

APPELLATE COURT OF ILLINOIS, THIRD DISTRICT

Tolentino v. Clifford's Towing & Recovery, LLC

2026 IL App (3d) 240618 · No. 3-24-0618 · Decided January 14, 2026

SUMMARY

The Illinois Appellate Court affirmed summary judgment for a towing company in a negligence action arising from the plaintiff’s fall while exiting a tow truck. The court held that the tow-truck operator did not owe an affirmative duty to assist or warn the plaintiff because the operator did not create the risk of harm and no recognized special relationship existed. The court also rejected the plaintiff’s argument that the towing company was acting as a common carrier of passengers.

CASE DETAILS

COURT	Appellate Court of Illinois, Third District
WRITING FOR THE COURT	Justice Davenport; Justice Anderson; Justice Bertani
JURISDICTION	Illinois Appellate Court, Third District
DECIDED	January 14, 2026
DOCKET	3-24-0618
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendant summary judgment in a negligence action and from the denial of his motion to reconsider.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The reviewing court construes the record strictly against the movant and liberally in favor of the nonmovant, does not weigh evidence or assess credibility, and may affirm on any ground supported by the record.
PRECEDENTIAL VALUE	Published Illinois Appellate Court opinion; precedential
PARTIES	Carlito Tolentino v. Clifford's Towing & Recovery, LLC

TOPICS

- negligence
- duty of care
- summary judgment
- vicarious liability
- appellate procedure

PRACTICE AREAS

- Torts
- negligence
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the tow-truck operator owed Tolentino an affirmative duty to warn or assist him in exiting the tow truck based on a common-carrier-and-passenger special relationship.
2. Whether the defendant could be held to the standard of care applicable to a common carrier or a quasi-common carrier of passengers.
3. Whether Tolentino's complaint preserved a theory that defendant owed him an ordinary duty of care.
4. Whether Tolentino preserved and established a voluntary-undertaking theory of liability based on the driver's agreement to transport him.

HOLDINGS

1. A defendant whose conduct did not create the risk of harm owes no affirmative duty to aid or protect another absent a legally recognized special relationship. Because Tolentino's complaint alleged that the risk arose from poor lighting, his vision problems, the truck's steps, and his unfamiliarity with them, rather than from conduct by the driver, the special-relationship requirement applied.
2. Clifford's Towing was not operating as a common carrier of passengers when it allowed Tolentino to ride in the tow truck. The ride was an unpaid accommodation incidental to the carriage of the Mercedes, and the company was not licensed or regularly engaged to transport passengers for hire.
3. Tolentino could not obtain reversal based on a theory that defendant owed him an ordinary duty of care because his complaint pleaded only a heightened duty of care as a common carrier and did not allege facts showing that defendant negligently created an unsafe condition or otherwise owed an ordinary duty.
4. Tolentino forfeited his voluntary-undertaking theory by raising it for the first time on appeal. In any event, the record established no undertaking to assist him in exiting the truck, and Tolentino did not rely on any promise of such assistance.

KEY QUOTATIONS

“ “[A]n affirmative duty to aid or protect another against an unreasonable risk of physical harm *** arises only within the context of a legally recognized ‘special relationship.’ ” ” (¶ 40)

“ Absent a special relationship between the parties, we may not impose on Penaloza an affirmative duty to warn or protect plaintiff from a risk of harm Penaloza did not create. ” (¶ 69)

FACTUAL BACKGROUND

Tolentino's Mercedes required towing, and Clifford's Towing transported the vehicle to his home in a flatbed tow truck. At Tolentino's request or through a prior request by his wife, the driver allowed him to ride in the truck as an accommodation incidental to the towing service. After arriving at Tolentino's home, the driver exited to unload the vehicle while Tolentino, who had disclosed that he had lost vision in one eye, attempted to exit the passenger side in dark, misty conditions without asking for assistance. Tolentino slipped from the upper step and fractured his tibia and fibula.

