



COURT OF APPEALS OF INDIANA ORAL ARGUMENT AT A GLANCE

CULVER COVE
RESORT & CONFERENCE CENTER

REBECCA KAYS V. STATE OF INDIANA

CRIMINAL LAW ISSUE:

Today the court will consider whether the trial court improperly ordered Rebecca Kays to pay restitution as a term of her probation for her conviction of battery as a class B misdemeanor.

ORAL ARGUMENT:

Friday, March 4, 2011
12:00 p.m.
20 minutes each side

APPEAL FROM:

Knox Superior Court,
The Honorable
Jim R. Osborne, Judge

CASE SYNOPSIS

Facts and Procedural History

Rebecca Kays and her neighbor, Cheryl Wolfe, had feuded over their property line for some time. Eventually, a survey was conducted, and posts were installed to mark the line. Kays discovered Wolfe had placed PVC pipe over each post. Kays decided to drive posts in her own yard next to the surveyor's posts. Wolfe began taking pictures of Kays as she installed posts, and Kays

then pulled the PVC pipes off the posts and began throwing them in Wolfe's yard. One of the pipes struck Wolfe in the leg, causing a laceration that required stitches.

After a bench trial, Kays was found guilty of Class B misdemeanor battery. She was sentenced to 180 days, all suspended, and one year of probation. She was ordered to pay \$1496.15 to Wolfe as restitution for her injuries.

CASE SYNOPSIS

Summary of Arguments

Kays appeals, arguing that the trial court improperly ordered her to pay restitution without inquiring as to her ability to pay or directing how and when she must pay, both of which are required by Ind. Code § 35-38-2-2.3. In addition, this Court has raised two issues *sua sponte*.

The first *sua sponte* issue is whether the trial court's order violates 42 U.S.C.A. § 407(a), which governs the assignment of social security benefits. Kays testified during sentencing that her only source of income was social security disability. 42 U.S.C.A. § 407(a) reads in relevant part:

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

The parties will address whether the court's order qualifies as an "other legal process" such that Kays' social security benefits may not be considered when assessing her ability to pay restitution.

The second *sua sponte* issue is whether, in light of *Stanley v. Walker*,

906 N.E.2d 852 (Ind. 2009), the trial court is required to consider the reasonable cost of the victim's medical services, not just the amount of the hospital bill, in determining restitution. In that case, Walker entered into evidence medical bills totaling \$11,570. Stanley sought to enter into evidence Walker's discounted medical bills, which were a product of negotiations between the medical service providers and Walker's insurance company, and reflect the actual amount Walker's insurance company paid for his care. Our Indiana Supreme Court held that, because personal injury damages are limited to necessary and reasonable medical expenses, the trial court was required to admit Stanley's evidence of a reduction in medical expenses for the purposes of determining the correct amount of damages, as long as Stanley did not mention the discount was procured by Walker's insurance company. At oral argument, the parties in the instant case will address whether the trial court should have considered evidence of the reasonable and necessary costs of Wolfe's medical care, instead of taking her medical bills as *prima facie* evidence of her damages.

For more information on the Court of Appeals, please visit our website:
<http://www.in.gov/judiciary/appeals>

TODAY'S PANEL OF JUDGES**HON. MARGRET G. ROBB (TIPPECANOE COUNTY),
CHIEF JUDGE PRESIDING****Judge of the Court of Appeals since July 1998**

Margret G. Robb was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis. In 2011, she began a three year term as Chief Judge; the first woman to hold that position in the Court's more than 100 year history.

Prior to joining the Court she was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation. In addition, she serves on the ABA Committee that accredits law schools and in 2010, chaired a national ABA Summit on appellate law.

Judge Robb has held numerous Board positions for and been an officer for

the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges.

Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award; a 2007 Warren G. Harding High School, Warren, Ohio Distinguished Alumni Award; and in 2010 an Indiana University Alumni Association President's Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000 and 2010, lives in West Lafayette with her husband, a Professor of Communication at Purdue (M.A. and Ph.D., Indiana University). Their son, Douglas, a graduate of the United States Naval Academy, is a Lieutenant on active duty in the United States Navy.

TODAY'S PANEL OF JUDGES**HON. PATRICIA A. RILEY (JASPER COUNTY)**
Judge of the Court of Appeals since January 1994

Patricia A. Riley was named to the Indiana Court of Appeals by Governor Evan Bayh in January of 1994. A native of Rensselaer, Indiana, Judge Riley earned her bachelor's degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974.

Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993. She is a former associate professor at St. Joseph's College in Rensselaer and currently an adjunct professor at the Indiana University School of Law-Indianapolis.

