

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92- 7235
(Summary Calendar)

THELMA D. HALL,

Plaintiff-Appellee

versus

WAL-MART STORES, INC.,

Defendant-Appellant

Appeal from the United States District Court for the
Northern District of Mississippi
(CA DC91-W3-D-0)

(December 9, 1992)

BEFORE KING, DAVIS, and WIENER, Circuit Judges

PER CURIAM:*

In this Mississippi personal injury diversity case, Defendant-Appellant Wal-Mart Stores, Inc. (Wal-Mart) appeals the jury verdict in favor of Plaintiff-Appellee Thelma Hall, complaining that the district court erred in denying Wal-Mart's Motion for Judgment as a Matter of Law. Finding no reversible error, we affirm.

I. FACTS AND PROCEEDINGS

The facts of this case present a variation on the traditional

*Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

"slip and fall" situation. Hall, an elderly woman, sued Wal-Mart alleging that she had tripped over a concrete parking "bumper"SOthe type of concrete divider commonly used in parking lots to delineate parking rows or spacesSOand suffered serious injuries. At trial, Hall testified that she was exiting the Wal-Mart store, looking straight ahead on a clear day, when her foot hit something hard and she fell to the ground. She also testified that she had not seen the bumper and that she had rarely, if ever, walked through the parking lot.

In addition to Hall's testimony, photographs of the bumper were introduced showing its placement and condition. The photographs show that the bumper in question was not placed between two opposing parking spots, but ran parallel to a space designated for handicapped parking. In other words, the bumper in question was placed perpendicular to all of the other bumpers in the lot. Moreover, the photographs showed that most of the customary yellow paint had chipped off the bumper, diminishing its visibility.

Wal-Mart made a Motion for Judgment as a Matter of Law, pursuant to Fed. R. Civ. P. 50, at the end of Hall's case-in-chief and again at the end of all evidence. The district court denied both these motions and submitted the case to the jury. The jury returned a verdict in favor of Hall in the amount of \$50,000. Wal-Mart renewed its objection, filing a post-trial Motion for Judgment as a Matter of Law, which was also denied. Wal-Mart timely appealed.

II. ANALYSIS

A. STANDARD OF REVIEW

Rule 50(a) of the Federal Rules of Civil Procedure provides that a district court may grant a Motion for Judgment as a Matter of Law if there "is no legally sufficient evidentiary basis for a reasonable jury" to find for a particular party on a particular issue. "The standard of review for motions . . . under Fed. R. Civ. P. 50 are the same for a trial court and an appellate court."¹ Thus, we review the jury verdict to determine whether reasonable jurors could not have reached the result on the evidence submitted.²

Under Mississippi law, the owner of a business has a duty to exercise ordinary care in maintaining the premises in a reasonably safe condition and warning of dangerous conditions that are not readily apparent.³ The owner, however, "is not an insurer of the customer using the parking lot and sidewalks, and is not liable for injuries cause by conditions which are not dangerous or which are or should be known or obvious to the customer."⁴ Whether a condition is "open and obvious" "is a question for the jury in all

¹ United States Indus., Inc. v. Aetna Casualty & Surety Co., 690 F.2d 459 (5th Cir. 1982).

² Boeing Co. v. Shipman, 411 F.2d 365, 374 (5th Cir. 1969) (en banc).

³ Kroger, Inc. v. Ware, 512 So.2d 1281, 1282 (Miss. 1982) (citations omitted).

⁴ Stanley v. Morgan & Lindsey Inc., 203 So.2d 473, 476 (Miss. 1967).

except the clearest cases."⁵

We cannot agree with Wal-Mart that this case is so clear that no question for the jury existed. The facts introduced by Hall demonstrates that there is indeed a question whether this particular bumper placed in an unusual position and denuded of most of its yellow warning paint was open and obvious. We conclude that a reasonable jury could find that Wal-Mart had breached a duty owed to Hall and was negligent in its placement and maintenance of the concrete bumper. We find no need to abandon our extreme deference to findings of facts by juries, given the circumstances of this case.

Accordingly, the decision of the district court is
AFFIRMED.

⁵ Bell v. Bay St. Louis, 467 So.2d 657, 664 (Miss. 1985).