

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 21, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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

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.

**No. 97-3526-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**ROBERT L. HAACK,**

**PLAINTIFF-RESPONDENT,**

**v.**

**JAMES STEPHENS, D/B/A CENTURY 21  
LAKEWOOD REAL ESTATE,**

**DEFENDANT-APPELLANT,**

**CENTURY 21 LAKEWOOD REAL ESTATE,  
AND MARY B. LEADER,**

**DEFENDANTS.**

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APPEAL from a judgment of the circuit court for Waushara County:  
LEWIS MURACH, Judge. *Affirmed.*

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

PER CURIAM.<sup>1</sup> James Stephens appeals from a judgment awarding attorney's fees to Robert Haack incurred while litigating a deed reformation claim against a third party, Mary Leader. The trial court held that Stephens' negligence forced Haack to litigate his successful claim against Leader. Stephens acknowledges that where the wrongdoing of one party forces another into litigation with a third party, the wrongdoer may be held liable for the other's attorney fees. *See Meas v. Young*, 142 Wis.2d 95, 102, 417 N.W.2d 55, 57 (Ct. App. 1987). However, he contends that the rule does not apply unless the wrongful conduct far exceeds his mere negligence in this case. We disagree and therefore affirm.

Haack sold Leader a large parcel of property. Through the negligence of Haack's realtor, James Stephens, the deed conveyed more property than Haack intended to sell or Leader intended to buy. In subsequent litigation the court ordered the deed reformed and ordered Stephens to pay Haack \$3300 in attorney's fees incurred while litigating the reformation claim.<sup>2</sup>

The trial court properly held Stephens accountable for Haack's attorney's fees. "An award of fees may be made by way of damages to a party who, because of the tortious conduct or breach of contract by another, has had to protect his or her interest by bringing or defending an action against or by a third party." *Silverton Enters., Inc. v. General Cas. Co.*, 143 Wis.2d 661, 675, 422 N.W.2d 154, 159 (Ct. App. 1988). That is precisely what occurred here.

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<sup>1</sup> This is an expedited appeal under RULE 809.17, STATS.

<sup>2</sup> The award represented ninety percent of Haack's litigation costs, based on a finding that Stephens' agency was ninety percent negligent and Haack ten percent negligent for the mistake in the deed.

Although *Meas* appears to distinguish between “wrongful conduct” and negligence for the purpose of awarding fees under this rule, that dichotomy is not recognized in other cases that apply it. See *Gustavson v. O’Brien*, 87 Wis.2d 193, 203, 274 N.W.2d 627, 631-32 (1979); *Wisconsin Academy of Sciences, Arts & Letters v. First Wis. Nat’l Bank*, 142 Wis.2d 750, 760, 419 N.W.2d 301, 306 (Ct. App. 1987). In both of those cases the court recognized that a party’s mere negligence, as opposed to some greater degree of culpability, entitled the plaintiff to resulting attorney’s fees. Stephens offers no persuasive reasons to exempt licensed real estate agents from the same standard.

*By the Court.*—Judgment affirmed.

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

