

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 6, 2002

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. 02-0366-FT
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-2176

**IN COURT OF APPEALS
DISTRICT IV**

ANGELA NOEL RAETHER,

PLAINTIFF-RESPONDENT,

PHYSICIANS PLUS INSURANCE CORPORATION,

SUBROGATED-PLAINTIFF,

v.

ANDREW GOTZION,

**DEFENDANT-THIRD-
PARTY PLAINTIFF-APPELLANT,**

v.

ALLIED INSURANCE COMPANY,

THIRD-PARTY DEFENDANT.

APPEAL from a judgment and an order of the circuit court for Dane County: JOHN C. ALBERT, Judge. *Reversed and cause remanded.*

Before Dykman, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Andrew Gotzion appeals an order and a judgment granting Angela Raether summary judgment against him for battery.¹ Because the record shows disputed, material facts, we reverse.

¶2 This court reviews summary judgment decisions *de novo*, applying the same standards as the trial court. *Smith v. Dodgeville Mut. Ins. Co.*, 212 Wis. 2d 226, 232, 568 N.W.2d 31 (Ct. App. 1997). A party is entitled to summary judgment when there are no genuine issues of material fact and that party is entitled to judgment as a matter of law. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987).

¶3 The following facts are undisputed: Gotzion and Raether were dating and had been living together. After they moved to separate abodes, Gotzion visited Raether, and the two got into an argument. Gotzion left, but then returned to retrieve his apartment keys, which he had noticed on Raether's coffee table. The two argued about the keys, with Raether hitting Gotzion with some paper towels and Gotzion pushing Raether. When she got up, Raether began screaming at Gotzion and coming toward him as he backed up to the door. She was pointing at him with her finger, and he grabbed her finger and refused to let go until she gave him the keys. Raether tried to pull her finger away, and Gotzion heard the finger "crack and crunch." The finger was broken and required surgery.

¹ This is an expedited appeal under WIS. STAT. RULE 809.17 (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶4 Gotzion argues that summary judgment was inappropriate because there was a material issue of fact in dispute, namely whether Gotzion intended to injure Raether. Raether responds that Gotzion's hold on her finger was an action from which intent can be inferred. Raether asserts this inference was properly made as a matter of law because of the certainty that the conduct would cause injury.

¶5 Raether cites *Gouger v. Hardtke*, 167 Wis. 2d 504, 515, 482 N.W.2d 84 (1992), for the proposition that “[a] substantial certainty of any injury ... may warrant inferring intent to injure as a matter of law.” In *Gouger*, the court held that intent to injure could not be inferred where one high school student had thrown a piece of soapstone at another in shop class. The *Gouger* court reviewed the development of inferred intent cases in Wisconsin, noting that the court of appeals had stated that the “applicability of this rule is narrow” and “will only be applied if the degree of certainty that the conduct will cause injury is sufficiently great to justify inferring intent to injure as a matter of law.” *Id.* at 514 (quoting *K.A.G. v. Stanford*, 148 Wis. 2d 158, 163, 434 N.W.2d 790 (Ct. App 1988)).

¶6 Here, the undisputed facts give rise to the inference that Gotzion intended to injure Raether. However, they also warrant an inference that Gotzion intended only to restrain Raether until she complied. Intent to restrain is not equivalent to intent to injure. Therefore, we conclude there is a material issue of fact that precludes summary judgment. We reverse and remand for further proceedings.

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

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

