

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 12, 1997

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

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No. 95-0793

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**JEFFREY DAGGETT and DENISE
DAGGETT,**

Plaintiffs-Appellants,

v.

**WISCONSIN ELECTRIC POWER
COMPANY,**

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Sheboygan County: GARY LANGHOFF, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Nettesheim JJ.

NETTESHEIM, J. This is a "stray voltage" case. Jeffrey and Denise Daggett appeal from a judgment dismissing their action against Wisconsin Electric Power Company (WEPCo). The dismissal followed a jury determination that WEPCo did not negligently cause damage to the Daggetts'

cattle herd by failing to adequately contain “stray voltage” from WEPCo’s primary electrical distribution system located on the Daggetts’ farm. The jury additionally determined that the Daggetts were 100% contributorily causally negligent and that they had not been damaged.

On appeal, the Daggetts raise various issues.¹ However, we conclude that this case is governed by only one issue: the Daggetts' claim that the jury's answers are inconsistent. We conclude that the answers are consistent. In addition, we conclude that the evidence supports the jury's finding that the Daggetts were not damaged, even though the Daggetts do not make this particular argument in their sufficiency of evidence challenge. We therefore affirm the judgment.

FACTS

The facts relevant to the various appellate issues which the Daggetts raise are lengthy and detailed. However, the facts relevant to the issue upon which we base our decision are not.

The Daggetts alleged that WEPCo “constructed, maintained, operated and repaired its electrical distribution system in such a manner as to cause a nuisance” and that WEPCo had “failed to provide reasonably adequate electrical service to the plaintiffs ...” The Daggetts sought compensation for claimed damage to their dairy herd, loss of profit, annoyance and

¹ The Daggetts claim that the trial court erred by: (1) failing to apply a higher standard of care to WEPCo, (2) including a statute of limitations question on the special verdict, and (3) instructing the jury as to the statute of limitations. Additionally, the Daggetts contend that the jury's answers are not supported by the evidence.

inconvenience. The case was tried before a jury over a sixteen-day period. At the close of the evidence, the trial court submitted a nine-question special verdict to the jury. The relevant questions and the answers are as follows:²

QUESTION 1: Was [WEPCo] negligent in failing to provide reasonably adequate service and facilities to the Jeffrey and Denise Daggett farm?

ANSWER: No.

....

QUESTION 3: Did [WEPCo] distribute electrical energy to the Jeffrey and Denise Daggett farm in a manner that created a nuisance?

ANSWER: No.

....

QUESTION 5: Were [the Daggetts] negligent with respect to the operation and/or maintenance of their farm electrical service or equipment?

ANSWER: Yes.

....

QUESTION 6: Was such negligence a cause of damages to the [the Daggetts]?

ANSWER: Yes.

....

² Questions 2 and 4 are omitted because the jury was instructed not to respond to them if they had answered affirmatively to Questions 1 and 3.

QUESTION 7: Assuming the total causal negligence which caused plaintiff's damages to be 100%, what percentage thereof do you attribute to:

- (a) [WEPCo] 0%
- (b) [The Daggetts] 100%
- TOTAL 100%

....

QUESTION 8: What sum of money, if any, will fairly and reasonably compensate [the Daggetts] for:

- (c) economic loss \$ 0
- (d) annoyance and inconvenience \$ 0

Regardless of how you have answered the preceding questions, please answer this question:

QUESTION 9: Did [the Daggetts] know, or should they with the exercise of reasonable care, have known before November 19, 1984, that [WEPCo's] primary distribution system serving their farm was a cause of damage to their operation?

ANSWER: Yes.

As the foregoing reveals, the jury unanimously found against the Daggetts as to each question submitted.

The Daggetts filed a postverdict motion raising various issues, including a claim that the jury answers were inconsistent. The trial court denied

the motion and entered judgment dismissing the Daggetts' action. The Daggetts appeal.

DISCUSSION

Inconsistent Jury Verdict

An inconsistent verdict is one containing “jury answers which are logically repugnant to one another.” *Fondell v. Lucky Stores, Inc.*, 85 Wis.2d 220, 228, 270 N.W.2d 205, 210 (1978). The Daggetts' argument that the verdict is inconsistent rests upon the jury's answers to three nondamage questions: the contributory negligence causation question, the comparative negligence question, and the statute of limitations question. As the special verdict reveals, all of these questions were framed in terms which presumed damage to the Daggetts. By answering these questions, the Daggetts reason that the jury was concluding that they were damaged. Thus, the Daggetts contend that the jury's further answer of zero damages is inconsistent.

We reject the Daggetts' argument. We first observe that the Daggetts' argument premised upon the comparative negligence question is a nonstarter since the jury should not have even answered that question. The jury had already determined that WEPCo was not negligent and had not created a nuisance. The preface to the comparative negligence question expressly directed the jury to skip the question if it had previously determined that WEPCo's negligence or nuisance was not causal. Since there was no negligence to compare, the jury should not have answered the question.³

³ We note that the jury's answer to the comparative negligence question, although unnecessary,

Even if we overlook the foregoing, we conclude that the jury's answers to the questions about comparative negligence, contributory negligence causation, and the statute of limitations are not inconsistent with the jury's failure to award damages. The questions upon which the Daggetts rely did not ask whether the Daggetts had been damaged. Rather, these questions were directed at other matters also at issue in the case: whether the Daggetts' contributory negligence was causal, the degree of the Daggetts' contributory negligence and whether the Daggetts' action was timely in light of their belief that they had been damaged.

