

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 19, 2010

A. John Voelker
Acting 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. 2009AP2829

Cir. Ct. No. 2009CV2168

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STEPHEN E. LEE,

PETITIONER-APPELLANT,

v.

WISCONSIN DEPARTMENT OF TRANSPORTATION,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
THOMAS R. COOPER, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. After Stephen E. Lee was involved in a car accident, the Department of Transportation determined that Lee was subject to the security requirements of Wisconsin's safety responsibility law, see WIS. STAT. §§ 344.12 to 344.22, and ordered Lee to deposit security in the event a judgment

was entered against Lee as a result of the accident. Lee sought judicial review of the Department's decision, and the circuit court affirmed. Lee, acting *pro se*, appeals the circuit court's order. We affirm.

BACKGROUND

¶2 A truck driven by Lee and a car driven by Rebecca A. Ferguson were involved in an accident at the intersection of West Capitol Drive and North 56th Street. The police officer who investigated the accident issued a ticket to Lee for failure to obey a traffic signal, contrary to WIS. STAT. § 346.04(2). Lee contested the ticket in municipal court, and the ticket was dismissed.¹

¶3 Shortly after the accident, the Department issued a notice of suspension requiring Lee to deposit security to satisfy any judgment for damages arising from the accident. *See* WIS. STAT. § 344.13(1) (requiring the secretary of the Department of Transportation to “determine ... the amount of security which is sufficient in the secretary's judgment to satisfy any judgment for damages resulting from such accident.”). Lee requested a hearing. *See* WIS. STAT. § 344.02(1). Lee testified at the hearing, and six exhibits were presented to the hearing examiner, including the police report for the accident, an evaluation of property damage sustained in the accident, several photographs of the cars, and a notice from the Milwaukee Municipal Court showing that Lee had been found not guilty.

¹ The Record of the administrative proceedings contains a notice from the Milwaukee Municipal Court indicating that Lee was found not guilty. At the administrative hearing, Lee testified that the city attorney asked for the dismissal of the citation after Ferguson testified. As we explain in the body of the opinion, the precise circumstances or reasons for the dismissal are not material.

¶4 The hearing examiner found that Lee had entered the intersection against a red light and that Ferguson had entered the intersection on a green light. The hearing examiner further found that there was a reasonable possibility that Lee would be found causally negligent and that a judgment against Lee for \$3230 could be entered against Lee. The hearing examiner specifically noted that the “issuance or disposition of a citation is not determinative of liability in an accident.” Because the hearing examiner determined that there was a reasonable possibility that a jury would find Ferguson ten percent contributorily negligent, the hearing examiner reduced the amount of required security to \$2905. The hearing examiner ordered that Lee’s operating privileges and all vehicle registrations be suspended if Lee did not deposit the required security. After the Department affirmed the hearing examiner’s decision, Lee petitioned the circuit court for review under WIS. STAT. ch. 227. The circuit court upheld the Department’s decision.

DISCUSSION

¶5 Because this is an appeal from a WIS. STAT. ch. 227 review, this court’s review is governed by WIS. STAT. § 227.57, and we review the decision of the Department, not the decision of the circuit court. *Plevin v. Department of Transportation*, 2003 WI App 211, ¶11, 267 Wis. 2d 281, 288, 671 N.W.2d 355, 359. The Department’s “findings of fact are conclusive on appeal if they are supported by credible and substantial evidence. Credible evidence is that evidence which excludes speculation or conjecture. Evidence is substantial if a reasonable person relying on the evidence might make the same decision.” *Id.*, 2003 WI App 211, ¶11, 267 Wis. 2d at 289, 671 N.W.2d at 359 (citations omitted). This court will give great weight deference to the Department’s conclusions of law when it is interpreting its own administrative rules unless its interpretation is not consistent

with the language of the regulation or is clearly erroneous. *Id.*, 2003 WI App 211, ¶13, 267 Wis. 2d at 289–290, 671 N.W.2d at 359–360.

¶6 If a motor vehicle accident causes death, bodily injury, or property damage over \$1000, the driver of any vehicle involved in the accident must prove that adequate resources exist to cover potential liability arising from the accident. *See* WIS. STAT. §§ 344.12 through 344.14. The driver may either show proof of liability insurance, § 344.14(2)(a), or post security “sufficient ... to satisfy any judgment for damages resulting from such accident.” § 344.13(1).

