COURT OF APPEALS
DECISION
DATED AND FILED

December 20, 2001

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-0333 **Cir. Ct. No. 99-CV-2036**

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

ROBERT RAMHARTER, DEBRA RAMHARTER, AND ALL-STAR MUTUAL INSURANCE COMPANY,

PLAINTIFFS-APPELLANTS,

V.

MADISON NEWSPAPERS, INCORPORATED,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County: PATRICK J. FIEDLER, Judge. *Affirmed*.

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

¶1 VERGERONT, P.J. The issue on this appeal is whether Wisconsin public policy precludes holding Madison Newspapers, Incorporated liable for arson committed by an intoxicated newspaper carrier. After a jury found Madison Newspapers liable for the negligent hiring, training, or supervision of the carrier, the trial court concluded that, as a matter of law, Wisconsin public policy

precludes holding Madison Newspapers liable. We agree with the trial court and therefore affirm.

BACKGROUND

¶2 Madison Newspapers hired Brian Meixner in early 1996 to deliver newspapers in a rural area in Oregon, Wisconsin. David Hoffmaster, the district sales manager for that area at the time, interviewed Meixner and looked at his driver's license but did not check the status of his driving privileges, his driving record, his criminal record, or any references. The prior route driver trained Meixner; Hoffmaster did not monitor Meixner while he was delivering papers for Madison Newspapers.

¶3 During 1996, Meixner had a problem with alcohol abuse. He consumed alcohol on a daily basis, and about two or three days a week he consumed alcohol while delivering his papers. Meixner testified at trial that he drove in a reckless manner and engaged in speeding about once or twice a week while delivering papers. Meixner checked himself into a detoxification program on September 18, 1996. The next day Meixner's wife notified Madison Newspapers that Meixner was in the hospital for alcoholism and would be unable to work because he was going into a rehabilitation program for thirty days. Meixner was in an inpatient treatment program until October 1, 1996, when he returned home to begin outpatient treatment. Meixner resumed drinking within days of his release from the hospital.

¶4 On approximately October 13, 1996, Meixner called Hoffmaster and asked for his route back. Meixner testified that he told Hoffmaster he had been to rehab. Hoffmaster did not contact anyone in the program to see if Meixner had successfully completed the treatment program, and he does not remember asking

Meixner any questions about whether he was still drinking. On October 15, while Meixner was delivering newspapers on his route, he broke into the home of Robert and Debra Ramharter, who were not at home, and consumed some alcohol from their refrigerator. He then set several fires in the house. Robert returned home to find the fires burning, and he suffered burns while trying to put out the fires; the house was destroyed.

¶5 The Ramharters' house was located in a rural area and could not be seen from the road. Meixner had had no contact with the Ramharters prior to setting the fires and he testified there was no reason he chose to set fires in their house in particular. He testified he would not have entered the house and started the fires if he was not severely intoxicated.

¶6 The Ramharters' claims of negligent hiring, training, and supervision against Madison Newspapers were submitted to the jury; the parties stipulated to the amount of property damage. The jury found that Madison Newspapers was negligent in the hiring, training, or supervision of Meixner, its negligence was a cause of Meixner's conduct on October 15, 1996, and his conduct was the cause of injuries to the Ramharters and their insurer. The jury awarded approximately $517,000 in damages, including the stipulated property damage.

¶7 Madison Newspapers filed motions after verdict, including a motion for judgment notwithstanding the verdict on the grounds that, as a matter of law, Wisconsin public policy precludes holding Madison Newspapers liable for Meixner's conduct. The court applied the six public policy factors set forth in ***Miller v. Wal-Mart Stores, Inc.***, 219 Wis. 2d 250, 264-65, 580 N.W.2d 233 (1998), among other cases, to determine whether public policy considerations

preclude liability. The court concluded that four of those six factors precluded imposing liability on Madison Newspapers. It therefore granted judgment in favor of Madison Newspapers solely on public policy grounds.

DISCUSSION

¶8 After a jury determines that the defendant's breach of duty is the cause-in-fact of a plaintiff's injury, the trial court may nevertheless decide that public policy considerations preclude imposing liability on the defendant. ***Id.*** at 264. When making this determination, Wisconsin courts are to look to these six public policy considerations:

> (1) the injury is too remote from the negligence; or
>
> (2) the injury is too wholly out of proportion to the culpability of the negligent tort-feasor; or
>
> (3) in retrospect it appears too highly extraordinary that the negligence should have brought about the harm; or
>
> (4) allowance of recovery would place too unreasonable a burden on the negligent tort-feasor; or
>
> (5) allowance of recovery would be too likely to open the way for fraudulent claims; or
>
> (6) allowance of recovery would enter a field that has no sensible or just stopping point.

