COURT OF APPEALS
DECISION
DATED AND FILED

April 25, 2000

Cornelia G. Clark
Clerk of Court of Appeals
of Wisconsin

No. 99-1850

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

ERIN PETERSON,

PLAINTIFF-APPELLANT,

V.

FRED MEMMER AND SOCIETY INSURANCE,
A MUTUAL COMPANY,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Polk County: JAMES R. ERICKSON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Erin Peterson appeals a summary judgment dismissing her personal injury action against Fred Memmer and his insurer. Peterson's arm was cut when hail shattered a window she was closing on a mobile home she rented from Memmer. She contends that defects in the window caused

her injury. Because we conclude that the injury is too remote from Memmer's negligence to allow recovery as a matter of public policy, we affirm the summary judgment dismissing Peterson's action.

¶2 Peterson identifies two defects in the louvered window. First, it had a spiderweb-type crack the size of a quarter, apparently from a stone thrown by a lawnmower. Second, the crank designed to open and close the window was broken, requiring Peterson to go outside to close the window by lifting slightly on the bottom portion and then letting it fold down into place, something she had done on other occasions. On the morning of her injury, she went outside to close the window during a hail storm. While she was lifting the window, hail stones the size of a quarter struck the window, causing it to shatter.

¶3 We conclude that the hail constitutes a superceding cause relieving Memmer of any liability he would otherwise have incurred based on his negligent failure to repair the window. A superceding cause relieves a negligent actor from liability based on public policy considerations such as:

> (1) The injury is too remote from the negligence; or
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> (2) The injury is wholly out of proportion to the culpability of the negligent tort-feasor; or
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> (3) In retrospect, it appears too highly extraordinary that the negligence should have brought about the harm; or
>
> (4) Allowance of recovery would place unreasonable burden on the negligent tort-feasor; or
>
> (5) Allowance of recovery would be too likely to open the way for fraudulent claims; or
>
> (6) Allowance of recovery would enter a field that has no sensible or just stopping point.

Coffey v. Milwaukee, 74 Wis. 2d 526, 541, 247 N.W.2d 132 (1976). Whether public policy precludes liability is a question of law that is usually decided after

the jury makes a finding of causal negligence. *See* ***Stewart v. Wulf***, 85 Wis. 2d 461, 474, 271 N.W.2d 79 (1978). It can be decided on summary judgment, however, when the record is complete and the facts giving rise to the injury are undisputed or causal negligence is conceded.

¶4 Memmer's negligence in not repairing the window is too remote from Peterson's injury to allow recovery. Peterson's injury was directly caused by unusually large hail striking the window. It is not reasonably foreseeable that failing to replace a defective crank would result in personal injury. Likewise, the small spiderweb-like crack in the window was not likely to cause personal injury. Memmer had no reason to believe that his failure to repair the window would lead to personal injury. The unusual hail storm was not an occurrence that a landlord should be required to anticipate and guard against when determining whether to replace a window with these defects. *See* ***id.*** at 477. Memmer's failure to promptly replace the window because of a small crack and a missing crank handle did not expose anyone to unreasonable risk of injury.

By the Court.—Judgment affirmed.

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