

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 24, 1996

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(1), 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. 96-0711

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

TED BECKINGHAM,

Plaintiff-Appellant,

v.

**JOHN RANDOLPH MYERS, M.D.,
LANGLADE MEMORIAL HOSPITAL -
HOTEL DIEU OF ST. JOSEPH OF
ANTIGO, WISCONSIN, THE MEDICAL
PROTECTIVE COMPANY, WISCONSIN
HOSPITAL ASSOCIATION OPTIONAL
SEGREGATED ACCOUNT AND
WISCONSIN PATIENT'S COMPENSATION
FUND,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Langlade County: THOMAS G. GROVER, Judge. *Affirmed.*

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

PER CURIAM. Ted Beckingham appeals a trial court judgment finding that Dr. John Myers was not negligent in treating Beckingham's injury and that Langlade Memorial Hospital, although negligent, was not causally negligent resulting in the dismissal of Beckingham's malpractice case against Dr. Myers and the hospital. Beckingham contends that the trial court's findings are contrary to the great weight of the credible evidence. Because we conclude that there is sufficient evidence to support the trial court's findings, the judgment is affirmed.

Ted Beckingham was admitted to Langlade Memorial Hospital after suffering a crushing foot injury when a fork lift fell on his foot. He was admitted to Langlade Memorial where he was ultimately treated by Dr. John Myers who attempted three times to perform a closed reduction of the fractures he observed, but was unsuccessful because of the amount of swelling in Beckingham's foot. He ordered hourly and ultimately bi-hourly observations of the injury. At approximately 9 a.m. the next day, Dr. Myers was advised that Beckingham's edema condition had deteriorated from a plus-three to a plus-four and that blisters had been forming on the top portion of his foot. Within an hour of this report, arrangements were made to transport Beckingham to Wausau Hospital where he was treated by Dr. Richard Foltz. After the course of treatment was concluded, substantial residual disabilities remained.

The findings of fact made by a trial court without a jury are viewed with deference and may not be upset on appeal unless they are clearly erroneous. *Fryer v. Conant*, 159 Wis.2d 739, 744, 465 N.W.2d 517, 519-20 (Ct. App. 1990); Section 805.17(2) STATS. The "clearly erroneous" standard is essentially the same as the "great weight and clear preponderance" standard. See *Noll v. Dimiceli's, Inc.*, 115 Wis.2d 641, 643, 340 N.W.2d 575, 577 (Ct. App. 1983). The fact findings of the trial court need not be supported by the great weight or clear preponderance of the evidence. *Cogswell v. Robertshaw Controls, Co.*, 87 Wis. 2d 243, 249, 274 N.W.2d 647, 650 (1979). Reversal is required only if the great weight and clear preponderance of the evidence requires a contrary finding. *Id.* at 249-50, 274 N.W.2d at 650 (citing *In re Estate of Jones*, 74 Wis. 2d 607, 611, 247 N.W.2d 168, 169-70 (1976)). The factfinder is the arbitrator of the weight and credit to be accorded to the witness' testimony. *Cogswell*, 87 Wis. 2d at 250, 274 N.W.2d at 650 (citing *Gehr v. Sheboygan*, 81 Wis.2d 117, 122, 260 N.W.2d 30, 33 (1977)). "When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact." *Id.*

Beckingham contends the trial court's finding that Dr. Myers was not negligent is contrary to the great weight of the credible evidence. This contention ignores the opinions expressed by two experts testifying on behalf of Dr. Myers. Doctors Joseph Pilon and Walter Dean Moritz testified that Dr. Myers' course of treatment was appropriate. While the court was not required to accept these opinions, it was privileged to do so. Because this is sufficient evidence to support the trial court's findings of fact, we are required to accept the factual determinations made by the court. The factfinder's acceptance of these experts' opinions is sufficient to support its findings which must be accepted upon appeal. We, therefore, affirm the trial court's finding that Dr. Myers was not negligent because such a finding is not clearly erroneous.

Beckingham also contends that the trial court erred by finding that Langlade Memorial was negligent but that the negligence was not causal to any of the damages. The medical evidence included the opinions of Drs. Moritz and Pilon, who testified that the crushing foot injury itself, and not Langlade Memorial's conduct, was the cause of Beckingham's damages. While the trial court found that Langlade Memorial failed to timely alert Dr. Myers of Beckingham's changing condition so that a referral could be made to Wausau Hospital, the court also found that the delay did not cause any additional injury. The expert testimony sufficiently supports this finding.

The expert opinions that the crushing injury and not the delay in making the referral was the cause of the injury are sufficient for the factfinder to conclude that there was no causal relationship between Langlade Memorial's conduct and Beckingham's injury. While the factfinder may have reached a different conclusion based upon other evidence, it is within the province of the factfinder to determine the credibility of the witnesses and the weight it wishes to attach to the evidence produced. *Cogswell*, 87 Wis.2d at 250, 274 N.W.2d at 650 (citing *Gehr*, 81 Wis.2d at 122, 260 N.W.2d at 33). Here, the factfinder elected to credit the testimony of the doctors finding that the delay had not caused the damage. We must defer to the trial court's credibility assessment. Section 809.17(2), STATS. We conclude that this finding is not clearly erroneous and affirm.

Langlade Memorial asks us to change as a matter of law the trial court's finding of negligence. Because this finding is not clearly erroneous, as it

is supported by the evidence, it is not within our province under section 809.17(2), STATS. to reverse that finding.

By the Court. – Judgment affirmed.

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