

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

November 2, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

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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. 99-1614**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**DEBORAH J. BULL,**

**PLAINTIFF-RESPONDENT,**

**v.**

**CITY OF ST. CROIX FALLS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Polk County:  
EUGENE HARRINGTON , Judge. *Affirmed.*

¶1 HOOVER, P.J. The City of St. Croix Falls appeals a small claims judgment entered against it after a trial to the court. The City contends that the trial court applied an improper legal standard because no evidence showed that the City negligently failed to prevent damage to Deborah Bull's property. This court disagrees. The City acknowledged it had a duty to protect Bull's property from further damage after it learned that a City water main had burst. It did nothing

and, as a result, Bull's property sustained damage from continued mud seepage. Bull established a prima facie case, and the City offered no evidence in rebuttal. Accordingly, the judgment is affirmed.

¶2 In January 1998, a water main broke and approximately 55,000 gallons of water escaped, flooding Bull's basement and depositing mud across her lawn and driveway. The broken main also caused a sinkhole on the street. The City repaired the main shortly after it broke, but Bull continued to experience problems with mud seepage onto her property through May due to soil saturated and displaced by the broken main.

¶3 Bull sued the City for negligence. Bull provided the only evidence at trial. The court found that the water main broke. It determined, and the City conceded, that the City, upon learning of the break, had a duty to protect its citizens and their property from additional damage. The court found that the City failed its duty because it did nothing to protect Bull's property.

¶4 The facts are not in dispute. When more than one inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact. *Cogswell v. Robertshaw Controls Co.*, 87 Wis.2d 243, 250, 274 N.W.2d 647, 650 (1979). Whether the facts and inferences the trial court drew fulfill the applicable legal standard is a question of law this court reviews de novo. *Greenlee v. Rainbow Auction/Realty*, 218 Wis.2d 745, 753, 582 N.W.2d 93, 96 (Ct. App. 1998).

¶5 The City contends that the facts are insufficient to establish negligence. It claims that there was no evidence in the record upon which the court could find that it had failed to exercise ordinary care. It posits that there is

“no evidence that what the City did after the water main break was not reasonable.” This court disagrees.

¶6 The elements in a negligence claim are: “(1) a duty of care on the part of the defendant; (2) a breach of that duty; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage as a result of the injury.” *Erickson v. Prudential Prop. & Cas. Ins. Co.*, 166 Wis.2d 82, 88, 479 N.W.2d 552, 554 (Ct. App. 1991).

¶7 The City admitted that the main broke, releasing approximately 55,000 gallons of water and that the water caused damage to Bull’s house. The City acknowledged that it had a duty to protect its citizens from harm to their property once it learned of the water main break. This admission established the City’s duty.

¶8 Bull proved that, other than repairing the water main and street, the City did nothing following the water main break. The City was aware that the break caused the soil to become saturated and that it created a sink hole in the street. It knew that soil was displaced and was causing problems for surrounding landowners. Bull had been in contact with the city manager regarding the continuing seepage on her property. The City offered no evidence that it examined the problem of the saturated and displaced soil to discover what property it might affect, or what could be done to protect its citizens from further damage. The trial court could, and did, infer from this evidence that the City failed to act reasonably. This evidence established the City’s breach of its duty.

¶9 Bull testified that she had problems with mud and water seepage through at least May 1988, and that the water and mud in the ground caused the seepage. The sinkhole was uphill from Bull’s property. The trial court inferred

from this evidence a connection between the continued seepage and the City's failure to perform its acknowledged duty. This evidence established the required causal connection between the continued seepage and the damage.

¶10 Finally, Bull testified about her damages, indicating they were for cleaning up the seepage damage, for restoring the property to its pre-seepage condition and for costs incurred to protect her property from continued seepage. Thus, Bull established the loss or damage as a result of negligence by failing to take steps to correct the mud and water problems that developed after the initial break.

¶11 This court concludes that Bull established a prima facie case of negligence against the City. The City failed to provide any evidence of its own in rebuttal. Accordingly, the judgment is affirmed.

*By the Court.*—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

