

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 21, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-2637

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

JESSICA L. EDWARDSON,

PLAINTIFF-APPELLANT,

v.

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,
MATHEW J. HARVEY AND JOSEPH J. CUTCHINS,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Rock County:
JOHN H. LUSSOW, Judge. *Reversed and cause remanded.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 DYKMAN, P.J. Jessica Edwardson appeals from a judgment arising out of a directed verdict in favor of the defendants, American Family, Matthew J. Harvey, and Joseph J. Cutchins. Edwardson was injured in a

motorcycle collision while riding as a passenger on one of two motorcycles. Harvey and Cutchins were driving their automobiles closely behind the two cycles when the accident occurred. The parties debate whether Harvey and Cutchins were chasing or merely following the cycles. Edwardson sued, claiming that their negligent conduct was a cause of her injuries. Harvey and Cutchins argued that there was insufficient evidence to support a finding of causation. The trial court directed a verdict for Harvey and Cutchins. Because there is sufficient credible evidence to support a finding of causation, we reverse and remand.

BACKGROUND

¶2 Harvey and Cutchins, who were prior acquaintances, met at a park at approximately 9:00 p.m. on June 3, 1994. During a brief conversation, Cutchins informed Harvey that he was having “some sort of problem” with Jon Paul and Shawn Burke, two men also at the park the night of June 3. Cutchins wanted to talk to the men in order to rectify the situation. Harvey felt that a fight between Cutchins and the two men was a possibility. Later that evening, Cutchins learned that Paul was at the park. Cutchins saw Paul leaving the park on a motorcycle, and began to follow him in his car. On the way out, Cutchins stopped and asked Harvey, also in a car, to follow him. Paul was soon joined by another motorcycle with Edwardson as a passenger. At this point, one of the passengers in Cutchins’ car got out of the vehicle and yelled something at the cyclists. Cutchins heard at least one of the cyclists say something like “Let’s go” or “Let’s get out of here.” The cyclists then started moving, and Cutchins and Harvey followed.

¶3 Harvey and Cutchins followed the cycles through town. They exceeded the speed limit by at least fifteen miles per hour during much of the drive through town. They also followed the cycles across a parking lot, and

Harvey ran a red stop light in order to keep up with them. The vehicles headed out of town on a road that turned into County Trunk A, which is where the accident occurred. Harvey estimated that their speeds reached at least seventy miles per hour while driving on County A. Immediately prior to the accident, Harvey's car was directly behind the cycles, followed by an unidentified truck and then Cutchins' car. Harvey was within twenty to thirty yards of the cycles when the cycle on the right turned into the one on the left, resulting in the accident. Edwardson, a passenger on one of the cycles, was severely injured. Harvey's car collided with one of the cycles after the accident, but did not come into contact with any people.

ANALYSIS

¶4 A motion for a directed verdict is a challenge to the sufficiency of the opposing party's evidence. See *Weiss v. United Fire & Cas. Co.*, 197 Wis. 2d 365, 388, 541 N.W.2d 753 (1995). In considering such a motion, a trial court "must view the evidence most favorably to the party against whom the verdict is sought to be directed." *Millonig v. Bakken*, 112 Wis. 2d 445, 450, 334 N.W.2d 80 (1983). Therefore, "a verdict should be directed only where there is no conflicting evidence as to any material issue and the evidence permits only one reasonable inference or conclusion." *Id.* at 451. This standard applies both to the trial court and to an appellate court on review. See *id.* at 450.

¶5 We give "substantial deference to the trial court's better ability to assess the evidence." *Weiss*, 197 Wis. 2d at 388-89 (quoting *James v. Heintz*, 165 Wis. 2d 572, 577, 478 N.W.2d 31 (Ct. App. 1991)). Therefore, we will not overturn a trial court's decision to direct a verdict for insufficient evidence "unless the record reveals that the circuit court was 'clearly wrong.'" *Id.* at 389 (citation

omitted). However, if a trial court directs a verdict despite the existence of credible evidence to the contrary, then it is “clearly wrong.” *Id.* Even if the evidence is undisputed, yet permits different reasonable inferences, a verdict should not be directed. *See Millonig*, 112 Wis. 2d at 451. “[O]nly the clearest of cases should be decided by the judge rather than by the jury.” *Id.* at 450.

¶6 A cause of action for negligence must be supported by four elements: (1) the defendant had a duty of care to the plaintiff; (2) the defendant breached that duty; (3) an injury resulted in loss or damage to the plaintiff; and (4) the defendant’s conduct was a cause of the injury. *See Miller v. Wal-Mart Stores, Inc.*, 219 Wis. 2d 250, 260, 580 N.W.2d 233 (1998). Here, viewing the evidence in the light most favorable to Edwardson, the record furnishes credible evidence to support a verdict in favor of Edwardson based on these four elements.

(a) Duty of Care, Breach of Duty, and Injury

¶7 Whether a duty exists in a case is a question of law that we review de novo. *See First Nat’l Bank v. Wernhart*, 204 Wis. 2d 361, 367, 555 N.W.2d 819 (Ct. App. 1996).

