

STATE OF MICHIGAN
COURT OF APPEALS

SHARON VAN AMEYDE and ALLAN VAN
AMEYDE,

UNPUBLISHED
April 27, 1999

Plaintiffs-Appellees,

v

No. 206853
Monroe Circuit Court
LC No. 95-004210 NO

WAL-MART STORES, INC.,

Defendant-Appellant.

Before: Saad, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment, following a jury trial, awarding plaintiffs \$62,067. We affirm.

Defendant contends that the trial court erred in excluding an incident report prepared by one of defendant's employees that contradicted plaintiff Sharon Van Ameyde's testimony regarding the cause of her trip and fall. We disagree. The admission of evidence is a matter within the trial court's discretion, and the trial court's determination will not be reversed absent an abuse of that discretion. *Heshelman v Lombardi*, 183 Mich App 72, 84; 454 NW2d 603 (1990). In the present case, defendant asserted that the report was admissible pursuant to MRE 803(6), the provision governing regularly conducted business activity. However, defendant failed to present a witness to establish that the incident report was taken in the ordinary course of business. Defendant's store greeter failed to establish a foundation that the incident report was taken in the ordinary course of business. Without such a foundation, the incident report was properly excluded from evidence. *Price v Long Realty, Inc*, 199 Mich App 461, 467-468; 502 NW2d 337 (1993).

Defendant also contends that the award of attorney fees was an abuse of discretion due to the number of hours expended and the hourly rate charged. Defendant did not dispute the reasonableness of the hours expended in the trial court. Therefore, this issue has not been preserved for appeal. *Schellenberg v Rochester Elks*, 228 Mich App 20, 49; 577 NW2d 163 (1998). Moreover, our review of the hourly rate charged does not evidence an abuse of discretion.

Finally, because we do not find this appeal to be vexatious, we decline to grants plaintiffs' request to impose sanctions upon defendant.

Affirmed.

/s/ Henry William Saad
/s/ William B. Murphy
/s/ Peter D. O'Connell