COURT OF APPEALS
DECISION
DATED AND RELEASED

February 4, 1997

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.

NOTICE

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

No. 95-3586

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

Claudia Differt and Edward Differt,

Plaintiffs-Appellants,

v.

Voss-Jorgensen-Schueler Co., Inc.,
Aetna Casualty and Surety Co., and
Winding Roofing Company, Inc.,

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL J. BARRON, Judge. *Affirmed*.

Before Fine, Schudson and Curley, JJ.

PER CURIAM. Claudia Differt and Edward Differt appeal from a judgment granting summary judgment and dismissing their claim against Voss-Jorgensen-Schueler Co., Inc., Aetna Casualty and Surety Co., and Winding Roofing Company. The Differts claim that there are issues of material fact that

preclude summary judgment. The Differts also claim that the trial court misinterpreted the law in granting summary judgment. We affirm.

The following facts are not disputed: The Differts own Muskego Lakes Sheet Metal Inc., an architectural sheet metal company. Voss-Jorgensen was the general contractor for the Firstar Bank project at Bayshore Mall. Voss-Jorgensen subcontracted certain work on the Firstar Bank project to Winding Roofing, which in turn subcontracted the roofing work on the project to Muskego Lakes.

Prior to completion of the roofing work, Muskego Lakes was ordered off the work site because it was using nonunion workers, a violation of a contract provision between Voss-Jorgensen and Winding, which required the use of union members in all projects subcontracted to Winding. Approximately one week after being ordered off the work site, the Differts were told, under threat of lawsuit, to return to the site to finish the roofing because there was water leakage in an area of the roof that had not been completed. After assessing the weather conditions and finding them unfavorable, Mr. Differt decided to complete the project the next day. The following day, the Differts returned to the job site in an attempt to cover the area on the roof that was leaking. The weather that day was rainy and the wind was gusting. While Mr. Differt attempted to place a tarp over the area of the roof that was leaking, Mrs. Differt and others tried to secure the tarp with rope. When the tarp was almost in place, a gust of wind lifted the tarp off the roof. As Mrs. Differt struggled to control the tarp, she fell into a hole and was injured.

In their complaint, the Differts allege that due to the defendants' improper removal of Muskego Lakes employees from the job site, Muskego Lakes was delayed in completing the project and this delay exposed them to an unwarranted risk of injury. The Differts further allege that the defendants then negligently ordered Muskego Lakes to return to the Firstar Bank job site, under threat of a lawsuit, and that this order was the direct and proximate cause of Mrs. Differt's injuries.

The defendants denied the Differts' allegations and filed affirmative defenses, alleging, among other things, that Mrs. Differt's injuries were caused by her own negligence. The defendants also filed cross-claims.

Summary judgment is appropriate when there is no dispute of material fact and the moving party is entitled to judgment as a matter of law. Section 802.08(2), STATS. When reviewing summary judgment, we apply the same methodology as the trial court. ***Green Spring Farms v. Kersten***, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987).

In a negligence action, the plaintiff must establish a duty of reasonable care owed by the defendant, a breach of that duty, a causal connection between the defendant's conduct and the plaintiff's injury, and damages as a result of the plaintiff's injury. ***Coffey v. City of Milwaukee***, 74 Wis.2d 526, 531, 247 N.W.2d 132, 135 (1976). Absent a showing of legal duty and its breach, there is no negligence. *See* ***Milwaukee Partners v. Collins Eng'rs, Inc.***, 169 Wis.2d 355, 361–362, 485 N.W.2d 274, 276–277 (Ct. App. 1992). Questions concerning breach of duty are ordinarily factual matters for the jury to decide. They become questions of law when the material facts are undisputed and reasonable persons cannot differ as to inferences to be drawn from those facts. ***Rockweit v. Senecal***, 197 Wis.2d 409, 419, 541 N.W.2d 742, 747 (1995).

The Differts cite four facts that they allege were misstated by the trial court and were material to the trial court's decision granting summary judgment.[1] We disagree. Regardless of whether these findings were material to some other aspect of the case, they are not material to the dispositive legal issue

[1] Those alleged errors are, as either quoted or paraphrased from the Differts' brief:

(1)"That the Differts' business, Muskego Lakes, was `trying to get away with something for a long period of time'—that being it was a non-union company";

(2)That Voss-Jorgensen told the Differts "that union workers were needed and ordered them off the job";

(3)"That the Differts were `told to come in and rectify the problems so no more damage is caused by bad weather' and that the `mode and method of how to take care of the problem are strictly within the confines of Muskego Lakes'"; and

(4)"That Voss-Jorgensen in ordering the Differts to take care of the problem was just a `requirement to finish a contract.'"

of whether the defendants breached any legal duty owed to the Differts. Whether a breach of duty has occurred depends upon whether the resulting harm was a reasonably foreseeable consequence of the defendants' acts. *See* ***Ollerman v. O'Rourke Co.***, 94 Wis.2d 17, 46, 288 N.W.2d 95, 109 (1980).

There is nothing in the record from which it can be inferred that Mrs. Differt's injuries were a reasonably foreseeable consequence of the defendants' acts of ordering the Differts off the construction site and then back on to the construction site in order to complete the work they were hired to perform. Mr. Differt, by his own testimony, made the decision as to when he would attempt to cover the leaking roof:

> I went out there Friday, and there wasn't a thing they could do because it was pouring rain. I assessed what we could get by with and figured I could come back, like, Saturday morning and cover the skylight with a large plastic canvas. That was my plan of attack.

The Differts were experienced roofers, assumedly cognizant of perilous situations and the effects of weather conditions on construction job sites. As Justice Scalia has written, "[l]ife is too short to pursue every human act to its most remote consequences; `for want of a nail, a kingdom was lost' is a commentary on fate, not the statement of a major cause of action against a blacksmith." ***Holmes v. Securities Investor Protection Corp.***, 503 U.S. 258, 287 (1992) (Scalia, J., concurring).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.