

The relationship defines the duty

By Donald P. Eckler

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The first questions in any negligence claim are whether a duty is owed, and if a duty is owed, what the duty is. Fortunately for defendants, the determination of the existence of a duty is usually a question of law that can be decided by a judge on a motion to dismiss or on a motion for summary judgment.

Two recent cases, one trial court opinion from Kane County and one oral argument before the Indiana Supreme Court illustrate the limitations on duties that can be imposed on employers and landowners, respectively.

In *Iniguez v. Aurora Packing Company, Inc.*, 16th Judicial Circuit Associate Judge Mark A. Pheanis granted a motion to dismiss a suit against an employer brought on behalf of the estate of the deceased spouse of an employee of the defendant. The plaintiff claimed that the defendant, early in the pandemic, failed to provide proper protection to its employees and that the deceased was exposed to COVID-19 when her husband, an employee of the defendant, contracted the virus and brought it home. Putting the causation issues aside which the court took as true on the 735 ILCS 5/2-615 motion, the court dismissed the suit, holding that there was no relationship sufficient to support a duty owed to the deceased.

The court considered, among other cases, *Marshall v. Burger King*, 222 Ill.2d 422 (2006), and *Kirk v. Michael Reese Hospital and Medical Center*, 117 Ill.2d 507 (2009), for its analysis, and held that there must be some limit to the duty owed stating:

“Decedent stands in no special relationship to Defendant. Decedent was not an invitee of Defendant and was not caused injury as a consumer of Defendant’s products or services. Taking the allegations of the complaint as factual as to causation, Decedent’s relationship to Defendant was no different from the relationship of any other citizen of the world who might encounter an employee of Defendant who contracted Covid while at work.”

Similar to *Iniguez*, the relationship of the parties and what duty is owed to those that never came onto the land of the defendant is central to an issue currently before the Indiana Supreme Court in *Reece v. Tyson Fresh Meats, Inc.*

The plaintiff in *Reece* suffered a traumatic brain injury when he was struck by a motorist that allegedly had his view obstructed by grass that had grown too high on Tyson’s property. The motorist violated numerous traffic laws by, among other things, making an illegal U-turn and violating a traffic control device. Neither the plaintiff nor the codefendant motorist was on the Tyson property or leaving the Tyson property.

In order to try to impose a duty on Tyson, the plaintiff relied on Section 363 of the Restatement (Second) of Torts which states:

“(1)Except as stated in Subsection (2), neither a possessor of land, not a vendor, lessor, or other transferor, is liable for physical harm caused to other outside of the land by a natural condition of the land.

“(2)A possessor of land in an urban area is subject to liability to persons using a public highway for physical harm resulting from his failure to exercise reasonable care to prevent unreasonable risk of harm arising from the condition of trees on the land near the highway.”

The case did not involve trees, and there was a question as to whether the distinction in the restatement between urban and rural settings is still relevant, given that the original version was written in 1934 and the second version was written in 1965. In addition, the meaning of a natural condition is problematic as it could mean that human conduct never affected the land.

The scope of a duty owed by a defendant who is not directly related to the plaintiff raises policy questions of just how far the responsibilities of a defendant might extend. Though these cases do not appear to raise fact questions (though the dissenting judge in the appellate court decision in *Reece* would disagree), when questions of fact are raised as to duty, appropriate jury instructions must be available to allow the parties to present those issues to the jury so that the court apply to those facts and decide if a duty is owed.

To wit, if the *Iniguez* case were to have been appealed (it was not and the judgment is final), and if the judgment had been reversed and proceeded to trial, as seen in this space on April 22, 2020, the Illinois Pattern Jury Instructions, in the effective absence of special interrogatories, would have been completely unprepared to deal with this situation or nearly any case in which the existence of a duty involves a disputed issue of fact. The question of duty is a question of law, but sometimes there are questions of fact that must be determined. In those circumstances, the issues instructions in the current form of the IPI are ill-suited and that inures to the dramatic detriment to the cause of civil justice as determination of the duty owed is the threshold question in any tort case.