

STATE OF INDIANA)
)ss:
COUNTY OF MARION)

MARION SUPERIOR COURT
CIVIL DIVISION 10
CAUSE NO. 49D10-0006-CT-000852

RICHARD GARMAN,)
)
 Plaintiff,)
 vs.)
)
 CITY OF INDIANAPOLIS and)
 INDIANAPOLIS POLICE)
 DEPARTMENT,)
)
 Defendants.)

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Introduction

Plaintiff Richard Garman (“Garman”) seeks damages largely for personal injuries from an automobile accident in which a suspect chased by police hit Garman’s automobile. Defendants City of Indianapolis and the Indianapolis Police Department (“City”) move for summary judgment arguing law enforcement immunity, and claiming Plaintiff’s tort claim notice limits damages to current and future medical expenses. With respect to immunity, the Court finds Indiana common law precludes ITCA application to police auto negligence cases. With respect to limiting damages, the Court finds Plaintiff substantially complied with the Indiana Tort Claim Act. Accordingly, the Court denies Defendants’ Motion for Summary Judgment.

Issues

Does the City have law enforcement immunity?

Is Garman's tort claim notice sufficient to allow damages beyond current and future medical expenses?

Facts

On or about November 7, 1999, Garman drove westbound on East 38th Street making a left turn to proceed onto South Meridian Street in Indianapolis. Around the same time, a City police officer observed a vehicle heading eastbound on 38th Street. (Report at pg. 4). Based on his experience and training, the police officer suspected that the vehicle and license plate might be stolen. (Report at pg. 3). The officer turned on his police lights in order to stop the vehicle. (Report at pg. 4). Instead, the driver sped up and attempted to escape. (Report at pg. 4). The officer pursued the suspect in a high-speed chase eastbound on East 38th Street. (Deposition of Robert Rider in Cause No. 49G02-9911-CF-195364, pg. 25-26). The chased vehicle was reached approximate speeds of 75-80 mph while the officer, by his own estimate, was reaching speeds of 68-70 mph during the chase. (Dep. Of Officer Rider, pgs 25-26). The office pursued the vehicle keeping less than a block between their two cars. The suspect eventually disregarded the traffic signal at Meridian and 38th Street, and collided with Garman. (Police Report and Accompanying Investigative Report).

The collision caused serious personal injury to Garman and the death of his fiancé, who was a passenger. The collision also caused the death of the passenger in the suspect's vehicle. The suspect was arrested for Resisting Law Enforcement Causing Death, but was never charged regarding stolen license plates because the plate actually belonged to him. (Dep. Of Officer Rider, pg. 41).

At no time did the officer terminate his pursuit, despite General Order 8.02 of the Indianapolis Police Department regarding Emergency Responses, Pursuits, and Escorts. (General Order 8.02).

Garman suffered certain injuries as a result of the crash. His injuries include chest pain, back pain, liver and spleen lacerations, pulmonary contusion, broken sternum and ribs, glass in his back and neck, emotional distress and clinical depression due to the accident and death of his fiancé and an inability to sleep.

On March 31, 2000, Garman filed a tort claims notice against the Defendants. (Tort Claims Notice at pg. 1). The notice claims Garman “has incurred medical expenses as a result of the incident and will incur future medical expenses.” (Tort Claims Notice at pg. 2). The notice also states Garman seeks damages in the amount allowed by the statutory cap on damages against governmental entities. (Tort Claims Notice at pg. 3). Garman also attached a copy of the Crash Report to his tort claims notice. On June 14, 2000, Garman filed this action seeking damages for current and future medical expenses, as well as property damage, lost wages, and other unspecified special expenses.

Law

Summary judgment is proper if the evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. T.R. 56 (C).

