IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-4650
Summary Calendar

BRENDA KAY OLIVEAUX
and
MARSHALL OLIVEAUX,

Plaintiffs-Appellants,

VERSUS

WAL-MART STORES, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(CA 90 2361)

November 18, 1992

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

In this typical retail slip-and-fall case, the plaintiffs, Brenda and Marshall Oliveaux, challenge an adverse jury verdict exonerating the defendant, Wal-Mart Stores, Inc. ("Wal-Mart"), from liability regarding a fall allegedly[1] suffered by Brenda

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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 Pursuant to that rule, the court has determined that this opinion should not be published.

[1] We say "allegedly" because there was conflicting testimony as to whether Brenda Oliveaux initially claimed, at the store, (continued...)

Oliveaux in a Wal-Mart store. Finding no error, we affirm.

I.

This is a diversity case, and the parties agree that Louisiana law imposes on a merchant a duty to keep aisles in a reasonably safe condition, including a reasonable effort to keep the premises free of any hazardous conditions that might reasonably give rise to injury. Also under state law, once a person proves that an accident was caused by a hazardous condition, the defendant must establish that it acted in a reasonably prudent manner in keeping the premises free of hazardous conditions. See La. R.S. 9:2800.6(A) and (B).

II.

The jury answered "no" to the following question: "Did the plaintiffs prove by a preponderance of the evidence that Defendant was negligent in allowing the red substance to remain on the floor?" In accordance with its instructions, the jury, having answered that question in the negative, addressed none of the remaining questions.

Federal law determines the measurement of the sufficiency of the evidence. Jones v. Wal-Mart Stores, Inc., 870 F.2d 982, 986 (5th Cir. 1989). Where, as here, no motion for judgment as a

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[1](...continued)
that she had "almost" fallen or that she said that she had slipped but braced herself and only bumped her knee, not her head (and with a resulting back injury) as later claimed. She had suffered neck pain before the incident in question.

matter of law[2] was made under Fed. R. Civ. P. 50, "our appellate review is limited to whether there was any evidence to support the jury's verdict, irrespective of its sufficiency or whether plain error was committed which if not noticed, would result in a `manifest miscarriage of justice.'" Bunch v. Walter, 673 F.2d 127, 129-30 (5th Cir. 1982).

III.

Whether we view the evidence from the perspective of the plaintiffs' burden to establish negligence, or from that of the defendant's obligation to show that it acted in a reasonably prudent manner, there plainly is evidence, in accordance with the above-described "any evidence" standard, to sustain the jury's verdict. It is undisputed that the spill was from a frozen "Icee" liquid slush drink. There was testimony that at the time of the incident, some ice crystals remained, from which the jury could conclude that the substance had been on the floor only a short time. Wal-Mart introduced evidence of its clean-up procedures, including periodic tours of the aisles by clerks and periodic safety sweeps. From this, the jury could conclude that Wal-Mart acted in a reasonably prudent manner.

In summary, the plaintiffs' attack on the jury verdict is without merit. The judgment of the district court is AFFIRMED.

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[2] Under the former rule, this would have been referred to as a motion for directed verdict.