Id. 264-65.

¶9 These six public policy considerations are an aspect of legal cause; they are not part of the determination of cause-in-fact. *See* ***Bowen v. Lumbermen's Mut. Casualty Co.***, 183 Wis. 2d 627, 654, 517 N.W.2d 432 (1994). Only one of these considerations need be present in order to preclude imposing liability. ***Tobias v. County of Racine***, 179 Wis. 2d 155, 161-62, 507 N.W.2d 340 (Ct. App. 1993). However, the supreme court instructs that the cases in which it is

appropriate to relieve a party of liability on the basis of public policy are rare. ***Stewart v. Wulf***, 85 Wis. 2d 461, 479, 271 N.W.2d 79 (1978).

¶10 The trial court in this case decided that the first, second, third, and sixth considerations precluded imposing liability on Madison Newspapers. On appeal the Ramharters and their insurer argue, as they did before the trial court, that none of the six considerations apply in this case. Since the issue of whether public policy precludes imposing liability is a question of law, we review the issue independently of the trial court, ***Schlomer v. Perina***, 169 Wis. 2d 247, 252, 485 N.W.2d 399 (1992), while benefiting from the trial court's analysis.

¶11 We agree with the trial court that the most significant public policy consideration in this case is that it appears too highly extraordinary that the negligence should have brought about the harm that occurred. This public policy factor focuses on the nexus between the negligent act and the resulting harm. ***Steffen v. Luecht***, 2000 WI App 56, ¶38, 233 Wis. 2d 475, 608 N.W.2d 713. The inquiry is whether the negligence would ordinarily and predictably result in the injuries that occurred in this case. ***Sawyer v. Midelfort***, 227 Wis. 2d 124, 144, 595 N.W.2d 423 (1999); ***Steffen***, 2000 WI App 56 at ¶40.[1]

¶12 The negligence in this case, as found by the jury, was that Madison Newspapers allowed a person who the company knew had just been in treatment

[1] We have previously observed that the first four factors overlap in that each requires consideration of the linkage, if any, between the negligence and the resulting harm. ***Steffen v. Luecht***, 2000 WI App 56, ¶38, 233 Wis. 2d 475, 608 N.W.2d 713. The trial court observed that the forseeability of the harm resulting from the negligence, which it correctly noted was the core of the third factor, also was an element in the first, second, and sixth factors as applied to this case, and for that reason it decided those four factors precluded imposing liability. We limit our consideration to the third factor because that factor resolves this appeal.

for alcoholism to resume delivering newspapers without taking any steps to determine whether he might drink on the job. The harm was the burn injuries and the destroyed house that resulted from the fires Meixner set when he broke into the house of one of the subscribers on his route. While it might be reasonably foreseeable that the negligence of Madison Newspapers would bring about harm to a person or property as a result of Meixner's driving—since Meixner's job involves driving—the chain of events linking the negligence to the injuries in this case are unexpected and could not be reasonably foreseen. Meixner's job did not require him to have contact with any of the subscribers, nor access to their homes; his job was to put the paper in the box, and he did not have to get out of his car to perform this job. Madison Newspapers specifically discouraged its carriers from getting out of their vehicles when delivering newspapers. In the case of the Ramharters, their home was not visible from the road. Meixner had never met the Ramharters and had no explanation for why he broke into their house. Therefore, it would not reasonably be expected that Meixner, even if he were drinking on the job, would break into their house—or the house of any other subscriber. Also unexpected is that Meixner set fires in the house. One would not reasonably expect Meixner's intoxication to cause him to burn down the house of a subscriber.

¶13 The Ramharters and their insurer argue that it is generally known that a significant number of crimes are committed by persons who are intoxicated, and therefore it is not at all unusual that Meixner committed a crime. However, the focus of our inquiry is the harm that occurred in this case. There is no evidence that Madison Newspapers was put on notice that Meixner might set fires in a subscriber's home while delivering papers on his route. In retrospect, it

appears too highly extraordinary that this harm should have resulted from Madison Newspapers' negligence in hiring, training, or supervising Meixner.

¶14 We therefore conclude that public policy precludes imposing liability on Madison Newspapers for the injuries caused the Ramharters. Accordingly, we affirm the trial court's judgment in favor of Madison Newspapers.

By the Court.—Judgment affirmed.

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