

IN THE INDIANA SUPREME COURT

HARJIT KAUR, Individually and)	ON PETITION TO TRANSFER FROM
as the Special Administrator)	THE INDIANA COURT OF APPEALS
of the Estate of)	
HARVAIL SINGH DHILLON,)	CAUSE NO. 23A-CT-02059
)	
<i>Appellant-Plaintiff,</i>)	
)	
v.)	APPEAL FROM THE HAMILTON
)	SUPERIOR COURT NO. 4
)	
AMAZON, INC.;)	
AMAZON.COM, INC.;)	TRIAL COURT CAUSE NO.
AMAZON LOGISTICS, INC.;)	29D04-2212-CT-010006
AMAZON.COM SERVICES LLC, MQJ1;)	
CF MOUNT COMFORT, DST;)	THE HON. J. RICHARD CAMPBELL,
ICI TRANSPORT, LLC; and)	TRIAL JUDGE
WILLIAM MCPHEARSON,)	
)	
<i>Appellees-Defendants.</i>)	

DEFENDANT/APPELLEE CF MOUNT COMFORT DST'S
REPLY IN SUPPORT OF PETITION TO TRANSFER

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TABLE OF CONTENTS

TABLE OF CONTENTS 2
TABLE OF AUTHORITIES..... 3
ARGUMENT..... 4
 1. The Opinion is incompatible with *Reece*. 4
 2. The Opinion creates a direct conflict with another Court of Appeals opinion.
 5
 3. Even if Dhillon was an invitee (he was not), the Opinion fails to employ the
 Goodwin framework in its duty analysis..... 6
CONCLUSION..... 7
WORD COUNT CERTIFICATE..... 8
CERTIFICATE OF SERVICE 9

TABLE OF AUTHORITIES

Goodwin v. Yeakle's Sports Bar & Grill, Inc., 62 N.E.3d 384 (Ind. 2016).....6

Reece v. Tyson Fresh Meats, Inc., 173 N.E.3d 1031 (Ind. 2021).....4, 5

State v. Flanigan, 489 N.E.2d 1216 (Ind. Ct. App. 1986).....5, 6

ARGUMENT

As Mount Comfort explained in its Petition to Transfer, the Indiana Court of Appeals' opinion in this matter (the "Opinion") is incompatible with the bright-line rule that this Court promulgated in *Reece v. Tyson Fresh Meats, Inc.*, 173 N.E.3d 1031 (Ind. 2021). Moreover, the Opinion creates a direct conflict with another Court of Appeals case, *State v. Flanigan*, 489 N.E.2d 1216 (Ind. Ct. App. 1986). Finally, the Opinion completely fails to address this Court's line of cases addressing foreseeability as a component of duty, such as *Goodwin v. Yeakle's Sports Bar & Grill, Inc.*, 62 N.E.3d 384 (Ind. 2016). Thus, bases exist for granting transfer under Indiana Appellate Rule 57(H)(1) and (2).

1. The Opinion is incompatible with *Reece*.

Appellant Harjit Kaur, on behalf of the Estate of Harvail Singh Dhillon ("Kaur"), contends that *Reece* has no relevance here because *Reece* pertains only to visual obstructions contained solely on the land.¹ Kaur urges an unreasonably narrow reading of *Reece*.

The fundamental principle driving the *Reece* decision is that a landowner's duty cannot be predicated upon a purely visual phenomenon contained entirely on the land. Under this principle, allegedly confusing signage and lighting is not meaningfully different than a visual obstruction. Both are entirely visual phenomena contained on land; neither intrudes physically onto the roadway. No purpose is served by having one rule for visual obstructions but a different rule for allegedly confusing signage.

¹ Opposition Brief, pp. 4-5.

Moreover, *Reece* does not create a different standard for motorists on a public roadway who intend to, but do not, enter upon the land and become invitees. Rather, the *Reece* court simply stated that it would not extend the duties owed to an invitee to persons on an adjacent public roadway. *Reece* at 1041, note 3. Because the deceased, Dhillon, never entered upon the property, he was not an invitee.² Thus, for purposes of determining duty, Dhillon is in the same position as the plaintiffs in *Reece*.

