COURT OF APPEALS
DECISION
DATED AND FILED

August 19, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

No. 98-2446

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

PETER N. PETERSON,

PLAINTIFF-APPELLANT,

V.

YMCA OF METROPOLITAN MADISON, INC., AND THE CINCINNATI INSURANCE COMPANY,

DEFENDANTS-RESPONDENTS,

STATE OF WISCONSIN, DEPARTMENT OF HEALTH AND FAMILY SERVICES, DIVISION OF HEALTH,

THIRD-PARTY DEFENDANT.

APPEAL from a judgment and an order of the circuit court for Dane County: PAUL B. HIGGINBOTHAM, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Vergeront, JJ.

PER CURIAM. Peter Peterson appeals a summary judgment that dismissed his personal injury lawsuit against YMCA of Metropolitan Madison, Inc. Peterson injured himself when a chinning bar he was using at the YMCA collapsed under his weight. The chinning bar was part of an exercise unit known as a SR MultiStation. Peterson opposed the YMCA's motion for summary judgment but submitted no expert testimony. The trial court concluded there was no evidence of negligence, noting that Peterson had given the court no expert testimony or other facts tending to show a failure by the YMCA to use ordinary care as to the bolts. On appeal, Peterson argues that the trial court overstated the need for expert testimony at the summary judgment stage and that his submissions showed disputes of material facts on the issue of negligence. We conclude the trial court properly granted summary judgment, and therefore affirm.

The YMCA is entitled to summary judgment if there are no genuine disputes of any material fact and it is entitled to judgment as a matter of law. *See* § 802.08(2), STATS. Courts seldom resolve negligence issues on summary judgment, *see* ***Cirillo v. City of Milwaukee***, 34 Wis.2d 705, 716-17, 150 N.W.2d 460, 466 (1967), but they may if the facts permit only one reasonable inference. *See* ***Hennekens v. Hoerl***, 160 Wis.2d 144, 162, 465 N.W.2d 812, 819-20 (1991). Negligence is the failure to use ordinary care. *See* ***Marciniak v. Lundborg***, 153 Wis.2d 59, 64, 450 N.W.2d 243, 245 (1990). A party bearing the burden of producing an admissible expert opinion at trial must make a showing that it can do so to avoid summary judgment in favor of the opposing party. *See* ***Dean Med. Ctr. v. Frye***, 149 Wis.2d 727, 735 n.3, 439 N.W.2d 633, 636 (Ct. App. 1989).

Here, the trial court correctly granted the YMCA summary judgment against Peterson. Peterson showed that the bolts on the chinning bar broke under his weight. He made no showing, however, of how the YMCA failed to exercise

ordinary care as to those bolts. Peterson offered no evidence of the bolts' useful life or replacement date. He offered no evidence on how the YMCA should have inspected the bolts or how often. He offered no maintenance instructions for the chinning bar from a manufacturer's manual. He offered no expert testimony on why the bolts broke or how the YMCA could have known in advance they were ready to break. He offered no other facts showing that the YMCA knew or should have known that the bolts were about to break. All Peterson offered was the bolts' failure itself. On this record, there is no basis for a reasonable inference that the YMCA used less than ordinary care. This was not a case in which the trial court could draw an inference of negligence from the bolts' failure itself, as allowed by the rule of *res ipsa loquitur*. Peterson needed to give the court some affirmative proof of fault, and he failed to give it. In short, the trial court drew the only reasonable inference.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.