

INDIANA COURT OF APPEALS

Pandel Ludwig v. Flaherty & Collins, Inc.

Court of Appeals Case No. 25A-CT-941 · No. 25A-CT-941 · Decided March 16, 2026

SUMMARY

The Indiana Court of Appeals affirmed judgment for Flaherty & Collins, Inc. after a jury found the plaintiff ninety percent at fault for injuries sustained in a slip-and-fall on ice outside an apartment-complex fitness center. The court held that the trial court did not abuse its discretion by refusing to give an adverse-inference instruction concerning missing surveillance footage or by denying a new trial based on the verdict form. The opinion discusses first-party spoliation, preservation duties, remedies, and the effect of recent amendments to Indiana Trial Rule 37 concerning electronically stored information.

CASE DETAILS

COURT	Indiana Court of Appeals
WRITING FOR THE COURT	Judge DeBoer; Judge Bradford; Judge Weissmann
JURISDICTION	Indiana Court of Appeals
DECIDED	March 16, 2026
DOCKET	25A-CT-941
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a motion for a new trial after a jury returned a defense verdict in a premises-negligence action, allocating ninety percent of the fault to Ludwig and ten percent to Flaherty.
STANDARD OF REVIEW	The denial of a motion for a new trial is reviewed for abuse of discretion, with a strong presumption of correctness. A trial court's jury instructions are reviewed for abuse of discretion. Failure to give a proposed instruction is evaluated by whether the instruction correctly stated the law, was supported by the evidence, and was covered in substance by other instructions. Relief is unavailable for harmless error, and an appellant must show a reasonable probability that the error adversely affected substantial rights.
PRECEDENTIAL VALUE	published; precedential
PARTIES	Pandel Ludwig v. Flaherty & Collins, Inc.

TOPICS

evidence

motion for new trial

jury instructions

comparative fault

standard of review

PRACTICE AREAS

premises liability

negligence

evidence

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by refusing to give Ludwig's proposed adverse-inference instruction concerning allegedly spoliated surveillance footage.
2. Whether the refusal to give the spoliation instruction, if erroneous, was harmless because Ludwig was permitted to present evidence and argument concerning the missing footage and the jury overwhelmingly assigned fault to her.
3. Whether alleged alterations and crossed-out entries on the verdict form required a new trial.
4. Whether polling the jurors, together with the court's comparative-fault instructions, established that the verdict accurately reflected the jury's intent.

HOLDINGS

1. Flaherty had a duty to preserve surveillance footage from the day of Ludwig's fall because, upon learning two days after the incident that a tenant had slipped, fallen, and been injured on its property, a sophisticated landlord should have known that litigation was possible.
2. Flaherty was at least negligent in allowing the surveillance footage from the day of the incident to be automatically deleted approximately five days after learning of Ludwig's fall, particularly because it failed to preserve any footage.
3. Even assuming Indiana law permits a permissive adverse-inference instruction for negligent or intentional spoliation of surveillance footage, any error in refusing the instruction was harmless and did not warrant a new trial.
4. The alleged irregularities and crossed-out entries on the verdict form did not require a new trial because the trial court polled every juror, each juror confirmed the verdict, and the court's instructions made clear that a finding that Ludwig was more than fifty percent at fault required a defense verdict and no damages.
5. Ludwig waived her argument that the verdict form was 'extraordinary' because she cited no legal authority supporting the requested new trial.

KEY QUOTATIONS

"If spoliation by a party to a lawsuit is proved, rules of evidence permit the jury to infer that the missing evidence was unfavorable to that party." (11)

"We see no reason why a sophisticated landlord who operates apartment complexes across multiple states would not know that litigation is possible when it learns that a tenant slipped, fell, and was injured on one of

its properties.” (20)

“We therefore find that Flaherty’s failure to preserve the video during that short time frame was at least negligent.” (22)

“As such, Ludwig has failed to show that her substantial rights were adversely affected by the trial court’s decision not to give the spoliation instruction. Consequently, to the extent that decision was erroneous, it was harmless.” (26)

“Since each juror did so, a new trial was not warranted merely because the jury crossed out items on the verdict form.” (31)

FACTUAL BACKGROUND

Ludwig walked to the fitness center at her apartment complex during an ice and sleet storm despite receiving a weather alert and observing that sidewalks had been salted. After exercising, she left the fitness center carrying a water bottle and cell phone, slipped on an icy sidewalk, and suffered multiple ankle fractures. Flaherty learned of the fall two days later, reviewed security footage that was directed toward but obstructed from the exit, and did not preserve the footage before the system automatically deleted it after five or six days. At trial, Ludwig argued that the missing footage should support an adverse inference that Flaherty had failed to salt the sidewalk.

