

11/28/00

SUPREME COURT OF LOUISIANA

No. 00-C-0445

MARY DAVIS

Versus

WAL-MART STORES, INC.

LEMMON, J., Concurring

This case presents an opportunity for this court to establish the standard by which an appellate court reviews the trial judge's conditional granting of a new trial after the appellate court reverses the trial judge's granting of a judgment notwithstanding the verdict (JNOV). In the present case, the majority states that there is a different standard for reviewing a conditional grant of a new trial than the standard for reviewing a JNOV, but appears to apply the same standard. Perhaps the appropriate standard for reviewing this unusual, but mandatory, procedural device must be developed on a case-by-case basis.¹

¹The standard for reviewing the granting of a simple motion for new trial (even when not joined with a motion for JNOV) has presented a great deal of difficulty in the intermediate appellate courts which this court may attempt to resolve. See Martin v. Heritage Manor South, cert. granted, 00-1023 (La. 6/16/00), ___ So. 2d ___.