COURT OF APPEALS
DECISION
DATED AND RELEASED

DECEMBER 27, 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. 96-1719-FT

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

GINGER L. LeBLANC,

Plaintiff-Respondent,

NETWORK HEALTH PLAN OF WISCONSIN, INC., and EMPLOYERS HEALTH INSURANCE COMPANY,

Involuntary-Plaintiffs,

v.

SECURA INSURANCE, a Mutual Company,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Outagamie County: MICHAEL W. GAGE, Judge. *Affirmed*.

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

PER CURIAM. Secura Insurance appeals a judgment finding its insured, Allan LeBlanc, 4% causally negligent for injuries suffered by his wife, Ginger.[1] Secura argues that the evidence does not support the trial court's findings regarding Allan's negligence and causation. We affirm the judgment.

When reviewing the findings of a trial court sitting without a jury, this court will uphold the findings unless they are clearly erroneous. *See* § 805.17(2), STATS. The trial court is the ultimate arbiter of credibility and, when more than one reasonable inference can be drawn from the credible evidence, this court must accept a reasonable inference drawn by the trial court. ***Cogswell v. Robertshaw Controls Co.***, 87 Wis.2d 243, 249, 274 N.W.2d 647, 650 (1979).

Sufficient evidence and reasonable inferences drawn from the evidence support the trial court's findings that Allan was negligent as to lookout and that his negligence was a substantial causal factor in Ginger's injury. The accident occurred when a car driven by Debra Powell ran a stop sign and collided with the LeBlanc's pickup truck. Ginger testified that she saw the Powell vehicle, realized it was not going to stop for the stop sign and communicated that fact to Allan before he reacted by swerving and applying the brakes. Allan testified that the Powell vehicle was "even with the stop sign" when he first saw it. Ginger saw it when it was about eighty feet from the intersection. An engineering expert testified that the Powell vehicle was traveling at approximately twenty-five to thirty miles per hour at the time of impact. From this evidence, the trial court could reasonably infer that a meaningful interval of time existed between Ginger's observation and communication of the danger and Allan's first sighting of the Powell vehicle.

Two other drivers trailing the LeBlanc pickup truck also testified that they saw the Powell car, realized it was not going to stop and started to take precautions in anticipation of the impending accident. Their testimony, along with Ginger's, support a finding that Allan failed to exercise ordinary care to keep a careful lookout for other vehicles. A person is negligent as to lookout if he fails to see what is in plain sight. ***Westfall v. Kottke***, 110 Wis.2d 86, 110, 328 N.W.2d 481, 493 (1983).

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

In addition to the observations of Ginger and the trailing drivers, the trial court found that the LeBlancs were listening to music and Allan was singing right before the accident, that there were four people in the front seat and that traffic was heavy at the time of the accident. The trial court reasoned that the singing and children in the front seat are consistent with some measure of distraction and that the duty of lookout increases with specific hazards such as high volume of traffic. These findings support the trial court's ultimate finding that Allan bears some reasonability for Ginger's injuries. Although the law gives a driver on a through highway a preference, the driver still has a duty of lookout. ***Leckwee v. Gibson***, 90 Wis.2d 275, 287, 280 N.W.2d 186, 191 (1979). Having the right-of-way does not relieve a driver of the duty to watch for vehicles entering the highway. ***Id***.

Sufficient evidence also supports the finding of causation. The trial court reasoned that if Allan had observed the danger when Ginger and the trailing drivers observed it, additional options would have been open to him. An engineering expert testified that when Allan first reacted to the situation, he was approximately 210 feet away from the impact area. His pickup truck covered roughly sixty feet during his reaction time and then veered 123 feet and left twenty-seven feet of skid marks before impact. This evidence allows the reasonable inference that if Allan had appreciated the danger at the time Ginger and the trailing drivers did, he could have avoided the accident or lessened its severity by braking sooner or more effectively swerving to avoid or lessen the impact.

By the Court.—Judgment affirmed.

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