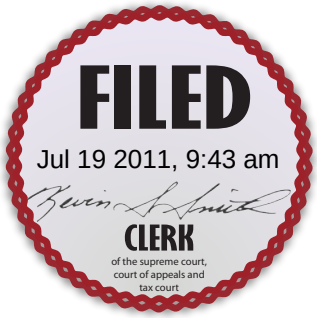

ATTORNEYS FOR APPELLANTS:

DAVID W. CRAIG
SCOTT A. FAULTLESS
KRYSTEN LESTER-LeFAVOUR
Craig Kelley & Faultless
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

RICHARD P. SAMEK
DIANA C. BAUER
Carson Boxberger LLP
Fort Wayne, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ROBERT L. CLARK, JR., and DEBRA CLARK,	)	
	)	
Appellants-Plaintiffs,	)	
	)	
vs.	)	No. 01A02-1007-CT-759
	)	
ROBERT L. CLARK, SR.,	)	
	)	
Appellee- Defendant.	)	

APPEAL FROM THE ADAMS CIRCUIT COURT
The Honorable Fredrick A. Schurger, Judge
Cause No. 01C01-0811-CT-16

July 19, 2011

MEMORANDUM DECISION –NOT FOR PUBLICATION

MAY, Judge

Robert Clark, Jr. (Junior), and his wife, Debra, (collectively, "the Clarks") appeal summary judgment in favor of Robert Clark, Sr. (Senior), on the Clarks' tort claim against Senior. As the Clarks' claims are not precluded by the Indiana Guest Statute,[1] we reverse and remand.

FACTS AND PROCEDURAL HISTORY

On September 5, 2007, Junior and Senior traveled to the home of Joyce Currie to fill jugs with drinking water. When they arrived, Junior got out of the vehicle to help Senior parallel park. Junior positioned himself in front of Senior's vehicle, between it and another vehicle parked in the alley. When Senior's vehicle was in the appropriate position, Junior signaled for Senior to stop by putting his hand up. Senior hit the gas pedal instead of the brake, and Junior was pinned between Senior's vehicle and the parked vehicle. Junior sustained serious injuries to his leg.

On November 20, 2008, the Clarks filed suit alleging negligence and loss of consortium. Senior answered and asserted the Indiana Guest Statute as an affirmative defense. Both the Clarks and Senior moved for summary judgment. After a hearing, the trial court issued Findings of Fact and Conclusions of Law and granted Senior's motion for summary judgment.

DISCUSSION AND DECISION

When reviewing summary judgment, we apply the same standard as a trial court:

[1] Ind. Code § 34-30-11-1.

summary judgment is appropriate where no designated evidence presents genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *Munsell v. Hambright*, 776 N.E.2d 1272, 1278 (Ind. Ct. App. 2002), *trans. denied.* When the material facts are not in dispute, our review is limited to determining whether the trial court correctly applied the law to the undisputed facts; and, if the issue presented is purely a question of law, we review the matter *de novo*. *Am. Family Ins. Co. v. Globe Am. Cas. Co.*, 774 N.E.2d 932, 935 (Ind. Ct. App. 2002), *trans. denied.*

Our review is unaltered by cross motions for summary judgment on the same issues, *Munsell*, 776 N.E.2d at 1278, or by a trial court's entry of findings of fact and conclusions of law. *Merrill v. Knauf Fiber Glass GmbH*, 771 N.E.2d 1258, 1264 (Ind. Ct. App. 2002), *trans. denied.* Although findings and conclusions provide valuable insight into a trial court's decision, the findings do not bind us. *Id.* The party appealing the denial of summary judgment carries the burden of persuading us that the trial court's decision was erroneous. *Munsell*, 776 N.E.2d at 1278.

