COURT OF APPEALS
DECISION
DATED AND FILED

April 11, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-2143

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

ALEXANDER D. DEACY, A MINOR BY JOHN B. RHODE, HIS DULY APPOINTED GUARDIAN AD LITEM, DIANE DEACY AND JAMES DEACY,

PLAINTIFFS-RESPONDENTS,

V.

GRINNELL MUTUAL REINSURANCE COMPANY,

DEFENDANT-APPELLANT,

HUMANA, INSURED BY EMPLOYERS HEALTH INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

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

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

¶1 PER CURIAM. This appeal involves a direct action lawsuit, brought by the injured parties against Grinnell Mutual Reinsurance Company. Grinnell appeals a judgment changing the jury's verdict in favor of the plaintiffs.[1]

¶2 Grinnell insured a business owned by Joseph Fittante and located on his personal residential property. Fittante's family dog bit one of the plaintiffs, and Grinnell argued that it had no liability because it only covered Fittante's business-related conduct. The jury found that Fittante was causally negligent in his personal conduct. Although the jury found that Fittante was negligent in his business-related conduct, it concluded that his business-related negligence was not a cause of the injuries. The trial court decided that the jury's finding of business-related negligence was sufficient to hold Grinnell liable. We agree with Grinnell that the jury's finding precludes any business-related liability. Accordingly, the judgment is reversed.

FACTS

¶3 Diane and James Deacy are the parents of Alexander Deacy, who was six years old at the time of trial. James Deacy worked for Joe Fittante Taxidermy Studio, a sole proprietorship, owned by Fittante.[2] The studio is located on the same real estate as Fittante's home, and there is a horseshoe shaped driveway that is used for both the home and business.

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[1] Judgment was entered after the trial court granted the plaintiffs' motion to change answers in the jury verdict pursuant to WIS. STAT. § 805.14(5)(c) (1997-98). The court explained that it was entering "judgment on the verdict"; however it also explained that it was disregarding several verdict answers. As discussed in more detail below, we conclude that this resulted in changing the jury's answers.

All statutory references are to the 1997-98 edition.

[2] Fittante is not a named party in the Deacys' lawsuit.

¶4 Fittante owned a golden retriever as a family pet. The dog was not a watchdog or a guard dog and it played no role in the business. When the dog was three months old, it nipped and scratched a little girl after she pulled its tail. As a result, Fittante had voluntarily signed an endorsement on his homeowner's insurance excluding coverage for the dog. The dog was routinely in contact with studio customers and allowed to freely follow Fittante back and forth between the residence, studio and various other buildings on the property.

¶5 James Deacy was not working on June 2, 1995, when he decided to stop at the studio to drop off a wedding gift for Fittante's son and to discuss Deacy's upcoming work schedule. Deacy brought along both Alexander and Alexander's sister. Fittante was in the house, not the studio, when they arrived. Fittante came outside his house and was talking with Deacy when the children asked if they could play with Fittante's dog. The children were playing with the dog in a grassy area about fifteen feet away from the adults when the dog bit Alexander.

¶6 In the opening declarations section, Grinnell's business liability policy lists the named insured as Joe Fittante Taxidermy Studio. The "BUSINESSOWNERS LIABILITY COVERAGE FORM" explains that "'you' and 'your' refer to the Named Insured shown in the Declarations." The policy further explains that it only insures business-related conduct, defining an insured in the following manner:

> **1.** If you are designated in the Declarations as:
>
> **a.** An individual, you and your spouse are insureds, *but only with respect to the conduct of a business* of which you are the sole owner. (Emphasis added.)

The policy clearly indicates that it only covers business-related conduct, and there is no suggestion that the policy language could lead a reasonable insured to mistakenly believe that the policy covered personal liability.

¶7 The Deacys sued Grinnell, alleging negligence relating to supervision and control of the dog. Grinnell denied the allegations and affirmatively alleged that James Deacy was negligent in supervising and exercising care for the safety of his son.

¶8 In an effort to have the jury apportion responsibility between business-related conduct and personal conduct, the court submitted the following special verdict questions, that were eventually answered by the jury in the following manner:

> **QUESTION 1:** Was Joe Fittante individually negligent?
>
> ANSWERED BY THE COURT:[3] Yes
>
> **QUESTION 2:** Was Joe Fittante's negligence a cause of the injuries?
>
> ANSWERED BY THE COURT: Yes
>
> **QUESTION 3:** Was Joe Fittante negligent in the conduct of his business, Joe Fittante Taxidermy Studio?
>
> ANSWER: Yes
>
> **QUESTION 4:** … Was Joe Fittante Taxidermy Studio's negligence a cause of the injuries?
>
> ANSWER: No
>
> **QUESTION 5:** Was James Deacy negligent in supervising and exercising care for the safety of Alexander Deacy?
>
> ANSWER: Yes
>
> **QUESTION 6:** … Was James Deacy's negligence a cause of the injuries?

[3] The trial court answered the first two verdict questions because of the strict liability statute for dog owners. *See* WIS. STAT. § 174.02.

