

**Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

ATTORNEYS FOR APPELLANTS:

**RICHARD S. EYNON**

Eynon Law Group, P.C.  
Columbus, Indiana

**LANDYN K. HARMON**

Columbus, Indiana

ATTORNEYS FOR APPELLEES:

**SCOTT L. STARR**

**JON M. MYERS**

**MATTHEW D. BARRETT**

Starr Austen Tribbett Myers & Miller  
Logansport, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

JULIE MOORE WALKER and SCOT MOORE, )  
Individually and as Co-Personal Representatives )  
Of the Estate of CHRISTOPHER SCOT MOORE, )  
Deceased, )

Appellants-Plaintiffs, )

vs. )

JAMES THAD MARTIN, Individually and )  
d/b/a JTM EXPRESS, and GR WOOD, INC. )  
a/k/a AMERICAN TIMBEX, and TIMOTHY )  
LAFOUNTAIN, Individually and d/b/a )  
LAFOUNTAIN LOGGING, )

Appellees-Defendants. )

No. 34A05-0608-CV-424

---

APPEAL FROM THE HOWARD CIRCUIT COURT  
The Honorable Lynn Murray, Judge  
Cause No. 34C01-0409-CT-710

---

**February 27, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Judge**

Appellants-plaintiffs Julie Moore Walker and Scot Moore (collectively, the Moores) individually and as co-personal representatives of the estate of their son, Christopher Scot Moore, appeal the trial court's entry of summary judgment in favor of appellee-defendant GR Wood, Inc. (Wood), in a wrongful death action that they initiated against Wood and others following a vehicle collision that resulted in Christopher's death. Specifically, the Moores claim that the grant of summary judgment was erroneous because the designated evidence established that James Martin—the defendant truck driver—was an employee, agent, or servant of Wood when the accident occurred. Alternatively, the Moores argue that a genuine issue of material fact exists in these circumstances because Wood should be held liable for the acts of Martin under the exceptions pertaining to the nonliability of an independent contractor or that Wood could be held liable under a joint venture theory. Concluding that the trial court properly granted Wood's motion for summary judgment, we affirm.

FACTS

Wood is a veneer wood company in Mooresville that sells its products to furniture manufacturers and other businesses. Wood purchases its logs from sawmills, loggers, and landowners, and saws the logs into veneer wood. Nearly 2600 loads of logs are delivered to the facility each year. Since approximately 1983, Wood has owned no log trucks, and

instead has contracted with either the sellers or truck owners to have the wood delivered to its mill.

Timothy LaFontaine is a logger in the business of purchasing, cutting, and reselling timber logs. He did not own a truck for the purpose of transporting the logs, and he would occasionally sell timber to Wood. On September 16, 2003, Wood entered into an agreement with LaFontaine, wherein Wood agreed to purchase forty-eight walnut logs and eight oak logs from LaFontaine. These fifty-six logs grew on land that was owned by a third party and felled by LaFontaine near Silver Lake.

Martin was the primary log hauler for LaFontaine in 2003, and he was retained to haul fifty-six logs from Silver Lake to Wood's veneer mill. However, the parties dispute who actually hired Martin to haul the logs from Silver Lake. Specifically, Wood maintained that it was LaFontaine's responsibility to contract for the log hauling, while LaFontaine alleged that it was Wood's responsibility to do so. Although Martin did not know who was responsible for paying him for hauling these logs, he had hauled so many loads for LaFontaine in 2003 that he had painted the company's logo on his truck.

Martin drove his truck under the business name of JTM Express and acted as his "own boss." Appellants' App. p. 45. Although Martin obtained a commercial driver's license in 1987, he suffered a severe head injury in 1991. As a result, Martin had to learn to speak and walk again, but he was subsequently able to resume his truck-driving career. At some point, Martin procured a "farm-log" exemption license plate in Michigan for his

truck.<sup>1</sup> As a result, Martin's plates did not require that he purchase the \$750,000 minimum interstate trucking insurance that the federal government requires.

