

No. 99-1614

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

DEBORAH J. BULL,

PLAINTIFF-RESPONDENT,

v.

CITY OF ST. CROIX FALLS,

DEFENDANT-APPELLANT.

FILED

November 5, 1999

CLERK OF
COURT OF APPEALS
OF WISCONSIN

ERRATA SHEET

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PLEASE TAKE NOTICE that the attached pages 1 and 2 are to be substituted for pages 1 and 2 in the above-captioned opinion which was released on November 2, 1999.

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 2, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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.

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APPEAL from a judgment of the circuit court for Polk County: EUGENE HARRINGTON, Judge. *Affirmed.*

¶1 HOOVER, P.J. The City of St. Croix Falls appeals a small claims judgment entered against it after a trial to the court. The City contends that the trial court applied an improper legal standard because no evidence showed that the City negligently failed to prevent damage to Deborah Bull's property. This court disagrees. The City acknowledged it had a duty to protect Bull's property from further damage after it learned that a City water main had burst. It did

nothing and, as a result, Bull's property sustained damage from continued mud seepage. Bull established a prima facie case, and the City offered no evidence in rebuttal. Accordingly, the judgment is affirmed.

¶2 In January 1998, a water main broke and approximately 55,000 gallons of water escaped, flooding Bull's basement and depositing mud across her lawn and driveway. The broken main also caused a sinkhole on the street. The City repaired the main shortly after it broke, but Bull continued to experience problems with mud seepage onto her property through May due to soil saturated and displaced by the broken main.

¶3 Bull sued the City for negligence. Bull provided the only evidence at trial. The court found that the water main broke. It determined, and the City conceded, that the City, upon learning of the break, had a duty to protect its citizens and their property from additional damage. The court found that the City failed its duty because it did nothing to protect Bull's property.

¶4 The facts are not in dispute. When more than one inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact. *Cogswell v. Robertshaw Controls Co.*, 87 Wis.2d 243, 250, 274 N.W.2d 647, 650 (1979). Whether the facts and inferences the trial court drew fulfill the applicable legal standard is a question of law this court reviews de novo. *Greenlee v. Rainbow Auction/Realty*, 218 Wis.2d 745, 753, 582 N.W.2d 93, 96 (Ct. App. 1998).

¶5 The City contends that the facts are insufficient to establish negligence. It claims that there was no evidence in the record upon which the court could find that it had failed to exercise ordinary care. It posits that there is

