COURT OF APPEALS
DECISION
DATED AND FILED

July 14, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2061 **Cir. Ct. No. 2014SC7982**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

CHRIS A. BRENZ,

PLAINTIFF-APPELLANT,

V.

STATE FARM INSURANCE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County: RHONDA L. LANFORD, Judge. *Affirmed*.

¶1 SHERMAN, J.[1] Chris Brenz appeals a judgment of the circuit court dismissing Brenz's small claims action against State Farm Insurance Company to recover for damages he allegedly sustained in a motor vehicle

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

accident with State Farm's insured, Jack Harned. For the following reasons, I affirm.

BACKGROUND

¶2 A trial de novo was held before the circuit court, following an evidentiary hearing before a court commissioner. At the trial, Brenz testified that at the time of the accident he was leaving the home of Parnee Harned, who he provided care to approximately three times per week. The accident occurred on Parnee's driveway, which is approximately one-quarter mile long, is narrow with sufficient room for only one vehicle to traverse at a time, and inclines up a hill with a "blind corner" near the top of the driveway that bends at approximately an 80 to 90 degree angle. Brenz testified that as he was coming around the curve in the driveway, he observed Jack's vehicle coming up the driveway and that he moved his car off to the right of the driveway "a little bit" and stopped. Brenz testified that while his vehicle was stopped, he made eye contact with Jack who was driving up the driveway, and that Jack's vehicle crashed into his own vehicle about five seconds after they made eye contact.

¶3 Jack testified that at the time of the accident, he was driving up Parnee's driveway at approximately 10-15 miles per hour. Jack testified that as he approached the top of the hill and was about to go around the "blind corner," he observed Brenz's vehicle, "slammed on [his] breaks" and collided with Brenz. Jack testified that after he "slammed on" his breaks, his "tires lock[ed] up" and his vehicle collided with Brenz's vehicle only one or two seconds after he saw Brenz's vehicle. Jack also testified that the accident occurred on a Tuesday, that he regularly drives to Parnee's home on Tuesdays to take out Parnee's garbage, that he was aware that Parnee had individuals come to her home to assist her, and

that prior to the date of the accident, he had never encountered another individual at Parnee's house on a Tuesday when he went to assist with the garbage, nor had he encountered another vehicle coming around the "blind corner" at the same time he was approaching.

¶4 The circuit court found in favor of State Farm and dismissed the action. The court found that Jack's version of how the accident transpired was more credible. The court further found that it could not find by a preponderance of the evidence that either Jack or Brenz had breached a duty of care at the time of the accident. Brenz appeals.

DISCUSSION

¶5 Brenz's sole challenge is of the factual findings underlying the circuit court's decision. On appeal, this court will uphold the circuit court's factual findings unless those findings are clearly erroneous. WIS. STAT. § 805.17(2); *see* ***Teubel v. Prime Dev., Inc.***, 2002 WI App 26, ¶12, 249 Wis. 2d 743, 641 N.W.2d 461. A finding of fact is clearly erroneous when "'it is against the great weight and clear preponderance of the evidence.'" ***State v. Arias***, 2008 WI 84, ¶12, 311 Wis. 2d 358, 752 N.W.2d 748 (quoted source omitted).

¶6 When an accident occurs on private property, an individual is "not under a duty to keep a lookout unless [he or] she knew or in the exercise of ordinary care ought to have known that [the] plaintiff or someone else was likely to be passing behind or in the vicinity of [the] car." ***Hartzheim v. Smith***, 238 Wis. 55, 59, 298 N.W. 196 (1941); *see also* ***Olsen v. Milwaukee Waste Paper Co.***, 36 Wis. 2d 1, 5, 153 N.W.2d 45 (1967) (to establish negligence on private property, plaintiff must establish a reasonable probability that harm might ensue.

¶7 Brenz argues that contrary to the court's findings, Jack was negligent because: (1) Jack had been driving at 10-15 miles per hour; (2) Jack knew that his view would be obstructed near the "blind corner" and that there was a possibility that someone could be driving down the driveway; and (3) because Brenz's vehicle was stopped prior to the accident, it was Jack's duty to avoid the collision. I conclude, however, that the record in this case reveals sufficient evidence supporting the circuit court's finding that neither Brenz nor Jack breached a duty of care at the time of the accident.

¶8 Here, the circuit court rejected Brenz's version regarding what happened at the accident. Instead, the circuit court determined that Jack's version of events was more credible. It is for the circuit court, not the appellate court, to resolve conflicts in the testimony. *See* ***Global Steel Products Corp. v. Ecklund***, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269. The circuit court "is the ultimate arbiter of the credibility of the witnesses, and of the weight to be given to each witness's testimony.... This court will not reverse a [circuit] court's credibility determination unless we could conclude, as a matter of law, that no finder of fact could believe the testimony." ***Teubel***, 249 Wis. 2d 743, ¶13.

¶9 I cannot conclude as a matter of law that Jack's testimony was incredible. Jack's testimony establishes that the parties were coming around a blind corner and that Jack had no reason to expect another vehicle to be coming down the driveway at the same time he was ascending the driveway. Jack's testimony further established that Jack attempted to stop his vehicle after he observed Brenz's vehicle, but that he was unable to do so in time. The circuit court's finding that neither Jack nor Brenz was negligent was not against the great weight of the evidence. Accordingly, I conclude that the circuit court's finding as to negligence was not clearly erroneous.

CONCLUSION

¶10 For the reasons discussed above, I affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.