COURT OF APPEALS
DECISION
DATED AND FILED

February 23, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 04-1004 **Cir. Ct. No. 02-CV-184**

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

LISA M. LEU,

PLAINTIFF-APPELLANT,

V.

PRICE COUNTY SNOWMOBILE TRAILS ASSOCIATION, INC. AND SPIRIT LAKE NORTHWOODS RIDERS, INC. AND GENERAL CASUALTY COMPANY OF WISCONSIN,

DEFENDANTS,

ARTHUR ZIETLOW AND CHURCH MUTUAL INSURANCE COMPANY,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Lincoln County: J. MICHAEL NOLAN, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Lisa Leu appeals a summary judgment dismissing her negligence claim against Arthur Zietlow and his insurer, Church Mutual Insurance Company, for the death of her husband, Lonnie.[1] The circuit court concluded that public policy precluded holding Zietlow liable for Lonnie's death. Leu argues public policy should not have been determined at summary judgment and that public policy does not preclude holding Zietlow liable for his negligence. We disagree and affirm the order.

BACKGROUND

¶2 This case arises from an accident on March 7, 2002, in which Lonnie was struck and killed by a falling tree while he was snowmobiling on a marked snowmobile trail. Joseph Massa felled the tree as part of a clean-up of wind-damaged trees. Massa was cutting down damaged trees at the request of Zietlow, who owned property next to the property where the tree was located. Massa mistakenly thought the tree was on Zietlow's property but it was actually on property owned by Mildred Briant.

¶3 Zietlow had met with Massa at the property sometime in December 2001 to show him where he could cut trees. There is a factual dispute as to how Zietlow described his property lines to Massa. Massa contends Zietlow indicated his property line was "down the center of the snowmobile trail." Zietlow claims he pointed out his property lines, which are not near the snowmobile trail, with an arm gesture.

[1] The document is entitled "Order for Dismissal," but arose from a motion for summary judgment.

¶4 Zietlow left the details of the tree removal, including what trees to cut and how, to Massa. Massa cleared timber for over a month. Zietlow visited the property approximately one week before the accident and saw that the wood was being cleared.

¶5 Zietlow was aware of the location of the snowmobile trail and that cutting was taking place when snowmobiles might be using the trail. Zietlow also acknowledged that it was possible for Massa to drop trees on the trail.

¶6 On August 21, 2002, Leu commenced this action. Zietlow and Church Mutual moved for summary judgment, contending that Leu's claims were barred by recreational immunity. The circuit court concluded the recreational immunity statute did not apply because the accident did not happen on Zietlow's property. However, it granted summary judgment in Zietlow's favor based on public policy. Specifically, the circuit court concluded that the injury was too remote from Zietlow's negligence and, in retrospect, it was too highly extraordinary that Zietlow's negligence should have caused the harm.

STANDARD OF REVIEW

¶7 We review summary judgments independently, applying the same methodology as the circuit court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 314-15, 401 N.W.2d 816 (1987). We view the facts in the light most favorable to the nonmoving party. ***State Bank of La Crosse v. Elsen***, 128 Wis. 2d 508, 511-12, 383 N.W.2d 916 (Ct. App. 1986). Summary judgment is appropriate when no material facts are in dispute and the moving party is entitled to judgment

as a matter of law. WIS. STAT. § 802.08.[2] Whether public policy precludes liability is a question of law that we review independently. ***Smaxwell v. Bayard***, 2004 WI 101, ¶40, 274 Wis. 2d 278, 682 N.W.2d 923.

DISCUSSION

¶8 "[I]n Wisconsin, even if all the elements for a claim of negligence are proved, or liability for negligent conduct is assumed by the court, the court nonetheless may preclude liability based on public policy factors." ***Id.***, ¶39. Those public policy factors include:

> (1) the injury is too remote from the negligence; (2) the injury is too wholly out of proportion to the tortfeasor's culpability; (3) in retrospect it appears too highly extraordinary that the negligence should have brought about the harm; (4) allowing recovery would place too unreasonable a burden upon the tortfeasor; (5) allowing recovery would be too likely to open the way to fraudulent claims; or (6) allowing recovery would have no sensible or just stopping point.

Stephenson v. Universal Metrics, Inc., 2002 WI 30, ¶43, 251 Wis. 2d 171, 641 N.W.2d 158. Liability may be denied, and recovery against a negligent tortfeasor barred, if any of the public policy factors apply. ***Id.***

¶9 Leu argues these public policy factors should not have been applied at summary judgment, but should have only been considered after trial on the negligence claim. Generally, the "better practice is to submit the case to the jury before determining whether the public policy considerations preclude liability." ***Alvarado v. Sersch***, 2003 WI 55, ¶18, 262 Wis. 2d 74, 662 N.W.2d 350.

