

INDIANA SUPREME COURT

Margaret Kosarko v. William A. Padula, Administrator of the Estate of Daniel L. Herndobler

979 N.E.2d 144 (Ind. 2012) · No. No. 45S03-1206-CT-310 · Decided December 12, 2012

SUMMARY

The Indiana Supreme Court held that Indiana's Tort Prejudgment Interest Statute abrogates and supplants common-law rules requiring damages to be complete and ascertainable in cases within the statute's scope. The court reversed the trial court's denial of Margaret Kosarko's motion for prejudgment interest because the denial was based on the abrogated common-law standard. It remanded for the trial court to exercise its discretion under the statute regarding whether to award interest, the rate and period of accrual, and the amount on which interest should be calculated.

CASE DETAILS

|                       |                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Indiana Supreme Court                                                                                                                                                                                               |
| WRITING FOR THE COURT | Chief Justice Dickson; Justice Rucker; Justice David; Justice Massa; Justice Rush                                                                                                                                   |
| JURISDICTION          | Indiana                                                                                                                                                                                                             |
| DECIDED               | December 12, 2012                                                                                                                                                                                                   |
| DOCKET                | No. 45S03-1206-CT-310                                                                                                                                                                                               |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Appeal on transfer from the Indiana Court of Appeals after the trial court denied the plaintiff's motion for prejudgment interest following a jury verdict awarding damages in an automobile-collision tort action. |
| STANDARD OF REVIEW    | Abuse of discretion. The trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances or when it misinterprets the law.                               |
| PRECEDENTIAL VALUE    | Published and precedential Indiana Supreme Court opinion                                                                                                                                                            |
| PARTIES               | Margaret Kosarko v. William A. Padula, Administrator of the Estate of Daniel L. Herndobler, Deceased                                                                                                                |

TOPICS

- statutory interpretation
- remedies
- damages
- appellate procedure
- standard of review

## PRACTICE AREAS

Torts

Remedies

Civil procedure

## QUESTIONS PRESENTED

1. Whether Indiana's Tort Prejudgment Interest Statute abrogates and supplants the common-law requirement that damages be complete and ascertainable before prejudgment interest may be awarded in covered tort actions.
2. Whether the trial court abused its discretion by denying prejudgment interest based on the common-law ascertainability rule.
3. Whether the case should be remanded for the trial court to exercise its statutory discretion regarding entitlement, rate, accrual period, and amount of prejudgment interest.

## HOLDINGS

1. The Tort Prejudgment Interest Statute abrogates and supplants the common-law rules governing the availability of prejudgment interest in cases within the statute's scope.
2. The trial court abused its discretion by applying the abrogated common-law requirement that damages be complete and ascertainable.
3. The matter must be remanded to the trial court to exercise its discretion under the TPIS; the Court of Appeals could not order the full requested amount because the trial court had not yet applied the statutory criteria.

## KEY QUOTATIONS

*"We agree with Kosarko and hold that the TPIS abrogates and supplants the common law rules governing the availability of prejudgment interest in cases covered by the statute." (at 6)*

*"We therefore reverse the judgment and remand the case to the trial court for a prejudgment interest determination consistent with this opinion." (at 7)*

*"We hold that the Tort Prejudgment Interest Statute abrogates and supplants the common law prejudgment interest rules in cases covered by the statute" (at 8)*

## FACTUAL BACKGROUND

Kosarko brought a tort action for injuries allegedly sustained in an automobile collision involving Daniel Herndobler. After Herndobler died, William Padula was substituted as administrator of the estate. Kosarko made a \$100,000 settlement offer that received no response, and a jury later awarded her \$210,000 in damages. She sought \$79,627.40 in prejudgment interest under Indiana's Tort Prejudgment Interest Statute.

## PROCEDURAL HISTORY

Kosarko sued Daniel Herndobler for injuries from an automobile collision and later substituted Padula as administrator of Herndobler's estate. A jury awarded Kosarko \$210,000. The trial court denied her motion for prejudgment interest under the Tort Prejudgment Interest Statute because the damages were ongoing and not

ascertainable within an appropriate time frame. The Indiana Court of Appeals reversed, and the Indiana Supreme Court granted transfer.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The trial court must reconsider Kosarko's motion for prejudgment interest under the Tort Prejudgment Interest Statute rather than the abrogated common-law ascertainability rule. It must exercise its statutory discretion regarding whether to award interest, the rate, the accrual period, and whether interest should be calculated on the full jury award or the \$100,000 insurance-policy limit.

## CASES CITED

- Kosarko v. Padula, 960 N.E.2d 810 (Ind. Ct. App. 2011)
- Inman v. State Farm Mut. Auto. Ins. Co., \_\_\_ N.E.2d \_\_\_ (Ind. 2012)
- State v. Willits, 773 N.E.2d 808, 811 (Ind. 2002)
- N.Y., Chi. & St. Louis Ry. Co. v. Roper, 176 Ind. 497, 507, 510, 96 N.E. 468, 472-73 (1911)
- State Farm Fire & Cas. Ins. Co. v. Graham, 567 N.E.2d 1139, 1142 (Ind. 1991)
- Travelers Indem. Co. v. Armstrong, 442 N.E.2d 349, 365-66 (Ind. 1982)
- Thor Electric, Inc. v. Oberle & Assocs., Inc., 741 N.E.2d 373, 380-81 (Ind. Ct. App. 2000)
- Blue Valley Turf Farms, Inc. v. Realestate Mktg. & Dev., Inc., 424 N.E.2d 1088, 1090-91 (Ind. Ct. App. 1981)
- Indianapolis Power & Light Co. v. Brad Snodgrass, Inc., 578 N.E.2d 669, 673 (Ind. 1991)
- Caesars Riverboat Casino, LLC v. Kephart, 934 N.E.2d 1120, 1123-24 (Ind. 2010)
- Forte v. Connerwood Healthcare, Inc., 745 N.E.2d 796, 800 (Ind. 2001)
- Hinshaw v. Bd. of Comm'rs of Jay Cnty., 611 N.E.2d 637, 640 (Ind. 1993)
- N. Ind. Pub. Serv. Co. v. Citizens Action Coal. of Ind., 548 N.E.2d 153, 159-61 (Ind. 1989)
- Gregory & Appel Ins. Agency v. Phila. Indem. Ins. Co., 835 N.E.2d 1053, 1065 (Ind. Ct. App. 2005)
- Simon Prop. Grp., L.P. v. Brandt Constr., Inc., 830 N.E.2d 981, 994 (Ind. Ct. App. 2005)
- Hanson v. Valma M. Hanson Revocable Trust, 855 N.E.2d 655, 665 (Ind. Ct. App. 2006)
- Clary v. Lite Machs. Corp., 850 N.E.2d 423, 442 (Ind. Ct. App. 2006)
- Loudermilk v. Jet Credit Union, No. 49A02-1006-PL-665, 2011 WL 5927428, at \*2-3 (Ind. Ct. App. Nov. 29, 2011)
- Van Winkle v. Nash, 761 N.E.2d 856, 860-61 (Ind. Ct. App. 2002)
- Lumbermens Mut. Cas. Co. v. Combs, 873 N.E.2d 692, 724-25 (Ind. Ct. App. 2007)
- Whited v. Whited, 859 N.E.2d 657, 664-65 (Ind. 2007)
- Johnson v. Eldridge, 799 N.E.2d 29, 33 (Ind. Ct. App. 2003)

- *Cahoon v. Cummings*, 734 N.E.2d 535, 547 (Ind. 2000)

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