

10/16/01 “See News Release for any concurrences and/or dissents.”

SUPREME COURT OF LOUISIANA

NO. 01-C-0299

GLADYS MARIE HUNTER, ET VIR.

V.

WAL-MART SUPERCENTER OF NATCHITOCHE

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
THIRD CIRCUIT, PARISH OF NATCHITOCHE

PER CURIAM\*

We granted certiorari in this case to determine whether the court of appeal erred in affirming the judgment of the district court granting plaintiffs’ motion for judgment notwithstanding the verdict and increasing the jury’s damage award. For the reasons that follow, we vacate that judgment and reinstate the jury verdict.

**UNDERLYING FACTS**

On April 22, 1996, Gladys Marie Hunter and her husband went shopping in the Wal-Mart Supercenter of Natchitoches (“Wal-Mart”). While shopping in the store’s garden center, Mrs. Hunter caught her foot in an empty wooden pallet on the floor. She almost fell to the ground, but a Wal-Mart employee caught her. After the incident, Mrs. Hunter was diagnosed as suffering from a bruised foot. She received physical therapy for approximately one month after the accident. In May 1997, she began complaining of soreness and numbness in her left foot. Subsequent medical testing did not reveal any objective signs of injury. In February 1997, approximately nine

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\* Retired Judge Robert L. Lobrano, assigned as Justice *Pro Tempore*, participating in the decision.

months after the Wal-Mart accident, Mrs. Hunter suffered a second fall while traveling in Oklahoma.

### **PROCEDURAL HISTORY**

As a result of the Wal-Mart incident, Mrs. Hunter and her husband filed the instant suit against Wal-Mart, seeking damages for pain and suffering, medical expenses, loss of consortium, lost wages, and embarrassment and humiliation. After a jury trial, the jury allocated 25% fault to plaintiffs and 75% fault to Wal-Mart. The jury awarded plaintiffs \$4,800 in past medical expenses and \$15,000 for pain and suffering. The jury rejected plaintiffs' claims for embarrassment, humiliation, loss of consortium and permanent injury.

Plaintiffs filed a motion for judgment notwithstanding the verdict ("JNOV"), or alternatively for new trial or additur. The district court granted plaintiffs' motion for JNOV as to damages only, and increased the jury's awards for past medical expenses to \$16,024.17 and for pain and suffering to \$50,000. Additionally, the district court awarded plaintiffs \$20,000 for embarrassment and humiliation, \$40,000 for permanent injuries, and \$20,000 for loss of consortium.

Wal-Mart appealed the district court's judgment. The court of appeal affirmed the judgment of the district court in an opinion not designated for publication.<sup>1</sup>

Upon Wal-Mart's application, we granted certiorari to review the correctness of that ruling.<sup>2</sup> The sole issue presented for our consideration is whether the district court abused its discretion in granting plaintiffs' motion for JNOV.

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<sup>1</sup> *Hunter v. Wal-Mart Supercenter*, 00-0520 (La. App. 3d Cir. 11/22/00) (not designated for publication).

<sup>2</sup> *Hunter v. Wal-Mart Supercenter*, 01-0299 (La. 4/12/01), 788 So. 2d 1197.

## DISCUSSION

In *Anderson v. New Orleans Public Service, Inc.*, 583 So. 2d 829 (La. 1991),

we set forth the proper standard to be applied in order to grant a JNOV:

Judgment notwithstanding verdict (JNOV) is warranted when facts and inferences point so strongly and overwhelmingly in favor of one party that the court believes that reasonable men could not arrive at a contrary verdict, and JNOV motion should be granted only when evidence points so strongly in favor of moving party that reasonable men could not reach different conclusions, not merely when there is preponderance of evidence for mover; if evidence opposed to motion is of such quality and weight that reasonable and fair-minded men in exercise of impartial judgment might reach different conclusions, the motion should be denied.

With these principles in mind, we now turn to an examination of the record to determine whether the evidence points so strongly in favor of plaintiffs that reasonable jurors could not have reached different conclusions.

Mrs. Hunter's own testimony indicates that her fall was relatively minor in nature. She testified she did not actually fall to the ground, but was caught by a Wal-Mart employee before she reached the ground:

A. And that was the time I turned and I was on my way back, I had these plants in my hand. I was on my way back to put the plants back out where they were at. And when I turned around and then my . . . all at once . . . I didn't look down cause usually when I'm walking I always kind of look straight ahead of me. And all at once my foot got caught up under that pallet and I just went to falling going backwards and sideways and fronts (sic) and on the side. And one guy he said, Oh Lady, you're going to hurt yourself. And he ran over there and I went down almost to the floor.

Q. And he caught you?

A. And he caught me.

The day after the accident, Dr. Brian Picou diagnosed Mrs. Hunter as suffering from a bruised foot. There was no swelling of the ankle or foot, no muscle or nerve damage, and little objective sign of injury. Approximately one week later, Mrs. Hunter complained of numbness in her leg.

Beginning in late April 1996, Mrs. Hunter engaged in physical therapy with Richard Guidroz. Mr. Guidroz testified that after each visit, Mrs. Hunter began to feel better and had decreased complaints. By the time he discharged her on May 23, she was having no problems with exercise and was walking normally.

In May, Mrs. Hunter continued to complain of left foot numbness, and was referred to Dr. Nguyen in October 1996. She reported some low back pain to Dr. Nguyen in December 1996, but indicated the pain was better by January 1997, although she still had some numbness and soreness in her lower leg.

In February 1997, approximately nine months after the Wal-Mart accident, Mrs. Hunter suffered a second fall while traveling in Oklahoma City. That same month, she returned to Dr. Nguyen. Dr. Nguyen testified he was never able to make any objective findings to explain her complaints and testified it would be unusual for her to have a loss of sensation based on catching her foot on a pallet.

The only medical testimony which connected Mrs. Hunter's injuries with her fall at Wal-Mart came from Dr. Naalbandian, who first saw her twenty-five months after the Wal-Mart incident.<sup>3</sup> Dr. Naalbandian testified that the Wal-Mart incident aggravated Mrs. Hunter's pre-existing spondylosis and degenerative disc disease. However, Dr. Naalbandian admitted that the fall did not cause her spondylosis and degenerative disc disease. He further conceded that her spondylosis and degenerative disc disease would cause her pain through her life, even absent trauma.

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<sup>3</sup> It is noteworthy that at the time plaintiff saw Dr. Naalbandian, she did not tell him about her Oklahoma fall.

Based on our review of the record, we cannot say that the evidence points so strongly in favor of plaintiffs that reasonable persons could not reach different conclusions. While plaintiffs assert that the evidence demonstrated Mrs. Hunter's injuries were ongoing and permanent in nature, there is sufficient evidence in the record which would allow reasonable and fair-minded persons in the exercise of their impartial judgment to reach an opposite conclusion and find that Mrs. Hunter's injury at Wal-Mart was a minor soft-tissue injury without permanent implications.

Because the evidence does not point so strongly in favor of plaintiffs that reasonable persons could not reach an opposite conclusion, the district court erred as a matter of law in granting plaintiffs' motion for JNOV. Accordingly, we will vacate that judgment and reinstate the jury verdict.

### **DECREE**

For the reasons assigned, the judgment of the court of appeal affirming the district court's judgment is vacated. The district court's grant of JNOV in favor of plaintiffs is vacated and the jury's verdict is hereby reinstated.