NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0527

MINDY M. WEILEY

VERSUS

WAL-MART STORE, INC., ET AL.

Judgment Rendered: APR 2 4 2015

* * * * *

On Appeal from the 23rd Judicial District Court
Parish of Ascension, State of Louisiana
Docket No. 103,397, Division "A"
Honorable Ralph Tureau, Judge Presiding

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Charles S. Long
Donaldsonville, LA

Attorney for
Plaintiff-Appellant
Mindy M. Weiley

Sidney J. Hardy
Lynda A. Tafaro
New Orleans, LA

Attorneys for
Defendant-Appellee
Wal-Mart Store, Inc., et al.

BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

HOLDRIDGE, J.

Mindy Weiley slipped and fell while walking inside a Wal-Mart store in Gonzales, Louisiana. She later filed a petition against Wal-Mart, Louisiana, LLC (Wal-Mart), seeking damages. After a jury trial, the district court rendered a judgment in accordance with the jury verdict, dismissing Ms. Weiley's case. In this appeal, Ms. Weiley seeks to reversal of the judgment in favor of Wal-Mart. For the following reasons, we affirm the judgment.

BACKGROUND

According to Ms. Weiley's petition, on April 13, 2011, she slipped and fell in a puddle of water in the Wal-Mart store and sustained various injuries, including those to her back, neck, and left knee. Ms. Weiley alleged that the injuries she suffered were due to negligence by Wal-Mart, including its failure to keep its premises clear of debris, failure to clean up debris, and failure to review its video surveillance of the area and then clean up liquid that had leaked onto the floor.

Ms. Weiley's claim was tried to a jury, and at the conclusion of the trial, the jury filled out a jury verdict form with its unanimous findings. That verdict found Wal-Mart negligent in connection with the condition of its floor at the location in question. However, the form showed that the jury further found that Wal-Mart's negligence was not a cause of injury to Ms. Weiley. Thus, the jury awarded no damages to Ms. Weiley. The district court signed a judgment in accordance with the jury verdict on August 23, 2013, and dismissed Ms. Weiley's petition with prejudice. Subsequently, Ms. Weiley filed a motion for a judgment notwithstanding the verdict or for a new trial, but the district court denied that motion. This devolutive appeal followed, and Ms. Weiley asserts two assignments of error:

1. The jury's verdict denying any damage award to Mrs. Weiley should be reversed as manifestly erroneous.

2. The jury's verdict finding liability but denying any damage award to Mrs. Weiley should be reversed as so internally inconsistent as to constitute an abuse of discretion.

APPLICABLE LAW

Liability of Owner/Custodian/Merchant for Negligence

The general rule is that the owner or custodian of property has a duty to keep the property in a reasonably safe condition. The owner or custodian must discover any unreasonably dangerous condition on the premises and either correct the condition or warn potential victims of its existence. Henry v. NOHSC Houma No. 1, L.L.C., 11-0738 (La. App. 1st Cir. 6/28/12), 97 So.3d 470, 473, writ denied, 12-1761 (La. 11/2/12), 99 So.3d 677. This duty is the same under theories of negligence or strict liability. Under either theory, the plaintiff has the burden of proving that: (1) the property that caused the damage was in the "custody" of the defendant; (2) the property had a condition that created an unreasonable risk of harm to persons on the premises; (3) the unreasonably dangerous condition was a cause in fact of the resulting injury; and (4) defendant had actual or constructive knowledge of the risk. Id. at 473-74; see also LSA–C.C. arts. 2315, 2317, and 2317.1.

Concerning the burden of proof in claims against "merchants," the Claims Against Merchants statute, LSA–R.S. 9:2800.6, provides, in pertinent part:

> A. A merchant owes a duty to persons who use his premises to exercise reasonable care to keep his aisles, passageways, and floors in a reasonably safe condition. This duty includes a reasonable effort to keep the premises free of any hazardous conditions which reasonably might give rise to damage.
>
> B. In a negligence claim brought against a merchant by a person lawfully on the merchant's premises for damages as a result of an injury, death, or loss sustained because of a fall due to a condition existing in or on a merchant's premises, the claimant shall have the burden of proving, in addition to all other elements of his cause of action, all of the following:

(1) The condition presented an unreasonable risk of harm to the claimant and that risk of harm was reasonably foreseeable.

(2) The merchant either created or had actual or constructive notice of the condition [that] caused the damage, prior to the occurrence.

(3) The merchant failed to exercise reasonable care. In determining reasonable care, the absence of a written or verbal uniform cleanup or safety procedure is insufficient, alone, to prove failure to exercise reasonable care.

