COURT OF APPEALS
DECISION
DATED AND FILED

November 20, 2001

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 00-3024 **Cir. Ct. No. 00-CV-32**

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

ARVID AMES, D/B/A AMES WHITETAIL RANCH,

PLAINTIFF-RESPONDENT,

V.

MARK ILLICK, D/B/A ILLICK ELECTRIC, AND MIDWEST FAMILY MUTUAL INSURANCE COMPANY,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Oneida County: MARK A. MANGERSON, Judge. *Affirmed*.

Before Cane, C.J., Peterson and Roggensack, JJ.

¶1 ¶PER CURIAM. Mark Illick, d/b/a Illick Electric and his insurer, appeal a judgment awarding Arvid Ames, d/b/a Ames Whitetail Ranch, $34,875 for Illick's negligence in causing the death of twenty-one deer on Ames' ranch. After trial to the court, the court found Illick 75% negligent based on its finding

that Illick's employees turned off the water pump while performing an electrical service changeover and neglected to turn it back on, resulting in the deer's dehydration. Illick argues that Ames was more negligent as a matter of law because he did not check the watering system for six days after the electrical work was completed. We reject that argument and affirm the judgment.

¶2 Sufficient evidence supports the trial court's finding that Illick was more negligent than Ames. The apportionment of causal negligence is within the special province of the trier of fact, and this court will interfere only when it is clear that one party's negligence equals or exceeds that of another. *See* ***Gross v. Denow***, 61 Wis. 2d 40, 48, 212 N.W.2d 2 (1973). Ames testified that he believed he told Illick about the importance of restoring the water system upon completion of the job. Ames also dispatched his employee, Bob Reimert, to inform Illick's employees of the importance of leaving the water system on. Illick's employees testified that Reimert showed them how to turn the water on and make sure the water was running by visual inspection. The trial court heard conflicting evidence on the degree to which Ames and Reimert instructed Illick's employees, but the trial court is the sole arbiter of the witnesses' credibility. *See* ***Leciejewski v. Sedlak***, 116 Wis. 2d 629, 637, 342 N.W.2d 734 (1984). Ames presented sufficient evidence that Illick's employees knew how the system operated and knew it was important that the water pump was operating when they completed their work. While Ames shared some of the blame for his failure to inspect the premises for six days after the electricians finished their work, his negligence did not exceed that of Illick and his employees as a matter of law.

¶3 Illick's argument is substantially based on his theory that Ames had the "last clear chance" to save the deer and that the "one who has the last clear chance to avoid an accident is the more guilty." *See* ***Britton v. Hoyt***, 63 Wis. 2d

688, 694, 218 N.W.2d 274 (1974). Illick takes that quotation out of context. The remainder of the sentence concludes "but it is doubtful the doctrine of last clear chance was ever the law in Wisconsin." ***Id.*** In Wisconsin, last clear chance is only a factor to be considered in the apportionment of causal negligence. ***Id.*** at 695. When the negligence of more than one party contributes to an accident, the last in time is not necessarily more negligent, particularly when he has no knowledge of the other party's negligence and the other party's actions directly contravened his explicit instructions.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).