In addition to hauling for LaFontaine, Martin would occasionally drive loads for other companies. Martin set his own rate, and he alone was responsible for determining the route that he was to drive. Martin also paid for his own fuel, and he owned the tools that he kept in the truck. Martin also charged by the load rather than by the hour, and he paid for his own insurance and mechanical maintenance. Sometimes Martin would charge \$.01 per board foot of timber that was hauled, and other times he would charge a typical load fee of \$2.00 per mile. When delivering the logs to Wood's mill, either Wood or LaFontaine would pay him.

On December 9, 2003, twenty-four-year-old Christopher was killed on U.S. 31 in Howard County when the vehicle he was riding in collided with a truck owned and operated by Martin while en route with a load of logs that he was delivering to Wood. Martin apparently ran a stoplight at an intersection and collided with the vehicle that Kathy Beatty was driving. Beatty also died in the collision.

When the accident occurred, Martin was operating his 1988 Freightliner tractor-trailer that bore LaFontaine's logging logo. Martin had loaded the trailer that morning with the logs from Silver Lake in order to haul them to Wood's mill. Although

---

<sup>1</sup> 49 CFR § 390.5 provides that a driver is eligible for a farm-log exemption by virtue of being an owner or employee of a log farm and transporting logs within 150 miles of that farm. Martin was not a log farm owner or operator, and he regularly operated more than 150 miles from his home. Appellants' App. p. 205-06.

LaFontaine was present when Martin was loading the logs onto the trailer, no one directed Martin regarding the arrangement of the load.

As a result of the accident, the Moores commenced a wrongful death suit against Martin, La Fontaine, and Wood on September 9, 2004.<sup>2</sup> Thereafter, on December 12, 2005, Wood moved for summary judgment, claiming that it was neither an employer nor a joint venturer with Martin. Wood further contended that Martin was an independent contractor and that Wood could not be held liable for Martin's acts.

Following a hearing on the motion, the trial court granted Wood's motion on July 10, 2006, determining that Martin was an independent contractor and not an employee, agent, or servant of Wood at the time of the collision.<sup>3</sup> The Moores now appeal.

#### I. Standard of Review

When reviewing a trial court's grant of summary judgment, we apply the same standard as that of the trial court. Summary judgment is appropriate if the pleadings and evidence submitted demonstrate that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. We construe the pleadings, affidavits, and designated evidence in the light most favorable to the non-moving party, and the moving party has the burden of demonstrating the absence of a genuine issue of material fact. Wilson v. Royal Motor Sales, Inc., 812 N.E.2d 133, 135 (Ind. Ct. App.

---

<sup>2</sup> The Moore's filed an amended complaint for damages on June 16, 2005.

<sup>3</sup> While the trial court granted summary judgment with respect to Wood, it was made clear that "[p]roceedings on the Plaintiffs' action against the remaining Defendants James Thad Martin individually and d/b/a JTM Express and Timothy LaFontaine individually and d/b/a La Fontaine Logging shall continue in accordance with further orders." Appellants' App. p. 25.

2004). Because a trial court's grant of summary judgment comes to us clothed with a presumption of validity, the appellant must persuade us that error occurred. Id. Nevertheless, we carefully scrutinize motions for summary judgment to ensure that the non-moving party was not improperly denied his or her day in court. Id. If the trial court's entry of summary judgment can be sustained on any theory or basis in the record, we must affirm. Irwin Mortgage Corp. v. Marion County Treasurer, 816 N.E.2d 439, 442 (Ind. Ct. App. 2004).

We also note that the trial court entered specific findings of fact and conclusions of law in its order granting summary judgment for Wood. While such findings and conclusions are not required, and although they offer valuable insight into the rationale for the judgment and facilitate our review, we are not limited to reviewing the trial court's reasons for granting or denying summary judgment. Bernstein v. Glavin, 725 N.E.2d 455, 458 (Ind. Ct. App. 2000).

## II. The Moore's Claims

### A. Independent Contractor

When considering the Moores' attacks on the summary judgment ruling, we note that Martin's employment status is the focal point of our analysis in light of Indiana's "long-standing general rule . . . that a principal is not liable for the negligence of an independent contractor." Bagley v. Insight Commc'ns Co., 658 N.E.2d 584, 586 (Ind. 1995). Whether one acts as an employee or an independent contractor is generally a question for the finder of fact. Mortgage Consultants, Inc. v. Mahaney, 655 N.E.2d 493 (Ind. 1995). However, if the significant underlying facts are undisputed, the court may

properly determine a worker's classification as a matter of law. Moberly v. Day, 757 N.E.2d 1007, 1009 (Ind. 2001).

