COURT OF APPEALS
DECISION
DATED AND FILED

December 15, 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. 99-0155

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

WILLIAM G. HEINEN,

PLAINTIFF-APPELLANT,

PEKIN INSURANCE COMPANY,

PLAINTIFF,

V.

JACQUELINE J. RANSBY AND STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Sheboygan County: TIMOTHY M. VAN AKKEREN, Judge. *Affirmed.*

Before Nettesheim, Anderson and Snyder, JJ.

¶1 PER CURIAM. In this appeal William G. Heinen seeks to overturn the jury's verdict that Jacqueline J. Ransby was not negligent when the car she was driving rear ended Heinen's car as he was making a right-hand turn. We conclude that there is credible evidence to support the jury's no negligence finding and there was no trial error commanding a new trial. We affirm the judgment.

¶2 The accident occurred on January 6, 1995, early in the evening. It had started snowing about one-half hour before the accident and was still snowing when the accident occurred. Heinen and Ransby were traveling in the same direction. Heinen signaled for a right turn but stopped short of the cutoff turn lane because another car was in front of him. Ransby intended to proceed straight through the intersection by using the lane connecting to the right-hand turn lane. Ransby saw Heinen's car, his brake lights and turn signal; she believed he was going to proceed with his turn. When Ransby realized Heinen's car was stationary, she applied her brakes. Her car skidded and rear ended Heinen's car.

¶3 Heinen argues that Ransby was negligent as a matter of law for violating safety statutes requiring a driver to maintain a reasonable and prudent distance and speed and that Ransby was negligent as to lookout. He contends that the no-negligence verdict is contrary to the credible evidence and the law.

¶4 The standard of review that we must apply to a claim that a new trial must be granted because the verdict was against the weight of the evidence requires us to sustain the verdict if there is any credible evidence which supports it. *See* ***Giese v. Montgomery Ward, Inc.***, 111 Wis.2d 392, 408, 331 N.W.2d 585, 593 (1983). The jury is the fact finder, and where more than one reasonable inference can be drawn from the evidence, we must accept the inference drawn by

the jury. *See* ***Millonig v. Bakken***, 112 Wis.2d 445, 451, 334 N.W.2d 80, 84 (1983).

¶5 Ransby testified that her speed was less than twenty-five miles per hour because of poor visibility and snowy roads. She observed Heinen's car approximately one-half block from the intersection and believed that the car would go around the corner and be gone by the time she reached that spot. She expected Heinen to complete the turn in time because she did not see any car ahead which would have blocked Heinen's ability to turn and the light controlling the traffic in the direction they were travelling was green. When she realized Heinen's car was stopped, she applied her brakes and tried to stop. She could not take evasive action to either side because of the traffic island to the left and the curb to the right.

¶6 The jury could reasonably find that Ransby had reduced her speed sufficiently to safely navigate the intersection with the anticipation that Heinen would complete the turn. It was for the jury to determine whether Ransby's assumption that Heinen's car would be gone by the time she reached that spot was reasonable under the circumstances. The mere fact that the accident happened is not proof of negligence. *See* ***id.*** at 457, 334 N.W.2d at 86. We cannot conclude that Ransby was negligent as a matter of law. Credible evidence supports the jury's no-negligence finding.

¶7 Heinen argues that the trial court erroneously exercised its discretion in permitting Ransby to testify about what "people do at that intersection ordinarily." Heinen objected as to foundation when Ransby was asked on direct examination what people ordinarily do at the intersection when making a right-hand turn. To lay a foundation, Ransby was questioned about her familiarity with

the intersection and she indicated that she had seen people make right-hand turns there numerous times. When asked again "what do people typically do," there was no objection. Ransby answered that persons making the right-hand turn typically pull around the corner between the traffic island and the curb.

¶8 Heinen's claim of error is waived because no further objection was made after the foundation was laid. *See* § 901.03(1)(a), STATS. "The burden is upon the party alleging error to establish by reference to the record that the error was specifically called to the attention of the trial court." ***Allen v. Allen***, 78 Wis.2d 263, 270, 254 N.W.2d 244, 248 (1977).

¶9 Even if not waived, Heinen has not advanced any concrete reason why Ransby should not have been allowed to testify about what people typically do at the intersection. The admission of evidence is generally within the discretion of the trial court. *See* ***Pophal v. Siverhus***, 168 Wis.2d 533, 546, 484 N.W.2d 555, 559 (Ct. App. 1992). Not only are lay persons entitled to give opinion evidence, *see* § 907.01, STATS., Ransby's experience at the intersection was relevant as to the reasonableness of her expectation that Heinen would complete the turn before she reached that spot. Admission of the evidence was proper.

¶10 Having affirmed the jury's no-negligence finding, we need not address the other two issues Heinen raises. Those issues only bear on damages and there will be no judgment for damages against Ransby.

By the Court.—Judgment affirmed.

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