

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

September 1, 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. 98-0785-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

---

**BOBBIE JEAN BRAGG,**

**PLAINTIFF-APPELLANT,**

**V.**

**JAMES B. BURDETTE, ESTHER BURDETTE  
AND HARTFORD INSURANCE COMPANY  
OF THE MIDWEST,**

**DEFENDANTS-RESPONDENTS.**

---

APPEAL from a judgment of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Bobbie Jean Bragg appeals a summary judgment dismissing her personal injury action against James and Esther Burdette and their

insurer.<sup>1</sup> Bragg fell while descending the stairs in the Burdette's home and contends that her injuries were caused by James Burdette's negligence in repairing the middle bracket of the hand rail. Because the trial court properly concluded that Bragg would not be able to prove causation beyond speculation and conjecture, we affirm the judgment.

The underlying facts are not disputed. Bragg was the only witness to her fall. She testified that as she descended the stairs, she did not notice any problem with the railing. She does not remember it being loose or unstable and, when she fell, did not notice anything happening to the railing.

James Burdette testified that both before and after Bragg's fall, the handrail remained sturdy and substantial. The top and bottom brackets were anchored directly into wall studs. The middle bracket, which had been screwed into thick plaster, had pulled out of the plaster and was unattached. Burdette had performed maintenance to the hand rail before the accident because it was loose in the middle. When he was unable to find any wall studs near the bracket, he anchored the screws for the middle bracket in the plaster.

To survive a motion for summary judgment, Bragg must present some evidence that would allow a reasonable inference that Burdette's negligence either caused her fall or caused her to be unable to arrest the fall by providing a secure brace that she could grasp. *See Cossette v. Lepp*, 38 Wis.2d 392, 400, 157 N.W.2d 429, 433 (1968). Bragg must show that Burdette's negligence was a substantial factor contributing to her injury. *See Merco Distrib. Corp. v. Commercial Police Alarm Co.*, 84 Wis.2d 455, 458, 267 N.W.2d 652, 654 (1978).

---

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

Bragg has the burden of production of evidence showing a nexus between the negligent act and the injuries. See *Fischer v. Ganju*, 168 Wis.2d 834, 858-59, 485 N.W.2d 10, 19-20 (1992); *Transportation Ins. Co. v. Hunzinger Constr. Co.*, 179 Wis.2d 281, 291-92, 507 N.W.2d 136, 139-40 (Ct. App. 1993). While the causal nexus may be established by a reasonable inference, it is not sufficient to present evidence that would require the jury to engage in speculation or conjecture. *Merco*, 84 Wis.2d at 460, 267 N.W.2d at 655. Speculation and conjecture apply to a choice between liability and nonliability when there is no reasonable basis in the evidence upon which the choice can be made. *Id.* A mere possibility of causation is not enough; and when the matter remains one of pure speculation or conjecture or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant. *Id.*

Bragg's evidence is not sufficient to allow a reasonable inference that Burdette's negligent maintenance of the center bracket contributed to her injuries. She noticed nothing unusual about the railing before her fall. She testified that she fell from the second or third step from the bottom. Burdette's testimony that the hand rail remained sturdy and was firmly attached to the wall studs at the top and bottom brackets is not disputed. Bragg's suggestion that she could have broken her fall if the center bracket of the hand rail had been anchored in a wall stud is pure speculation. Because Bragg has no evidence establishing a causal nexus between Burdette's negligence and her injuries, the trial court properly granted summary judgment.

*By the Court.*—Judgment affirmed.

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

