

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 4, 2005

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP746-FT

Cir. Ct. No. 2004CV197

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY, A FOREIGN INSURANCE CORPORATION,
AND JOHN T. BRANDENMUEHL,**

PLAINTIFFS-RESPONDENTS,

v.

**SHAWN O. BELT, BADGER STATE WESTERN, INC.
AND GREAT WEST CASUALTY COMPANY,**

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Dane County:
MARYANN SUMI, Judge. *Affirmed.*

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Shawn Belt, Badger State Western, Inc., and Great West Casualty Company appeal a money judgment in favor of State Farm Mutual

Automobile Insurance Company and John T. Brandenmuehl. The latter sued the appellants for property damage resulting from a highway collision between Brandenmuehl's pickup truck and Belt's tractor trailer. The jury found Belt 75% negligent and Brandenmuehl 25% negligent, and the trial court awarded judgment based on that apportionment. The issue is whether there was sufficient evidence at trial to require a verdict question on the negligence of a third driver involved in the accident. We conclude that the trial court properly denied a verdict question on the third driver's negligence, and therefore affirm.

¶2 The traffic accident at issue resulted when Belt crossed the eastbound lanes of a four-lane divided highway, and then stopped while waiting to turn into the westbound lanes. While he waited, Belt's trailer temporarily blocked both eastbound lanes.

¶3 Nancy Spensley, Doug Smith, and Brandenmuehl were driving in the eastbound lanes toward Belt's stopped trailer. Spensley was driving 55 to 60 miles per hour and Smith was close behind her. Heavy fog limited visibility to a few car lengths. Spensley saw Belt's rig in time to drive her car onto the shoulder and avoid it. Smith, also driving a tractor trailer, was unable to avoid Belt's trailer and smashed into it. Brandenmuehl, approaching in his pickup truck, was also unable to stop or turn in time, and struck Belt's and Smith's rigs, resulting in the damage to his vehicle that prompted this lawsuit. At trial, there was evidence that all three eastbound drivers were going too fast for conditions.

¶4 Whether the verdict should have addressed the alleged negligence of a non-party is a question of law. *Zintek v. Perchik*, 163 Wis. 2d 439, 454, 471 N.W.2d 522 (Ct. App. 1991), *overruled on other grounds by Steinberg v. Jensen*,

194 Wis. 2d 439, 534 N.W.2d 361 (1995). Consequently, we review the issue de novo. 163 Wis. 2d at 454.

¶5 Although there was testimony that Smith drove his truck too fast for conditions, and, therefore, drove negligently, there was no evidence that his negligence caused or exacerbated Brandenmuehl's damages. Under Wisconsin law "negligence and causation are separate inquiries and ... a finding of cause will not automatically flow from a finding of negligence." *Fondell v. Lucky Stores, Inc.*, 85 Wis. 2d 220, 225-26, 270 N.W.2d 205 (1978). Here, so far as we can tell from the evidence, Belt's trailer would have blocked the highway whether or not Smith struck it. The appellants offered no evidence that Brandenmuehl could have avoided striking Belt's trailer but for Smith's collision with it. Similarly, appellants presented no evidence that the earlier collision caused Brandenmuehl's truck to suffer more damage than if Smith had not been involved. Without such evidence, there was no basis to put Smith's negligence to the jury as causal negligence.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