In general, an employer-employee relationship exists when the principal has the right to control the manner and methods in which the agent performs his work and the agent has the ability to subject the principal to personal liability. Indiana Ins. Co. v. Am. Comm. Serv., Inc., 768 N.E.2d 929, 936 (Ind. Ct. App. 2002). On the other hand, an independent contractor undertakes to produce a certain result but is not controlled as to the method in which he or she obtains that result. Id. As there are no rigid rules for determining whether a person is an employee or an independent contractor, we turn to our Supreme Court's opinion in Moberly v. Day, where the court applied a ten-factor analysis described in the Restatement (Second) of Agency § 220 (1958) to distinguish employees from independent contractors:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work;

(b) whether or not the one employed is engaged in a distinct occupation or business;

(c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(d) the skill required in the particular occupation;

(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

(f) the length of time for which the person is employed;

(g) the method of payment, whether by the time or by the job;

(h) whether or not the work is a part of the regular business of the employer;

(i) whether or not the parties believe they are creating the relation of master and servant; and

(j) whether the principal is or is not in business.

Moberly, 757 N.E.2d at 1010 (quoting Restatement (Second) of Agency § 220(2) (1958)). We consider all of the circumstances set forth above, and no single factor is dispositive. Id. By the same token, “extent of control” is the single most important factor in determining the existence of an employer-employee relationship. Wishard Mem. Hosp. v. Kerr, 846 N.E.2d 1083, 1090 (Ind. Ct. App. 2006).

#### 1. Extent of Control Over Details of the Work

Turning to the circumstances here, we note that Martin alone controlled the loading and driving of his semi truck and trailer. Appellants’ App. p. 319. As noted above, Martin considered himself to be his “own boss.” Id. at 315. Martin also testified in his deposition that it was his decision alone as to what route to take when delivering his loads. Id. at 319. In essence, except for being told where to pick up and deliver the logs, the designated evidence establishes that all of the details as to how the task was to be performed were left to Martin’s discretion. Therefore, Wood controlled neither the methods nor the means of how Martin performed his delivery tasks.

## 2. Occupation or Business of Employee

As set forth above, Martin had placed the LaFontaine's logo on the side of his semi-tractor trailer. In explaining why he did so, Martin testified as follows:

I thought the guy I was hauling for, Tim LaFontaine would enjoy his logo on my door, for one. Kind of maybe a little P.R. thing going. And it just made more sense having a logging logo on my door than a J.T.M. logo, so I just thought, well, I'll put it on.

Id. at 44. As noted above, Martin acknowledged that he hauled logs for a number of other companies besides LaFontaine. Id. at 48. In essence, the designated evidence supports the determination that Martin was engaged in his own hauling business and did not work exclusively for Wood. In other words, Martin operated his own business and hauled logs for companies or individuals of his own choosing. Id. at 49. Hence, this factor also weighs in favor of Martin as an independent contractor.

## 3. Kind of Occupation

As noted above, Martin was the "boss" of his company, and he could work for whomever and whenever he wanted. Id. at 49. No one supervised Martin or instructed him how he was to perform his duties. Hence, this factor also weighs in favor of Martin as an independent contractor.

## 4. Skill Required

We note that unskilled labor is typically performed by employees, while skilled labor is often performed by independent contractors. Howard v. U.S. Signcrafters, 811 N.E.2d 479, 483 (Ind. Ct. App. 2004). Here, it was established that Martin held a commercial driver's license and had made his living driving trucks since 1987.

Appellants' App. p. 43-47. Martin's qualifications to drive a truck were regulated by the Federal Motor Carrier Safety Regulations (FMCSR), and the purpose of that legislation is to create uniform standards of travel in order to promote safety and prevent truck collisions. See 49 C.F.R. §§ 382.102, 383.1(a), and 3897.1. A truck driver must be qualified before being permitted to drive by satisfying many criteria. See 49 C.F.R. § 391.11. Hence, we conclude that this factor weighs in favor of Martin's independent contractor status.

