

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 26, 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, 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. 95-0576

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT II

CITY OF OSHKOSH,

**Plaintiff-Respondent,**

v.

LUCILLE A. AIELLO,

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for Winnebago County: PETER L. GRIMM, Judge. *Affirmed.*

BROWN, J. Lucille A. Aiello appeals a conviction for using imprudent speed while operating a motor vehicle contrary to § 346.57(2), STATS. Aiello argues that the trial court misapplied the law by ruling that she had an absolute duty to avoid an accident and that she violated that duty simply by virtue of the fact that a collision occurred. We determine, however, that she has misstated the trial court's holding. The trial court held that she has a responsibility to control her vehicle. That this is the law in Wisconsin there can

be no doubt. The trial court found that she failed in *this* responsibility and we agree.

Aiello struck the rear end of a vehicle being driven by another driver while that driver was stopped at a traffic light. The other driver admitted that she was not paying attention to the light and did not immediately notice that the light had turned green. Aiello accelerated her vehicle when the light changed in anticipation that the vehicle in front of her would move as well. When Aiello realized that the vehicle in front of her was not moving, she applied her brakes. But she was unable to stop in time and a collision occurred.

Aiello was issued a citation for inattentive driving. After hearing the evidence at trial, the trial court amended the charge to imprudent driving to conform to the evidence. This statute, § 346.57(2), STATS., reads:  
No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. The speed of a vehicle shall be so controlled as may be necessary to avoid colliding with any object, person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and using due care.

The trial court ruled that Aiello anticipated the other car moving forward when the light turned green and accelerated her vehicle without proper regard for the hazard in front of her. The trial court opined:  
The defendant did have the responsibility to control her vehicle to avoid colliding with the vehicle of [the witness], and even though the speed might have been minimal compared to the posted speed limit and even though the distance may have been minimal, it still was the

duty of the defendant to control her vehicle, having regard for the actual hazard of the [vehicle in front of her.]

Aiello claims that this is the statement of the trial court which amounted to imposing an absolute liability upon her to avoid an accident. But that is not how we read the trial court's statement. The trial court said that she had the responsibility to "control her vehicle." This statement is synonymous with the hornbook law that drivers have the duty to exercise due care. Indeed, WIS J I—CIVIL 1105 provides that drivers must exercise proper "management and control" of the motor vehicle so that when danger appears, the driver may stop the vehicle or take other means to avoid injury or damage. The statute used by the trial court in this case is in keeping with this concept. It mandates that vehicle operators drive at a speed no greater than is "reasonable and prudent," having "regard for the actual and potential hazards then existing." The statute thus speaks to the driver's duty to exercise management and control over the vehicle. The State imposes this requirement in an effort to avoid accidents. This is all the trial court was saying. The trial court correctly stated the law.

Having correctly stated the law, the remaining question is whether the trial court made factual findings which are not clearly erroneous. Section 805.17(2), STATS. Aiello claims that her speed, which was minimal, was reasonable and prudent under the circumstances. She points to her testimony that she started from a "stopped position, so my speed wasn't very fast at all. ... It felt more like a bumper car to me. I didn't feel really much of the impact at

all.” She further points to evidence that the only damage to the vehicle in front of her was a broken tail pipe and that her car had no damage. Aiello also points to evidence that as soon as she realized that the vehicle in front of her was not moving, she immediately applied her brakes, but struck the forward vehicle nonetheless. From this, Aiello asserts that her speed was not the cause of the accident and it is difficult to imagine that she could have gone any slower. She argues that her actions were entirely reasonable and prudent. She contends that she had every reason to believe that the vehicle in front of her would proceed with the pace of traffic once the light turned green.

And that is where she goes wrong. She does not have the right to so believe. She has a duty to look out for potential hazards and to drive her vehicle at a speed commensurate with those hazards. If the potential hazard is an object that is not moving, then the prudent speed of her vehicle should be zero. When the hazard is removed (by movement in this case), then she can move. Aiello admitted that she accelerated her vehicle in the belief that the driver in front of her would also move. She even conceded at trial that her belief was “miscalculated and misjudged.” The “miscalculation” she refers to is the same thing as a lack of managing and controlling her vehicle with regard to the hazards then existing, actual or potential. The trial court could and obviously did infer that Aiello failed to show regard for the hazard then and there existing, i.e., the possibility that the driver in front of her would not move when the light turned green.

We do not mean to suggest that Aiello is solely at fault. From the testimony, it appears obvious that the driver in front of her failed to pay attention to what was going on. The record does not show whether the other driver was ticketed for inattentive driving. She should have been in our opinion. But that does not negate Aiello's responsibility to exercise management and control over her vehicle so as to take into account the potential hazard in front of her. Simply because the other driver may also have violated the rules of the road does not obviate Aiello's duty.

*By the Court.* – Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.