**IN THE UNITED STATES COURT OF APPEALS**

**FOR THE FIFTH CIRCUIT**

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No. 92-3475

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TONI DECOSSAF HERNANDEZ,

Plaintiff-Appellant,

VERSUS

K-MART CORPORATION, et al.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
CA 90 2180 "I"

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May 19, 1993

Before WISDOM, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:[*]

This slip and fall case arose on July 26, 1989, when Toni Hernandez slipped in a small puddle of bubble bath or shampoo in a Chalmette, Louisiana, K-Mart store. Hernandez's husband caught her before she fell, but the slip injured her back and aggravated a dormant cyst in her ankle. After a three-day trial, the jury awarded damages of $31,916.58. After reviewing the briefs and

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[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

record, we conclude that no error occurred and affirm the judgment.

I.

The district court established August 2, 1991, as the deadline for amending the complaint. On December 30, 1991, eight days before trial, Hernandez sought to join the K-mart manager as an additional defendant )) a joinder that would have destroyed diversity of citizenship and deprived the district court of jurisdiction. We review the district court's denial of Hernandez's motion for abuse of discretion. Daves v. Payless Cashways, Inc., 661 F.2d 1022, 1024 (5th Cir. Unit A Nov. 1981).

The district court did not abuse its discretion. Hernandez seeks to justify her delay in seeking the amendment by claiming that a Louisiana appellate decision clarified the law in this area, allowing her to sue the manager. See Holmes v. Great Atlantic & Pac. Tea Co., 587 So. 2d 750 (La. App. 4th Cir. 1991), writ denied, 592 So. 2d 412 (1992). We find this claim puzzling, as that decision states that the law on this point has been settled since 1973. See id. at 752.

Simply because a court had held that joinder was improper in another case involving this K-Mart, does not mean that the law was confused. Rather, the court in the other case applied the settled law and concluded that no liability could be imposed under that standard. Even if the law were incorrectly applied in that other case, Hernandez had no excuse for not attempting to join the man-

ager earlier.

II.

Next, Hernandez argues that the district court erred by failing to grant her motion for judgment as a matter of law or for a new trial on the ground that the evidence does not support a finding of comparative negligence. The jury found Hernandez twenty-five percent at fault. We must affirm the verdict unless the evidence points so overwhelmingly in favor of one party that a reasonable jury could not have arrived at the verdict. Boeing Co. v. Shipman, 411 F.2d 365, 374 (5th Cir. 1969) (en banc).

Hernandez calls our attention to Doming v. K-Mart Corp., 540 So. 2d 400, 405 (La. App. 1st Cir. 1989), affirming the trial court's granting of a judgment notwithstanding the verdict on the issue of comparative negligence. The trial court reduced the jury finding of forty percent negligence to five percent. Here, however, the record presents adequate evidence to support the verdict. Hernandez had shopped at this store many times and was familiar with the store's layout. She testified that at the time of the accident, she was looking straight ahead, rather than down, and was not looking at displays or merchandise. A reasonable jury could find negligence from these facts.[1]

[1] We reject Hernandez's argument that the district court abused its discretion in excluding the testimony of her safety experts. The testimony offered by the experts related to matters within the common knowledge of typical people, thereby obviating the need for expert analysis. Peters v. Five Star Marine Serv., 898 F.2d 448, 449 (5th Cir. 1990) (per curiam).

III.

Hernandez also argues that the jury verdict undercompensated her for pain and suffering and disregarded evidence of her loss of earnings. We will not disturb a jury finding on damages unless it is entirely disproportionate to the injury sustained. Caldarera v. Eastern Airlines, 705 F.2d 778, 784 (5th Cir. 1983). We do not believe that the award for pain and suffering was so disproportionate as to justify a new trial, as the award was approximately half as large as the damages for medical expenses. This award is especially justified, as Hernandez admitted on cross-examination that she had reinjured her ankle when she fell off of her crutches. Given that she had previously denied this injury, the jury had reason to question her veracity.

Likewise, we cannot conclude that the jury's award for loss of earnings was unreasonable. Hernandez worked for her mother's accounting firm and testified that she had missed thirty-nine weeks of work because of the accident. Hernandez's mother testified, without documentation, that just prior to the accident she had decided to increase Hernandez's workload and responsibilities substantially. We think a reasonable jury could view this testimony with some skepticism. As a result, we cannot disturb the jury's findings.

IV.

Finally, Hernandez asserts that the jury erred by failing to

award damages for loss of consortium.[2] Hernandez's husband testified that he had sexual relations with his wife once or twice per day, every day before the accident, and that this dwindled to about once per month after the accident. He testified that Hernandez was bedridden for four months, yet she never told her doctor. Given the frequency of pre-accident sexual relations alleged by Hernandez, the jury rightly could view his claim with some skepticism. When combined with the overall questionable nature of testimony on other issues, the jury reasonably could choose not to believe Mr. Hernandez's testimony.

The judgment of the district court is AFFIRMED.

[2] K-Mart Corporation argues that we do not have jurisdiction over the loss of consortium claim because Hernandez's husband is not listed as a party on the notice of appeal. Although the notice of appeal uses the phrase "et al.," we previously have held that "et al." suffices to provide notice where there are only two parties. Morales v. Pan Am. Life Ins. Co., 914 F.2d 83, 85 (5th Cir. 1990).