

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-001479-MR

DORTHA MORRISON

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT  
HONORABLE JANET COLEMAN, JUDGE  
ACTION NO. 97-CI-01778

WAL-MART STORES, INC.

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: EMBERTON, GUIDUGLI AND McANULTY, JUDGES.

GUIDUGLI, JUDGE. Dortha Mae Morrison (Morrison) appeals from a jury verdict which awarded her \$6,175.00 in damages for injuries she received as a result of a slip and fall at the Elizabethtown Wal-Mart. She argues that the trial court erred by admitting evidence of her prior medical history which she alleges was irrelevant and inadmissible pursuant to Kentucky Rules of Evidence (KRE) 402. We have found no error and, hence, affirm.

Morrison and her friend, Troy Logsdon, went shopping at the Elizabethtown Wal-Mart on May 19, 1997. It was raining hard as they entered the store. After shopping, Morrison proceeded through the checkout area to pay for her purchases. As she began

to walk out of the store, she slipped and fell, landing on her back in the customer service area. Morrison alleged that she slipped and fell due to the accumulation of water on the floor caused by water dripping off rain ponchos being worn inside by Wal-Mart employees, a practice she claimed was against store policy. Wal-Mart denied that its employees were wearing rain ponchos inside the store.

Although Morrison left the store with her friend, according to her testimony, once home she began to suffer severe back pain. She stated it felt "like someone hit me with a sledge hammer." She began treatment with Dr. Rolando Cheng (Dr. Cheng), an orthopedic surgeon. Dr. Cheng indicated that Morrison had suffered an acute compression fracture in her spine. At the time of trial, Morrison had been treated conservatively, had required no surgery, and had seen Dr. Cheng only occasionally since the fall.

On May 3, 2000, prior to the start of the jury trial, Morrison filed motions in limine requesting the trial court to exclude and prohibit all testimony, evidence, statements and remarks concerning the following: (1) any collateral source payments; (2) her 1970 back surgery; (3) her osteoporosis; (4) her 1996 ankle fracture; (5) her past heart surgeries; and (6) any mid to lower back pain allegedly experienced dating back to 1993. The motions relating to Morrison's past medical history were denied and counsel for Wal-Mart was permitted to question her regarding her prior medical treatment and statements she made to other physicians concerning her back problems and physical

limitations. Following a three-day trial, the jury returned a verdict in Morrison's favor and awarded her \$2,356 for past medical expenses and \$10,000 for pain and suffering, but apportioned fault at 50% - 50%. Thereafter, Morrison's motion to vacate and/or amend the judgment entered May 17, 2000, was denied on June 8, 2000. This appeal followed.

On appeal, Morrison continues her contention that evidence and testimony concerning her past medical history was irrelevant and inadmissible pursuant to KRE 402 and Turner Construction Co., et al. v. D. B. E. Garrett, et al., Ky., 310 S.W.2d 786 (1958). Wal-Mart counters by arguing that her medical history was relevant, probative evidence relating to causation and the nature and extent of Morrison's damages. In Turner, the Court found that the trial court had not abused its discretion in excluding medical testimony which it deemed speculative as to contributing to the present physical condition. Relying on Turner, Morrison argues that there must be some connection or relationship between the prior injury or illness and the injury which Morrison is complaining of in this action. Morrison further claims that her treating orthopaedic surgeon, Dr. Cheng, stated there was no connection between her past medical history and the injury she suffered as a result of the slip and fall at Wal-Mart, and thus, none of her prior medical history was relevant to this action. We disagree.

KRE 402 states:

All relevant evidence is admissible, except as otherwise provided by the Constitutions of the United States and the Commonwealth of Kentucky, by Acts of the General Assembly of

the Commonwealth of Kentucky, by these rules, or by other rules adopted by the Supreme Court of Kentucky. Evidence which is not relevant is not admissible.

The issue on appeal is whether or not the trial court abused its discretion in allowing evidence of Morrison's past medical history. We believe it did not in that the testimony was relevant as to both causation and damages. In this case, Morrison claimed that when she fell at Wal-Mart she experienced pain like never felt before and that she had throbbing pain like she had been "hit with a sledge hammer." Later, she testified that she could not stand the pain and she could not do anything like she used to (such as crocheting, gardening, needlepoint, house work, etc.). Finally, she stated, "I'm miserable and my life is just ruined." However, her testimony was inconsistent with the medical records. Several times Morrison denied having had back pain or requesting pain medication for her back, yet the medical records indicated otherwise. The testimony the trial court permitted was both relevant and probative to inform the jury that Morrison had suffered other injuries and illnesses which directly affected her physical condition on the day of the fall and her ability to function and her quality of life both prior to and after the incident at Wal-Mart.

Relevant evidence is evidence which tends to establish or disprove an issue in litigation. O'Brien v. Massey-Ferguson, Inc., Ky., 413 S.W.2d 891 (1967). What constitutes relevant evidence was addressed in Partin v. Commonwealth, Ky., 918 S.W.2d 219 (1996), as follows:

However, the admissibility of the above evidence must further be examined pursuant to the guidelines outlined in KRE 401 and KRE 403. Relevant evidence, defined in KRE 401, "means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." A decision by the trial court will not be disturbed in the absence of an abuse of discretion. KRE 403 provides as follows:

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of undue prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence."

According to Lawson, at 2.10

The following judgments are required by the equation formulated in KRE 403:

- (i) assessment of the probative worth of the evidence whose exclusion is sought;
- (ii) assessment of the probable impact of specified undesirable consequences likely to flow from its admission (i.e., "undue prejudice, confusion of the issues, or misleading the jury, ... undue delay, or needless presentation of cumulative evidence"); and
- (iii) a determination of whether the produce of the second judgment (harmful effects from admission) exceeds the product of the first judgment (probative worth of evidence.)

Id. at 56.

Partin, Id. at 222.

A thorough review of the testimony and evidence permitted by the trial court in this case does not convince us that the trial court erred. The evidence was both probative and relevant and the trial court did not abuse its discretion in admitting Morrison's prior medical history. Based upon the foregoing reasoning, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

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