

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 27, 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. 2004AP2297**

**Cir. Ct. No. 2003CV7470**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT 1**

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**MICHELLE BENZOW AND  
CHRISTOPHER BENZOW,**

**PLAINTIFFS-APPELLANTS,**

**v.**

**BERNARD W. HALL, JR.,  
ABC INSURANCE COMPANY,**

**DEFENDANTS,**

**TODD BIERMAN AND RURAL  
MUTUAL INSURANCE COMPANY,**

**DEFENDANTS-RESPONDENTS,**

**U.S. HEALTH & LIFE INSURANCE  
COMPANY, INC.,**

**DEFENDANTS.**

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APPEAL from a judgment of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Reversed and cause remanded.*

Before Fine, Curley and Kessler, JJ.

¶1 KESSLER, J. Michelle and Christopher Benzow (collectively, Benzow) appeal from a judgment dismissing their claims against Bernard W. Hall, Jr., Todd Bierman, and several insurance companies.<sup>1</sup> Benzow argues that because there are disputed issues of material fact with respect to ownership of the vehicle that struck Michelle, the trial court should not have granted summary judgment in the defendants' favor. We agree and, therefore, reverse the judgment and remand for further proceedings.

### **BACKGROUND**

¶2 Michelle Benzow and her minor child were involved in a vehicle accident with Hall, who was driving a pickup truck. The dispositive issue on appeal is the ownership of the pickup truck. The parties agree that if it was owned by Hall, then there is no insurance coverage available to Benzow. If the truck was owned by Bierman, then potentially there is insurance coverage available through Bierman's insurer, Rural Mutual Insurance Company.<sup>2</sup>

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<sup>1</sup> It appears from the record that Hall has been dismissed from this action due to bankruptcy, but he is listed as a defendant on the order granting summary judgment against Benzow. Whether Hall remains a party is not an issue before this court and does not affect our analysis.

<sup>2</sup> The parties do not address whether Benzow could also proceed directly against Bierman if he is determined to be the truck's owner. Because this issue is not before us, we do not address it.

¶3 The question of ownership arises from a February 3, 2003, event. Bierman and Hall are “step-cousins” who sometimes work together. Bierman testified at a deposition in this case that he offered to sell Hall a pickup truck to help Hall get to work. Bierman explained the transaction:

I told him I would sell him this pickup if he paid payments. But I kept the title to insure that I got the money for, more or less, a loan I gave to him, you know, the loan to pay the payments. And when he paid off the vehicle, I'd give him the title.

¶4 Bierman testified that the purchase price was \$800, and that Hall gave Bierman a \$100 check as the first payment. Bierman said that the plan was that Hall would make cash payments. Subsequently, Hall also did some work for Bierman as partial payment for the truck.

¶5 The accident occurred on April 7, 2003, approximately two months after the alleged sale. Benzow sued Bierman, Hall and several insurers. Rural Mutual moved for summary judgment on grounds that Hall was the undisputed owner of the truck and that it had no liability to Benzow if Hall owned the vehicle. The trial court agreed and granted summary judgment in the defendants' favor. This appeal followed.

### **STANDARD OF REVIEW**

¶6 Summary judgment is appropriate when there is no material factual dispute and the moving party is entitled to judgment as a matter of law. *Germanotta v. National Indem. Co.*, 119 Wis. 2d 293, 296, 349 N.W.2d 733 (Ct. App. 1984). In an appeal from the grant of summary judgment, this court reviews the record *de novo*, applying the same standard and following the same

methodology required of the trial court under WIS. STAT. § 802.08 (2003-04).<sup>3</sup> See *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315-17, 401 N.W.2d 816 (1987). That methodology is well known, and need not be repeated here. See § 802.08; *Grams v. Boss*, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473 (1980).

## DISCUSSION

¶7 At issue is whether Hall owned the truck on the day of the accident. It is undisputed that Bierman never signed over the title to Hall. In such cases, when determining ownership, “the intent and conduct of the parties govern.” *Bachelor v. Employers Mut. Liab. Ins. Co.*, 93 Wis. 2d 564, 573c, 287 N.W.2d 817 (1980) (modified on reconsideration).

