COURT OF APPEALS
DECISION
DATED AND FILED

March 30, 2000

Cornelia G. Clark
Acting 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* WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1234

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

LORENTZ R. ROE,

PLAINTIFF-RESPONDENT,

V.

TIMOTHY ROE,

DEFENDANT,

MILWAUKEE MUTUAL INSURANCE COMPANY AND ALPHA PROPERTY & CASUALTY INSURANCE COMPANY,

DEFENDANTS-APPELLANTS,

GENERAL CASUALTY INSURANCE COMPANY,

DEFENDANT-CO-APPELLANT,

WISCONSIN FARMERS MUTUAL INSURANCE N/K/A WISCONSIN AMERICAN MUTUAL INSURANCE, AND EMPLOYERS HEALTH INSURANCE,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Waupaca County: PHILIP M. KIRK, Judge. *Affirmed.*

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

¶1 VERGERONT, J. This case arises out of an accident that occurred when a pickup truck operated by fourteen-year-old Timothy Roe suddenly accelerated backward and injured his father, Lorentz Roe. Three defendant insurers—Milwaukee Mutual Insurance Company, Alpha Property & Casualty Insurance Company and General Casualty Insurance Company—appeal the judgment entered on the jury verdict, which found Timothy 55% negligent, Lorentz 45% negligent, and the negligence of both to have caused Lorentz's injuries.[1] Appellants contend: (1) the trial court erred in permitting Ray Huber to testify as an expert; (2) the trial court erred in declining to give the jury instruction they requested on negligent entrustment; and (3) the jury's verdict was not supported by the evidence and the trial court should have decided that Lorentz was more negligent than Timothy as a matter of law.

¶2 We reach the following conclusions. (1) The trial court did not erroneously exercise its discretion in permitting Huber's testimony on most points challenged by appellants, and, to the extent some of his opinions were not properly the subject of expert testimony, appellants were not prejudiced by that testimony. (2) The trial court did not erroneously exercise its discretion in declining to give the requested jury instruction. (3) The verdict is supported by sufficient evidence

[1] Pursuant to a stipulation, Timothy was dismissed as a defendant and the parties stipulated to Lorentz's damages and to a mechanism for determining the award of damages to Lorentz depending on the jury's apportionment of negligence. The two other insurers listed as defendants—Wisconsin Farmers Mutual Insurance and Employers Health Insurance—are not parties to this appeal.

and the trial correctly denied the post-verdict motion for a ruling that Lorentz was more negligent than Timothy as a matter of law. We therefore affirm.

BACKGROUND

¶3 The undisputed facts concerning the accident are as follows. The accident occurred when Timothy and Lorentz were performing chores on the farm where Lorentz lived, which was owned by Lorentz's brother, Everett. Lorentz and Timothy's mother had been divorced for many years. Timothy lived with his mother in Marion, Wisconsin, and stayed with his father every other weekend and for a week at a time periodically during the summer months. When Timothy stayed with his father, they would generally do farm chores for a portion of the time. At the time of the accident they were using Everett's 1978 Ford F-150 pickup truck to haul sand from another location on the farm to fill a hole, and Lorentz was driving. The truck was for use on the farm, although Everett took it into town for repairs and to refuel it. While emptying a load of sand from the truck, Lorentz asked Timothy to move the truck forward so they could shovel out the rest of the sand. Timothy assumed the truck was in neutral, but Lorentz had left it in reverse. Timothy started the engine and then put his foot on the gas, causing the truck to accelerate quickly backward, knocking Lorentz down and running over him.