[2] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

However, "[t]he assessment of public policy does not necessarily require a full factual resolution of the cause of action by trial." ***Stephenson***, 251 Wis. 2d 171, ¶42. "[W]here the facts presented are simple and the question of public policy is fully presented by the complaint and the motion for summary judgment, this court may make the public policy determination." ***Sawyer v. Midelfort***, 227 Wis. 2d 124, 141, 595 N.W.2d 423 (1999).

¶10 We conclude a trial is not necessary to resolve the public policy issues relevant to Leu's claim. The facts of this case are not complicated. The only disputed fact is the manner in which Zietlow identified his property lines and, because this case arises from Zietlow's summary judgment motion, we resolve that factual dispute in Leu's favor. *See* ***Elsen***, 128 Wis. 2d at 511-12. Leu fails to identify any additional facts not raised at summary judgment that would affect the public policy determination.

¶11 Leu also argues that public policy should not preclude holding Zietlow liable for Lonnie's death. Leu's complaint alleges Zietlow was negligent by "failing to take all reasonable and necessary steps to prevent" Massa from injuring Lonnie. At the summary judgment hearing, Leu articulated three particular theories of negligence: (1) failing to properly identify his property boundaries to Massa; (2) failing to warn Massa of the potential for dropping trees on the snowmobile trail; and (3) failing to monitor and inspect Massa's work. Leu's briefs in this court appear to primarily rely on her first theory of negligence. She argues that "had Zietlow properly identified his property lines, the accident would not have occurred." She claims that because Zietlow was directly involved in the chain of events that gave rise to the accident, the injury is not remote from Zietlow's negligence. Zietlow's negligence, which we assume for purposes of this

analysis, in failing to properly identify the boundary of his property set off the chain of events that led to Lonnie's death.

¶12 By establishing the chain of events, Leu effectively argues that Zietlow's negligence was the cause-in-fact of Lonnie's death. However, "negligence plus an unbroken sequence of events establishing cause-in-fact does not necessarily lead to a determination that a defendant is liable for plaintiff's injuries." ***Rieck v. Medical Protective Co.***, 64 Wis. 2d 514, 517, 219 N.W.2d 242 (1974). "[W]e assume there is negligence and that the negligence was a cause of the injury, but for reasons of public policy, we [may] prevent the claim from proceeding." ***Cole v. Hubanks***, 2004 WI 74, ¶7, 272 Wis. 2d 539, 681 N.W.2d 147.

¶13 We conclude Zietlow's negligence for improperly identifying his property boundaries is simply too remote from Leu's injury to hold Zietlow liable. The word "remote," when used in the context of a public policy limitation on liability, means "removed or separated from the negligence in time, place, or sequence of events." ***Beacon Bowl, Inc. v. Wisconsin Elec. Power Co.***, 176 Wis. 2d 740, 762, 501 N.W.2d 788 (1993). Here, because Zietlow failed to properly identify the boundary to Massa, Massa ended up on Briant's property several months later. Because Massa was on Briant's property, he cut Briant's tree. Massa felled the tree onto the snowmobile trail. The tree hit the trail at the exact moment Lonnie was driving past on his snowmobile. Zietlow's negligence is removed in time and in sequence from Lonnie's injury and, thus, is too remote to hold Zietlow liable for that injury.

¶14 Leu's second negligence theory is that Zietlow failed to warn Massa of the potential for dropping trees on the snowmobile trail. Zietlow acknowledged

he knew the location of the trail and the potential that trees might fall on the trail. However, Massa also knew the location of the trail, knew the trail was open and intended that the tree fall on the trail. Zietlow's negligence, then, was failing to warn Massa of a danger of which Massa was already aware. However, we conclude it is too highly extraordinary that Zietlow's negligence should have brought about the harm to Lonnie. *See* ***Stephenson***, 251 Wis. 2d 171, ¶43.

¶15 Leu's final theory of negligence is that Zietlow failed to supervise Massa's activities. Massa cut trees for over one month and was an experienced logger. Massa's activities were on Zietlow's recreational property that he infrequently used during this time of year. Under these circumstances, it would be unreasonable to require Zietlow to personally supervise Massa's clean-up efforts. We conclude that allowing recovery on this theory would place too unreasonable a burden on Zietlow. *See* ***id.***

By the Court.—Judgment affirmed.

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