

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

SEPTEMBER 12, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 94-3389-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**SYLVIA A. GREGORY,**

**Plaintiff-Appellant,**

**COUNTY OF MILWAUKEE,  
a municipal corporation,**

**Plaintiff,**

**v.**

**MILWAUKEE TRANSPORT SERVICES, INC.  
and COUNTY OF MILWAUKEE,  
a municipal corporation,**

**Defendants-Respondents.**

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM J. HAESE, Judge. *Reversed and cause remanded with directions.*

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Sylvia A. Gregory appeals from a judgment dismissing her personal injury claim against Milwaukee Transport Services, Inc., and Milwaukee County pursuant to Milwaukee Transport's motion for a directed verdict. The judgment turned on the trial court's evaluation of the credibility of the witnesses and its assignment of weight to conflicting evidence—matters properly within the province of the jury. Accordingly, we reverse the judgment and remand this matter for trial.<sup>1</sup>

## BACKGROUND

Gregory initiated this lawsuit after sustaining injuries while riding on a bus operated by Milwaukee Transport. At trial, Gregory testified that she boarded a Milwaukee Transport bus on May 25, 1991, at approximately 3:50 p.m. She stated that the bus made a sharp turn to the right as she made her way to a seat, causing her to lose her balance and fall. On cross-examination, Gregory could not recall where on the bus her fall occurred, whether or not she was holding onto a handrail when the bus turned, or the condition of the bus's floor that day. Gregory also admitted that she could not remember giving a deposition in the case. On re-direct, Gregory told the jury that she had difficulty remembering things due to a severe beating she had sustained prior to the accident.

Carol Cabrera, a friend and witness of Gregory's, testified that she boarded the bus with Gregory on the day of the accident. She told the jury that the bus swung out and made a sharp right turn as Gregory made her way to a seat while steadying herself with a support bar. On cross-examination, Cabrera admitted that she had made a statement before trial, describing the turn as “not a real fast sharp turn, but I would say it was kind of a quick turn.”

The bus driver, Michael Reineiro, testified that it rained on the day of the accident and that the floor of the bus was wet. He denied swinging his bus out to turn right at the intersection on the day that Gregory fell. Reineiro also denied suddenly braking during the turn, testifying that the bus was traveling at less than five miles per hour during the turn.

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<sup>1</sup> This is an expedited appeal under RULE 809.17, STATS.

Finally, Jacqueline Marie Wigley, another passenger on the bus, testified. She told the jury that prior to the bus pulling away from the curb she overheard Cabrera ask Gregory whether “she was all right or was she having one of her fainting spells.” Wigley testified that the bus then proceeded to make a “regular smooth turn.” In contrast to the bus driver's testimony, Wigley testified that the floor of the bus was dry at the time of the accident.

At the close of the evidence, Milwaukee Transport moved for a directed verdict. The trial court granted the motion and entered judgment dismissing Gregory's claim.

#### STANDARD OF REVIEW

The trial court should grant a motion for a directed verdict only “where the evidence is so clear and convincing that a reasonable and impartial jury properly instructed could reach but one conclusion.” *Leen v. Butter Co.*, 177 Wis.2d 150, 155, 501 N.W.2d 847, 848 (1993) (citation omitted). When evaluating the motion, “the evidence must be ‘viewed most favorably to the party against whom the verdict is sought to be directed.’” *Id.* at 155, 501 N.W.2d at 849 (citation omitted). This court applies the same standard on appeal, tempered by our deference “to the trial court's better ability to assess the evidence.” *Id.* (citation omitted). Accordingly, this court will not reverse a trial court determination to grant “a motion for a directed verdict unless the record reveals that the trial court was ‘clearly wrong.’” *Id.* (citation omitted).

## DISCUSSION

As a general matter, “the existence of negligence is a question of fact which is to be decided by the jury.” *Ceplina v. South Milwaukee Sch. Bd.*, 73 Wis.2d 338, 342, 243 N.W.2d 183, 185 (1976) (footnote omitted). Further, it is for the jury to determine the credibility of witnesses and draw the ultimate conclusions as to the facts. *American Family Mut. Ins. Co. v. Dobrzynski*, 88 Wis.2d 617, 630, 277 N.W.2d 749, 755 (1979). “[W]hen conflicting evidence is pointed out to the jury, the weight to be given to the conflict and the determination of which version should be believed are matters for the finder of fact to resolve.” *Rabata v. Dohner*, 45 Wis.2d 111, 117, 172 N.W.2d 409, 411 (1969).

The trial court focused largely on Gregory's testimony when ruling on Milwaukee Transport's motion for a directed verdict. Characterizing Gregory's testimony at trial as a “shallow performance,” the trial court asserted that the jury would not accept her version of the accident:

Accompanied by the universal statement that a right turn was made and that that same right turn would be made literally dozens of times today, that on the day in question, the testimony we have is that the bus driver says the floor was damp, the testimony of one of the witnesses who presumably has no connection with this case was that it was dry. That is indeed a slender re[e]d upon which to hang a finding, and I don't think this jury will. I frankly have never heard a witness take the stand and made statements like, I don't remember a deposition that was taken, I don't remember that I ever rode a bus before.

The trial court then concluded that “any jury that would make a finding of negligence on the part of the bus driver to exclusion or to greater than 50 percent ... or more on that bus driver, would be an unreasonable jury and this court would not sustain it.”

This decision discloses that the trial court passed on the credibility of the witnesses and weighed the evidence in ruling on Milwaukee Transport's motion for a directed verdict. Because the trial court invaded the province of the jury by judging witness credibility and resolving conflicts in the evidence, the trial court's decision was "clearly wrong" within the meaning of *Leen*. Accordingly, the judgment granting Milwaukee Transport's motion for a directed verdict must be reversed and the matter remanded for a new trial.

*By the Court.*—Judgment reversed and cause remanded with directions.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.