PROCEDURAL HISTORY

Tolentino sued Clifford's Towing & Recovery, LLC, alleging that its tow-truck driver negligently failed to warn or assist him as he exited the truck. The Du Page County circuit court granted defendant's motion for summary judgment, concluding that defendant was not a common carrier subject to a heightened duty and that the accident was not foreseeable under the circumstances. The circuit court denied Tolentino's motion to reconsider, and the Illinois Appellate Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Heath v. City of Naperville, 2024 IL App (3d) 230663, ¶¶ 49-50
- Reynolds v. Decatur Memorial Hospital, 277 Ill. App. 3d 80, 84 (1996)
- Aboufariss v. City of De Kalb, 305 Ill. App. 3d 1054, 1058-59 (1999)
- Bruntjen v. Bethalto Pizza, LLC, 2014 IL App (5th) 120245, ¶ 79
- Marshall v. Burger King Corp., 222 Ill. 2d 422, 430, 438-39 (2006)
- Smith v. Tri-R Vending, 249 Ill. App. 3d 654, 658 (1993)
- Bogenberger v. Pi Kappa Alpha Corp., 2018 IL 120951, ¶¶ 22, 33-35, 37, 41
- Simpkins v. CSX Transportation, Inc., 2012 IL 110662, ¶ 21
- Quiroz v. Chicago Transit Authority, 2022 IL 127603, ¶ 34
- American Standard Insurance Co. v. Basbagill, 333 Ill. App. 3d 11, 15 (2002)
- Crane v. Railway Express Agency, Inc., 369 Ill. 110, 115 (1938)
- Meyer v. Rozran, 333 Ill. App. 301, 306-07 (1948)
- Rathbun v. Ocean Accident & Guarantee Corp., 299 Ill. 562, 566-67 (1921)
- Browne v. SCR Medical Transportation Services, Inc., 356 Ill. App. 3d 642, 646-47 (2005)
- Illinois Highway Transportation Co. v. Hantel, 323 Ill. App. 364, 377 (1944)
- Doe v. Rockdale School District No. 84, 287 Ill. App. 3d 791, 794 (1997)
- Long v. Illinois Power Co., 187 Ill. App. 3d 614, 616-17, 629-30 (1989)
- Miller v. Miller, 395 Ill. 273, 278-81, 285-87 (1946)
- Navistar Financial Corp. v. Allen's Corner Garage & Towing Service, Inc., 153 Ill. App. 3d 574, 575-77 (1987)
- New York Central Railroad Co. v. Lockwood, 84 U.S. 357, 377 (1873)
- Baltimore & Ohio and Southwestern Railway Co. v. Voigt, 176 U.S. 498, 520 (1900)
- Green v. Carlinville Community Unit School District No. 1, 381 Ill. App. 3d 207, 213-14 (2008)
- Doe v. Sanchez, 2016 IL App (2d) 150554, ¶ 27
- Van Cleave v. Illini Coach Co., 344 Ill. App. 127, 129 (1951)
- People ex rel. Klaeren v. Village of Lisle, 352 Ill. App. 3d 831, 846 (2004)

- Ropiy v. Hernandez, 363 Ill. App. 3d 47, 57 (2005)
- Hatchett v. W2X, Inc., 2013 IL App (1st) 121758, ¶ 31
- Dominick's Finer Foods v. Indiana Insurance Co., 2018 IL App (1st) 161864, ¶ 29
- Wakulich v. Mraz, 203 Ill. 2d 223, 241 (2003)
- Caulkins v. Pritzker, 2023 IL 129453, ¶ 41
- Bell v. Hutsell, 2011 IL 110724, ¶¶ 12, 23
- Frye v. Medicare-Glaser Corp., 153 Ill. 2d 26, 33 (1992)
- Mattice v. Goodman, 173 Ill. App. 3d 236, 238-40 (1988)
- Lacey v. Perrin, 2015 IL App (2d) 141114, ¶ 52

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