

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 2, 1999

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. 98-2418

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CHRIS L. PETTENGILL,

PLAINTIFF-APPELLANT,

V.

**ROLLIE SCHRAEPFER, A/K/A R.D. SCHRAEPFER D/B/A
MT. HOREB MINI STORAGE,**

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County:
PAUL B. HIGGINBOTHAM, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ.

¶1 PER CURIAM. Chris Pettengill appeals from a judgment dismissing his negligence complaint against Rollie Schraepfer. The dispositive issue is whether we should exercise our power of discretionary reversal under § 752.35, STATS. We affirm.

¶2 Pettengill alleged that motorcycles he owned were stolen from a storage locker operated by Schraepfer. He alleged that Schraepfer was liable because his employee gave out Pettengill's locker number to an unknown telephone caller who asked for it. The jury found both parties negligent, but also found that neither party's negligence was causal. Accordingly, Pettengill's complaint was dismissed.

¶3 Pettengill did not file any motions after verdict, and therefore on appeal he confines his argument to discretionary reversal. The parties agree that we may reverse if justice has miscarried, which requires a showing of a substantial probability of a different result on retrial. Pettengill argues that because the jury found both parties negligent, it necessarily should have found the negligence causal, and then apportioned the negligence between the parties.

¶4 We reject the argument. The jury could reasonably have concluded that neither party's negligence was a substantial factor in causing the theft. For example, the jury may have concluded that the acts of the thief or thieves were so substantially the cause that the parties' negligence was rendered insubstantial as a causal agent. Or, the jury may have concluded that the theft would have occurred even if the parties had not been negligent.

¶5 Pettengill also asserts that we should reverse because the real controversy was not fully tried. However, he does not explain in what sense he believes it was not fully tried, and we do not consider the argument further. *See State v. Pettit*, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992). We need not address the other issues argued, because they relate only to damages.

By the Court.—Judgment affirmed.

This opinion will not be published.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