> ANSWER: Yes
>
> ….
>
> **QUESTION 7:** Assuming the total negligence that caused Alexander Deacy's injuries to be 100%, what percentage of this negligence do you attribute to:
>
> a) Joseph Fittante individually 80%
>
> b) Joseph Fittante Taxidermy Studio 0%
>
> c) James Deacy 20%

¶9 The Deacys filed several post-verdict motions essentially asking for judgment in their favor. The Deacys asked, among other things, that the court strike questions 3, 4, 7(b) and 7(c), and that the court enter judgment in favor of the plaintiffs, "based on the jury's answer of 'Yes' to question 3 of the special verdict, finding that Joe Fittante was acting in the conduct of his business at the time of the dog bite injuries to Alex Deacy, thereby invoking coverage under Grinnell Mutual's policy."

¶10 Grinnell responded that the Deacys' position ignored the answer to questions 4 and 7(b), which found there was no causal connection between the business conduct and the alleged injuries. The court made the following ruling:

> [T]he only question is whether or not Joe Fittante's business was negligent.
>
> If Joe Fittante's business is negligent, I don't really care about Questions 2 and 4, causation, because the acts were clearly caused by the dog and Joe Fittante. It's still Fittante's dog. He's the supervisor of that dog.
>
> If he is negligent, then the cause really doesn't mean anything.
>
> ….
>
> I'm going to disregard Questions 2 and 4 which are the causation questions, and by making a ruling, I guess, that causation is not an issue in this case. The only issue is whether the dog was under the supervision of the business or not.

LIABILITY

¶11 The dispositive issue is whether Fittante's business-related conduct created any liability covered by Grinnell's policy.[4] For Grinnell to have any liability, there must have been a causal connection between Fittante's business-related negligence and Alexander's injuries. *See* ***Miller v. Wal-Mart Stores, Inc.***, 219 Wis. 2d 250, 261, 580 N.W.2d 233 (1998). The jury was instructed that in order for any of Fittante's business-related negligence to be causal, it must have been a substantial factor in producing Alexander's injuries. *See* ***Reiman Assocs., Inc. v. R/A Adver., Inc.***, 102 Wis. 2d 305, 321-22, 306 N.W.2d 292 (Ct. App. 1981).

¶12 The jury found that Fittante's personal negligence caused Alexander's injuries. Regarding his business-related conduct, however, the jury found that Fittante was not causally negligent. Grinnell's insurance policy only covers liability for business-related conduct.[5] While the jury verdict supported liability for Fittante's personal conduct, Grinnell's policy does not provide coverage for his personal liability. The jury's finding that Fittante's business-related negligence was not causal precludes Grinnell's liability for that negligence.

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[4] We agree with Grinnell's statement that

> The Deacys have repeatedly argued that the owner of a sole proprietorship is not a separate entity from his or her business with respect to personal liability. Even assuming that position is correct, that is not the same question of whether an insurance policy provides coverage for all claims relating to the owner.

[5] Although not faced with the issue presented here, in ***Grotelueschen v. American Family Mut. Ins. Co.***, 171 Wis. 2d 437, 451, 492 N.W.2d 131 (1992), the court recognized in dicta that a sole proprietor insurance policy may restrict coverage to business-related liability.

By concluding that Grinnell's policy covered Fittante's negligent business-related conduct, the trial court implicitly overturned that portion of the jury verdict.

¶13 In ***Weiss v. United Fire & Cas. Co.***, 197 Wis. 2d 365, 389-90, 541 N.W.2d 753 (1995), the court explained:

> When a circuit court overturns a verdict supported by "any credible evidence," then the circuit court is "clearly wrong" in doing so. When there is any credible evidence to support a jury's verdict, "even though it be contradicted and the contradictory evidence be stronger and more convincing, nevertheless the verdict … must stand." (Footnote omitted.)

Whether any credible evidence supports the jury verdict is a question of law that we review without deference to the circuit court. *See* ***American Family Mut. Ins. Co. v. Dobrzynski***, 88 Wis.2d 617, 625, 277 N.W.2d 749 (1979). Therefore, if any credible evidence supports the jury's verdict, we must reverse the trial court's judgment.[6]

¶14 We conclude that credible evidence supports the jury's verdict that there was no causal relationship between any of Fittante's business-related conduct and Alexander's injuries. The jury could have reasonably relied on the fact that Fittante was inside his house not the studio when the Deacys arrived. It could also have found that James Deacys' reasons for stopping by Fittante's home that day were purely personal. The jury could have then decided that the only substantial factors for the injuries should be apportioned between the two people

[6] Our inquiry is somewhat hampered because the trial court's implicit decision to overrule the jury's finding did not include a discussion of what evidence it found lacking or how the jury's verdict was not supported by credible evidence. Rather, the court only explained that it believed the only necessary inquiry was whether Fittante was acting in a business-related manner at the time of the incident.

who were personally supervising the dog and children at that time. In other words, the jury could have concluded that there was no business-related conduct directly involved in Alexander's injuries. We are unable to conclude, as a matter of law, that whatever business-related conduct the jury found to be negligent must have been a causal factor in Alexander's injuries. Therefore, we conclude that the jury's verdict means that there was no business-related liability for Grinnell's policy to cover.[7] The judgment is accordingly reversed and the cause is remanded with instructions to enter judgment consistent with the jury's verdict.

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

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

[7] We reject the Deacys' various other claims because they all rely on Fittante's business-related liability.