PROCEDURAL HISTORY

Ludwig sued Flaherty after slipping on ice outside Flaherty's fitness center and suffering multiple ankle fractures. Following a two-day jury trial, the jury found Ludwig ninety percent at fault and Flaherty ten percent at fault, requiring a verdict for Flaherty under Indiana's Comparative Fault Act. Ludwig moved for a new trial based on the refusal to give a spoliation instruction and alleged irregularities in the verdict form. The Marion Superior Court denied the motion and entered judgment for Flaherty; the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Newland Res., LLC v. Branham Corp., 918 N.E.2d 763, 772 (Ind. Ct. App. 2009)
- Leroy v. Kucharski, 878 N.E.2d 247, 250 (Ind. Ct. App. 2007)
- Pendleton v. Aguilar, 827 N.E.2d 614, 624 (Ind. Ct. App. 2005)
- Ellis v. State, 194 N.E.3d 1205, 1214 (Ind. Ct. App. 2022)
- Humphrey v. Tuck, 151 N.E.3d 1203, 1207 (Ind. 2020)
- Rosen v. Cmty. Healthcare Sys., No. 25S-CT-217, slip op. at 6-8, 11, 14 (Ind. Mar. 11, 2026)
- Safeco Ins. Co. of Ind. v. Blue Sky Innovation Grp., 230 N.E.3d 898, 902 (Ind. 2024)
- Gribben v. Wal-Mart Stores, Inc., 824 N.E.2d 349, 350-51, 354-55 (Ind. 2005)
- Expert Pool Builders, LLC v. Vangundy, 224 N.E.3d 309, 312 (Ind. 2024)
- N. Ind. Pub. Serv. Co. v. Aqua Env't Container Corp., 102 N.E.3d 290, 301-04 (Ind. Ct. App. 2018)

- Carmichael v. Separators, Inc., 148 N.E.3d 1048, 1060 (Ind. Ct. App. 2020)
- Howard Reg'l Health Sys. v. Gordon, 952 N.E.2d 182, 189 (Ind. Ct. App. 2011)
- Shirey v. Flenar, 89 N.E.3d 1102, 1107 (Ind. Ct. App. 2017)
- Faas v. Sears, Roebuck & Co., 532 F.3d 633, 644 (7th Cir. 2008)
- Park v. City of Chi., 297 F.3d 606, 615 (7th Cir. 2002)
- S.C. Johnson & Son, Inc. v. Louisville & Nashville R.R. Co., 695 F.2d 253, 258 (7th Cir. 1982)
- Rummery v. Ill. Bell Tel. Co., 250 F.3d 553, 558 (7th Cir. 2001)
- Bracey v. Grondin, 712 F.3d 1012, 1018-19 (7th Cir. 2013)
- Sharp v. Hylas Yachts, LLC, 872 F.3d 31, 41-42 (1st Cir. 2017)
- United States v. Laurent, 607 F.3d 895, 902 (1st Cir. 2010)
- Bull v. United Parcel Serv., Inc., 665 F.3d 68, 79 (3d Cir. 2012)
- Jones v. Norton, 809 F.3d 564, 580 (10th Cir. 2015)
- Turner v. Pub. Serv. Co. of Colo., 563 F.3d 1136, 1149 (10th Cir. 2009)
- Brookshire Bros., Ltd. v. Aldridge, 438 S.W.3d 9, 16-17 (Tex. 2014)
- Hoffer v. Tellone, 128 F.4th 433, 438 (2d Cir. 2025)
- Victor Stanley, Inc. v. Creative Pipe, Inc., 269 F.R.D. 497, 526 (D. Md. 2010)
- Zubulake, 220 F.R.D. 212, 217 (S.D.N.Y. 2003)
- Elmer Buchta Trucking, Inc. v. Stanley, 744 N.E.2d 939, 944 (Ind. 2001)
- Peak v. Campbell, 578 N.E.2d 360, 362 (Ind. 1991)
- Torrence v. Gamble, 124 N.E.3d 1249, 1251 (Ind. Ct. App. 2019)
- Penn Harris Madison Sch. Corp. v. Howard, 861 N.E.2d 1190, 1198 (Ind. 2007)
- State v. Normandy Farms, 413 N.E.2d 268, 271 (Ind. Ct. App. 1980)
- Foddrill v. Crane, 894 N.E.2d 1070, 1080-81 (Ind. Ct. App. 2008)
- Prange v. Martin, 629 N.E.2d 915, 922 (Ind. Ct. App. 1994)
- Miller v. Patel, 212 N.E.3d 639, 657 (Ind. 2023)
- Pierce v. State, 29 N.E.3d 1258, 1267 (Ind. 2015)
- Cedars-Sinai Med. Ctr. v. Superior Ct., 954 P.2d 511, 518 (Cal. 1998)