¶4 Prior to trial the appellants filed a motion in limine that requested a ruling that Ray Huber could not testify as an expert for Lorentz and render these opinions: (1) it is commonplace on farms for children Timothy's age to operate farm machinery and vehicles, and (2) Timothy was negligent with respect to the operation of the truck. Concerning the first opinion, appellants contended in their brief that no expert testimony was needed because it was part of a juror's common

experience, and the opinion was irrelevant because the accident involved the operation of a motor vehicle, not farm machinery or equipment. As to the second opinion, appellants argued that no expert opinion was necessary, Huber did not have the necessary expertise and his testimony would be invading the province of the jury. The hearing on the motion took place just before voir dire of the jury panel. The court concluded the evidence regarding the age children operate vehicles and equipment on farms was relevant, was not within the common knowledge of all jurors, and Huber had sufficient farming experience. As we explain in more detail below, it is not clear whether the court intended to allow Huber to testify on the manner in which Timothy operated the truck, but all parties apparently construed the court's statement "that motion is denied" as allowing this testimony as well as his testimony on farm practices.

¶5 The evidence at trial relevant to Timothy's driving experience and Lorentz's knowledge of it included the following. Timothy did not have a valid driver's license. He had driven his mother's car, which had an automatic transmission, a couple times. He had driven a garden tractor at his mother's home about ten times a year for about three or four years. This tractor had a manual transmission and a clutch, which he knew how to use. Since he was thirteen, he had operated a tractor at another uncle's farm, steering while his uncle used the manual transmission and the clutch and showed him how to use those. Timothy saw what his uncle was doing and was aware that when you have a manual transmission you have to push the clutch in and then use the shift. When he was thirteen, he also drove another tractor with a manual transmission and a clutch. Timothy had never driven the truck, although he had been in it many times when his uncle was driving it. Timothy did not have experience in operating a manual transmission pickup truck.

¶6 Lorentz testified that the training he had provided his son on the truck consisted of showing him how he had to shift on the truck while he (Lorentz) was driving it that day. Timothy testified that he remembered his father saying, "you are going to have to learn how to do this soon" but he did not recall what his father was showing him. Timothy acknowledged that he did not pay attention because he did not think it was important. Lorentz knew that Timothy had driven his mother's car, tractors on his uncles' farm, and a garden tractor, and he thought his son had been driving this truck because he always rode with Everett. However, he had never seen his son drive this truck or drive a tractor by himself. Timothy acknowledged that his father may have believed he had used the truck before with his uncle; he never told his father anything to the contrary.

¶7 With respect to the details of the accident, there was this evidence. The truck was parked on level ground. Lorentz left it in reverse, and did not push the emergency parking brake nor "chock the wheels" (put a piece of wood or something behind or in front of the tires) to prevent it from moving. Lorentz was behind the truck on the driver's side, about three or four feet away, when he told his son to pull the truck forward. When his son got into the truck, Lorentz did not move or watch his son, but continued working with his back to the truck.

¶8 Timothy testified that he did not feel comfortable moving the truck when his father told him to, but he did not object or ask for instructions. He knew you had to push in the clutch to shift a manual transmission vehicle, but he did not know you had to do that to start such a vehicle. He assumed the truck was in neutral, but he did not check. Timothy testified that he heard his father say, "You turn the key and step on the gas," while Lorentz testified he did not recall that he said anything after telling Timothy to move the truck, and he would not tell somebody to turn the key and step on the gas with a manual transmission.

Timothy turned the key to start the truck without putting his foot on the clutch or the brake, and the truck started to roll backward a little. Then he hit the gas because he was afraid the engine was going to stall; he did not look out the back window or in any mirror. When he stepped on the gas, the truck shot backward fast. The truck hit his father, hit the milk house and kept going. Timothy put his foot on the brake then, and shut the truck off. He did not know that he had hit his father.

¶9 Huber testified at trial, as he had at his deposition, that on a farm it is reasonable to expect a child of Timothy's age to be operating farm vehicles. He also testified that Lorentz's instruction to Timothy regarding the truck was not "lacking" given that Lorentz was aware of his prior driving experience, had showed him the shifting mechanism, and the small movement he asked Timothy to make. Huber also testified that the cause of trauma to Lorentz was the truck backing over him and "apparently Tim started the truck improperly." Huber agreed that Timothy had omitted to do a number of things—putting his foot on the clutch being the most important—and these omissions "to some degree" caused the accident.[2]

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[2] An exhibit listing the following omissions was shown to Huber:

Operator Negligence Prior To Starting:

1. No objection/declination to drive.
2. No request for further instruction.
3. No look out back window.
4. No look in rear view mirror.
5. No checking gear position.
6. No warning prior to moving vehicle.

