

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 13, 2008**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

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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. 2007AP1642**

**Cir. Ct. No. 2004CV294**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**THE ESTATE OF CHARLES WEIDNER AND MARITA WEIDNER,**

**PLAINTIFFS-APPELLANTS,**

**FIRST STUDENT,**

**INVOLUNTARY-PLAINTIFF,**

**v.**

**GENERAL MOTORS CORPORATION, INTERNATIONAL TRUCK AND ENGINE  
CORPORATION AND THOMAS BUILT BUSES, INC.,**

**DEFENDANTS-RESPONDENTS,**

**LAND'S END,**

**DEFENDANT.**

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APPEAL from a judgment of the circuit court for Sauk County:  
JAMES EVENSON, Judge. *Affirmed.*

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

¶1 PER CURIAM. The Estate of Charles Weidner, and Marita Weidner, (the Weidners) appeal a judgment dismissing their complaint against General Motors Corporation, International Truck and Engine Corporation and Thomas Built Buses, Inc. Charles was driving a school bus when he suffered a stroke that led to his death. The Weidners alleged that a fire on the bus caused his injury. The trial court dismissed the Weidners' complaint on summary judgment, after concluding that they failed to present facts refuting the Respondents' prima facie case that Charles suffered his stroke before the fire began. We agree that the Weidners failed to refute the prima facie case on causation, and therefore affirm.

¶2 Summary judgment is appropriate if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2) (2005-06). If, as conceded here, the moving parties have presented a prima facie case for judgment, the opposing party must show material fact disputes, or reasonable alternative inferences from undisputed material facts. *Grams v. Boss*, 97 Wis. 2d 332, 338, 294 N.W.2d 473 (1980), abrogated on other grounds by *Olstad v. Microsoft Corp.*, 2005 WI 121, 284 Wis. 2d 224, 700 N.W.2d 139 (alteration in *Grams*). We review summary judgments independently, without deference to the trial court's decision. *Kosky v. International Ass'n of Lions Clubs*, 210 Wis. 2d 463, 470, 565 N.W.2d 260 (Ct. App. 1997).

¶3 The fire occurred while Charles was delivering several students to their homes. It is agreed that the fire started when transmission fluid vapors came into contact with a hot exhaust pipe. In their complaint the Weidners' alleged that

a defective design of the bus was responsible. They sought damages on their theory that the stress of dealing with the fire caused Charles to suffer his stroke.

¶4 On summary judgment the Respondents submitted evidence that Charles suffered the stroke before the fire, and that his involuntary physical reactions to the stroke caused him to rev the engine for an extended time with the brake engaged. According to one analyst, “[t]his abnormal operation resulted in excessive heating of the automatic transmission fluid which then escaped as a vapor and ignited on the hot exhaust system piping.”

¶5 The principal evidence that the stroke preceded the fire came from Nicholas Vorndran and Audrey Wipperfurth, who were passengers on the bus, and John Walker, who lived near the scene of the fire. Their accounts are as follows:

Nicholas Vorndran:

[Charles] put it in reverse like normal. He backed up onto the road and he was going to stop, put it in drive like usual, but he couldn't reach over and put it in drive because his right arm kind of fell down and reached behind grabbing Aaron Feiner, who was sitting next to me at that time, trying to grab his leg. His head was bobbing up and down, and I just—we were trying to get him to talk and he wouldn't talk.

Then the bus was jerking the whole time like he was on the brake and left off the brake. I looked at the rpm's. They were at 2,500. All of a sudden we smelled smoke, and then I looked down by his feet and I seen fire, and Audrey and I decided to get off the bus.

Audrey Wipperfurth:

Once we had gotten reversed, we—the bus wouldn't go forward. It kept stopping and reversing and jerking backwards, and then the engine would rev up a couple times and none of us kids really knew what was going on. So everyone had went up to the front of the bus and was kind of asking Charlie if he knew what was going on or if he wanted us to do anything, but he wouldn't respond and he didn't look at us or he didn't say anything at all. Then

he—his right arm was moving back and he was—we thought he was trying to push Aaron’s foot off of the seat, because his foot was resting on it, so we didn’t really think much of it besides he was trying to get Aaron to kind of move farther away.

So the bus would rev up and stuff and jerk backwards, and then we all thought we were bothering Charlie, so we just sat down and kind of tried to see if he knew what was going on. When nothing happened, then it was probably about five minutes later, we went up to the bus again, to the front of the bus, and we asked him what was going on and he still wouldn’t respond. Then [the fire started].

John G. Walker:

When he backed out to where he typically backs out to, I just kind of went back to doing my work and then, you know, a couple minutes went by or whatever and I notice the bus was still there.

I heard a little rev of the motor, and basically then I just looked over and it was still off to my right. I really wasn’t paying attention. Then I suppose a couple more minutes went by and I heard another little kind of rev of the motor and then I looked over and was kind of paying attention. I was like, well, and it’s not uncommon for him to just stop, if the kids aren’t going to sit or whatever, so I didn’t think much of it.

Then, you know, I think it was the third time I had looked over, because he was still there, and so I was just looking at it, and I was like, you know, just thinking why is he still sitting there. And then, poof, flames just came off and underneath the wheel wells. No smoke, no real indication of anything from where I was looking that anything really, you know, was amiss.

So I was like, wow. It just came fast. It just shot right out.

Notwithstanding these accounts, the Weidners contend that a material factual dispute exists as to whether the stroke occurred first.

¶6 The Weidners rely on opinions from medical experts Dr. Charles Miley and Dr. Jeffrey Kushner that a stressful event likely caused the stroke, and

that the bus fire was therefore a factor in causing the stroke. However, both witnesses conceded in deposition testimony that their opinion that the fire prompted the stroke was based on the assumed fact that the fire preceded the stroke. Neither asserted that the fire preceded the stroke as a matter of fact. Consequently, their opinions do not place the eyewitness accounts of the incident in dispute. The eyewitness accounts remain the only evidence as to which event came first.

¶7 Alternatively, the Weidners contend that a fact finder could reasonably infer the following sequence of events: (1) the fire started; (2) Charles discovered it from his vantage point in the driver's seat and suffered his stroke; (3) Vorndran and Wipperfurth went to the front of the bus and observed his condition but not the fire; and (4) only after a few minutes did the fire become observable to the passengers and bystanders. However, nothing in the eyewitness accounts provides evidence of this chain of events, and the Weidners point to no other evidence from which we could reasonably infer that the fire preceded the stroke. Both witnesses on the bus were up front next to Charles at least part of the time, but saw no fire. Walker described a sudden combustion after the bus was stationary for several minutes. A fact finder could only speculate that events occurred in a different order and manner than described by witnesses. A party opposing summary judgment must present specific and admissible evidentiary facts; speculation is not sufficient. *Helland v. Kurtis A. Froedtert Mem'l Lutheran Hosp.*, 229 Wis. 2d 751, 756, 601 N.W.2d 318 (Ct. App. 1999).

¶8 Our decision on causation makes it unnecessary to consider whether a material factual dispute exists concerning the Weidners' allegation of defective design.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)5 (2005-06).