We properly examine a jury's answer to a particular verdict question in light of the verdict as a whole and in light of the subject matter to which each question was directed. The Daggetts are attempting to transform the jury's answers as to causation, comparative negligence and statute of limitations into substantive findings that they were damaged. However, that was not the purpose of those questions and that was not the focus of the instructions which accompanied those questions. The issue of the Daggetts' alleged damage was reserved for Question 8, the damage question. Only that question focused the jury's attention squarely on the damage issue.⁴ Viewing

(..continued)

is in keeping with its other answers. The jury had previously exonerated WEPCo of all alleged wrongdoing and instead had assessed all of the fault to the Daggetts. The answer in the comparative negligence question assessing 100% of the causal negligence to the Daggetts is in harmony with the jury's answers to the previous questions.

⁴ We also observe that the damage question (Question 8) was prefaced with the admonition:

“Regardless of how you have answered the preceding questions, please answer this question.” This

each question in its proper perspective, we conclude that the corresponding answers are not inconsistent.⁵

The Daggetts also rely on *Westfall v. Kottke*, 110 Wis.2d 86, 328 N.W.2d 481 (1983). There, the plaintiff was injured when his motorcycle hit the defendant and his tractor. See *id.* at 90, 328 N.W.2d at 484. The jury found both the plaintiff and the defendant negligent but also found that the defendant's negligence was not causal. See *id.* at 91, 328 N.W.2d at 485. Nevertheless, the jury apportioned 10% of the negligence to the defendant and 90% to the plaintiff. See *id.* The supreme court concluded that "the inconsistency on the face of the verdict was irreconcilable." *Id.* at 100, 328 N.W.2d at 489.⁶

(..continued)

reasonably alerted the jury that the prior questions were aimed at other matters in issue. And, although the statute of limitations question followed the damage question, we are not persuaded that a reasonable jury would construe this further question as a damages-related question—particularly since the jury had already answered as to damages.

⁵ We note that the language of the causation and comparative negligence questions upon which the Daggetts rest their argument is in keeping with the language suggested by the comments of the Uniform Civil Jury Instructions Committee as to similar special verdict questions. See, e.g., WIS J I—CIVIL 1390 (Questions 3 and 4); WIS J I—CIVIL 1723 (Questions 2, 4, 8, 9 & 10); WIS J I—CIVIL 1592 (Question 2).

⁶ A typical inconsistent verdict is one which exonerates a party as to causal negligence but then attributes a portion of the damages to such party. See *Statz v. Pohl*, 266 Wis. 23, 28-29, 62 N.W.2d 556, 558-59 (1954); *Jahnke v. Smith*, 56 Wis.2d 642, 647, 203 N.W.2d 67, 70 (1973); *Ollinger v. Grall*, 80 Wis.2d 213, 217-18, 258 N.W.2d 693, 696 (1977); *D'Huyvetter v. A.O. Smith Harvestore Prods.*, 164 Wis.2d 306, 337-40, 475 N.W.2d 587, 599-600 (Ct. App. 1991).

Clearly, a verdict which finds a party not negligent on the one hand, but attributes a portion of the negligence to the exonerated party on the other, is irreconcilable. As to both questions, the jury is focusing on the question of the party's alleged negligence. Such a verdict which compares "apples and apples" and provides contradicting answers is clearly suspect.

Here, however, the jury's answers to the questions upon which the Daggetts rely were not focused on damages. Rather, the questions focused on causation, comparative negligence and statute of limitations. Measured against damages, these concepts are "apples and oranges." The jury's answers stand comfortably beside each other.

We conclude that the jury did not return an inconsistent verdict.

Damage Award: Sufficiency of Evidence

Although the Daggetts raise sufficiency of evidence arguments, they do not specifically challenge the jury's failure to award damages. Nonetheless WEPCo addresses this issue in its respondent's brief. We only briefly address this question.

We will sustain a jury verdict if there is any credible evidence to support it. *See Nieuwendorp v. American Family Ins. Co.*, 191 Wis.2d 462, 472, 529 N.W.2d 594, 598 (1995). We review the evidence in a light most favorable to the verdict, and when more than one inference may be drawn from the evidence, we are bound to accept the inference drawn by the jury. *See id.*

We have examined the evidentiary record in this case. We will not repeat the voluminous material presented by both the Daggetts and WEPCo on this question. Suffice it to say that the jury was presented with extensive evidence on both sides of the damage issue. The Daggetts' evidence supported their claim that WEPCo's distribution system caused their claimed damage. WEPCo's evidence contended that the Daggetts were not damaged or that the Daggetts' own electrical operations, or "on-farm" sources of stray voltage rather than WEPCo's distribution system, caused any alleged damage. In short, the sharp conflicting evidence on this issue made this a jury question. Since certain of the evidence supports WEPCo's claim that the Daggetts were not damaged, we affirm.

CONCLUSION

We conclude that the jury's answers to the special verdict questions are not inconsistent. We also hold that the evidence supports the jury's decision not to award damages. Since the jury has determined that the Daggetts were not damaged, we need not address the other challenges raised by the Daggetts. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938). Accordingly, we affirm the judgment.

By the Court. – Judgment affirmed.

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