COURT OF APPEALS
DECISION
DATED AND RELEASED

MAY 21, 1996

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.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3036-FT

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

ELIZABETH L. MUNRO and ROBERT A. MUNRO, Husband and Wife,

Plaintiffs-Appellants,

JOHN HANCOCK FINANCIAL SERVICES,

Plaintiff,

v.

MIDWEST EXPRESS AIRLINES, INC.,

Defendant-Respondent.

APPEAL from judgment of the circuit court for Outagamie County: DENNIS C. LUEBKE, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Elizabeth and Robert Munro appeal a judgment dismissing their personal injury action against Midwest Express Airlines, Inc.[1] The Munros contend that Midwest Express was negligent for failing to warn Elizabeth about a defect in the airport tarmac upon which she tripped and fell. The trial court found that Midwest Express was not negligent and, if it was negligent, Elizabeth was 70% causally negligent. The Munros argue that the trial court's findings are not supported by the evidence and that the trial court failed to consider the parties' conduct as a whole when it allocated 70% of the causal negligence to Elizabeth. We reject these arguments and affirm the judgment.

Elizabeth tripped and fell as she walked across the tarmac to a waiting airplane. Robert testified at the bench trial that he noticed a defect in the tarmac in the area where his wife fell. He testified that a slab of concrete was raised approximately one-half inch above the adjoining slab. Robert's testimony was impeached by his deposition testimony in which he estimated the raised edge to be between one-quarter and one-half inch. The trial court found that the raised edge was between one-quarter and one-half inch.

The trial court's findings of fact will not be upset on appeal unless they are clearly erroneous. To command reversal, evidence in support of a contrary finding must itself constitute the great weight and clear preponderance of the evidence. *See* ***Cogswell v. Robertshaw Controls Co.***, 87 Wis.2d 243, 249-50, 274 N.W.2d 647, 650 (1979). The Munros presented no evidence other than Robert's testimony in support of their contention that the slab was raised by such an amount that one can infer that Midwest Express knew or should have known of the defect. Even if this court were to presume that the edge of the slab was raised one-half inch, that fact does not require this court to overturn the judgment because it does not establish that Midwest Express' negligence exceeded Elizabeth's negligence.

The trial court also found that the record was devoid of any evidence concerning the length of time the alleged defect may have existed or whether Midwest Express was aware of the defect. The Munros argue that a sealant placed between the two slabs indicates that a period of time had elapsed

[1] This is an expedited appeal under RULE 809.17, STATS.

since the defect arose and that Midwest Express had knowledge of the condition and had taken steps to remedy it. The record does not show who put the sealant on the crack or why it was placed there. The tarmac is not owned, leased or maintained by Midwest Express. The Munros' argument that the sealant demonstrates actual or constructive knowledge by Midwest Express is pure speculation properly rejected by the trial court. *See* ***Schwalbach v. Antigo Elec. & Gas, Inc.***, 27 Wis.2d 651, 654, 135 N.W.2d 263, 265 (1965).

The Munros argue that the trial court attributed excessive negligence to Elizabeth because it failed to consider the fact that her neck was immobilized by a brace at the time she fell and she was distracted when Midwest Express crew members greeted her. The trial court's finding that Elizabeth was negligent as to lookout is adequately supported by the record. Elizabeth could see several feet in front of her. A "good morning" greeting does not constitute such a distraction that it relieves a person of exercising ordinary care as to lookout.

By the Court.—Judgment affirmed.

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