

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 6, 1995

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.

NOTICE

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

No. 95-0581

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**JASON LIEDER, by his Guardian ad Litem
TIMOTHY B. MELMS, PETER LIEDER, and
BARBARA LIEDER,**

Plaintiffs-Appellants,

**STATE OF WISCONSIN, DEPARTMENT
OF HEALTH AND SOCIAL SERVICES,**

Plaintiff,

v.

**TIMOTHY STANFIELD, FRED
STANFIELD, and MARYANN
STANFIELD,**

Defendants,

GERMANTOWN MUTUAL INSURANCE COMPANY,

Defendant-Respondent,

BENEFIT TRUST LIFE INSURANCE COMPANY,

Nominal-Defendant.

APPEAL from a judgment of the circuit court for Oneida County:
ROBERT E. KINNEY, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Jason Lieder appeals a summary judgment dismissing his action against Germantown Mutual Insurance Company. Lieder was injured when Germantown's insured, Timothy Stanfield, struck him with a tire iron causing injury to his face and head. The trial court concluded that the insurance policy did not provide coverage for Stanfield's intentional act. Lieder argues that outstanding issues of material fact preclude summary judgment because Stanfield's intent remains at issue. He also argues that Stanfield's parents were negligent in supervising their son. We reject these arguments and affirm the judgment.

The supporting papers, construed in the light most favorable to coverage, establish that Stanfield believed his car had been vandalized by Lieder. After reporting the incident to the police, Stanfield got a tire iron out of the trunk and drove around in search of Lieder. When Stanfield found Lieder standing on a corner with some friends, he got out of the car and approached Lieder holding the tire iron. Lieder pushed Stanfield and Stanfield swung at and hit Lieder in the arm with the tire iron. Stanfield again swung at Lieder, hitting him in the head. Stanfield's affidavit states that he swung at Lieder's body, and only struck him in the head because Lieder ducked.

Intent to cause injury exists where the actor subjectively intends to cause injury or where injury is substantially certain to occur from the actor's conduct. *Gouger v. Hardtke*, 167 Wis.2d 504, 512, 482 N.W.2d 84, 88 (1992). As long as the actor intends to inflict personal injury, the requisite intent is established even though the actor did not intend the particular injury that occurred. *Pachucki v. Republic Ins. Co.*, 89 Wis.2d 703, 712, 278 N.W.2d 898, 903 (1979). Stanfield struck Lieder several times. He never claimed to be acting in self-defense. He pled guilty to criminal charges of aggravated battery and

intentionally causing bodily harm to a child,¹ both of which have an element of intent. *See §§ 940.19(2) and 948.03(2)(b), STATS.* From this evidence, the trial court properly concluded that there was no genuine issue of material fact or competing inferences regarding Stanfield's intent and that summary judgment was appropriate. *See Tomilson v. Mid-America Life Ins.*, 168 Wis.2d 92, 95, 483 N.W.2d 234, 236 (Ct. App. 1992).

Stanfield's parents were not negligent in supervising their sixteen-year-old son as a matter of law. At the time Lieder was injured, Stanfield's parents believed he was at the movies. They did not consent to his actions, nor were they aware that he was planning to search for Lieder and injure him. They did not know, or have reason to know, of Stanfield's probable conduct. Under these circumstances, Stanfield's parents are not negligent as a matter of law. *See Bankert v. Threshermens Mut. Ins. Co.*, 110 Wis.2d 469, 474, 329 N.W.2d 150, 152 (1983).

By the Court.—Judgment affirmed.

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

¹ Jason Lieder was only fourteen-years-old at the time of the incident.