The moving party must establish the “absence of any genuine issue of fact as to a determinative issue.” Jarboe v. Landmark Community Newspaper, Inc. (1994), Ind., 664 N.E.2d 118, 123. If there is sufficient evidence to establish the elements of a determinative defense, the burden shifts to the plaintiff to make sufficient showing to

establish the existence of a genuine issue for trial regarding such defense. Shell Oil Co. v. Lovold Co. (1998), Ind., 705 N.E.2d 981. On a motion for summary judgment, all doubts as to the existence of material issues of fact must be resolved against the moving party. Owens Corning Fiberglass Corp. v. Cobb (2001), Ind., 754 N.E.2d 905, 909.

Immunity Issue

Campbell v. State (1972), Ind., 284 N.E.2d 733 abolished Indiana sovereign immunity except for limited governmental actions. Subsequently, the Indiana Tort Claims Act (“ITCA”) was enacted.

Under the ITCA, “A governmental entity or employee acting within the scope of the employee’s employment is not liable if a loss results from: . . . (8) the adoption and enforcement of or a failure to adopt or enforce a law . . . unless the act of enforcement constitutes false arrest . . .” I.C. 34-13-3-3(8). This section is generally interpreted as “law enforcement immunity.” Seymour National Bank v. State (1981), Ind., 422 N.E.2d 1223.

Quackenbush v. Lackey (1993), Ind., 622 N.E.2d 1284 overruled Seymour’s broad application of “law enforcement immunity” under the ITCA, and found no immunity for police officers unless their actions related to “public” duties, not common law duties to private individuals, like negligence. The court in Quackenbush also reasoned that the ITCA codified existing Indiana common law including common law duties to private individuals.

Benton v. City of Oakland City (1999), Ind., 721 N.E.2d 224 reaffirmed Campbell’s holding of limited sovereign immunity, and expressly observed, “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.” Id. at 232.

In King v. Northeast Security, Inc. (2003), Ind., 790 N.E.2d 474, the Indiana Supreme Court further discussed the ITCA and “law enforcement immunity” and held:

- a. Campbell is properly applied by presuming that a governmental unit is bound by the same duty of care as nongovernmental unit *except* where the duty alleged to have been breached is so closely akin to one of the limited exceptions under the ITCA. Id. at 479.
- b. The public/private duty test “is a tool for applying the ‘adopting or enforcing the law’ language” of the ITCA law enforcement immunity section. But as Benton pointed out, this test was frequently not susceptible to ready application. So although Benton appears to implicitly overrule the public/private duty test *at common law*, the court still held: “We think the courts remain free to interpret the statutory language without referring to the public/private duty analysis *when appropriate.*” Id. at 482 (emphasis supplied). This directly implies that the public/private duty analysis otherwise remains as law.

Overall, duty analysis in immunity cases remains unclear after King, but the above language appears to suggest Indiana courts should use the public/private duty analysis in most immunity cases.

In Seymour National Bank v. State, *supra.*, a police car in pursuit crashed into another vehicle. Although a divided Indiana Supreme Court found “law enforcement immunity” under ITCA, Justice DeBruler dissents by first observing the public/private duty distinction, especially in motor vehicle cases involving police:

Operators of motor vehicles upon the public streets and highways, whether in the employ of another or not, owe a private legal duty to others using the streets, to use due care while driving. This duty is imposed upon governors, judges, legislators, public employees and private employees and citizens, alike, when taking the wheel. That the General Assembly should grant to any person a legal immunity from liability when operating a motor vehicle upon a public street, is an astounding proposition, as it is totally at odds with the pervasive regulation of that activity by the State.

Id. at 864.

Justice DeBruler further reasons that such blanket immunity conflicts with other statutes which regulate the operation of motor vehicles, specifically I.C. 9-21-1-8 which provides that persons who drive an authorized emergency vehicle, such as a police car, are not relieved from the duty to drive "with due regard for the safety of all persons." Therefore, Justice DeBruler concludes, an officer owes a duty of driving with reasonable care to other travelers on the highway while enforcing the law. Id. at 864.

