COURT OF APPEALS
DECISION
DATED AND FILED

July 28, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP1401 **Cir. Ct. No. 2008CV768**

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

ELIZABETH WANTA AND FRANKLIN WANTA,

PLAINTIFFS-RESPONDENTS,

CENTERS FOR MEDICARE AND MEDICAID SERVICES,

INVOLUNTARY-PLAINTIFF-RESPONDENT,

V.

LEAGUE OF WISCONSIN MUNICIPALITIES MUTUAL INSURANCE, CITY OF SHAWANO, WISCONSIN AND DOHN DALLMAN,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Marathon County: JILL N. FALSTAD, Judge. *Affirmed*.

Before Lundsten, Sherman and Blanchard, JJ.

¶1 PER CURIAM. League of Wisconsin Municipalities Mutual Insurance, the City of Shawano, and Dohn Dallman appeal a judgment awarding damages as a result of a vehicle collision. The issue is whether the circuit court's apportionment of negligence was erroneous. We conclude it was not, and we affirm.

¶2 The appellants dispute the court's finding that Dallman was 55 percent causally negligent and Franklin Wanta was 45 percent contributorily negligent. As to the circumstances of the collision, neither party appears to dispute the historical findings of the circuit court, which we now summarize.

¶3 The Wanta vehicle collided with a City truck driven by Dallman. Dallman stopped the truck at a stop sign. He looked only once to his left. The Wanta vehicle was on the cross-highway, approaching from his left, and traveling in the right-turn-only lane. Dallman saw that the Wanta vehicle was not slowing down to make the turn and did not have the right-turn signal activated. Dallman assumed the Wantas would turn right and he removed his foot from the brake and moved slowly past the stop sign, with the front of the vehicle reaching thirty-six feet past the stop sign, but not encroaching into the through lane. The Wanta vehicle did not turn, but moved left and attempted to return to the through lane. However, it changed lanes only partly, and collided with the front of the City truck.

¶4 The court found that Dallman was negligent by not maintaining proper lookout. More specifically, it found that Dallman was negligent by looking to the left only once before moving the truck past the stop sign and into the intersection. The court stated that the Wanta vehicle's steady speed and lack of a turn signal should have led Dallman to reconfirm its path before proceeding into

the intersection. The court concluded that if Dallman had stayed at the stop sign, this collision would not have occurred.

¶5 The court also found that Franklin Wanta was negligent. The court found that his vehicle was traveling at fifty-two miles per hour in a forty-five-mile-per-hour zone; that he did not activate his brakes; and that he was traveling in the right-turn lane even though intending to proceed straight. The court pointed out that five road signs informed Wanta of the right-turn lane. It found Wanta negligent for failing to pay sufficient attention to the road signs; for failing to signal and for other driving behavior that left his intentions unclear; for failing to move out of the right-turn lane soon enough; and for speeding. The court stated that the collision would not have occurred if Wanta had moved into the left lane sooner.

¶6 In apportioning the negligence, the court concluded that Dallman's driving conduct was more to blame for the accident, because he failed to use ordinary care to keep a careful lookout while stopped at a stop sign and before proceeding into the intersection with a large truck with protruding equipment on the front. As we stated, the court apportioned the negligence 55 percent to Dallman and 45 percent to Franklin Wanta. On appeal, we will not set aside a judge or jury's apportionment of negligence "'except in the most unusual circumstances evidencing a gross and shocking misallocation, or in the case of demonstrated legal error.'" ***Sachsenmaier v. Mittlestadt***, 145 Wis. 2d 781, 787, 429 N.W.2d 532 (Ct. App. 1988) (citation omitted).

¶7 The appellants argue that Wanta's negligence was greater than Dallman's. We do not agree that there was a gross and shocking misallocation of negligence. Both parties were negligent in significant ways, as already described

above. Wanta's most serious negligence appears to have been his attempt to proceed straight ahead from the right turn lane, while at slightly excessive speed. Dallman's negligence was in proceeding past the stop sign while assuming, without continuing to watch, that the cross traffic would not pass in front of him.

¶8 As the circuit court correctly pointed out, if not for the negligence of *both* parties, this collision would not have occurred. If Dallman had stayed at the stop sign until traffic actually passed, the Wanta vehicle would have passed in front of him without collision, despite Wanta's negligence. *See* WIS. STAT. §§ 346.46(2)(a) and 346.18(3) (vehicle required to stop at stop line and yield right-of-way to "other vehicles … approaching the intersection upon the through highway"). Under these circumstances, an approximately equal apportionment of the negligence was reasonable. Although we might not have made the same allocation, it was not unreasonable to conclude that Dallman's causal negligence was somewhat greater.

¶9 The appellants also argue that the circuit court considered improper and irrelevant factors, specifically, the size and configuration of the truck. However, the appellants are vague about why these factors were improper or irrelevant. Obviously, when stopping at or moving forward from a stop sign, the driver must be aware of the location of the front of the vehicle, and of the type of obstruction it would cause to cross traffic. We do not read the court's decision to have placed improper emphasis on these factors.

By the Court.—Judgment affirmed.

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