COURT OF APPEALS
DECISION
DATED AND FILED

April 25, 2002

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 01-2275 **Cir. Ct. No. 00-CV-142**

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

CURT WENZEL AND DOROTHY WENZEL,

PLAINTIFFS-APPELLANTS,

V.

KRISTY PETERS AND AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

DEFENDANTS-RESPONDENTS,

HEALTH CARE FINANCING ADMINISTRATION,

DEFENDANT.

APPEAL from an order of the circuit court for La Crosse County: MICHAEL J. MULROY, Judge. *Reversed and cause remanded.*

Before Vergeront, P.J., Dykman and Roggensack, JJ.

¶1 PER CURIAM. Curt and Dorothy Wenzel appeal from an order dismissing their personal injury claim against Kristy Peters and her insurer. The matter was tried to a jury. The trial court dismissed the complaint for insufficient evidence at the close of the Wenzels' case. However, we conclude that the Wenzels presented sufficient evidence to allow a verdict in their favor. We therefore reverse.

¶2 Dorothy Wenzel, and Peters adversely, testified to the following. While driving on a highway, Dorothy saw cars ahead that were sliding and fishtailing upon entering an ice-covered underpass. Consequently, she slowed down. Directly behind her, Peters also saw the sliding cars and approached the icy patch "a little slower than usual." However, upon driving onto the ice, Peters lost control and struck Dorothy's car from behind, injuring Dorothy. There was no evidence of the speed of either car at or just before the accident, just that both drivers had reduced their speed.

¶3 At the close of the plaintiffs' case, Peters moved to dismiss on insufficient evidence. The court made the following oral ruling on the motion:

> Motion [to dismiss] is granted …. [Peters testified] that she observed vehicles under the overpass quite a distance away, she drove slower than usual, and acknowledged that she may need [sic] more reaction time.
>
> At this particular point, it would be just speculation on the part of jury as to whether or not Ms. Peters was negligent under the circumstances.

¶4 We review de novo a decision to dismiss for insufficient evidence at the close of the plaintiffs' case, applying the same standards employed by the trial court. *See* ***American Family Mut. Ins. Co. v. Dobrzynski***, 88 Wis. 2d 617, 624, 277 N.W.2d 749 (1979). Dismissal is warranted if, considering all credible

evidence in the light most favorable to the plaintiffs, no jury could disagree on the proper facts or inferences to be drawn and there is no credible evidence to sustain a finding in plaintiffs' favor. ***Weiss v. United Fire & Cas. Co.***, 197 Wis. 2d 365, 388, 541 N.W.2d 753 (1995).

¶5 A reasonable jury could find Peters causally negligent on the testimony the Wenzels presented. Both Dorothy Wenzel and Peters saw the hazard ahead and both slowed down. Dorothy slowed down enough to maintain control of her car and avoid a slide, while Peters slid out of control on the same spot. Consequently, a jury could reasonably infer that Peters did not sufficiently reduce her speed, and was therefore causally negligent. The trial court should not remove a negligence determination from the jury except in unusual circumstances. ***Millonig v. Bakken***, 112 Wis. 2d 445, 451, 334 N.W.2d 80 (1983). Such was not the case here.

¶6 Our decision to reverse and remand for further proceedings makes it unnecessary to address the Wenzels' contention that they established a prima facie case of negligence under the res ipsa loquitur doctrine.

By the Court.—Order reversed and cause remanded.

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