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July 27

2012



by: Colin E. Flora
Associate Civil Litigation Attorney

Indiana Guest Statute Not Applicable to Persons Outside of Vehicle

This past week the Indiana Supreme Court had an opportunity to address the role of the Guest Statute to a person who was injured while outside of a vehicle and attempting to direct the driver while parking. The Indiana Guest Statute provides that “[t]he owner, operator, or person responsible for the operation of a motor vehicle is not liable” for injuries to his parent, spouse, child/stepchild, brother/sister, or a hitchhiker who is injured while being transported in or upon the vehicle unless he is doing it for pay or injured the other person due to wanton or willful misconduct. Basically, what the Guest Statute does is provide immunity to a person whose family member is injured in a car accident.

In a case decided this week by the Indiana Supreme Court, the Court held that the Guest Statute does not apply to bar a claim by a man who was injured shortly after exiting a vehicle driven by his father. The specific facts of *Clark v. Clark* were that Robert Clark, Jr. and his father Robert Clark, Sr. had driven somewhere. When they got where they were going, Junior – a 46-year-old man himself – hopped out of the car and directed his father into a parking space. When Junior signaled for his father to stop, Senior reached for the brake but accidentally hit the gas and seriously injured his son. Junior brought a suit against his father to

recover for his injuries.

One important note is that while it may seem peculiar for a son to sue his father, it is not only not uncommon but it is not quite what you may think. This is not a situation in which a son is mad at his father and suing him personally. This is a case where the father is sued as a procedural/formalistic requirement. The reality of cases like this is that the named defendant is really just a strawman. The real defendant is the father's insurance coverage. However, under Indiana law an injured person cannot sue the other person's insurance company directly for his injuries.

The primary issue in the *Clark* case was whether the son, who had just exited his father's vehicle, constituted a person who is "in or upon" his father's vehicle. This is something where the average non-lawyer reader may look at it and be absolutely puzzled how anyone could ever seriously argue that the son was "in or upon" the vehicle. And in this case, the average non-lawyer is in line with the average lawyer. It is quite inexplicable how anyone might conclude that the Guest Statute could apply to the *Clark* case. Nevertheless, the trial court actually found that the Guest Statute barred the son's claim.

Fortunately the mind-boggling results ended there. The son appealed the decision to the Indiana Court of Appeals who reversed the trial court and held that the Guest Statute was not a bar to the case. However, the decision was not unanimous. It was split 2-1. Judge Robb, looking to Indiana Case law found two other equally bizarre cases that supported the proposition that a person outside of a vehicle could be covered by the Guest Statute. Due to this split and its previous success at the trial court – after all defendant's argument had worked with 2 out of 4 judges – sought review by the Indiana Supreme Court.

The Indiana Supreme Court looked at the Guest Statute and concluded that it was clear and unambiguous. The key phrase in the Statute to the case was not "in or upon" as had been so crucial to the Court of Appeals decision, but rather "being transported." The son was not "being transported" when he was standing outside of the vehicle. Thus, the Guest Statute did not apply. However, like the Court of Appeals decision, the Supreme Court decision was not unanimous. The court was split 3-2, with two Justices finding the logic of Judge Robb's dissent to be persuasive. So, at the end of the day the forces of common sense won out with a score of 5 to 4. With the trial court judge, a Court of Appeals judge, and two Supreme Court justices finding in favor of the defendant.

Even though the Indiana Supreme Court has the final say on issues of Indiana law, and *Clark v. Clark* was ultimately decided in favor of the son, the

depth of divide on the issue throughout the judiciary makes it readily apparent that this is no settled issue. Thus, when it comes to handling such an issue, it is of the utmost importance to find a lawyer who understands the complexities of this area of law, is experienced, and can zealously advocate for your rights.

Join us again next week.

Sources

- *Clark v. Clark*, 971 N.E.2d 58 (Ind. 2012).
- *Clark v. Clark*, No. 01A02-1007-CT- 759, 2011 WL 2848178, at *3-5 (Ind. Ct. App. July 19, 2011).
- Indiana Guest Statute– codified at Ind. Code Chapter 34-30-11-11.

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