NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 2270

ANGEL OCKMAN

VERSUS

WAL-MART LOUISIANA, L.L.C.

Judgment rendered September 21, 2012.

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Appealed from the
21st Judicial District Court
in and for the Parish of Tangipahoa, Louisiana
Trial Court No. 2009-0001961
Honorable Elizabeth P. Wolfe, Judge

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

McClendon, J. dissents and assigns reasons.

PETTIGREW, J.

Defendant-appellant, Wal-Mart Louisiana, L.L.C. ("Wal-Mart"), appeals from the trial court's judgment in favor of plaintiff-appellee, Angel Ockman, which awarded plaintiff damages for personal injuries sustained as a result of a slip and fall at Wal-Mart on September 27, 2008. For the reasons that follow, we hereby affirm.

According to the record, Ms. Ockman alleges that several days after delivering a child, she was shopping for sanitary napkins at the Wal-Mart Super-Center in Hammond, Louisiana, when she slipped and fell on shampoo that had been inexplicably spilled in an aisle of the store's health and beauty aid section. Ms. Ockman claims her left leg went in front of her, while her right leg went behind her, causing her right knee to strike the floor. Ms. Ockman also alleges that as a result of this fall, she sustained a 2-millimeter disruption of a previously-sutured 4-millimeter perineal laceration that had been repaired following the birth of her child.[1]

Ms. Ockman testified that as a result of this accident, certain undergarments cause her discomfort, and she is embarrassed because she claims the sides of her vagina are not uniform in appearance. This causes Ms. Ockman anxiety with regard to sexual intimacy, and as a result, Ms. Ockman claims to abstain from sex.

Ms. Ockman subsequently filed suit against Wal-Mart in the 21st Judicial District Court on June 3, 2009.

The matter proceeded to a bench trial on April 12, 2011. At the conclusion of the evidence, the trial court ruled in favor of Ms. Ockman, and awarded out-of-pocket medical expenses of $121.00 together with general damages of $40,000.00 plus legal interest from the date of judicial demand and court costs. The trial court signed a judgment in accordance with these findings on May 5, 2011. It is from this judgment that Wal-Mart

[1] During the birth of her child, Ms. Ockman sustained a first degree laceration of the perineum that was repaired by three stitches. In his deposition testimony, Dr. Gary Agena stated that a re-suture of this laceration would have required another procedure, and it was felt that such a procedure "would not be warranted and would only cause [Ms. Ockman] more pain." Accordingly, Dr. Agena allowed the disruption to heal on its own with the application of topical anesthetics.

has appealed; Ms. Ockman has answered the appeal seeking an increase in damages together with attorney fees.

On appeal, Wal-Mart initially challenges the trial court's findings of fact on the issues of liability and causation. Wal-Mart contends that pursuant to La. R.S. 9:2800.6, Ms. Ockman failed to prove it had either actual or constructive notice of the spilled shampoo on the floor of the hair products aisle or that it failed to exercise reasonable care. Wal-Mart further argues that the court was clearly wrong in failing to require Ms. Ockman to prove that her injuries were caused by her fall. A manifest error review is applicable to these fact-driven determinations.

It is well settled in Louisiana law that a trial court's findings of fact may not be reversed absent manifest error or unless clearly wrong. **Stobart v. State of Louisiana, Through Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993). The reviewing court must do more than just simply review the record for some evidence that supports or controverts the trial court's findings; it must instead review the record in its entirety to determine whether the trial court's findings were clearly wrong or manifestly erroneous. **Id.** The issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the fact finder's conclusion was a reasonable one. **Id.** If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. **Id.** at 882-883. The manifest error standard demands great deference to the trier of fact's findings, for only the fact finder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). Thus, where two permissible views of the evidence exist, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. **Id.**

In the present case, the trial court opined:

> Ms. Ockman has satisfied all the elements of [La. R.S. 9:2800.6]. There was a foreign substance on the floor. That, again, is undisputed in action alley on the date of the accident. The condition existed for a time period

> sufficient for Wal-mart employees to have discovered it if it had exercised reasonable care. Again, the Wal-mart employee, Ms. Martha Davis, was near or in the area before the accident. She did not testify she saw the spilled substance before the accident, yet the substance was on the floor. The spilled liquid created an unreasonable risk of harm to Ms. Ockman, and the risk of harm was foreseeable by Wal-mart considering their employee was in the area of the spill. The unreasonable risk of harm led to Ms. Ockman's slip and fall. There wasn't any comparative negligence on Ms. Ockman's part that I heard. Her attention was drawn to displayed merchandise that she was looking for.

Based upon a thorough review of the record, we find that the trial court's conclusions are reasonable and that its findings are not manifestly erroneous. Wal-Mart's assignments of error numbers 1, 2, 3, and 4 are without merit.

Wal-Mart also challenges the trial court's damage award. Specifically, Wal-Mart attacks the trial court's award of $40,000.00 in general damages to Ms. Ockman for the partial disruption of the sutures that were used to repair the perineal laceration that she sustained during the birth of her child. Wal-Mart contends that an award of $40,000.00 is grossly excessive for the exacerbation of a soft tissue injury sustained during childbirth that resolved itself within three weeks. Because the purported disfigurement is barely noticeable, and then, only in the most intimate situations, Wal-Mart argues that the trial court abused its discretion in making such a high award.

In the assessment of damages in cases of offenses, quasi offenses, and quasi contracts, much discretion must be left to the trier of fact. La. Civ. Code art. 2324.1. The standard for appellate review of general damages is set forth in **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994), wherein the Louisiana Supreme Court stated that "the discretion vested in the trier of fact is 'great,' and even vast, so that an appellate court should rarely disturb an award of general damages." The appellate court's initial inquiry is whether the award for the particular injuries and their effects under the particular circumstances on the particular injured person is a clear abuse of the "much discretion" of the trier of fact. **Youn**, 623 So.2d at 1260. The role of the appellate court in reviewing general damage awards is not to decide what it considers to be an

appropriate award, but rather to review the exercise of discretion by the trier of fact. **Millican v. Ponds**, 99-1052, p. 6 (La. App. 1 Cir. 6/23/00), 762 So.2d 1188, 1192.

Based upon our review of the evidence before us, we find no abuse of discretion by the trial court in the damages awarded. While the damage awards in this case may be on the high side, they are not so high as to constitute an abuse of the trial court's vast discretion. Given the "particular injuries and their effects under the particular circumstances" on Ms. Ockman, the trial court's damage award is not beyond that which a reasonable trier of fact could assess. See **Youn**, 623 So.2d at 1260. Wal-Mart's assignment of error number 5 is similarly without merit.

For the above and foregoing reasons, we affirm the judgment of the trial court and reject Ms. Ockman's request for an increase in damages put forth in her answer to the appeal. All costs associated with this appeal shall be assessed against defendant-appellant, Wal-Mart Louisiana, L.L.C. We issue this memorandum opinion in accordance with Uniform Rules -- Courts of Appeal, Rule 2-16.1B.

AFFIRMED.

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McCLENDON, J., dissents and assigns reasons.

Plaintiff failed to establish that the condition existed for some time prior to her fall, as required by LSA-9:800.6. Absent some showing of this temporal element, the statute does not allow for the inference of constructive notice. See **White v. Wal-Mart Stores, Inc.**, 97-0393 (La. 9/9/97), 699 So.2d 1081, 1084. Therefore, I respectfully dissent.