The Indiana Guest Statute does not preclude the Clarks' suit against Senior. That Statute provides:

> The owner, operator, or person responsible for the operation of a motor vehicle is not liable for loss or damage arising from injuries to or the death of:
>
> (1) the person's parent;
> (2) the person's spouse;
> (3) the person's child or stepchild;
> (4) the person's brother;
> (5) the person's sister; or
> (6) a hitchhiker;
>
> resulting from the operation of the motor vehicle while the parent, spouse, child or stepchild, brother, sister, or hitchhiker was being transported without

> payment in or upon the motor vehicle unless the injuries or death are caused by the wanton or willful misconduct of the operator, owner, or person responsible for the operation of the motor vehicle.

Ind. Code § 34-30-11-1. Junior claims he was not "in or upon" Senior's vehicle, nor was he "being transported" at the time he was injured, and thus the statute does not preclude his lawsuit against Senior.

In the order granting summary judgment for Senior, the trial court explained:

> Strictly construing the Guest Statute the way the statute reads would result that [sic] in Jr.'s claim that the Guest Statute is not applicable. However the Indiana Appellate court in its most recent examination of the Guest Statute in this case, KLLM, Inc. vs. Legg, 826 NE 2d 136 (Ind. Ct. App. 2005), *trans. denied*,[2] applied the Guest Statute to facts extremely similar to those present here. . . .
> This Court applying the two decisions [*C.M.L. ex. rel. Brabant v. Republic Servs., Inc.*, 800 N.E.2d 200, 208-209 (Ind. Ct. App. 2003), *trans. denied*,[3] and *KLLM*] finds it very hard to differentiate the two cases but finds that the KLLM case was the latest in time and is most similar to the Clark case and therefore is constrained by the KLLM case to find that the Indiana Guest Statute as interpreted by the Indiana Court of Appeals should be found to apply to the complaint of Jr. and therefore the Court finds in this Motion for Summary Judgment in favor of Sr. and against Jr. on their respective Motions for Summary Judgment finding that the Indiana Guest Statute, because of its interpretation in KLLM, is applicable to this case, and fatal to Jr.'s claim.

(App. at 8-9) (footnotes added).

We need not compare the facts before us to either decision because Senior admitted Junior was not "in or upon" the vehicle at the time of the accident, and his admission

[2] In *KLLM*, a hitchhiker was killed while helping a semi-truck driver park his truck at a filling station. Relying on *Michigan Mut. Ins. Co. v. Combs*, 446 N.E.2d 1001, 1007 (Ind. Ct. App. 1983), we held the hitchhiker was "upon" the semi-truck because a "sufficient relationship" existed between the hitchhiker and the semi-truck.

[3] In *C.M.L.*, a stepfather and his stepson, C.M.L., were riding in a garbage truck, collecting trash on the stepfather's route. C.M.L. exited the vehicle to urinate, and the stepfather struck C.M.L. We held the language of the statute was unambiguous, and C.M.L. was not "in or upon" the vehicle for purposes of the Guest Statute. *C.M.L.*, 800 N.E.2d at 209. Thus the statute did not preclude C.M.L. from bringing suit against his stepfather or his stepfather's employer. *Id.*

concludes the issue. In his response to the Clarks' request for admissions, Senior admitted:

> 19. On September 5, 2007, at the time of the collision, Robert L. Clark, Jr. was not in the Chevrolet.
>
> RESPONSE: At the moment of impact the plaintiff was not in the Chevrolet . . .
>
> 20. On September 5, 2007, at the time of the collision, Robert L. Clark, Jr. was not upon the Chevrolet.
>
> RESPONSE: At the moment of impact the plaintiff was not upon the Chevrolet . . .

(*Id*. at 56.) Senior argues those admissions are legal conclusions, and "not dispositive because it is this court's obligation, not Sr.'s, to interpret whether the facts of this case demonstrate whether Jr. as [sic] 'in or upon' his father's vehicle at the time of injury." (Br. of Appellee at 3, fn 1.)

