

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 10, 2001

Cornelia G. Clark  
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 WIS. STAT. § 808.10 and RULE 809.62.

**No. 00-2186**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**CHERIE PROPHETT,**

**PLAINTIFF-APPELLANT,**

**V.**

**EQUITY CORPORATION INTERNATIONAL,  
D/B/A MOLTHEN BELL AND SONS CO.,**

**DEFENDANT-RESPONDENT,**

**JOSEPH MICHALSKI,**

**DEFENDANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: VICTOR MANIAN, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Cherie Prophettt appeals a judgment in favor of Equity Corporation International (ECI), a funeral home. The issue is whether ECI had a duty to place a funeral procession flag on Joseph Michalski's car. We conclude that it did not. Therefore, we affirm.

¶2 The material facts are not disputed. Michalski was part of a funeral procession. He did not have a flag on his car because he joined the funeral procession as it pulled out of the parking lot. There were at least twenty cars in front of him and five or six cars behind him when he entered the procession. Along with the rest of the procession, Michalski turned against a light. His car collided with Prophettt's car in the intersection.

¶3 Prophettt brought an action against Michalski and ECI. ECI moved for summary judgment, arguing that it did not have a duty to place flags on the cars in the procession and, even if it did, it did not violate that duty as a matter of law because it did not know that Michalski was going to enter the procession. The trial court granted summary judgment in favor of ECI.

¶4 Summary judgment must be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (1999-2000).<sup>1</sup> We review the trial court's decision to grant summary judgment *de novo*. ***Bethke v. Lauderdale of La Crosse, Inc.***, 2000 WI App 107, ¶6, 235 Wis. 2d 103, 612 N.W.2d 332, *review denied*, 2000 WI 102, 237 Wis. 2d 260, 618 N.W.2d 750..

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶5 Summary judgment was appropriate because ECI did not have a duty as a matter of law to either Michalski or to Prophett to ensure that Michalski placed a flag on his car. The funeral procession statute, WIS. STAT. § 346.20, does not require that members of a funeral procession have flags on their cars. By extension, there is no statutory requirement that a funeral home ensure that cars in a funeral procession are flagged. No such requirement exists at common law. There is simply no legal authority to support an argument that the funeral home had a duty to ensure that a flag was placed on Michalski's car.

¶6 Prophett contends that ECI *voluntarily* assumed the duty to supply flags to vehicles in its funeral procession and was therefore required to exercise due care in performing that duty. Assuming that ECI voluntarily assumed the duty to flag vehicles, summary judgment in favor of ECI was still appropriate because it is undisputed that Michalski's car joined the funeral procession while it was in motion, thereby depriving the funeral company of an opportunity to put a flag on the car. As a matter of law, the funeral home did not breach any voluntarily assumed duty to flag because it did not know that Michalski's car was going to participate in the procession.<sup>2</sup>

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<sup>2</sup> Prophett contends that there is a disputed issue of fact as to whether Michalski's car joined the funeral procession when it was already in motion because one of the witnesses stated in his affidavit that Michalski's car, to the best of his recollection, was parked next to him in the parking lot. We disagree. The fact that Michalski's car was parked in the lot does not contradict the undisputed statements made in the affidavits that Michalski's car joined the procession while it was in motion.

*By the Court.*—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

