



**WISCONSIN SUPREME COURT
THURSDAY, MARCH 2, 2006
11 a.m.**

05AP121 Lina M. Mueller v. McMillian Warner
Insurance Company

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed a judgment of the Marathon County Circuit Court, Judge Vincent K. Howard presiding.

This case began with an accident involving an all-terrain vehicle (ATV). Those in a position to render aid to the victim claimed not to have immediately recognize her injuries. The Supreme Court is expected to clarify the circumstances under which a person who comes to the aid to an injured person at or near the scene of an accident is immune from civil liability under the Good Samaritan law.

Here is the background: On Oct. 25, 2003, Merlin and Stephanie Switlick hosted a party for about 25 business associates and friends at their cabin. Alcohol was made available to those present. Included in the group were the Switlicks' son, Apollo, then 19, and Apollo's girlfriend, Lina Mueller.

That evening, Apollo and Mueller took a ride on a guest's ATV. Neither wore a helmet. On the return trip, Apollo drove under a branch and both he and Mueller hit their heads. At the cabin, Mueller vomited and Apollo's mother, Stephanie, encouraged her to lie down. Stephanie checked on Mueller approximately hourly. At 6 a.m., when Mueller called Stephanie "Mom," Stephanie called for an ambulance. Mueller was taken to the hospital and diagnosed with serious head injuries.

Mueller sued the Switlicks, contending that they failed to render emergency aid and that they provided alcohol to an underage person. The circuit court ruled against Mueller, finding that (1) she had no claim against the parents because she was one of the underage people consuming the alcohol that was provided, and (2) Merlin and Stephanie were immune from liability because they had provided traditional first aid to Mueller and therefore were considered Good Samaritans under the law:

Wis. Stat. § 895.48(1):

Any person who renders emergency care at the scene of any emergency or accident in good faith shall be immune from civil liability for his or her acts or omissions in rendering such emergency care.

Mueller appealed. The Court of Appeals, focusing on the Good Samaritan claim, saw things differently. The court concluded that covering Mueller with a blanket and checking on her periodically did not constitute "emergency care" under the circumstances and within the meaning of the statute. Therefore, the Switlicks were not immune from liability.

Now, the Switlicks have come to the Supreme Court, where they argue that the Court of Appeals decision, if allowed to stand, will discourage people from attempting to help accident victims. The Supreme Court will clarify the circumstances under which the

Good Samaritan law applies to provide immunity to those who have contact with an accident victim.