Judge Riley's legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA's Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System. Judge Riley is the former chair of the Appellant Practice Section of the Indiana Bar Association, and a member of the ABA's Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges.

Judge Riley's civic associations include being on the Board of Directors of The Greater Indianapolis Health Foundation, Board of Directors of Global Peace Initiatives, Board of Directors and Treasurer of the Indiana University School of Law – Indianapolis Alumni Association, and a member of the Indianapolis Rotary Club. In 2008, she co-founded the Legal Aid Centre of Eldoret, Kenya (LACE), which provides legal access to justice in the AMPATH medical center for its HIV/AIDS patients.

Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006.

TODAY'S PANEL OF JUDGES**HON. MELISSA S. MAY (VANDERBURGH COUNTY)**
Judge of the Court of Appeals since April 1998

Melissa S. May was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon in April of 1998. She was born in Elkhart, Indiana. She received a B.S. in criminal justice from Indiana University-South Bend and, in 1984, a J.D. from Indiana University School of Law-Indianapolis. She is also a graduate of the Graduate Program for Indiana Judges.

Prior to her appointment to the Court, Judge May practiced law for fourteen years in Evansville, Indiana, where she focused on insurance defense and personal injury litigation.

Judge May has been active in local, state, and national bar associations and bar foundations. She served the Indiana Bar Association on the Board of Managers from 1992-1994, as Chair of the Litigation Section from 1998-1999, as Counsel to the President from 2000-2001, as Chair of the Appellate Practice Section from 2007-2008, and as Secretary to the Board of Governors in 2008-2009. She is also a member of the Indianapolis Bar Association and the Evansville Bar Association. In addition, she was a member of the Board of Directors of the Indiana Continuing Legal Education Forum from 1994-1999 and has been a co-chair of ICLEF's Indiana Trial Advocacy College from 2001 to present. She is a fellow of the Indiana Bar Foundation, as well as for the American Bar Association, and she is a Master Fellow of the Indianapolis Bar Association.

From 1999 until December 2004, Judge May was a member of Indiana's Continuing Legal Education Commission, where she chaired the Specialization Committee. She is currently on an Advisory Panel to the Specialization Committee. In 2005, she was named to the Indiana Pro Bono Commission and in July 2008, she was named as Chair of that Commission. While chair, she worked with the fourteen pro bono districts to train lawyers and mediators on how to assist homeowners who are facing foreclosure. Judge May also serves on the Civil Instruction Committee, an Indiana Judicial Conference Committee, which has been working to translate all of the civil jury instructions into "plain English." She frequently speaks on legal topics to attorneys, other judges, schools, and other professional and community organizations.

In 2003, Judge May was named to the American Bar Association's Standing Committee on Attorney Specialization. She is now special counsel to that committee. In the spring of 2004, Judge May became adjunct faculty at Indiana University School of Law-Indianapolis, where she teaches a trial advocacy course. Also in the spring of 2004, she was awarded an Honorary Doctor of Civil Law from the University of Southern Indiana.

Judge May, who was retained on the Court of Appeals in 2000 and 2010, is married and lives with her husband in Morgan County.

Rebecca Kays v. State of Indiana

ATTORNEYS FOR THE PARTIES



For Appellant, Rebecca Kays:

Cara Wieneke
Wieneke Law Office, LLC
Indianapolis

Cara Wieneke was born in Bloomington and has lived in Indiana her entire life. She majored in Criminal Justice as a student at Indiana University. She graduated *summa cum laude* from the Indiana University School of Law – Indianapolis in 2003.

After graduation, Ms. Wieneke was a judicial law clerk at the Court of Appeals of Indiana. She worked briefly as a family law attorney but returned to

the area of law she most enjoys: criminal defense. After working as a deputy state public defender, Ms. Wieneke opened her own law practice, handling criminal cases at the appellate and post-conviction levels.

For Appellee, State of Indiana:

James Porter
Office of the Attorney General
Indianapolis

James Porter represents the State in criminal appellate cases. He graduated from the University of North Texas College of Music in 2003 with a Bachelor's degree in Music Education, *magna cum laude*. He obtained his J.D., *cum laude*, from Indiana University School of Law at Indianapolis. Mr. Porter was an article editor for the *International and Comparative Law Review*. He received the Norman Lefstein award for excellence upon

exceeding 200 hours of *pro bono* service with Indiana Legal Services.

Mr. Porter began working for the Office of the Indiana Attorney General in 2008 as a law clerk, and became a Deputy in the Appeals Division in February of 2009. He has authored over one-hundred criminal appellate briefs.