COURT OF APPEALS
DECISION
DATED AND FILED

December 22, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1553-FT **Cir. Ct. No. 2003CV232**

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

LYNNETTE M. BRANSHAW,

PLAINTIFF-APPELLANT,

AMERICAN MEDICAL SECURITY AND EMPLOYERS HEALTH INSURANCE HUMANA,

SUBROGATED-PLAINTIFFS,

V.

LARRY L. STORMER AND AMERICAN FAMILY MUTUAL INSURANCE,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Columbia County: RICHARD REHM, Judge. *Affirmed.*

Before Dykman, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Lynnette Branshaw appeals[1] from the circuit court's judgment dismissing her case. She argues: (1) that the jury should have found defendant Larry Stormer negligent; (2) that the jury's verdict was perverse because the jury awarded her nothing for pain and suffering; and (3) that the circuit court should have allowed evidence of Stormer's consumption of alcohol prior to the automobile accident. We affirm.

¶2 Branshaw first argues that the jury should have found Larry Stormer negligent. Our review of a jury verdict is "severely circumscribed." ***Staehler v. Beuthin***, 206 Wis. 2d 610, 617, 557 N.W.2d 487 (Ct. App. 1996). "We must affirm the jury's verdict if there is any credible evidence to support it." ***Id.*** (citation omitted). "Our task is not to search the record for evidence contrary to the jury's verdict; rather, we must search the record for credible evidence in support of the verdict, accepting any reasonable inferences favorable to the verdict that the jury could have drawn from that evidence." ***Id.*** (citation omitted).

¶3 The jury's verdict is sufficiently supported by the evidence. Stormer was driving 40-45 miles per hour in a 55 mile-per-hour zone on a dark, stormy night. He testified that he looked down at his speedometer, and when he looked up again, there was an animal in the road. It was crossing the road from Stormer's right to his left. Stormer testified that he reacted instinctively, swerving to the right to avoid hitting the animal. After doing so, he tried to stop his vehicle but was unable to do so until the car went off the road. Bearing in mind our standard of review, which requires that we consider only the facts that support the verdict, a

[1] This is an expedited appeal under WIS. STAT. RULE 809.17 (2002-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

reasonable jury could conclude that Stormer did not act negligently while driving because the accident was the result of a reasonable attempt to avoid an animal.

¶4 Branshaw next argues that the jury verdict was perverse because the jury awarded $4,886 for past and future medical expenses, but awarded nothing for past and future pain and suffering. "A party may move to set aside a verdict and for a new trial because … the verdict is contrary to law or to the weight of evidence … or in the interest of justice." WIS. STAT. § 805.15(1). In ***Staehler***, we explained that where, as here, "the jury has answered liability questions unfavorably to the plaintiff … the granting of inadequate damages to the plaintiff does not necessarily show prejudice or render the verdict perverse." ***Id.*** at 622. As aptly explained by Stormer, "[t]he jurors may have decided not to award damages for pain and suffering because they did not believe Mr. Stormer was responsible for any pain and suffering on the part of Ms. Branshaw." In any event, there is no practical ill effect from the jury's decision to award no damages for pain and suffering because the jury found Branshaw 100% liable for her own injuries because she was not wearing a seatbelt and the circuit court ultimately changed the answer on this verdict question from $0 to $15,000 for pain and suffering.

¶5 Finally, Branshaw next argues that the circuit court should not have prohibited evidence that Stormer had consumed three beers over the two hours prior to the accident. Branshaw has failed to provide a transcript of the circuit court's ruling on this issue. It is the appellant's responsibility to assure that the record is complete. ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 26, 496 N.W.2d 226 (Ct. App. 1993). Where the record is incomplete, we will assume the missing

transcript supports the circuit court's ruling. ***Id.*** at 27. Therefore, we reject this claim.[2]

By the Court.—Judgment affirmed.

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

[2] Stormer asks us to modify the verdict to change the answer regarding pain and suffering from $15,000 back to $0. However, Stormer did not cross-appeal, so we will not consider this argument.