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.

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IN THE
COURT OF APPEALS OF INDIANA

MARK P. FRANCIOSE and RAY RAMIREZ, III,	)	
Appellants-Defendants,	)	
vs.	)	No. 64A03-0802-CV-60
AARON A. JONES,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Jeffrey L. Thode, Special Judge
Cause No. 64D01-0506-CT-5201

July 29, 2009

MEMORANDUM DECISION ON REHEARING- NOT FOR PUBLICATION

VAIDIK, Judge

We grant rehearing for the limited purpose of addressing claims by appellants Ray Ramirez and Mark Franciose that we misstated the record in *Franciose v. Jones*, 907 N.E.2d 139 (Ind. Ct. App. 2009).

Ramirez argues that we mistakenly overlooked his motion for a directed verdict on the issue of the superseding cause doctrine. We have reviewed Ramirez's oral motion for a directed verdict that he contends was based upon a theory of superseding cause. Ramirez's App. p. 75; Tr. Vol. III p. 137. In the motion, Ramirez neither mentioned the superseding cause doctrine nor made a substantive argument based upon it. Nevertheless, in our original opinion, we addressed whether Ramirez was relieved from liability pursuant to the superseding cause doctrine and concluded that he was not. *Franciose*, 907 N.E.2d at 150-51. We decline Ramirez's invitation to revisit this issue.

Franciose contends that we mistakenly found that he waived his challenge to Dr. Yarkony's testimony by failing to make a motion to strike the testimony after Dr. Owens testified. Having reviewed the record, we now recognize that Franciose did make such a motion.[1] However, in our original opinion, we nonetheless addressed whether Dr. Yarkony's testimony constituted proper rebuttal evidence and concluded that it did. *Franciose*, 907 N.E.2d at 145. We decline to address the issue further.

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[1] It is worthwhile to explain why we overlooked the oral motion in the first place. In his appellate brief and again on rehearing, Franciose points to page 95 of his appendix and Transcript Volume IV page 2 (purportedly the same page of the Transcript) to show us when he made this motion. However, the second page of Transcript Volume IV is *not* the same page as the appendix page. Only upon our own search through the record did we locate the relevant transcript page. Although the page is labeled "2", it is actually located between Transcript Volume IV pages *154 and 156*. It would have been helpful had counsel for Franciose alerted us to this. Further, this mishap highlights the importance of a properly prepared transcript.

Subject to the above factual correction, we affirm our original opinion.

RILEY, J., and DARDEN, J., concur.