COURT OF APPEALS
DECISION
DATED AND RELEASED

November 19, 1996

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. 96-1315

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

MARK ARMBRUSTER and BETH ARMBRUSTER,

Plaintiffs-Respondents,

v.

DAVID M. COUNARD,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN P. BUCKLEY, Reserve Judge. *Affirmed*.

FINE, J. David M. Counard appeals from a judgment entered in a small-claims case that awarded $980 plus costs to Mark and Beth Armbruster. Both parties appear *pro se*. Mr. Counard argues that there is no evidence to support the judgment. We affirm.

I.

This case arises out of an automobile accident. The Armbrusters sued Mr. Counard for damages they allegedly sustained when Mr. Counard's car struck the car Mr. Armbruster was driving, a 1986 Cavalier. Mr. Armbruster testified that he was driving east on Whitnall Avenue in Milwaukee, in the right lane, preparing to make a right turn onto Pine Avenue when Mr. Counard "pulls out and hits me." According to Mr. Armbruster, Mr. Counard told him that he, Mr. Counard, was also going to make a right turn onto Pine. Mr. Armbruster testified that the accident happened when Mr. Counard changed lanes preparatory to his turn, and that Mr. Counard's car hit the front driver's side of Mr. Armbruster's car.

According to Mr. Armbruster, the front left fender was "smashed in," the plastic front bumper containing the headlights was "all cracked," the wheel rim was bent, and he couldn't open his driver's side door after the accident because of the smashed front fender. When asked by the trial court about the dollar value of the damage, Mr. Armbruster replied that he did not have any of the bills (he said that he gave them to the Department of Motor Vehicles, and did not keep any copies), but that he received estimates that "came out to like $1600, which would have totalled the car because the value of the car was only like fourteen something." Although the estimates are not part of the appellate record, Mr. Armbruster had them with him at the trial, and the trial court apparently examined them.[1] Mr. Armbruster did not have his car repaired.

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[1] We are, of course, bound by the record as it comes to us. ***State v. Pettit***, 171 Wis.2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992). It is the *appellant's* burden to ensure that the record is sufficient to address the issues raised on appeal. ***State Bank of Hartland v. Arndt***, 129 Wis.2d 411, 423, 385 N.W.2d 219, 225 (Ct. App. 1986); *see* RULE 809.15(1)(a)9, STATS. (The record on appeal shall include "[e]xhibits material to the appeal whether or not received in evidence."); RULE 809.15(2), STATS. (The parties receive ten-day notice of the provisional contents of the record prior to its transmittal to the appellate court.). Indeed, when the appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court's ruling. *See* ***Duhame v. Duhame***, 154 Wis.2d 258, 269, 453 N.W.2d 149, 153 (Ct. App. 1989). When Mr. Armbruster indicated that he had the repair-shop estimates, the trial court responded: "I want to see those."

Mr. Counard testified that he was stopped at a red light, partially into the lane from which he wanted to make his right turn, with his right turn signal on. It had snowed the day before and, according to Mr. Counard, the road was "still icy and slippery." He told the trial court what then happened:

> The light turned green. I did look out of my mirrors. Mr. Armbruster was not over there. He was still in the same--right behind everybody else. I started--continued making my turn. Mr. Armbruster decided that he was going to try to fit between the two points, I guess, and his front end ran into my passenger car door. And that's basically what happened.

Mr. Counard testified that "when the light turned green, I had looked out and he ran into me before I got a change [*sic*] to go anywhere." Mr. Counard claimed that Mr. Armbruster was "behind" Mr. Counard's car, and that he, Mr. Counard, saw Mr. Armbruster "coming up." Mr. Counard told the trial court that there was no room for two cars at the "end of the road" because of the accumulation of snow from the previous day's twelve-inch snow fall. Although the police-generated accident report is not part of the appellate record, Mr. Counard described it as showing "my front end of the car into his"; Mr. Counard contended that this was wrong because "it was his front end of the car into mine."[2]

The trial court ruled that Mr. Counard was primarily at fault, with Mr. Armbruster being thirty-percent negligent:

> THE COURT: All right. Whitnall Avenue was a two land highway with a center line indicating the division between the right and left lanes or the north and south lanes. The defendant Counard was the third of three cars parked near the center line waiting for the light, which was then red, to change. And as it changed, the plaintiff was operating his vehicle in

[2] Again, it is the appellant's burden to ensure that the appellate record is complete.

> the right-hand lane behind Counard; and as the light changed, the plaintiff pulled out to his right and occupied the remainder of the lane in order to make a right turn. Two vehicles ahead of Mr. Counard were indicating left turn signals. Mr. Counard said he was indicating that he was going to make a right turn.
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> MR. COUNARD: Sir, the vehicles in front of me did not have no turn signals on.
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> THE COURT: Anyway, they were making left turns. So when impact occurred, according to the accident report, primarily the collision was with Mr. Armbruster's car in the right side of Mr. Counard's car. The damage was to the left side of Armbruster's car. Based upon the facts given and the information given, the Court is of the opinion that Mr. Counard had a duty to yield the right of way. Even though it is only a one lane highway, there's room for two cars. To Mr. Armbruster who was approaching, the Court is of the opinion that Mr. Armbruster, however, exercising due caution may or should have anticipated that turn. He didn't do so.
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> The Court will find that the defendant is 70 percent negligent, the plaintiff is 30 percent negligent. The damages are the book value of the car at the time, and the only testimony on that is $1400.

As to damages, the trial court based its assessment on the range of values reported by the Blue Book, which the parties apparently presented at the trial.[3] Moreover, the owner of property is competent to give an opinion of that property's value, ***Trible v. Tower Ins. Co.***, 43 Wis.2d 172, 187, 168 N.W.2d 148, 156 (1969), and may base that opinion on evidence that is not admissible, *see*

[3] Values reported by the Blue Book would be admissible under RULE 908.03(17), STATS. ("published compilations, generally used and relied upon by the public").

RULE 907.03, STATS.[4] The trial court assessed damages at seventy-percent of what it determined as the car's value of $1,400.

[4] Thus, it is not material that the estimates might not have been admissible into evidence.

II.

Our review of a trial court's findings of fact is severely limited—we may not overturn a trial court's factual findings unless they are "clearly erroneous." RULE 805.17(2), STATS. Further, we must accept reasonable inferences that the trial court draws from the evidence. ***State v. Friday***, 147 Wis.2d 359, 370-371, 434 N.W.2d 85, 89 (1989). Given the state of this record, we cannot conclude that the trial court's findings of fact are "clearly erroneous." We must, therefore, affirm.[5]

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

[5] Mr. Counard claims that the trial court erroneously admitted a hearsay statement by the investigating police officer. The trial court's findings are amply supported by the record even excluding the objected-to statement.