Operator Negligence While Starting:

1. No foot on clutch.
2. No foot on brake.
3. Thought "no big deal" when truck started to roll backwards.

(continued)

¶10 Everett, who had lived on a farm all his life, testified that it was common practice for a person under sixteen to drive a vehicle on a Wisconsin farm. In addition, Lorentz submitted treatises containing information on the age at which children on farms operate farm machinery, equipment and tractors.

¶11 At the jury instruction conference following the close of evidence, appellants asked for this jury instruction on negligent entrustment, patterned on WIS JI—CIVIL 1014, but substituting "Lorentz Roe" for "defendant":

> To find Lorentz Roe negligent in permitting Timothy Roe to use the pick-up truck, you must find that:
>
> 1. Lorentz Roe was initially in control of the pick-up truck;
> 2. Lorentz Roe permitted Timothy Roe to use the pick-up truck; and
> 3. Lorentz Roe either knew or in the exercise of ordinary care should have known that Timothy Roe intended or was likely to use the pick-up truck in a way that would create an unreasonable risk or harm to others.

The trial court denied this request, expressing reservations whether the instruction was intended to apply to a plaintiff's entrustment to a defendant and reasoning that the general instruction on negligence adequately covered the issue the jury needed to decide with respect to Lorentz's negligence in telling Timothy to move the truck.

¶12 The jury returned a verdict finding Timothy 55% negligent and Lorentz 45% negligent. The appellants moved for an order changing this answer,

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4. Hit accelerator while in gear and rolling backwards.
5. No use of brake while rolling backwards.
6. No warning while moving.
7.

granting a judgment notwithstanding the verdict and for a new trial.[3] The grounds were the same as those raised on this appeal: the trial court erred in admitting Huber's testimony, in not giving the requested instruction, and Lorentz was more negligent than Timothy as a matter of law. The trial court denied the motions, repeating its reasoning for its prior rulings on the first two issues. With respect to the sufficiency of the evidence, the court stated that if it would have been the fact finder, the verdict would have been different because, in its view, Lorentz's evidence, though credible, was not entitled to the weight the jury gave it. However, the court concluded there was credible evidence supporting the jury's verdict, and it therefore could not substitute its view of the evidence for the jury's view and change the jury's answer on the apportionment of negligence.

DISCUSSION

Admissibility of Huber's Testimony

¶13 The admissibility of expert testimony is committed to the discretion of the trial court. *See* ***State v. Friedrich***, 135 Wis. 2d 1, 15, 398 N.W.2d 763 (1987). We uphold discretionary decisions of the trial court if it considered the relevant facts, applied a correct standard of law and arrived at a reasonable result through a rational thought process. *See* ***State v. Peters***, 192 Wis. 2d 674, 685, 534 N.W.2d 867 (Ct. App. 1995). In Wisconsin expert testimony is generally admissible if the testimony will aid the trier of fact in understanding the evidence or determining a fact in issue and if the expert is qualified by knowledge, skill, experience, training or education to render an opinion on the particular subject

[3] At the close of the evidence appellants had moved to dismiss the case on the ground that Timothy was not negligent as a matter of law, or alternatively, that Lorentz was more negligent than Timothy as a matter of law. The trial court reserved ruling on the motion.

matter. *See* ***Kerkman v. Hintz***, 142 Wis. 2d 404, 422, 418 N.W.2d 795 (1988); WIS. STAT. § 907.02 (1997-98).[4] In addition, in order to be admissible, evidence must be relevant. *See* WIS. STAT. § 904.02. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." WIS. STAT. § 904.01.

