

WISCONSIN SUPREME COURT
THURSDAY, OCT. 4, 2007
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed part of a Milwaukee County Circuit Court decision, Judge Patricia D. McMahon, presiding.

2005AP2796

Richards v. Badger Mutual Insurance Co.

This insurance liability case stems from a fatal automobile accident and wrongful death lawsuit that was filed in Milwaukee County Circuit Court.

Michelle Richards' husband was killed when the car he was driving was hit by a vehicle driven by a 19-year-old drunken driver, who had obtained alcohol from a third party.

The pertinent facts are undisputed: Early in the evening of Jan. 25, 2003, Robert Zimmerlee and David Schrimpf, both 19 years old at the time, decided they wanted to consume alcohol. Schrimpf asked Tomakia Pratchet, a 31-year-old co-worker at a restaurant, to purchase beer for him and Zimmerlee. She procured an 18-pack of beer.

Schrimpf and Zimmerlee went to a party around midnight and left in a car driven by Zimmerlee at about 7:30 a.m. Zimmerlee, who admitted drinking about half of the beer, ran a stop sign while traveling in excess of the posted speed before the collision with a vehicle driven by Christopher Richards.

The parties stipulated that Schrimpf and Pratchet were negligent under Wis. Stat. § 125.07(1)(a) 1. Zimmerlee's share of the causal negligence was set at 72 percent; Schrimpf's and Pratchet's shares were set at 14 percent each. Richards reached a settlement with Zimmerlee, and Schrimpf's insurer, Badger Mutual, paid \$250,000 to cover Schrimpf's 14 percent of the causal negligence.

Richards did not pursue a claim against Pratchet, but is seeking to recover her share from Schrimpf under Wis. Stat. § 895.045(2). The statute imposes joint and several tort liability upon parties who act in accordance with a "common scheme or plan." Richards is unable to recover Pratchet's share from Zimmerlee because of the type of settlement he reached released him from that liability.

The circuit court held that Schrimpf was liable for Pratchet's share; the Court of Appeals reversed.

Richards has asked the Supreme Court to review if Wis. Stat. § 895.045(2) applies to an individual engaged in a plan to illegally procure alcohol for an underage person who becomes intoxicated and causes the wrongful death of a third party due to the intoxicated use of a motor vehicle.

Badger Mutual contends the common scheme or plan of procuring alcohol for a minor did not itself cause injury, and that driving recklessly while drunk was not part of the common scheme or plan.

A decision could help develop and clarify insurance liability law on an issue that seems likely to recur.