More recently, Patrick v. City of Gary and City of Gary Police Department (2005), Ind.App, 821 N.E.2d 856 also found Justice DeBruler's dissent useful in holding that the ITCA provides no immunity to police in cases of alleged auto negligence, even when enforcing a law.¹ In Patrick, a chasing police officer collided with an unrelated vehicle while speeding between sixty and seventy-five miles per hour. The Indiana Court of Appeals reviewed the law enforcement immunity cases above, and Justice DeBruler's argument regarding the conflict between the ITCA and the "due regard" standard of I.C. 9-21-1-8. Patrick first resolves the conflict by applying well-settled rules of statutory construction, especially harmonizing statutes related to the same subject without repealing by implication. Id. at 867. In addition, it concludes "the legislature did not intend to 'sanction negligent and reckless conduct, and [cause] hardship to the individual injured by the enforcement.' " Id. at 868 (quoting Quakenbush v. Lackey, supra. at 1220).

Under Patrick, the “due regard” standard of I.C. 9-21-1-8 prevails over the ITCA, and police chases are not immune from liability.

Notice Issue

Indiana Courts have consistently held that Indiana is a notice pleading state. City of Anderson v. Weatherford, 714 N.E.2d 181, 185 (Ind. App. Ct. 1999).

ITCA notice must include the names of the persons involved, the extent of the loss, the time and place of the loss, the circumstances that brought about the loss, the amount of damages sought, and the address of the person making the claim. It is strictly construed with respect to time of notice. However, Indiana common law has long held that whether notice is *sufficiently given* as time, place, nature, etc. of the injury, is determined by liberal construction. See Volk v. Michigan City (1941), Ind.App., 32 N.E.2d 724; Galbreath v. City of Indianapolis (1970), Ind., 255 N.E.2d 225; Daugherty v. Dearborn County (2005), Ind.App., 827 N.E.2d 34. The purpose of the notice statute is to inform a political subdivision with reasonable certainty of the accident and surrounding circumstances so that the political subdivision may investigate, determine liability and prepare a defense to the claim. Daugherty v. Dearborn County, *supra*. at 35. Our supreme court has stated that a liberal application of the requirements of the ITCA statute was proper in order to avoid denying plaintiffs an opportunity to bring a claim where the purpose of the statute has been satisfied. Id. Not all technical violations of this statute are fatal to a claim. Id. Non-compliance has been excused in certain cases based on the theories of substantial compliance, waiver, and estoppel. Id. Furthermore:

What constitutes substantial compliance, while not a question of fact, but one of law, is a fact-sensitive determination. Generally, a notice that is filed within the required time period, informs the municipality of the claimant's intent to make a

¹ The Indiana Supreme Court granted transfer May 12, 2005.

claim, and contains sufficient information that reasonably affords the political subdivision with an opportunity to promptly investigate the claim will satisfy the purpose of the statute and will be held to substantially comply with the statute. In reviewing a notice provided by a claimant to a political subdivision, the emphasis is whether the public body is sufficiently notified of the claim, able to meet it, and is not misled.

Howard County Bd. of Comm'rs v. Lukowiak (2004), Ind.App., 810 N.E.2d 379.

Analysis

First of all, the Court follows the Patrick analysis and conclusion. Police officers engaged in a chase are not entitled to immunity for negligence. It is therefore left to a jury to decide the fault in this case, that is, who caused the accident: the police officer, the suspect who chose to flee, or a combination of both?

In addition, the Court finds Garman's ITCA notice sufficient to allow the jury to consider the damages for which he prays in the Complaint. The notice only specifies current and future "medical expenses." However, Garman also attached the crash report. Any reasonable reading of the notice and information provided to the City shows an extensive accident, two deaths, multiple injuries, and severe property damage. The Court cannot conclude the mere omission of specific references to property damage or lost wages, for example, fails to reasonably afford the City an adequate opportunity to investigate Garman's claim, or somehow misleads the City about the nature of the claim. The City could not logically be misled about the obvious nature of this accident, and the range of likely resulting damages. The liberal construction granted to Garman here, and the reasonable inferences from his notice, especially the crash report, show substantial compliance with the ITCA.

Order

The City's motion for summary judgment is DENIED.

Dated this 24th day of August 2005.

David J. Dreyer, Judge
Marion Superior Court

Commissioner Heather Welch
Marion Superior Court