¶14 Appellants first challenge the admissibility of Huber's opinions on what is customary and reasonable for children on farms as irrelevant and not a proper subject of expert testimony.[5] It is not relevant, they claim, because Timothy did not grow up on a farm and because the pickup truck was not farm machinery or equipment but a motor vehicle licensed to operate on roads within the State of Wisconsin. It does not appear that appellants raised this first claim of irrelevancy before the trial court but, since Lorentz does not object on this ground,

[4] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

[5] Appellants state in their brief that Huber was not competent to testify as an expert. They recite his experience as an attorney and point out that he is not an accident reconstructionist nor a driving instructor. They do not refer to Huber's testimony on his farming experience, nor argue that he was not qualified by experience to render the opinions concerning common and reasonable practices on a farm with respect to children operating farm vehicles and machinery, other than this one-sentence assertion: "Mr. Huber himself is not an expert in the areas in which he was asked to testify." In response, Lorentz presents a developed argument that Huber was qualified by his training and experience in farming, citing to the record and to legal authority. Appellants do not dispute this in their reply brief. Whether a witness has the requisite expertise under WIS. STAT. § 907.02 must be analyzed with reference to the specific subject matter of the testimony. If appellants wished us to decide the issue of Huber's qualifications to render opinions concerning the common and reasonable practices on farms with respect to children operating farm vehicles and machinery, it was their responsibility to present a developed argument in their first brief, *see* ***Fritz v. McGrath***, 146 Wis. 2d 681, 686, 431 N.W.2d 751 (Ct. App. 1988). Failing that, it was their responsibility to respond to Lorentz's discussion in their reply brief. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994). Since they did neither, we do not decide this issue but take it as a concession that the trial court could reasonably conclude that Huber was qualified to render opinions on this topic because of his farming experience.

we address this contention. We conclude that in light of Everett's and Lorentz's testimony on the amount of time Timothy had spent on the farm doing chores with them, evidence on the practices of farm families and their children was relevant to the reasonableness of Lorentz's direction to Timothy to move the truck forward. With respect to the second claim of irrelevancy, we conclude the trial court properly exercised its discretion in rejecting it. Huber's testimony covered farm vehicles, including trucks, as well as farm machinery and equipment, and there was ample testimony that the accident occurred on the farm while using a vehicle typically used on a farm to perform a farm chore.

¶15 We also conclude that a reasonable judge, applying the correct law to the facts of record, could decide that Huber's opinions on this subject would aid the jury and were outside the common experience of jurors. The court explained its view that jurors who have not grown up on farms or lived around farms would not likely know what is customary for children Timothy's age to do in terms of operating farm vehicles and machinery. The cases appellants cite in support of their position do not persuade us otherwise. None of those cases concern a similar subject of testimony. In addition, most either address whether expert testimony is required in a particular case to avoid dismissal, *see* ***Cramer v. Theda Clark Mem'l Hosp.***, 45 Wis. 2d 147, 152-54, 172 N.W.2d 427 (1969), or uphold a trial court's exercise of discretion in excluding testimony. *See, e.g.,* ***Kreklow v. Miller***, 37 Wis. 2d 12, 22, 154 N.W.2d 243 (1967). Therefore, quite apart from the significant differences in the subject matter, these cases are not helpful in analyzing whether the trial court here properly exercised its discretion in admitting these opinions.

¶16 Appellants next contend the trial court erroneously permitted Huber to testify on Lorentz's and Timothy's negligence because expert testimony was

unnecessary, Huber did not have the requisite expertise, and this invaded the province of the jury. Our review of this issue is made more difficult because appellants do not direct their arguments to specific opinions or testimony. From our review of the record, we believe they are objecting to Huber's opinion that Lorentz's instruction to Timothy was not "lacking" and to his opinions that Timothy improperly started the truck and that various omissions in doing so caused Lorentz's injuries. We confine our analysis to this testimony.

