

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 10, 2009

David R. Schanker
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. 2009AP1323-FT

Cir. Ct. No. 2008CV2920

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

BICKFORD FARMS, INC., PAUL BICKFORD AND CYD BICKFORD,

PLAINTIFFS-APPELLANTS,

v.

ALLIANT ENERGY CORPORATION,

DEFENDANT-RESPONDENT,

WISCONSIN POWER AND LIGHT COMPANY,

DEFENDANT.

APPEAL from an order of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Reversed and cause remanded.*

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Bickford Farms, Inc., and Paul and Cyd Bickford (the Bickfords), appeal an order dismissing their complaint against Alliant Energy Corporation. The complaint presented a stray voltage claim against Alliant, and against Wisconsin Power and Light (WPL). The trial court granted summary judgment to Alliant on undisputed evidence that WPL, rather than Alliant, provided the Bickfords with the electrical service that allegedly damaged their dairy farm operations. Although WPL undisputedly provided the electrical service in question, we conclude that a factual dispute remains whether Alliant negligently participated in testing of the stray voltage problem. We therefore reverse the dismissal order.

¶2 We review summary judgments de novo, using the same methodology as the circuit court. *Bilda v. County of Milwaukee*, 2006 WI App 57, ¶8, 292 Wis. 2d 212, 713 N.W.2d 661. We first examine the moving papers and documents supporting the motion to determine whether the moving party has made a prima facie case. *Kraemer Bros. v. United States Fire Ins. Co.*, 89 Wis. 2d 555, 566, 278 N.W.2d 857 (1979). If those submissions make a prima facie case for judgment, the opposing party must set forth facts demonstrating a genuine issue for trial. *Id.* at 567. If the evidence on summary judgment permits conflicting inferences, summary judgment is improper. *See id.*

¶3 On summary judgment, Alliant presented undisputed evidence that it is a utility holding company that owns all of the stock of WPL, but does not itself supply electricity to the public. However, the Bickfords' complaint not only alleged negligence in supplying them with electricity, but in testing of the electrical systems on their property once the stray voltage problem became known. In that regard, their evidentiary submissions included a letter they received from Robert J. Fick discussing the testing program. The letter responded to the

Bickfords' letter to a WPL employee concerning the voltage testing performed at the Bickfords' farm and, in it, Fick explained the testing procedure and reported the results of that testing. Fick also offered whatever "assistance we can in any further testing," and invited the Bickfords to call Fick with questions. Fick's letter creates a reasonable inference that he participated in some manner in the testing that the Bickfords claim was negligently performed. Moreover, the letter creates a reasonable inference that Fick was an Alliant Energy Corporation employee because the "Alliant Energy" logo appears at the top of the letter, and Fick gave his email address as robertfick@alliantenergy.com. Further proceedings are therefore necessary to resolve the fact dispute regarding Alliant's role in the allegedly negligent testing.

¶4 We acknowledge Alliant's evidence that its subsidiaries use its logo, such that Fick's use of the logo in his letterhead does not definitively prove that he was an Alliant Energy Corporation employee. However, it reasonably creates that inference, when combined with other information in the letter, including his email address, and his offer of further assistance, ostensibly in Alliant's name.

¶5 Additionally, we are mindful of the distinction between testing and the provision and removal of electrical services. Fick's letter referred to both. It stated that on request "Alliant energy will remove the existing underground and replace with overhead conductors on poles" The submissions on summary judgment plainly show that Alliant does not provide that service. Further, it is established that Alliant is a holding corporation which owns the stock of WPL. But what is not established in the summary judgment evidence is whether Alliant was involved in *testing* for stray voltage. If it is true that a utility holding company can do no more than hold stock and, therefore, does not engage in testing, no one draws our attention to any submissions in that regard.

¶6 There may be arguments that the parties have not made to us, and there certainly may be further evidentiary submissions on remand that might provide a basis for additional litigation on whether summary judgment is appropriate.¹ However, on appeal we are limited to the record before the circuit court. *See State v. Aderhold*, 91 Wis. 2d 306, 314-15, 284 N.W.2d 108 (Ct. App. 1979). That record leaves a material factual dispute unresolved.

By the Court.—Order reversed and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2007-08).

¹ We are aware that Alliant Energy Corporation has submitted a response to the Bickfords' reply brief containing evidence that Fick works for an entity called the Alliant Energy Services Corporation. The letter is not part of the record, and we have not considered it in reaching our decision.

