

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

OCTOBER 15, 1996

NOTICE

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.

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

No. 96-0013

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CAROL COX and JAMES COX,

Plaintiffs-Appellants,

v.

NATIONAL INDEMNITY COMPANY,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Washburn County: WARREN WINTON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Carol and James Cox appeal a judgment awarding Carol damages based on a jury's finding that a truck driver was eighty percent responsible for an accident and Carol Cox was twenty percent responsible. They argue that the issue of Carol's negligence should not have been submitted to the jury because there was no evidence to support a finding that Carol was responsible for the accident. We affirm the judgment.

Contributory negligence is an issue for the jury if there is any credible evidence that would support a finding of negligence. *Bentzler v. Braun*, 34 Wis.2d 362, 370, 149 N.W.2d 626, 631 (1967). When considering whether to instruct the jury on contributory negligence, the court must view the evidence in the light most favorable to the defendant. *Id.*

The trial court correctly determined that sufficient evidence allowed a finding that Carol was contributorily negligent. The evidence showed that the Cox vehicle was struck from behind when it slowed down very quickly on a slippery road while its brake and turn signals were covered with snow, providing no warning to the trailing truck. In *Bentzler*, the court held that a driver could be found negligent when he slowed appreciably when not faced with an emergency and was struck from behind while his brake lights were not operating. The court held that the driver had a duty to make an observation to the rear to see if it was safe to suddenly slow down. In this case, as in *Bentzler*, Carol's negligence can be predicated on her failure to keep a proper lookout to the rear or to give adequate warning of her intentions. Cases cited by the Coxes in which the drivers were required to stop because other cars blocked the roadway or in which appropriate turning or stop signals were given are inapposite.

By the Court.—Judgment affirmed.

This opinion will not be published.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