¶17 We view Huber's testimony regarding Lorentz's conduct as requiring a different analysis from that regarding Timothy's. We conclude Huber's opinion on the former was within the area of Huber's expertise as a farmer and his knowledge of the common practice on farms concerning children operating farm vehicles and farm machinery. The court's reasoning for permitting Huber's testimony on those common practices as an aid to the jury also supports the admission of his opinion on Lorentz's conduct in light of those practices. We do not agree with appellants that this testimony invades the province of the jury. An "opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact," WIS. STAT. § 907.04, as long as the ultimate issue is not a legal concept, such as negligence, for which the jury needs definitional instructions. *See* ***Lievrouw v. Roth***, 157 Wis. 2d 332, 351-352, 459 N.W.2d 850 (Ct. App. 1990). Huber did not testify that Lorentz was not negligent. He was asked whether he had an opinion on "the reasonableness of [Lorentz's] instructions to [Timothy]" with regard to the pickup

truck, and he answered that, based on various factors, "I don't think his instruction was lacking." This testimony did not invade the province of the jury.[6]

¶18 However, Huber's testimony that Timothy improperly started the truck and that his omissions caused Lorentz's injuries are directed to subjects other than farm practices with respect to children operating farm vehicles and machinery. We first consider whether appellants preserved their objections to Huber's testimony on these subjects.

¶19 Appellants did not object to this testimony at trial, although when Lorentz sought admission of the list of Timothy's omissions in starting the truck, after Huber agreed they were causal to some degree of Lorentz's injuries, appellants' counsel said he did not object "[s]ubject to previous comments." Presumably he was referring to the hearing on the motion in limine that had occurred earlier that day. When a party brings a motion in limine and receives an adverse ruling, that preserves the party's right to appeal the ruling without also objecting at trial, but only to the extent of the evidence opposed and the argument presented in the motion. *See* ***State v. Bustamante***, 201 Wis. 2d 562, 571, 549 N.W.2d 746 (Ct. App. 1996).

¶20 Appellants' brief supporting the motion in limine[7] objected to Huber testifying on Timothy's negligence, but did not mention causation, and causation

[6] Huber's testimony on Lorentz's instructions was not the subject of appellants' pretrial motion, apparently because at Huber's deposition, Huber testified that he did not have an opinion to a reasonable degree of certainty whether Lorentz "was or was not negligent with respect to the instruction of his son before operating the pickup truck." (Appellants read this portion of his deposition in cross-examining Huber at trial.) However, as we have said above, the court's reasoning in denying the motion applies to this testimony as well, and we therefore cannot say that appellants should have made an objection to this testimony at trial in order to preserve their right to raise it on appeal.

[7] The motion itself did not specify what opinions of Huber appellants were objecting to.

was not mentioned in the oral argument on the motion or the courts ruling. We therefore conclude that appellants' failure to object to this causation testimony at trial waives their right to raise this on appeal.

¶21 With respect to Huber's testimony on Timothy improperly starting the vehicle, the court did not explain why that was admissible. Indeed, it is not clear that the court intended to allow that testimony. However, it appears appellants and Lorentz understood that, when the court said "that motion is denied," it intended to allow Huber to render an opinion on Timothy's negligence in the manner in which he operated the truck.[8] We therefore conclude that it

[8] Appellants objected to Huber's opinion on "whether [Timothy] was negligent" in their brief supporting their motion. However, the pages of Huber's deposition testimony attached to their motion did not contain Huber's criticisms of how Timothy started the truck, but only a brief reference to those criticisms. The attached pages were primarily directed to Huber's background and his opinion on common practices on farms with respect to children operating farm vehicles and machinery. Although Huber's entire deposition was filed with the court along with the motion, it does not appear that the court's attention was ever drawn to the pages in which Huber deposed that Timothy neglected to do a number of things he should have done in starting the truck.

