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DISTRICT IV

October 31, 2024

To:

Hon. Troy L. Nielsen
Circuit Court Judge
Electronic Notice

John A. Kramer
Electronic Notice

Yvette Kienert
Clerk of Circuit Court
Waupaca County Courthouse
Electronic Notice

Keith E. Trower
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP1211

Bruce Ames v. Fleet Farm LLC (L.C. # 2022CV300)

Before Blanchard, Graham, and Nashold, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Bruce and Bambi Ames appeal a circuit court order that dismissed their wrongful death action against Fleet Farm for failure to state a claim. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We summarily affirm.

The Ameses filed this wrongful death action against Fleet Farm alleging that its negligence caused the death of their son, Ryan Ames. While working at Fleet Farm, Ryan took a

¹ All references to the Wisconsin Statutes are to the 2021-22 version.

handgun from an unsecured storage area and used that gun to kill himself. The complaint alleged that Fleet Farm negligently failed to prevent Ryan from taking the gun, and that it was therefore liable for his death. Fleet Farm moved to dismiss the complaint for failure to state a claim under WIS. STAT. § 802.06(2)(a)6., and the circuit court granted the motion based on its determination that liability is precluded under *Bogust v. Iverson*, 10 Wis. 2d 129, 102 N.W.2d 228 (1960).

In *Bogust*, our supreme court determined that “‘suicide constitutes an intervening force which breaks the line of causation from the wrongful act to the death and therefore the wrongful act does not render [a] defendant civilly liable.’” *Id.* at 137 (quoted source omitted). In *McMahon v. St. Croix Falls Sch. Dist.*, 228 Wis. 2d 215, 596 N.W.2d 875 (Ct. App. 1999), we recognized that “Wisconsin follows [that] general rule” of nonliability. *Id.* at 224 (quoting *Bogust*, 10 Wis. 2d at 137). We explained that Wisconsin law recognizes only one exception to *Bogust*: “when the defendant’s negligence or wrongful act creates in the deceased an ‘uncontrollable impulse,’ a delirium, frenzy or rage, during which the deceased commits suicide ‘without conscious volition to produce death.’” *Id.* at 225 (quoting *Bogust*, 10 Wis. 2d at 138). We rejected the McMahons’ attempt to “invok[e] a second exception to *Bogust*’s general rule that our courts have not adopted: ‘a special relationship’ between the defendant and the deceased that imposes a higher duty of care on the defendant.” *Id.* at 226-28. We reiterated that “Wisconsin law is clear ... that the uncontrollable impulse rule is the only exception to the general rule that suicide is an intervening and superseding cause precluding liability.” *Id.* at 228.

The Amesess concede that *Bogust* and *McMahon* are the controlling law in Wisconsin, and they do not meaningfully dispute that the case law as it currently exists precludes their wrongful death action against Fleet Farm. However, they argue that the decision in *Bogust* is

outdated and should be revisited, and that the “special relationship” exception that we rejected in *McMahon* should be adopted and applied in this case.

Only the supreme court may overrule precedent established by the supreme court or a published decision of this court. *See Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). We are bound by the law as set forth in *Bogust* and *McMahon*, which requires that we affirm the order dismissing the Ames’ wrongful death action.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals