

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 19, 1996

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. 95-1143

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**RICKY R. HENRY, JR., (a minor)
by his Guardian ad Litem,
ROBERT P. VANDEHEY, and
CAROL M. HENRY, as Personal
Representative of the
Estate of Ricky R. Henry, Sr.,**

Plaintiffs-Appellants,

v.

**CITY OF PLATTEVILLE,
a Municipal Corporation,**

Defendant-Respondent,

JASON R. ROLING,

Defendant,

EMPLOYERS MUTUAL CASUALTY COMPANY,

Defendant-Respondent,

**GRANT COUNTY and
WAUSAU UNDERWRITERS INSURANCE COMPANY,**

Defendants.

APPEAL from a judgment and an order of the circuit court for Grant County: JOHN R. WAGNER, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Ricky Henry, Jr., and Carol Henry, on behalf of the estate of Ricky Henry, Sr., appeal from a summary judgment dismissing their wrongful death claim against the City of Platteville and its insurer and an order denying their motion for reconsideration. Henry, Sr., was killed when the car in which he was a passenger crashed during a pursuit by a Platteville police officer. The suit was brought against the City for the officer's alleged negligence in initiating and continuing the pursuit. Because recent Wisconsin case law holds officers immune for initiating and continuing vehicle pursuits, we affirm.

Under § 893.80(4), STATS., municipal officers are immune for the performance of discretionary acts. *Estate of Cavanaugh v. Andrade*, 202 Wis.2d 290, 315, 550 N.W.2d 103, 113 (1996). In *Cavanaugh*, the supreme court held that an officer's decision to initiate or continue a high-speed chase is discretionary, and that immunity is lost only if the injury results from the officer's failure to exercise due regard while physically operating his or her vehicle during the pursuit. *Id.* at 317-19, 550 N.W.2d at 114-15. The Henrys, however, did not allege, or produce any evidence showing, that the accident was caused by the officer's failure to physically operate his vehicle with due care. He and the City of Platteville, as his employer, are therefore immune. Our decision makes it unnecessary to address the other issues raised on appeal pertaining to negligence, causation and damages.

By the Court.— Judgment and order affirmed.

This opinion will not be published.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