¶8 Benzow argues that there are disputed issues of material fact with respect to the intent and conduct of Hall and Bierman. In contrast, Bierman contends “there simply is no factual material from which a reasonable jury could infer that Hall and Bierman’s intent was anything other than to transfer ownership of the pickup to Hall.”

¶9 The documents presented in support of the motion for summary judgment included depositions of both Hall and Bierman, a copy of the accident report filed by the investigating officer, and other documentary evidence. The documents and depositions contain the following facts and statements in support of the claim that Hall purchased the truck from Bierman on February 3, 2003:

- (1) Hall gave Bierman a check for \$100;

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<sup>3</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

(2) Hall subsequently did work for Bierman toward payment of the truck and made at least two cash payments;

(3) Hall used the truck as transportation regularly and had sole possession of the keys;

(4) Hall parked the truck where he was living;

(5) Hall maintained the truck and did repairs as needed;

(6) Bierman told Hall he needed to insure the vehicle as his own;

(7) Bierman “believe[d]” that his wife called his insurance agent to cancel Bierman’s insurance coverage on the truck;

(8) Hall obtained insurance for the truck that was in effect for at least one month;<sup>4</sup>

(9) In the two months between the alleged sale and the accident, Bierman asked Hall three times if he had insured the truck, and Hall said he had;

(10) Bierman testified that he believed Hall was the owner of the truck; and

(11) Hall testified that he understood the truck was his as soon as Bierman gave it to him on February 3, 2003.

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<sup>4</sup> Hall testified that he does not recall ever receiving a bill for the insurance and that he never paid the bill, so the insurance was cancelled.

¶10 Although these facts could support a finding that it was the parties' intent to transfer ownership of the truck to Hall, there are other facts concerning the parties' intent and conduct that also suggest persuasively that Bierman retained ownership. Specifically:

(1) Bierman's license plates remained on the truck the entire time between the alleged sale and the accident;

(2) Bierman did not transfer title of the truck to Hall;

(3) Hall's initial \$100 check to Bierman bounced and the record does not reveal that Bierman ever received a replacement check from Hall;

(4) Hall could not recall the purchase price or how much he had paid toward the purchase price;

(5) Hall made no payments to Bierman after the accident;

(6) At the time of the accident, Hall told the investigating officer that he "was paying for the vehicle, [but] it was ... titled and licensed as [Bierman's] until it was paid for";

(7) The police report indicates that Bierman is the owner;

(8) Sometime after the accident, the truck was left on Bierman's property;

(9) Bierman testified that after the accident, he

contacted Rural Insurance, because I happened to have the policy on the vehicle still. They needed to have the adjuster or whoever they send out to look at it. After they took their pictures ... they told me to cancel the insurance policy, and I could discard of the vehicle any way I needed to;

(10) After the accident, Bierman signed the title to the truck over to a friend;

(11) Contrary to Hall’s testimony that he believed he owned the truck, he also testified: “As far as I was concerned, it was legally [Bierman’s], but he gave it to me, told me it was mine to use as my own personal vehicle, you know, as long as I was paying for it”; and

(12) Although Bierman testified he intended to cancel his insurance, he never received a cancellation notice, the policy remained in effect, and monthly insurance premiums continued to be automatically withdrawn from Bierman’s checking account.<sup>5</sup>

¶11 Reasonable inferences from these material facts contradict the reasonable inferences from the material facts in support of the conclusion that Hall owned the vehicle. There are genuine issues of material fact that must be resolved by a jury. Therefore, we reverse the judgment and remand for further proceedings.

*By the Court.*—Judgment reversed and cause remanded.

Not recommended for publication in the official reports.

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<sup>5</sup> This monthly withdrawal was for insurance premiums that covered the truck and other insurance policies held by Bierman and his wife. Bierman testified that the monthly premium did not change even after Bierman believed his wife cancelled the truck policy.