#### 5. Supplier of Equipment, Tools, and Work Location

As our Supreme Court observed in Moberly, "it is particularly significant if an employer provides tools or instrumentalities of substantial value, and the same would presumably be true if the workman is the provider." 757 N.E.2d at 1012. As discussed above, Martin owned both the semi-tractor and trailer that hauled the logs. Appellants' App. p. 318. Moreover, Martin paid for any required maintenance on his rig, the truck fuel and insurance, and he owned all of the tools and straps used to secure the logs. Id. at 318-20. As a result, this factor supports the conclusion that Martin was working as an independent contractor when the accident occurred.

#### 6. Length of Employment

The Moberly court observed that "employment over a considerable period of time with regular hours indicates employee status." 757 N.E.2d at 1012 (emphasis in original). Id. And it was determined that an employee is "one who performs continuous service for another." Id.

In this case, the designated evidence established that Martin hauled logs for a number of entities and individuals in 2003. He occasionally hauled logs to Wood's facility, but there was no evidence indicating that Martin was on Wood's payroll. Moreover, Martin could accept or reject a particular job at his discretion. Martin's hours were not regular, and his service for Wood was not continuous. Hence, the evidence is indicative of Martin's status as an independent contractor with regard to this factor.

#### 7. Method of Payment

Martin was not paid on an hourly basis like an employee. Rather, Martin was paid by the load based on the number of miles that he traveled. Appellants' App. p. 319. As noted in Moberly, sporadic payments in lump sum amounts for each job performed, instead of payments by the hour or on a weekly basis, are more typical of an independent contractor status than an employee. 757 N.E.2d at 1012; see also Restatement (Second) of Agency § 220(2) cmt. h. (payment by hour or month indicates employer-employee relationship). Also, Wood paid Martin on only three occasions in 2003. Appellants' App. p. 326-34. In this instance, the method of payment is more indicative of an independent contractor status on the part of Martin.

#### 8. Regular Business of Employer

Wood sold its produced venire wood to various furniture manufacturers. Although the delivery of logs to Wood's facility is an intricate part of its business operations, Wood owned no delivery trucks. Martin made his living hauling logs, and he did not perform deliveries for Wood on a regularly scheduled basis. Again, this factor weighs in favor of Martin's status as an independent contractor.

### 9. Belief of the Parties

Martin clearly and unequivocally stated that his relationship with Wood was that of an independent contractor. Id. at 315, 321. And a representative of Wood executed an affidavit stating that “at all relevant times, it was Wood’s belief that . . . Martin was either an employee or independent contractor of . . . LaFontaine.” Id. at 251. Hence, the designated evidence established that Martin was an independent contractor when considering this factor.

### 10. Whether the Principal is in Business

Wood was a business, so this factor alone favors employee status for Martin.

### 11. Totality of Factors

In sum, when considering all of the factors set forth in Moberly, the dominant factor of control establishes Martin’s status as an independent contractor while he was working for Wood. Nine of the ten factors weigh in favor of Martin’s status as an independent contractor. That said, taken as a whole, the undisputed facts set forth in the designated evidence support the trial court’s conclusion that Martin was an independent contractor at the time of the accident.

### B. Exceptions to the Rule

Notwithstanding the above analysis regarding Martin’s status as an independent contractor, the Moores argue that several exceptions apply in these circumstances to the general rule of nonliability for the torts of independent contractors. In Bagley, our Supreme Court recognized five exceptions to this general rule: (1) where the contract requires the performance of intrinsically dangerous work; (2) where the principal is by

law or contract charged with the performance of a specific duty which was violated and the violation was a proximate cause of the injury; (3) where the act will create a nuisance; (4) where the act to be performed will probably cause injury to others unless due precaution is taken; and (5) where the act to be performed is illegal. 658 N.E.2d at 586.

