

SUPREME COURT OF INDIANA

Gribben v. Wal-Mart Stores, Inc.

824 N.E.2d 349 (Ind. 2005) · No. No. 94S00-0403-CQ-130 · Decided March 22, 2005

SUMMARY

The Supreme Court of Indiana answers certified questions concerning whether Indiana recognizes an independent claim for first-party negligent or intentional spoliation of evidence. The court holds that Indiana law does not recognize such an independent tort, concluding that existing evidentiary inferences, discovery sanctions, and other remedies outweigh the disadvantages of creating a new cause of action. Because the first certified question was answered negatively, the court finds it unnecessary to answer the second question.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Justice Dickson; Chief Justice Shepard; Justice Sullivan; Justice Boehm; Justice Rucker
JURISDICTION	Indiana
DECIDED	March 22, 2005
DOCKET	No. 94S00-0403-CQ-130
DISPOSITION	other
PROCEDURAL POSTURE	The United States District Court for the Southern District of Indiana certified two questions of Indiana law to the Supreme Court of Indiana under Indiana Appellate Rule 64. The questions concerned whether Indiana recognizes an independent tort claim for first-party spoliation of evidence and, if so, the elements and remedies of that tort.
STANDARD OF REVIEW	The court answered certified questions of state law de novo.
PRECEDENTIAL VALUE	Published, precedential opinion answering certified questions of Indiana law
PARTIES	Patricia Gribben v. Wal-Mart Stores, Inc.

TOPICS

[torts](#)[evidence](#)[appellate procedure](#)[remedies](#)

PRACTICE AREAS

Torts

Evidence

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether Indiana law recognizes an independent claim for first-party negligent or intentional spoliation of evidence by an alleged tortfeasor.
2. If such a claim exists, what its elements and remedies would be and whether a plaintiff must elect between the spoliation claim and an evidentiary inference in the underlying tort action.

HOLDINGS

1. Indiana law does not recognize an additional independent cognizable claim against an alleged tortfeasor for either negligent or intentional first-party spoliation of evidence relevant to a tort action.
2. Because Indiana does not recognize the proposed first-party spoliation claim, it was unnecessary to answer the certified question concerning the tort's elements, remedies, or possible election between a spoliation claim and an evidentiary inference.
3. The court declined to decide whether Indiana recognizes a separate remedy for third-party spoliation because the certified questions were limited to first-party spoliation.

KEY QUOTATIONS

“We thus determine the common law of Indiana to be that, if an alleged tortfeasor negligently or intentionally destroys or discards evidence that is relevant to a tort action, the plaintiff in the tort action does not have an additional independent cognizable claim against the tortfeasor for spoliation of evidence under Indiana law.” (355-56)

“We answer the first certified question in the negative: Indiana law does not recognize a claim for “first-party” negligent or intentional spoliation of evidence.” (356)

FACTUAL BACKGROUND

Patricia Gribben alleged that she was injured in a fall at a Wal-Mart store. She claimed that Wal-Mart intentionally or negligently failed to preserve a surveillance videotape that would have been relevant to her underlying tort action. Gribben sought to add an independent first-party spoliation claim against Wal-Mart.

PROCEDURAL HISTORY

Patricia Gribben brought a tort action for injuries sustained in a fall at a Wal-Mart store and sought to amend her complaint to add a spoliation claim based on Wal-Mart's alleged intentional or negligent failure to preserve a surveillance videotape. The federal district court certified the questions because Indiana precedent was inconclusive. The Indiana Supreme Court accepted certification and answered the first question in the negative, making it unnecessary to answer the second.

DISPOSITION

CASES CITED

- Temple Community Hospital v. Superior Court, 20 Cal. 4th 464, 84 Cal. Rptr. 2d 852, 976 P.2d 223 (1999)
- Cahoon v. Cummings, 734 N.E.2d 535, 545 (Ind. 2000)
- Underwood v. Gale Tschuor Co., Inc., 799 N.E.2d 1122, 1134 (Ind. Ct. App. 2003)
- Porter v. Irvin's Interstate Brick & Block Co., Inc., 691 N.E.2d 1363, 1364 (Ind. Ct. App. 1998)
- Great American Tea Co. v. Van Buren, 218 Ind. 462, 33 N.E.2d 580 (1941)
- Murphy v. Target Products, 580 N.E.2d 687, 690 (Ind. Ct. App. 1991)
- Thompson v. Owensby, 704 N.E.2d 134 (Ind. Ct. App. 1998)
- Whitewater Valley Canoe Rental, Inc. v. Franklin County Commissioners, 507 N.E.2d 1001, 1008 (Ind. Ct. App. 1987)
- Reinbold v. Harris, No. IP 00-0587-C-T/G, 2000 WL 1693792 (S.D. Ind. Nov. 7, 2000)
- Hannah v. Heeter, 213 W. Va. 704, 584 S.E.2d 560 (2003)
- Nichols v. State Farm Fire & Casualty Co., 6 P.3d 300 (Alaska 2000)
- Oliver v. Stimson Lumber Co., 297 Mont. 336, 993 P.2d 11 (1999)
- Holmes v. Amerex Rent-A-Car, 180 F.3d 294 (D.C. Cir. 1999)
- Boyd v. Travelers Insurance Co., 166 Ill. 2d 188, 209 Ill. Dec. 727, 652 N.E.2d 267 (1995)
- Coleman v. Eddy Potash, Inc., 120 N.M. 645, 905 P.2d 185 (1995)
- Smith v. Howard Johnson Co., 67 Ohio St. 3d 28, 615 N.E.2d 1037 (1993)
- Martino v. Wal-Mart Stores, Inc., 835 So. 2d 1251 (Fla. Dist. Ct. App.), review granted, 861 So. 2d 430 (Fla. 2003)
- Richardson v. Sara Lee Corp., 847 So. 2d 821 (Miss. 2003)
- Dowdle Butane Gas Co. v. Moore, 831 So. 2d 1124 (Miss. 2002)
- Rosenblit v. Zimmerman, 166 N.J. 391, 766 A.2d 749 (2001)
- Goff v. Harold Ives Trucking Co., Inc., 342 Ark. 143, 27 S.W.3d 387 (2000)
- Meyn v. State, 594 N.W.2d 31 (Iowa 1999)
- Cedars-Sinai Medical Center v. Superior Court, Cedars-Sinai Medical Center v. Superior Court, 18 Cal. 4th 1, 74 Cal. Rptr. 2d 248, 954 P.2d 511 (1998)
- Trevino v. Ortega, 969 S.W.2d 950 (Tex. 1998)
- Christian v. Kenneth Chandler Construction Co., Inc., 658 So. 2d 408 (Ala. 1995)
- Gardner v. Blackston, 185 Ga. App. 754, 365 S.E.2d 545 (1988)
- Koplin v. Rosel Well Perforators, Inc., 241 Kan. 206, 734 P.2d 1177 (1987)
- La Raia v. Superior Court, 150 Ariz. 118, 722 P.2d 286 (1986)
- Smith v. Superior Court, 151 Cal. App. 3d 491, 198 Cal. Rptr. 829 (1984)
- Velasco v. Commercial Building Maintenance Co., 169 Cal. App. 3d 874, 215 Cal. Rptr. 504 (1985)
- Burton v. Estate of Davis, 730 N.E.2d 800 (Ind. Ct. App. 2000)

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