COURT OF APPEALS
DECISION
DATED AND RELEASED

July 05, 1995

NOTICE

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.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 93-3030

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

ARLENE CLAYTON-MALLETT,

Plaintiff-Appellant,

MANAGED HEALTH SERVICES, INC.,

Plaintiff,

v.

MILWAUKEE COUNTY,
MILWAUKEE COUNTY TRANSIT SYSTEM
and JAMES BROWN,

Defendants-Third Party
Plaintiffs-Respondents,

PHILLIP G. SIMPSON,

Third Party Defendant.

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

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Arlene Clayton-Mallett, *pro se*, appeals from a judgment, after a jury trial, dismissing her personal injury action against Milwaukee County for the negligence of its employee, James Brown, in the operation of a Milwaukee County Transit System bus. Clayton-Mallett was a passenger in the bus when Phillip G. Simpson struck the bus with his motor vehicle. Her complaint alleged that as a result of Brown's negligent operation of the bus, she suffered severe personal injuries. The County filed a third-party action against Simpson that was eventually dropped. A jury found that neither Brown nor Simpson was negligent in the operation of their vehicles; consequently, the jury awarded no damages. The trial court then entered a judgment dismissing the action and, pursuant to § 814.10, STATS.,[1] awarded the defendants $635.42 in costs.

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[1] Section 814.10, STATS., provides:

Taxation of costs. (1) Clerk's duty, notice, review. The clerk shall tax and insert in the judgment and in the docket thereof, if the same shall have been docketed, on the application of the prevailing party, upon three days' notice to the other, the sum of the costs and disbursements as above provided, verified by affidavit.

(2) Cost bill, service. All bills of costs shall be itemized and served with the notice of taxation.

(3) Objections, proofs, adjournment. The party opposing such taxation, or the taxation of any particular item shall file with the clerk a particular statement of the party's objections, and the party may produce proof in support thereof and the clerk may adjourn such taxation, upon cause shown, a reasonable time to enable either party to produce such proof.

(4) Court review. The clerk shall note on the bill all items disallowed, and all items allowed, to which objections have been made. This action may be reviewed by the court on motion of the party aggrieved made and served within 10 days after taxation. The review shall be founded on the bill of costs and the objections and proof on file in respect to the bill of costs. No objection shall be entertained on review which was not made before the clerk, except to prevent great hardship or manifest injustice. Motions under this subsection may

Clayton-Mallett raises several disparate and undeveloped issues on appeal: (1) whether the trial court erred in failing to grant a new trial because the jury verdict was allegedly unsupported by credible evidence; (2) whether the trial court erroneously exercised its discretion in failing to instruct the jury on *res ipsa loquitur*; (3) whether the trial court erred in awarding costs to the defendants pursuant to § 814.10, STATS.; and (4) whether she should be granted relief from this court for unpaid physician and physical therapy bills.[2] None of the issues have any merit. Accordingly, we affirm the judgment dismissing the action and awarding statutory costs.

On motions after verdict, Clayton-Mallett petitioned the trial court to grant a new trial because she alleged that there was insufficient evidence to support the jury's verdict. The trial court denied the motion and approved the jury verdict on both the liability and damages issues. Clayton-Mallett renews this argument on appeal.

"In reviewing a jury finding following a trial, we sustain the jury's determination if there is any credible evidence to support its verdict." ***Bauer v. Piper Industries, Inc.,*** 154 Wis.2d 758, 763, 454 N.W.2d 28, 30 (Ct. App. 1990). Further, "[w]e are even more reluctant to interfere when the trial judge has reviewed the allegations of negligence and approved the jury verdict." ***Id***. Finally, "[t]he jury is the ultimate arbiter of witness credibility and is uniquely empowered to make determinations of the parties' negligence;" and we will not "usurp this function unless no reasonable jury could find that an actor failed to exercise ordinary care." ***Id***.

There is abundant evidence to support the jury's verdict in this case. The jury concluded that neither Brown nor Simpson was negligent in the operation of his vehicle. This was an intersection collision during snowy, inclement weather. There was testimony that Brown made a proper lookout at the intersection, observed the Simpson vehicle, and made a determination that it was safe to proceed. Once Brown drove the bus into the intersection, another

(..continued)

be heard under s. 807.13.

[2] Although Clayton-Mallett appeals *pro se*, she is not entitled to leniency in the presentation of her appeal. She is "bound by the same rules that apply to attorneys on appeal." ***Waushara County v. Graf,*** 166 Wis.2d 442, 452, 480 N.W.2d 16, 20, *cert. denied*, 113 S. Ct. 269 (1992).

vehicle unexpectedly pulled out of a driveway, causing Brown to stop in the intersection. Further, Simpson testified that there appeared to be sufficient distance between his and Brown's vehicle when Brown entered the intersection. Simpson was traveling within the posted speed limit but could not stop his car because of the road conditions. From this evidence, the jury could reasonably conclude that neither Simpson or Brown was negligent in the operation of their motor vehicles. Consequently, we will not usurp the jury's function and overturn its verdict. *See* ***id***.

For the first time on appeal, Clayton-Mallett raises the issue of the trial court's failure to instruct the jury on *res ipsa loquitur*. Clayton-Mallett did not file a request for the instruction, and the trial court did not mention it in its post-verdict decision. Section 805.13(3), STATS., provides that a party may file motions for requested instructions at the instruction and verdict conference, and may object to instructions or "other error." Failure to do so constitutes a waiver of any error in proposed instructions. Section 805.13(3), STATS. Clayton-Mallett waived submission of the *res ipsa loquitur* charge when she failed to request it at the instruction conference.

Clayton-Mallett requests that this court reverse the trial court's judgment for $635.42 in costs imposed against her pursuant to § 814.10, STATS. She, however, failed to comply with § 814.10(2), which required her to file objections to the bill of costs with the clerk of courts. Further, she did not petition the trial court for review of taxation of costs within the ten days after the taxation as required by § 814.10(4). Under these circumstances, she has waived her objection to costs. *See* § 805.11(1), STATS.

Finally, Clayton-Mallett seeks relief from this court for unpaid physician and rehabilitation clinic bills. She cites no authority for this request; thus, we will not address it. *See* ***Lechner v. Scharrer***, 145 Wis.2d 667, 676, 429 N.W.2d 491, 495 (Ct. App. 1988) (argument not supported by legal authority will not be considered on appeal).

By the Court.—Judgment affirmed.

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