

**COURT OF APPEALS
DECISION
DATED AND FILED**

OCTOBER 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. **99-0274-FT**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

PATTIANN REIMER,

PLAINTIFF-APPELLANT,

V.

**RICHARD BURBY, SR. AND RJB, INC., D/B/A
B & B AUTO,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Langlade County:
JAMES P. JANSEN, Judge. *Reversed and cause remanded with instructions.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Pattiann Reimer appeals a judgment dismissing her action against Richard Burby and his vehicle towing business in which she alleged conversion, misrepresentation, violation of § 779.415(1m) and (2), STATS., (lien

law), fraudulent representation under § 100.18, STATS., and unfair trade practices.¹ Following an accident, Burby towed Reimer's van to his lot and, after storing it for several months, sold it. In a general verdict, the jury awarded Reimer \$3,300. The trial court set aside the verdict,² holding that Reimer presented no evidence that she ever demanded the return of her van or that Burby committed any wrongdoing. Because we conclude that Reimer presented sufficient evidence to allow the jury to infer that she demanded the return of her van, that Burby falsely informed her that he could not release the van to her because it was on police hold, that Burby failed to give twenty-days notice before selling the van as required by § 779.415(2), STATS., and/or that he sold the van after he received a restraining order prohibiting its sale, we reverse the judgment and remand with directions to grant judgment on the verdict.

¶2 When reviewing the trial court's order setting aside a jury's verdict, we defer to the verdict and will overturn the trial court if there was any credible evidence to support the verdict. *See Foseid v. State Bank*, 197 Wis.2d 772, 787, 541 N.W.2d 203, 209 (Ct. App. 1995). Reimer and her boyfriend, Michael Swanson, testified that they began contacting Burby three days after the accident. Swanson testified that he talked to Burby about "coming over and squaring up with [Burby] on the towing bill and when that would be possible" The jury could reasonably infer that Reimer sought the return of her van. She and Swanson testified that Burby told them the van could not be released because it was on

¹ This is an expedited appeal under RULE 809.17, STATS.

² The trial court granted Burby's motion for judgment notwithstanding verdict (JNOV). As defined in § 805.14(5)(b), STATS., JNOV occurs when the court accepts the jury's verdict, but grants judgment for reasons not found in the verdict. In this case, because the trial court concluded that insufficient evidence supported the verdict, we construe its order as one granting a motion to change the answer under § 805.14(5)(c), STATS.

police hold. As the sole arbiter of the witnesses' credibility, the jury had the right to find that testimony credible and infer that Reimer demanded the return of her van as soon as the fictitious police hold was lifted. See **Bauer v. Piper Indus., Inc.**, 154 Wis.2d 758, 763, 454 N.W.2d 28, 30 (Ct. App. 1990).

¶3 The jury could also have reasonably found that Burby sold the van without giving twenty-days notice or violated an order enjoining the sale. Burby sent a letter on July 7, 1997, advising Reimer of his intent to sell the van. One week later, Reimer filed a motion for a temporary restraining order to prevent Burby from selling the van. The order enjoining sale was granted July 23 and mailed to Burby on July 25. Burby testified that he sold the vehicle approximately July 21 or 22, testimony that he disavows on appeal by noting that it was a rough estimate made a year after the transaction. The jury could find, however, that he either sold the vehicle without twenty-days notice, or, if later than July 27, after he had notice of the restraining order.

¶4 Reimer requests that we remand with instructions to award double damages and attorney fees as allowed by two of her causes of action, those alleging violations of §§ 100.18 and 100.20(1t) and (4), STATS. Reimer has not properly preserved her claim for double damages and attorney fees because she has not established that she requested a form of verdict that would allow this court to determine the theory under which the jury awarded her damages. See **Roach v. Keane**, 73 Wis.2d 524, 535-36, 243 N.W.2d 508, 515 (1976). The verdict submitted to the jury does not differentiate between Reimer's various causes of action. The parties have not provided this court with the complete transcript. Reimer does not allege that she objected to the form of the verdict and the portion of the transcript available to this court shows no objection. We are therefore

unable to determine whether the jury based its award on any of the causes of action that allow double damages and attorney fees.

By the Court.—Judgment reversed and cause remanded with instructions.

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