In this case, the Moores maintain that exceptions two, four, and five apply. However, we note that the Moores have not designated any evidence that Wood's contract with LaFontaine imposed a specific duty of care that would have protected Christopher from harm. When interpreting a written contract, it is the court's duty to ascertain the intent of the parties at the time the contract was executed as disclosed by the language used to express their rights and duties. Teitge v. Remy Constr. Co., 526 N.E.2d 1008, 1010-11 (Ind. Ct. App. 1988). To determine whether a party is charged with a specific duty of care under a contract, the court looks to the contract as a whole by examining all of its provisions. Merrill v. Knauf Fiber Glass, 771 N.E.2d 1258, 1268 (Ind. Ct. App. 2002). Moreover, the assumption of duty by contract exception to the general rule of nonliability is not triggered merely because a contractor may have a right to inspect and test the work, approve of the work and/or supervise employees of the independent contractor, or even by requiring the contractor to follow company safety rules. Armstrong v. Cerestar USA, Inc., 775 N.E.2d 360, 371 (Ind. Ct. App. 2002). For this exception to apply, a contract must provide for a specific duty of care, evidence that the duty was breached, and, additionally, evidence that the breach proximately caused the injury. Armstrong, 775 N.E.2d at 371-72; Merrill, 771 N.E.2d at 1269-70.

In examining the one-page contract between Wood and Lafontaine, there is no indication that Wood intended to assume a specific duty of care as to Christopher, travelers on the public roadways, or even a general duty of care regarding the hauling of logs. Therefore, the Moores have failed to show that this exception to independent contractor non-liability applies.

While the Moores contend that the “probable injury” exception should apply in this instance, this court has determined that it must be established that the principal, at the time of the contract, should have foreseen that the performance of the work would probably cause injury. Merrill, 771 N.E.2d at 1267. The danger that the principal must foresee must be substantially similar to the accident that produced the injury. Id. Also, more than a mere possibility of harm is required—the defendant should have foreseen the probability of such harm. Red Roof Inns, Inc. v. Purvis, 691 N.E.2d 1341, 1346 (Ind. Ct. App. 1998). This exception contemplates that it is the independent contractor that should be held responsible for anticipating and guarding against predictable dangers. McDaniel v. Bus. Inv. Grp., Ltd., 709 N.E.2d 17, 22 (Ind. Ct. App. 1999). To find otherwise would be to abrogate not only the general rule of non-liability but also the contractee/independent contractor relationship itself. Id.

As this court determined in Armstrong:

Recovery under this exception will only happen if the plaintiff shows that in review of the nature of the work and the conditions under which it was executed, the defendant should have foreseen the actual catastrophe which occurred was likely to happen if those precautionary measures were omitted.

775 N.E.2d at 370.

Here, the Moores have not designated any evidence demonstrating that Wood had knowledge of Martin’s previous head injury, any alleged mechanical problems with his truck, his driving record, or his alleged noncompliance with the interstate trucking laws. Moreover, there is no showing that Wood could have reasonably foreseen that Martin would negligently disobey a traffic signal when driving through an intersection. The proper focus is on the act of driving the truck—not the resulting accident. While it is certainly possible that driving a load of logs could cause injury unless certain precautions are taken, we cannot say that the act of hauling logs in and of itself establishes that harm will probably result. Thus, the Moores’ argument fails as to this exception.

Finally, the fifth exception—illegality—provides that mere knowledge that the work was being done in an unlawful manner by an independent contractor is not sufficient to charge the general contractor with negligence, unless the general contractor took part in or directed the illegal activity. In Ryobi Die Casting v. Montgomery, 705 N.E.2d 227, 231 (Ind. Ct. App. 1999), this court reasoned:

We now decline to extend the fifth exception to the general rule of nonliability to include owners who merely become aware of illegal acts during the course of performance of the contract, absent the owner/employer’s participation in or direction of the illegal act.

Here, the Moores maintain that Martin engaged in an illegal act because he did not have a valid license to transport the logs or the proper plates on his truck because he improperly obtained a “farm-log” exemption for his truck. Appellants’ Br. p. 28. Because none of the representatives from Wood made any inquiry regarding the legality of Martin’s ability to haul logs, the Moores argue that this constituted “a knowing

permission of the doing of an illegal act.” Id. at 28. We cannot discern, however, how any representative from Wood could have given Martin permission to engage in illegal acts if those representatives had no knowledge of the illegal acts. Indeed, the Moores do not point to any designated evidence establishing that anyone from Wood had knowledge of these matters or that any representative may have participated in directing Martin’s alleged illegal acts.