2. The Opinion creates a direct conflict with another Court of Appeals opinion.

In *State v. Flanigan*, the plaintiffs, intending to visit a flea market, were injured by a vehicle on a highway after they parked their vehicle off the premises and began walking along the highway toward the flea market. *Id.* at 1217. Plaintiffs alleged that the flea market was negligent in failing to provide a safe place for customers to walk to the market and for failing to provide adequate traffic control. *Id.* Disagreeing, Court of Appeals held the flea market could not be liable for injuries caused by a third party over whom the defendant had no control while the plaintiffs were still on the public roadway. *Id.* at 1218.

Kaur mischaracterizes *Flanigan* as simply holding that a business owner owes no duty to persons on a public roadway “if the business did nothing to create or increase such dangers.”³ But *Flanigan* absolutely involved an allegation the business “create[d]

² Kaur erroneously claims that Mount Comfort waived the argument that Dhillon was not an invitee by failing to present the argument in the Court of Appeals. Opposition Brief, p. 12. In fact, Mount Comfort’s Appellee’s Brief noted that a person enjoys the protections of invitee status only when the person has entered upon the land. Appellee’s Brief, pp. 11-12.

³ Opposition Brief, p. 10.

or increase[d]" a danger to those not on its property; plaintiffs in that case alleged that the flea market owner created a danger by failing to provide adequate parking on its premises and to provide for the safe flow of traffic. *Flanigan* at 1217. Nonetheless, the Court of Appeals held the flea market could not be liable because the flea market's activities, just like Mount Comfort's, did not extend onto the roadway. *Id.*

Because the operative facts of *Flanigan* are not meaningfully different from the operative facts here, the Opinion creates a direct conflict among Court of Appeals cases.

3. Even if Dhillon was an invitee (he was not), the Opinion fails to employ the *Goodwin* framework in its duty analysis.

Kaur points to parts of the Amended Complaint alleging prior incidents when drivers became confused about where they should enter the fulfillment center. Kaur contends, incorrectly, that such incidents made the harm that Dhillon suffered foreseeable.⁴ This is exactly the kind of evidence that this Court has explained is irrelevant in analyzing foreseeability as a component of duty.

In *Goodwin v. Yeakle's Sports Bar and Grill, Inc.*, this Court explained in determining the nature of the duty that a landowner owes to an invitee, courts should ask whether given the activity on the land, the landowner generally would expect the occurrence of type of harm that the plaintiff allegedly suffered. *Id.* at 393-94. This Court explicitly stated historical events, such as police runs to the establishment, may be relevant in determining proximate cause, but they are irrelevant in the duty analysis. *Id.* In this case, prior alleged incidents of confusion are exactly like the prior police runs in

⁴ *Id.*, p. 8.

Goodwin: Completely irrelevant in determining the existence of duty. Because the Opinion relied heavily on historical incidents in finding the Amended Complaint pled facts sufficient to create a duty, it is incompatible with this Court's *Goodwin* line of cases.

Moreover, Kaur erroneously expands the proper inquiry under *Goodwin*.⁵ While Kaur contends the Court's duty analysis should inquire whether a truck driver may be injured in a traffic accident, it is undisputed Singh was a pedestrian when the accident occurred, not in his truck. The proper inquiry is therefore whether a fulfillment center would expect a truck driver to park his vehicle and walk into traffic while trying to cross the road as a pedestrian.

CONCLUSION

For all of the foregoing reasons, CF Mount Comfort DST respectfully prays that this Court reverse the decision of the Court of Appeals below and enter an order affirming the Trial Court's grant of judgment on the pleadings.

Respectfully submitted,

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⁵ *Id.*, p. 7.

WORD COUNT CERTIFICATE

I verify that this Reply in Support of Petition to Transfer, excluding cover information, Table of Contents, Table of Authorities, Signature Block, Word Count Certificate, and Certificate of Service, contains no more than 1,000 words.

s/Barath S. Raman

Barath S. Raman

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2024, the foregoing Reply in Support of Petition to Transfer was filed with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court.

I also certify that on December 12, 2024, the foregoing was served by the Court's electronic filing system which automatically generated electronic service upon:

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