Ind. Trial Rule 36 allows written requests for admissions regarding "the truth of any matters within the scope of Rule 26(B)[.]" T.R. 26(B) allows for discovery regarding "any matter, not privileged, which is relevant to the subject-matter involved in the pending action." In *Gen. Motors Corp., Chevrolet Motor Div. v. Aetna Cas. & Sur. Co.*, our Indiana Supreme Court held:

> Properly used, requests for admissions simplify pre-trial investigation and discovery, facilitate elimination of unnecessary evidence at trial, and reduce the time and expense demands upon the parties, their counsel and the courts. To achieve these purposes, T.R. 36 requests are not limited to purely evidentiary matters, but may also seek admissions as to legal issues, contentions, and conclusions, if related to the facts of the case.

573 N.E.2d 885, 888 (Ind. 1991), *reh'g denied*. Once a party makes an admission to the

court, there is no need for further proof and the factfinder must consider the admission. *Corby v. Swan*k, 670 N.E.2d 1322, 1324 (Ind. Ct. App. 1996).

Because Senior's admission that Junior was not "in or upon" the vehicle is dispositive of his affirmative defense, we hold the Indiana Guest Statute inapplicable here. Thus, we reverse and remand for proceedings consistent with this opinion.

Reversed and remanded.

ROBB, C.J., dissenting with separate opinion.

VAIDIK, J., concurring with separate opinion.

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	)	
ROBERT L. CLARK, SR.,	)	
	)	
Appellee-Defendant.	)	

ROBB, Chief Judge, dissenting

I respectfully dissent and would affirm the trial court's conclusion that the Guest Statute bars the Clarks' claims against Senior. First, while the majority holds dispositive Senior's answers to requests for admissions, I find the requests and answers were written too imprecisely to be conclusive of the matter and were posed as questions of fact, not law. Second, I agree with the trial court's reasoning and reliance on KLLM, Inc. v. Legg, 826 N.E.2d 136 (Ind. Ct. App. 2005), trans. denied, a factually similar case that no subsequent development in the law has called into doubt.

At the outset, it is crucial to consider the full text of the Clarks' requests for admissions and Senior's equivocal answers, as follows:

> 18. On September 5, 2007, at the time of the collision, Robert L. Clark, Jr. was a pedestrian.

RESPONSE: At the moment of impact the plaintiff was not in the Chevrolet, whether he was a pedestrian is genuine issue for trial and therefore denied.

19. On September 5, 2007, at the time of the collision, Robert L. Clark, Jr. was not in the Chevrolet.

RESPONSE: At the moment of impact the plaintiff was not in the Chevrolet. Whether he was a pedestrian is genuine issue for trial and therefore denied.

20. On September 5, 2007, at the time of the collision, Robert L. Clark, Jr. was not upon the Chevrolet.

RESPONSE: At the moment of impact the plaintiff was not upon the Chevrolet. Whether he was a pedestrian is genuine issue for trial and therefore denied.

Appendix at 56. As such, Senior's answers were not unequivocal admissions of the matters requested. By contrast, to certain other requests in the same discovery response, Senior simply answered "Admitted" or "Admitted, subject to discovery showing otherwise." Id. at 56-57. While Trial Rule 36(B) provides that matters admitted are conclusively established, our caselaw supplies the complementary proposition that "[a] statement which contains ambiguities or doubt is not to be regarded as a binding admission." Heyser v. Noble Roman's, Inc., 933 N.E.2d 16, 19 (Ind. Ct. App. 2010), trans. denied.

Even more importantly, words such as "in" and "upon" can have different meanings when used in a generic ordinary sense as opposed to the phrase "in or upon" used as a legal term of art. A recent commentator has observed that current legal scholarship criticizes the use of English language dictionaries to define statutory terms. Adam Liptak, Justices Turning More Frequently to Dictionary, and Not Just for Big Words, N.Y. TIMES, June 13, 2011, at A11.[4] Among the scholarship cited in the Liptak article is Jeffrey L. Kirchmeier & Samuel A. Thumma, Scaling the Lexicon Fortress: The United States Supreme Court's Use

[4] Available at http://www.nytimes.com/2011/06/14/us/14bar.html.