Huber's opinions on common farm practices with respect to children operating farm vehicles and machinery, and his qualifications to testify on those opinions, dominated the argument on the motion, and are the topics the trial court addressed in its decision denying the motion. It appears from the court's comments in denying the motion that it agreed with appellants' argument that the issue of whether Timothy was negligent in driving the vehicle was one on which no expert testimony was necessary, but it disagreed with appellants' argument that expert testimony on farm practices was irrelevant because this was simply a motor vehicle accident. After explaining that the testimony on farm practices would be helpful to the jury, that it was relevant and that Huber's experience qualified him to present this testimony, the court stated:

> While I agree that things like lookout [sic] and whatever else may be are things that the ordinary person could judge, however, that cannot be separated seriatim and looked at in a vacuum. This is all in the operation of a farm business, and because of that, it has to be looked at in its totality. And that's why I think starting with the fact that there is testimony that will be offered that children under the age that they could be licensed to drive a motor vehicle on the highways in this state are operating these types of equipment on farms, and the nature of this involvement, the quality of that involvement, the duration of that involvement,

(continued)

would be unfair to appellants not to review this issue. We will assume without deciding that Huber's testimony on the manner in which Timothy operated the vehicle was not the proper subject for expert testimony and will analyze whether its admission was harmless error.

¶22 Appellants are not entitled to a new trial unless their substantial rights were affected by the admission of this testimony, that is, unless there is a reasonable possibility that this testimony contributed to the jury's determination on the apportionment of negligence. *See* ***Huss v. Yale Materials Handling Corp.***, 196 Wis. 2d 515, 531, 538 N.W.2d 630 (Ct. App. 1995). We are convinced this test has not been met. Huber's comments on Timothy's improper operation of the truck amounted to a very brief portion of Huber's testimony. The question actually asked of Huber was whether the omissions caused Lorentz's injuries. Huber did not mention any omission in particular, except the failure to push in the clutch. Timothy himself testified to the things he did and did not do when he started the truck and there was no dispute over this part of his testimony. Indeed, there was no dispute that he did not start the truck properly. Lorentz's counsel did not refer to this portion of Huber's testimony in closing argument, but rather referred only to his testimony on common practices on farms, which was the major part of his testimony.

Jury Instruction on Negligent Entrustment

¶23 Appellants contend they were entitled to the negligent entrustment instruction because it was undisputed that Lorentz was initially in control of the truck and permitted Timothy to drive the truck, and their evidence, if believed,

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> all of those types of things I believe are appropriate in putting this in front of the jury. Therefore that motion is denied.

shows that Lorentz should have known that Timothy was likely to use the truck to create an unreasonable risk of harm to others. However trial courts have wide discretion in instructing the jury and, if the instructions adequately cover the law, there is no erroneous exercise of discretion when the court refuses to give a requested instruction, even if the proposed instruction is a correct one. ***Nelson v. Taff***, 175 Wis. 2d 178, 186, 499 N.W.2d 685 (Ct. App. 1993). Appellants do not explain how the instructions given were an erroneous statement of the law, and we conclude they were a correct statement.

¶24 Appellants rely on ***Lutz v. Shelby Mutual Insurance Co.***, 70 Wis. 2d 743, 235 N.W.2d 426 (1975), for the proposition that if the evidence, when viewed in favor of the requesting party, raises a particular issue, the party is entitled to an instruction on that issue. However, ***Lutz*** does not apply to the issue in this appeal. The jury *was* instructed on the issue of Lorentz's negligence and contributory negligence; appellants wanted an *additional* instruction on a specific type of negligence. The trial court's reasons for declining to give it are sound. The cases cited in the comments to the form instruction on negligent entrustment address a situation in which a person is suing the entruster for entrusting a dangerous object to someone else who injures the plaintiff. *See* WIS JI—CIVIL 1014, Comments. When the instruction is used as appellants propose here, it raises the question: Who are these "others" for whom the entrustment creates an unreasonable risk of harm when Lorentz, the entruster, was the only person harmed? The court could reasonably conclude that using this instruction in this case might cause confusion, and was unnecessary because the other instructions were adequate.

