COURT OF APPEALS
DECISION
DATED AND RELEASED

May 23, 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. 95-3174-FT

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

LEANNE GLADIS HANSON,

Plaintiff-Appellant,

THE STATE OF MINNESOTA,
DEPARTMENT OF HUMAN SERVICES,

Plaintiff,

v.

TRAVELERS INSURANCE COMPANY, OMNI VENTURE, LTD., HOWARD COX, d/b/a OMEGA TRUST, and DELLS INVESTMENT COMPANY,

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Sauk County: PATRICK J. TAGGART, Judge. *Affirmed*.

Before Eich, C.J., Dykman and Sundby, JJ.

PER CURIAM. Leanne Gladis Hanson appeals from a judgment dismissing her personal injury action.[1] The issues are whether the trial court erred by refusing to give the jury the common carrier instruction, WIS J I—CIVIL 1025, or, alternatively, the safe place instructions contained in WIS J I—CIVIL 1900.4, 1901 and 1904. We need not decide whether it was error to refuse to give those instructions, because their absence did not prejudice Hanson. *See* § 805.18(2), STATS. We therefore affirm.

Hanson is a paraplegic. Her injuries occurred when she fell from her wheelchair while exiting an elevator at the Super 8 Motel in Wisconsin Dells. The respondents are the owners of the motel, and their insurer.

The parties offered diametrically opposed versions of her accident. According to Hanson, it occurred when a motel employee operating the elevator stopped it six inches above floor level. The clerk did not warn her of the drop-off, and instead advised her it was okay to exit. When she attempted to do so, the front wheels of the wheelchair fell over the six-inch ledge, throwing her from the chair and injuring her.

In contrast, the motel employee testified that she was not in the elevator nor operating it when Hanson was injured. Nor did the elevator stop above the floor level. Hanson fell as she came off the elevator, according to the employee, when she leaned too far forward to retrieve a small dog who had just jumped off her lap.

The common carrier instruction, WIS J I—CIVIL 1025, advises the jury that a common carrier must exercise the highest degree of care for the safety of its passengers and that the failure to do so is negligence. The safe place instructions advise that a business operator must keep its premises as safe as the nature of the place reasonably permits. The trial court refused to give the former because it concluded that the elevator in the motel was not a common carrier. It refused safe place instructions because Hanson failed to prove that the elevator was mechanically unsafe. However, the trial court did give WIS J I—CIVIL 8051, which advises that a hotelkeeper has a duty to exercise

[1] This is an expedited appeal under RULE 809.17, STATS.

reasonable care to provide guests with safe premises which may be used in an ordinary and reasonable way without danger. The court also instructed that the defendant owners would be liable for their employee's negligence. The jury reconciled the different versions of the accident by finding Hanson seventy-five percent causally negligent and the owners twenty-five percent causally negligent.

Hanson would not have benefitted from the common carrier instruction.[2] Hanson contends, necessarily, that the jury would have found the owners at least twenty-five percent more negligent and her twenty-five percent less negligent, with the common carrier instruction. However, she does not explain how that would have occurred. Her version of the accident placed 100% of the blame on the employee's reckless conduct, which would have constituted negligence under even the most minimal standard of care. The fact that the jury assigned the owners a far lesser proportion of the negligence demonstrates that it essentially disbelieved her version. She cannot reasonably argue that any connection exists between the instructions on the owners duty and the jury's assessments of the witnesses' credibility.

For the same reason, Hanson would not have benefitted from the safe place instructions. Additionally, those instructions do not define a standard of care significantly different than the one described in the hotelkeeper instruction that the court gave the jury.

By the Court.—Judgment affirmed.

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

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[2] The owners contend that Hanson waived her right to the common carrier instruction, WIS J I—CIVIL 1025, because she did not specifically request it. While it is true that Hanson did not request the instruction by number, she submitted an instruction that repeated WIS J I—CIVIL 1025 virtually word-for-word and conveyed the identical information. There is no requirement that she had to refer to the instruction by its Wisconsin Jury Instruction citation in order to preserve the issue for appeal.