of Dictionaries in the Twenty-First Century, 94 MARQ. L. REV. 77 (2010).[5] Those authors observe, among other things, that "[u]nlike other points of reference for interpreting words and phrases . . . dictionary definitions provide no context for the word or phrase being defined." Id. at 80. Relatedly, Justice Stephen Breyer recently wrote that "neither dictionary definitions nor the use of the word 'license' in an unrelated statute can demonstrate what scope Congress intended the word 'licensing' to have as it used that word in this federal statute. Instead, statutory context must ultimately determine the word's coverage." Chamber of Commerce of U.S. v. Whiting, 131 S. Ct. 1968, 1988 (2011) (Breyer, J., dissenting) (emphasis in original) (partially quoted in Liptak, supra). In line with these observations, we should not implicitly rely on dictionary definitions of "in" and "upon" as individual words. Instead, we should interpret and apply the phrase "in or upon" in the Guest Statute as a legal term of art with a particular meaning, consistent with the approach taken in the KLLM case.

Returning to the present case, the better reading of Senior's answers to requests for admissions is that they used "in" and "upon" in a generic and factual, not a legal, sense. The phrase "in or upon" was not posed in the requests; rather, one request posed "in" and another posed "upon" as separate queries. Thus, I read Senior as admitting that Junior was not literally inside or on top of the Chevrolet at the moment of impact, yet reserving the issue of whether he was "in or upon" the vehicle for purposes of applying the Guest Statute. This reading is reinforced by Senior's thrice-repeated denial that Junior was a "pedestrian." In short, I cannot agree with the majority's rationale for reversal because the questions were

[5] Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1832926##.

asked of and answered by Senior in a generic and factual sense, whereas a trial court or appellate decision as to the applicability of the Guest Statute requires applying the phrase "in or upon" in a technical and legal sense.

The trial court correctly relied on KLLM, where this court held a passenger was "upon" a tractor-trailer for purposes of the Guest Statute when, though temporarily physically outside the trailer, he was assisting the driver in backing up the trailer, "in direct furtherance of the[] journey." 826 N.E.2d at 144. KLLM distinguished C.M.L. ex rel. Brabant v. Republic Servs., Inc., 800 N.E.2d 200 (Ind. Ct. App. 2003), trans. denied – where this court held that a child who exited his stepfather's garbage truck to urinate and was then struck by the truck was not "in or upon" the truck – by noting the child's actions were not in direct furtherance of the journey. KLLM, 826 N.E.2d at 144; see Republic Servs., 800 N.E.2d at 209. The facts of the present case are more akin to KLLM, in that Junior was assisting Senior in parking the Chevrolet – an integral part of completing their journey – when the impact occurred. I would follow the reasoning of KLLM and hold that the trial court properly concluded the Guest Statute bars the Clarks' claims.

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Appellee-Defendant.	)	
	)	

VAIDIK, Judge, concurring.

I concur in full with the majority opinion that summary judgment for Senior is improper because Senior's admissions that Junior was not "in or upon" his vehicle precludes application of the Indiana Guest Statute.

I write separately to note that even without Senior's admissions, summary judgment is nonetheless improper pursuant to this Court's opinion in *C.M.L. ex rel. Brabant v. Republic Services, Inc.*, 800 N.E.2d 200 (Ind. Ct. App. 2003), *trans. denied*. In *C.M.L.*, a child exited his stepfather's garbage truck to urinate and was then struck by the truck when his stepfather pulled forward to the next stop. *Id.* at 201-02. The trial court granted summary judgment for the stepfather in part because it determined that the Indiana Guest Statute barred the child's

negligence action. *Id.* at 202. On appeal, we determined that the terms "in or upon" in the Indiana Guest Statute are not ambiguous and therefore applied their plain meanings. *Id.* at 209. Because the child was not "in or upon" the garbage truck when he was struck, we concluded that the Indiana Guest Statute did not bar the child's claim. *Id.*

Likewise, as Junior was not "in or upon" Senior's vehicle at the time he was struck but standing in front of it, I would conclude that the Indiana Guest Statute does not bar Junior's claim.