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Indiana Supreme Court Applies Comparative Fault to Intentional Tort & Rejects Very Duty Doctrine

Today's first post was dedicated to the case *Schoettmer v. Wright*. This post is dedicated to a case that garnered a great deal of attention on its way up to the Indiana Supreme Court: *Santelli v. Rahmatullah*. Sadly, unlike *Schoettmer*, the result of *Santelli* strikes a serious blow to the rights of injured people in Indiana. The *Santelli* decision stands as a reminder of the imperfection of the legal system. Just because someone has a legal right to recover compensation for harm does not mean that the legal machine actually provides a real mechanism to remedy that harm or turn a judgment into anything more than paper.

Santelli was of sufficient importance as to garner amici curiae briefs from the Indiana Trial Lawyers Association and from the Defense Trial Counsel of Indiana. Despite the hard work of the ITLA attorneys and plaintiff's counsel, it was the defendants and the defense bar that would rule the day.

In order to understand the context and importance of the *Santelli* decision, we must first revisit the concept of comparative fault. In today's earlier post we briefly touched on the distinction between comparative fault and contributory negligence. We have previously gone into great detail about the comparative fault act in our post *Damages Pt. 5 - Assessing Damages When Injured Person is Partially*

at Fault. For our purposes we will keep the discussion brief. In short, under the comparative fault standard, a person can recover for his/her injuries so long as that person is no more than 50% at fault for the harm done to him/her. In cases where only two people were involved, it is easy to see that if the plaintiff is 20% at fault then the defendant is 80% at fault. Where things get complicated is when you add in multiple parties. This is especially true when there are what we call "nonparties" who may also be liable. Typically a nonparty is a person who has not been made a party to the suit because he or she is not sufficiently financially solvent to satisfy a judgment. Such people are often called "judgment proof." This is the precise issue in *Santelli*.

The facts of the case are tragic. Mr. Santelli was an Illinois resident who was staying in an Indiana hotel while working on a construction project. It was in his hotel room that he was robbed and murdered by Joseph Pryor – now serving an 85-year sentence for the crimes. Due to Joseph Pryor being judgment proof and Indiana law recognizing a duty of a hotel owner to safeguard his patrons, the late Mr. Santellli's estate brought a claim against the owner of the hotel. It is important to note that Joseph Pryor was not just some vagrant that wandered in off the street to commit his heinous crime; he was an employee of the hotel. He was also a convicted felon with an outstanding warrant for violation of probation.

The case progressed to a five-day jury trial in which the evidence showed that the hotel was in a high crime area and that the security at the hotel was lax. Specifically, the only security cameras were in the lobby and by the pool and were not monitored. Further, the hotel failed to keep exterior doors consistently closed and also failed to keep locks in working order. Unsurprisingly, the jury returned a verdict for the plaintiff, although a fairly modest one in light of the horrendous circumstances of Mr. Santelli's death.

> [T]he jury returned a verdict finding total damages in the amount of $2,070,000.00 and apportioning the fault for Santelli's death as follows: 1% to Santelli, 2% to Rahmatullah, and 97% to Pryor, resulting in an award to the Estate of $41,400.00.

Thus, without Pryor a judgment proof person and not a party to the case, the net return of the verdict was $41,400 for the life of a man. The case was appealed.

Before the Indiana Court of Appeals, a unanimous panel reversed the trial court and remanded the case. However, the defendant sought and received transfer to the Indiana Supreme Court where Justice Robert D. Rucker, writing for a unanimous court, reinstated the trial court's decision. Though the case addressed a technical procedural issue at length, the primary thrust was the argument that the

comparative fault standard "should not allow apportionment of responsibility to an intentional tortfeasor or criminal actor when the negligent defendant's 'very duty' was to exercise reasonable care to protect the plaintiff from the specific risk of an intentional tort or criminal act." Put more simply, where the entire point of a theory of liability is to prevent the harm that occurred, a defendant should not be allowed to point the finger elsewhere to avoid liability.

In resolving this issue in the defendant's favor, the court looked to the concept of the "very duty" doctrine. The court, in light of no case law discussing the concept, considered this to be a novel issue in Indiana law that merited examination. The court's focus turned on the specific language of Indiana's Comparative Fault Act. The court found two sections of specific importance to this case. The first states:

> The jury shall determine the percentage of fault of the claimant, of the defendants, and of any person who is a nonparty. . . . In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party. . . .

The second defines "fault" for purposes of the act.

> [A]ny act or omission that is negligent, willful, wanton, reckless, or *intentional* toward the person or property of others. The term also includes unreasonable assumption of risk not constituting an enforceable express consent, incurred risk, and unreasonable failure to avoid an injury or to mitigate damages.

Applying the language of these two portions, the court found that the statute specifically allows for application of fault to nonparties for intentional harms.

This finding alone was not sufficient to overcome the "very duty" argument advanced by ITLA and Mr. Santelli's estate. In order to do so, the court had to conclude that the Comparative Fault Act had acted to supplant a common law doctrine known as "joint and several liability." Under the common law approach of "joint and several liability" defendants who are found to be "jointly and severally liable" are both responsible for 100% of the damages. That is not to say that the plaintiff can collect 200% of his damages if he collects from both, but that the plaintiff has full discretion in choosing from whom and to what extent to collect from either defendant. Under that doctrine, where the harm was an intentional tort then joint and several liability attached. Thus, the estate argued that the

Comparative Fault Act had not replaced "joint and several liability."

However, in a 2012 decision, the Indiana Supreme Court found just that, stating, "[T]he Act abrogates the old rule of joint and several liability in suits to which the Act applies." While it may seem that this pronouncement is cut and dry and leaves no room for the plaintiff's argument, bear in mind that the Indiana Court of Appeals, in *Dallas v. Cesna*, found that the above quotation did not mean that the Comparative Fault Act applied to intentional torts. Ultimately, the court rejected the "very duty" argument and upheld the result at trial.

So what does this mean? It means that there is now a manifestly unjust hole in Indiana law. That is, there is now a duty on persons to prevent harm without a real mechanism to enforce that duty. One is left to wonder what the point of assigning a duty if there is no meaningful enforcement mechanism to see that the duty is observed.

I am generally very proud of Indiana's Supreme Court and regardless of this decision think that we have among the finest justices in any state. But I very much disagree with the underlying reasoning that created this result. The good news is that since the case turned on the breadth of the Comparative Fault Act, results like this can be prevented if the General Assembly acts to amend the Comparative Fault Act to allow for the enforcement of the very duty.

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

Sources

- *Schoettmer v. Wright*, --- N.E.2d ---, No. 49S04-1210-CT-607, 2013 WL 4519807 (Ind. Aug. 27, 2013).
- *Santelli v. Rahmatullah*, --- N.E.2d ---, No. 49S04-1212-CT-667, 2013 WL 4552608 (Ind. Aug. 28, 2013).
- *Santelli v. Rahmatullah*, 966 N.E.2d 661 (Ind. Ct. App. 2012), *trans. denied.*
- *Ind. Dept. of Ins. v. Everhart*, 960 N.E.2d 129, 138 (Ind. 2012).
- *Dallas v. Cesna*, 968 N.E.2d 291 (Ind. Ct. App. 2012).

- Indiana Tort Claims Act – codified at Ind. Code chapter 34-13-3.

- Colin E. Flora, *Damages Pt. 5 - Assessing Damages When Injured Person is Partially at Fault*, HOOSIER LITIGATION BLOG (May 11, 2012).