

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-30416
Summary Calendar

PATRICIA SCARBRO,

Plaintiff-Appellant,

VERSUS

WAL-MART STORES INC.,
d/b/a Sam's Wholesale Club,

Defendant-Appellee.

Appeal from the United States District Court
For the Middle District of Louisiana

(CA-93-266-B-M1)

(November 4, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

We review de novo the decision of the district court granting the motion for summary judgment of Wal-Mart Stores Inc. (Wal-Mart), dismissing Patricia Scarbro's (Scarbro) complaint with prejudice.

Scarbro was injured on Wal-Mart premises in Baton Rouge,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Louisiana. At the time of her injury she was employed as a demonstrator for Industrial Chemical Distributors, Inc. It is undisputed that Scarbro is a statutory employee of Wal-Mart and is therefore limited to compensation as provided under the Louisiana Worker's Compensation laws unless her injury resulted from an intentional act of Wal-Mart. See, La.R.S. 23:1032(A)(1)(a); 23:1032(B). In order to find an intentional act, Wal-Mart must have either consciously desired to bring about Scarbro's injuries or known that such injuries were substantially certain to follow. See, Bazley v. Tortorich, 397 So.2d 475, 481 (La. 1981).

Scarbro's summary judgment evidence reveals that she fell while attempting to retrieve items from a storage shelf on the Wal-Mart premises. The area leading to and in front of the storage shelf was cluttered. The conditions were described as dangerous. Prior to Scarbro's injury complaints had been made by others using the storage shelves about store items being left about and building up in the subject work area. Other employees like Scarbro would sometimes have to climb over the items left in front of the shelves to retrieve materials. One such employee had suffered scratches and bruises from climbing on the clutter. Complaints had been made to Wal-Mart about the condition of the premises.

Viewing Scarbro's motion for summary judgment in the light most favorable to her, a reasonable person could conclude that Wal-Mart knowingly permitted a hazardous or dangerous working condition to exist; however, said evidence does not raise a material fact issue that Wal-Mart consciously desired that Scarbro would be injured, nor that her injuries were substantially certain to

follow. Accordingly, the Magistrate Judge correctly granted Wal-Mart's motion for summary judgment based on the exclusivity of remedies under the Louisiana Worker's Compensation laws.

The judgment of the trial court is **AFFIRMED**.