COURT OF APPEALS
DECISION
DATED AND FILED

April 14, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP2912-FT **Cir. Ct. No. 2003CV1574**

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

JACALYN M. HEIMAN,

PLAINTIFF-APPELLANT,

DANE COUNTY DEPARTMENT OF HUMAN SERVICES AND DEAN HEALTH PLAN INCORPORATED,

INVOLUNTARY-PLAINTIFFS,

V.

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

DEFENDANT-RESPONDENT,

DANNY R. BAUMANN,

DEFENDANT.

APPEAL from an order of the circuit court for Rock County: JOHN W. ROETHE, Judge. *Affirmed*.

Before Deininger, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM.[1] Jacalyn Heiman appeals from the circuit court's order in favor of American Family Mutual Insurance Company and Danny Baumann. Heiman argues that summary judgment was not appropriate because there are disputed issues of material fact. We affirm.

¶2 The well-known purpose of summary judgment is "to avoid trials where there is nothing to try." ***Transportation Ins. Co. Inc. v. Hunzinger Constr. Co.***, 179 Wis. 2d 281, 289, 507 N.W.2d 136 (Ct. App. 1993) (citation omitted). On appeal, we review the circuit court's decision de novo, using the same methodology. ***Id.*** If we determine that there are no genuine issues of material fact, and we determine that the moving party is entitled to judgment as a matter of law, we will affirm the decision granting summary judgment. ***Lambrecht v. Kaczmarczyk***, 2001 WI 25, ¶24, 241 Wis. 2d 804, 623 N.W.2d 751.

¶3 The determinative issue in this case is whether defendant Danny Baumann had permission to drive the automobile owned by his mother, Carol Baumann, on the night of the accident that injured Jacalyn Heiman. Danny and Carol both testified by deposition that Danny did not have *express* permission to drive the car. Danny and Carol both testified that Carol had been sleeping on the night that Danny came into her apartment, got her car keys and took her car. In her deposition, Heiman did not contradict this testimony. Heiman testified that she did not know whether Carol had given permission on the night of the accident

[1] This is an expedited appeal under WIS. STAT. RULE 809.17 (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

because she was not there. Based on the deposition testimony, there is no factual dispute that Danny did not have express permission to drive the car.

¶4 There is also no testimony that reasonably permits the inference that Danny was using the car on the night of the accident with the *implied* permission of Carol. To the contrary, Danny testified that Carol told him he could not use her car when he had been drinking. Danny also testified that he drank four or five beers on the night of the accident. Heiman did not present testimony by deposition or otherwise that called Danny's testimony on this point into question. She did not present any evidence that Danny *was allowed* to drive the car *when he had been drinking*. Similarly, she did not present evidence to contradict Danny's testimony that he had been drinking on the night of the accident. Because no facts were alleged that would give rise to a reasonable inference that Danny had implied permission to drive the car, the circuit court properly granted summary judgment.

By the Court.—Order affirmed.

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