¶7 A driver is not required to prove insurance or post security “when it appears to the satisfaction of the [Department] that there does not exist a reasonable possibility of a judgment ... being rendered against [the driver] as a result of the accident.” WIS. STAT. § 344.14(2)(k). When considering whether there is a reasonable possibility of a judgment, the Department may consider the following:

- whether the driver violated any rule of the road as set out in WIS. STAT. chs. 346, 347, 348, or 350;
- whether the driver failed to exercise ordinary care;
- notice of payment of claims from insurance companies;
- investigator reports;
- other relevant evidence provided by witnesses or the parties involved in the accident; and
- coroner reports.

WIS. ADMIN. CODE § TRANS 100.06(2).

¶8 Lee’s defense throughout the administrative review process, and his overarching argument on appeal, is that the dismissal of the traffic ticket by the municipal court precluded the Department from ordering that he post security for the accident. In Lee’s view, dismissal of the ticket was tantamount to sufficient proof that “there does not exist a reasonable possibility of a judgment ... being rendered against” him. See WIS. STAT. § 344.14(2)(k) (one of several exceptions to the requirement that a person’s operating privilege be suspended for failing to deposit security when ordered). Lee also argues that the dismissal of the ticket constituted a release from liability within the meaning of WIS. STAT. § 344.14(2)(h) (a release from liability or a final adjudication of no liability excepts a person from the security requirement) and that the dismissal was “[a] final judgment on the merits and with prejudice dismissing all claims against” him and, therefore, under WIS. ADMIN. CODE § TRANS 100.12(3), the dismissal “shall be treated as a release of liability for that uninsured operator or owner as to all parties to that court action.” We reject Lee’s argument.

¶9 As we noted in *Plevin*, “[t]he purpose of the financial responsibility law is to ensure compensation to parties who have suffered injury to themselves or their property as a result of another person’s negligent operation of a motor vehicle.” *Id.*, 2003 WI App 211, ¶8, 267 Wis. 2d at 287, 671 N.W.2d at 358. The law is remedial, and the Department is charged to interpret the law so as to protect persons who suffer damages when an uninsured driver negligently causes an accident.

¶10 With that purpose in mind, we conclude that the Department’s factual findings are not clearly erroneous and its legal conclusions are correct. The dismissal of the ticket issued to Lee is neither a release of liability under WIS.

STAT. § 344.14(2)(h) nor a final judgment dismissing all potential claims arising from the accident within the meaning of WIS. ADMIN. CODE § TRANS 100.12(3).

¶11 The prosecution of a traffic ticket is distinct from any civil action arising from an accident. The issues in a traffic ticket prosecution differ from the issues in a negligence action. Importantly, the standard of proof in municipal court is “clear, satisfactory, and convincing,” see *Masko v. City of Madison*, 2003 WI App 124, ¶8, 265 Wis. 2d 442, 450, 665 N.W.2d 391, 395, whereas the standard of proof in a negligence action is the lesser “reasonable certainty by the greater weight of the credible evidence” standard, see WIS JI—CIVIL 200. The dismissal of the ticket would not preclude a jury from finding that Lee was causally negligent in the accident and, therefore, liable for damages suffered by Ferguson. See *Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co.*, 2001 WI App 148, ¶62 n.22, 246 Wis. 2d 933, 982 n.22, 632 N.W.2d 59, 81 n.22. Contrary to Lee’s steadfast belief, the dismissal of the traffic ticket did *not* absolve him of potential liability in a civil action arising from the accident.

¶12 The accident report indicated that Lee ran a red light before his truck struck Ferguson’s car that had entered the intersection on a green light. The accident report was properly considered by the Department when determining whether there was a reasonable possibility of a judgment against Lee. See WIS. ADMIN. CODE § TRANS 100.06(1)(b). Even if its contents are disputed by Lee, the accident report creates a reasonable possibility of a judgment against Lee. Therefore, the Department correctly ordered Lee to deposit security under WIS. STAT. § 344.13(1).

By the Court.—Order affirmed.

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