¶8 “In Wisconsin, everyone has a duty of care to the whole world.” *Miller*, 219 Wis. 2d at 260. The scope of this general duty is outlined as “the obligation of due care to refrain from any act which will cause foreseeable harm to others even though the nature of that harm and the identity of the harmed person ... is unknown at the time of the act.” *Rockweit v. Senecal*, 197 Wis. 2d 409, 419-20, 541 N.W.2d 742 (1995) (quoting *A.E. Inv. Corp. v. Link Builders, Inc.*, 62 Wis. 2d 479, 483, 214 N.W.2d 764 (1974)). At the very least, Harvey and Cutchins owed this duty of care to Edwardson. Reckless driving is a violation of a person’s general duty to the public. *See Ogle v. Avina*, 33 Wis. 2d 125, 133, 146

N.W.2d 422 (1966). Here, there is evidence that Harvey and Cutchins were speeding, tailgating, and otherwise driving in an unsafe manner. This conduct reflects a breach of the standard duty of care. *See id.* Finally, there is evidence that Edwardson was severely injured as a result of the accident. The record could reasonably support the duty, breach, and injury elements of negligence. The dispute between the parties is based on whether Harvey and Cutchins' conduct was a cause of Edwardson's injuries.

(b) Cause

¶9 Conduct is causal if it is “a substantial factor in producing the injury.” *Clark v. Leisure Vehicles, Inc.*, 96 Wis. 2d 607, 617, 292 N.W.2d 630 (1980). “It need not be the sole factor or the primary factor, only a ‘substantial factor.’” *Id.* (citation omitted). A substantial factor is defined as conduct that “has such an effect in producing the harm as to lead the trier of fact ... to regard it as a cause, using that word in the popular sense.” *Id.* at 617-18. Several substantial factors can exist, all contributing to the same result. *See id.* at 618.

¶10 Here, Harvey and Cutchins argue that there is no way of knowing what caused the cycles to collide. Harvey's car did not touch the cycles until after the crash, and it never made contact with Edwardson. However, conduct can be causal even if it is not the most immediate factor causing the injury. *See Sampson v. Laskin*, 66 Wis. 2d 318, 325, 224 N.W.2d 594 (1975). The proper inquiry is whether Harvey and Cutchins' negligent behavior was a “substantial factor” in causing Edwardson's injury. *Clark*, 96 Wis. 2d at 617. It does not matter whether the conduct came at the beginning or end of the causal chain, only that it was a substantial factor. Much has been made of whether Harvey and Cutchins were “chasing” the motorcycles during the course of events. Harvey and Cutchins

contend that there is no proof of any chase. The absence of testimony from Edwardson or either driver of the cycles makes it impossible to determine with any certainty whether the cyclists felt they were being chased or not. We conclude that this line of inquiry is not determinative of whether Harvey and Cutchins' conduct was a cause of the injury. The events in question are more analogous to the "drag racing" cases that deal with issues of negligence and causation.

¶11 "In a race, the participants share equally the responsibility for damage done by any participant." *Ogle*, 33 Wis. 2d at 134. Racing is seen as "a situation of mutual stimulation where the negligence of each participant is so related to the negligence of the other participants that the participants should each be chargeable with the causal negligence of the other." *State v. McClose*, 95 Wis. 2d 49, 53, 289 N.W.2d 340 (Ct. App. 1980) (citing *Ogle*, 33 Wis. 2d at 135). Such a situation can come about between strangers. *See City of Madison v. Geier*, 27 Wis. 2d 687, 694, 135 N.W.2d 761 (1965). There is no need for a prior agreement, and a race may be inferred from the speeds and relative positions of the cars. *See id.* at 693.

¶12 Here, there is evidence that Harvey and Cutchins exceeded the speed limit through town, and reached speeds as high as seventy miles per hour. During this time they stayed behind the cycle on which Edwardson was a passenger, keeping close to the cycles, yet never passing them. It is therefore reasonable to infer that the cycles were driving at roughly the same speeds as Harvey and Cutchins, and likewise exceeding the speed limit. "[W]hether causation exists is frequently an inference the trier of fact draws from the circumstances." *Johnson v. Neville*, 226 Wis. 2d 365, 379, 595 N.W.2d 100 (Ct. App. 1999). Viewing the evidence in the light most favorable to Edwardson, there is credible evidence that the cyclists were aware of Harvey and Cutchins and engaging in behavior that was

at least partially motivated by Harvey and Cutchins' conduct. While their conduct may not have been the most immediate cause of the accident, the evidence was such that a reasonable jury could find it to be a substantial factor in the accident that injured Edwardson.

CONCLUSION

¶13 We reverse the trial court's judgment, and remand the case to the trial court for further proceedings consistent with this opinion.

By the Court.—Judgment reversed and cause remanded.

Not recommended for publication in the official reports.