Sufficiency of the Evidence

¶25 Appellants contend, as a matter of law, Lorentz was more negligent than Timothy.[9] Generally the apportionment of negligence is for the jury. *See* ***Kloes v. Eau Claire Cavalier Baseball Assoc., Inc.***, 170 Wis. 2d 77, 88, 487 N.W.2d 77 (Ct. App. 1992) A court must sustain a jury's apportionment of negligence if there is any credible evidence that supports the verdict and removes it from the realm of conjecture. *See* ***Burch v. American Family Mut. Ins. Co.***, 198 Wis. 2d 465, 474, 543 N.W.2d 277 (1996). In this analysis we look at those facts most favorable to sustaining the verdict and, where more than one reasonable inference may be drawn from the facts, we are bound to accept the one favorable to the verdict. *See* ***id.*** This standard applies both to the trial court and this court. *See* ***Weiss v. United Fire & Cas. Co.***, 197 Wis. 2d 365, 388, 541 N.W.2d 753 (1995). Thus, we may hold that Lorentz is more negligent than Timothy as a matter of law only if no reasonable jury could find otherwise, viewing the evidence and all reasonable inferences most favorably to Lorentz.

¶26 Applying this standard, we affirm the trial court's ruling that there was sufficient credible evidence to sustain the jury's apportionment of negligence. Appellants point to evidence that supports their position, but that is not the proper test. Looking at the evidence most favorably to the verdict, as we are required to do, a reasonable jury could determine that Lorentz's belief that Timothy knew enough about operating a manual transmission to pull the truck ahead a few feet

[9] We do not agree with appellants that the evidence is undisputed. We also do not agree with appellants that the evidence in this case is comparable to that in ***Burch v. American Family Mutual Insurance Company***, 198 Wis. 2d 465, 543 N.W.2d 277 (1996), in which the father left a developmentally disabled fourteen-year-old with the cognitive capacity of a three to six-year-old in a truck with the keys in the ignition, knowing she had no driving experience and giving her no admonition about not touching the keys.

was reasonable in light of what he testified he knew and believed to be Timothy's experience, and in light of the testimony that it is reasonable to expect a fourteen-year-old in a farm family to do such things. A reasonable jury could have: disbelieved Timothy's testimony that his father told him to "just turn the key and step on the gas"; attached significant weight to Timothy's testimony that he had not been paying attention when his father showed him how to use the gears on the truck shortly beforehand, and yet did not indicate to his father that he did not know how to do what his father told him to do; and decided that a fourteen-year-old with the driving experience that Timothy said he had should have known, once the truck started rolling backward, to put his foot on the brake or to look behind him or at the gears, or both, before stepping on the gas, since he knew his father was standing behind the truck. A jury looking at the evidence in this way could reasonably conclude that Timothy's negligence was greater than Lorentz's. There are undoubtedly other ways to view the evidence, and other apportionment determinations a reasonable fact finder could make, but this jury's determination meets the standard and must be sustained.[10]

By the Court.—Judgment affirmed.

Not recommend for publication in the official reports.

[10] Appellants also argue the cumulative effect of all the errors warrants a new trial, but they do not develop the argument further. We conclude there are no grounds for the exercise of our discretionary power of reversal under WIS. STAT. § 752.35 because we have rejected most of appellants' challenges and have concluded that any error with respect to Huber's testimony on Timothy's omissions was harmless. Even were we to consider the objection to Huber's testimony on cause, which we have not reviewed because appellants did not properly preserve it, we would reach the same result. There was no real dispute over the cause of Lorentz's injuries, so there is no reasonable possibility that, in the absence of Huber's testimony that Timothy's failure to properly start the truck caused the injuries, the jury would have determined otherwise.