In Inland Steel v. Pequignot, 608 N.E.2d 1378 (Ind. Ct. App. 1993), we determined that a shipper was not liable for the negligent acts of a trucker who failed to register—as required by statute—one of its Interstate Commerce Commission certificates of authenticity with state authorities. In examining the shipper’s non-liability, we observed as follows:

The violation of a statute raises no liability for injury to another unless the injury was in some manner the result of such violation. Conway v. Evans (1990), Ind.App., 549 N.E.2d 1092, 1095. In order to find that an injury was the proximate result of a statutory violation, the injury must have been a foreseeable consequence of the violation and would not have occurred if the requirements of the statute had been observed. Ray v. Goldsmith (1980), Ind.App., 400 N.E.2d 176, 179.

Here, the contract between Inland Steel and Combined Transport was for the hauling of steel. Hauling steel is not an illegal act. As in B.A. Kipp Co. v. Waldon (1947), Ind.App., 75 N.E.2d 675, the work itself--hauling the steel--could have been performed lawfully. “The contract itself did not call for or necessarily involve any violation of the law.” Id. at 676. Liability under this exception to the general rule also requires the employer of an independent contractor to have knowledge of and sanction the illegal act at the time of contracting. Cummings, *supra*, at 1277.

...

We fail to see how Combined Transport’s failure to register with the department of revenue could in any way be considered the proximate cause

of this tragic accident. Pequignot alleges, and Inland Steel does not dispute, that he struck a tractor-trailer driven by Hinds as it ran a red light at about 40 mph. This act is contrary to I.C. 9-4-1-35—disregarding a traffic signal—and was the immediate cause of Pequignot’s injuries.

As a matter of law, Combined Transport’s failure to comply with I.C. 8-2.1-18-9 is not negligence per se. The trial court erred in not granting Inland Steel’s motion for summary judgment on this issue.

Id. at 1383-84. In our view, the reasoning set forth in Inland Steel applies to the circumstances here. Thus, the Moore’s claim regarding the applicability of this exception fails.

In sum, the Moores have failed to establish any of the exceptions to the general rule of non-liability with regard to a general contractor. As a result, the trial court did not err in determining that Wood was not liable for the wrongful death action on the basis of Martin’s status as an independent contractor.

### C. Joint Venture

As an alternative to the above arguments regarding Martin’s status as an independent contractor, the Moores argue that the grant of summary judgment was improper because Wood was engaged in a “joint venture” with LaFontaine for the purpose of hauling the logs when the accident occurred. In essence, the Moores maintain that the purported joint venture rendered Wood liable for Martin’s negligence because Martin was an employee or independent contractor of LaFontaine.

A joint venture is defined as an association of two or more persons formed to carry out a single business enterprise for profit. Inland Steel, 608 N.E.2d at 1382. For a joint venture to exist, the parties must be bound by an express or implied contract providing

for “(1) a community of interests, and (2) joint or mutual control, that is, an equal right to direct and govern the undertaking that binds the parties to such an agreement.” Id. While similar to a partnership, a joint venture contemplates only a single transaction. Id. And a joint venture must provide for the sharing of profits. Id.

In this case, there is no evidence that Wood and LaFontaine shared profits. Instead, the purchase agreement provided that Wood agreed to pay LaFontaine directly for the purchase of the logs. As noted above, Martin testified in his deposition that he did not recall receiving any payment whatsoever for the logs. Hence, it is apparent that the three parties—Wood, LaFontaine, and Martin—were in business for individual commercial gain. And we cannot agree with the Moore’s contention that Wood was engaged in a joint venture with Martin based on nothing more than Martin’s status as an employee or independent contractor of LaFontaine. Thus, the Moores may not successfully claim that Wood may be held liable for Martin’s conduct under a joint venture theory.

The judgment of the trial court is affirmed.<sup>4</sup>

DARDEN, J., and ROBB, J., concur.

---

<sup>4</sup> As an aside, we note that the Moores contend that the trial court erred in granting Wood’s motion to strike argument and evidence with regard to its refusal to admit Martin’s past driving record as designated evidence in the opposition to summary judgment that the Moores filed. Indiana Evidence Rules 404(b) and 609(a), which address the admissibility of prior criminal convictions and other “bad acts,” might have precluded the admission of Martin’s driving record. However, even assuming—and without deciding—that the trial court may have erred in striking this exhibit, such error was harmless in light of our conclusion that Martin was an independent contractor rather than an employee or agent of Wood.