty mentioned above, as follows:

The general rule, as to the liability of cities for injuries caused by the presence of snow or ice on the sidewalks thereof, as gathered from the best reasoned decisions seems to be, that while a city is not liable for injuries arising from a general slippery condition of a sidewalk made so from an accumulation of snow or ice through natural causes, nevertheless liability may exist *where such snow or ice has been so changed in form from its original condition as to become an obstruction to travel* by reason of being rough and uneven.

City of Linton v. Jones, 75 Ind.App. 320, 322, 130 N.E. 541, 542 (1920) (emphasis added).

The slippery condition of a thoroughfare arguably demands less attention from a city than does

