

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 3, 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. 98-0347

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

PAMELA L. HERTER,

PLAINTIFF-APPELLANT,

V.

TIM L. HANSEN,

DEFENDANT,

**COUNTY OF WAUPACA, WISCONSIN COUNTY MUTUAL
INSURANCE CORPORATION, TOWN OF LARRABEE,
RURAL MUTUAL INSURANCE COMPANY,**

DEFENDANTS-RESPONDENTS,

**NETWORK HEALTH PLAN OF WISCONSIN, INC.,
AMERICAN FAMILY MUTUAL INSURANCE COMPANY,
GENERAL MOTORS CORPORATION, AND ABC
INSURANCE COMPANY,**

DEFENDANTS.

APPEAL from an order of the circuit court for Waupaca County:
PHILIP M. KIRK, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Vergeront, JJ.

PER CURIAM. Pamela Herter appeals from an order granting summary judgment in favor of the Town of Larrabee and Waupaca County. The dispositive issue is whether the Town and County are immune from suit. We conclude that they are and therefore affirm.

Herter was a passenger in Tim Hansen's truck. Hansen came over a steep crest on a Town road, approaching a stop sign 400 feet ahead. Hansen did not see the stop sign in time to stop, and Herter suffered injuries in the ensuing accident. She sued Hansen for negligent driving and the Town and County for negligent failure to put a "stop sign ahead" sign at least 450 feet from the intersection.¹

The Town and County moved for summary judgment, claiming government immunity. Herter responded with evidence that the stop sign was installed after 1977, and by citing § 349.065, STATS., which provides that all traffic control devices placed and maintained by local authorities after January 1, 1997, shall conform to the Uniform Traffic Control Devices Manual. That manual, in turn, requires installation of "Stop Ahead" signs on roads with fifty-five miles per hour speed limits when, as here, the upcoming stop sign is not visible for at least 450 feet. The trial court nevertheless held that governmental immunity applied, and granted the summary judgment that resulted in this appeal.

¹ She alleged the County was liable under a contract with the Town to install and maintain its road signs.

Section 893.80(4), STATS., provides immunity to governmental subdivisions, such as towns and counties, for the acts of its officers or agents done in an official capacity unless, as alleged here, the agent or officer negligently performs a purely ministerial duty. *C.L. v. Olson*, 143 Wis.2d 701, 710-11, 422 N.W.2d 614, 617 (1988). If the material facts are undisputed, as here, summary judgment is appropriate if only one reasonable inference is available from those facts and that inference requires judgment for a party. *Wagner v. Dissing*, 141 Wis.2d 931, 939-40, 416 N.W.2d 655, 658 (Ct. App. 1987). We independently decide this issue without deference to the trial court. *Schiller v. Marine Nat'l Bank*, 131 Wis.2d 389, 394, 388 N.W.2d 645, 648 (Ct. App. 1986).

In *Harmann v. Schulke*, 146 Wis.2d 848, 855, 432 N.W.2d 671, 674 (Ct. App. 1988), we held that § 349.065, STATS., did not impose a ministerial duty on local authorities to install traffic signs when instructed to in the manual. Whether to install a sign in the first place remained a discretionary, legislative decision. Although Herter contends that *Harmann* was erroneously decided, we do not have the power to overrule, modify or withdraw language from a prior published opinion. *Cook v. Cook*, 208 Wis.2d 166, 189-90, 560 N.W.2d 246, 256 (1997). Additionally, we are unable to distinguish *Harmann*. That resolves the matter. The Town, and the County under its maintenance contract, are immune from suit for their alleged negligence in failing to place the warning sign.

By the Court.—Order affirmed.

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