Standard of Review

The trier of fact's findings under the Claims Against Merchants statute are subject to the manifest error standard of review. Williams v. State Farm Ins. Co., 47,348 (La. App. 2nd Cir. 7/25/12), 103 So.3d 433, 436. Thus, 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. Stobart v. State through Dept. of Transp. and Development, 617 So.2d 880, 882 (La. 1993). If the jury's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even if convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Id. at 882-83. Moreover, in applying this standard, the trier of fact's credibility determinations are entitled to great deference. In re Succession of Wagner, 08-0212 (La. App. 1st Cir. 8/8/08), 993 So.2d 709, 717. Where two permissible views of the evidence exist, the fact finder's choice between them can virtually never be manifestly erroneous or clearly wrong. Rosell v. ESCO, 549 So.2d 840, 844 (La. 1989).

ANALYSIS

Assignment of Error Number One

Ms. Weiley argues in her first assignment of error that the jury verdict was manifestly erroneous in failing to award her any damages. The jury rejected Ms. Weiley's claim because it found that Ms. Weiley failed to prove Wal-Mart's negligence caused her any injury. Our examination of the record shows that the

main point contested by the two sides at trial was whether Ms. Weiley sustained an injury from slipping and falling on the floor at Wal-Mart. That issue was vigorously disputed by the parties. Ms. Weiley contended she had suffered multiple injuries requiring in excess of two years of medical treatment. Wal-Mart contended that, despite Ms. Weiley's long course of continuing medical treatment, she had actually suffered no injury at Wal-Mart. Both sides elicited testimony and adduced substantial evidence in support of their respective positions. The following representative examples illustrate that.

Dr. Thomas Perkins

One of the doctors Ms. Weiley consulted after her accident was a family practice physician, Dr. Thomas Perkins. Called to testify by Ms. Weiley, Dr. Perkins testified that the plaintiff had come to see him on April 15, 2011, because she said she had fallen at Wal-Mart a few days earlier, had hurt her left leg and knee, and had gone to the emergency room at the time. Dr. Perkins testified that he prescribed pain medication for Ms. Weiley and referred her to an orthopedic specialist.

During cross examination, counsel for Wal-Mart asked Dr. Perkins about a medical record from the Baton Rouge General Medical Center of June 29, 2010, which referred to Ms. Weiley's having chronic problems in both knees and which she reported having for two years after a fall. Wal-Mart's counsel asked Dr. Perkins if Ms. Weiley had told him that her knee problems were chronic, and Dr. Perkins stated that she had not.

Later, as counsel for Wal-Mart continued his cross-examination of Dr. Perkins, he questioned him about the absence of a complaint by Ms. Weiley about her ankle or her back. The following colloquy took place, which starts with a question about the medical record of Ms. Weiley's visit to the emergency room on

the night of the accident:

Q. Now, they asked her when she came in where she was hurt, I believe.
A. Yes.
Q. And she said – I don't see anything about ankle or back for that matter in here. And take your time and look at it. Do you?
A. No.
Q. And it says – well, let me show you the next page – go to her exam. Muscular exam – and this is the left lower extremity. They examined the whole leg, right?
A. Yes.
Q. No significant abnormality.
A. That's correct.
Q. Lower leg – left lower extremity, that's the leg, with no objective evidence of trauma.
A. That's correct. No bruising.
Q. I don't see a swelling noted in here, do you?
A. No.
Q. Edema is redness, none of that.
A. No.
Q. Looks like a pretty much totally normal exam.
A. Right.
Q. And it says pain out of proportion to clinical exam.
A. Yeah, in the other, patient said that she was crying, very emotional. When they say that phrase they mean they can't really find an injury from examination but that she appears to be very tender.
Q. If she had severely sprained her ankle or her knee, for example, you would probably expect some swelling, wouldn't you?
A. Yes.
Q. A sprained ankle hurts real bad, [doesn't] it?
A. It does.
Q. And you know it pretty soon after you turn your ankle, don't you?
A. Yes.
Q. And it really hurts.
A. It does.
Q. And you saw Ms. Weiley two more times I believe. You saw her on April 15, correct?
A. Yes.
Q. She had complaints of left knee and back on that visit, right?
A. Yes.
Q. No ankle complaints?
A. Let me see. April 15th, two days after the accident, her pain was – her complaint was about her left knee pain.
Q. Okay. [April 20] you referred her for an MRI. That was for the knee only, right?
A. Yes.
Q. In fact, she never complained to you of an ankle injury in this accident, did she?
A. No.

Dr. Scott Pitre

The second physician Ms. Weiley called to testify was her orthopedist, Dr. Scott Pitre. On direct examination, Dr. Pitre stated that he had first seen Ms. Weiley on June 1, 2011, and continued to see her for treatment in his office every few weeks through the time of his testimony at trial, August 7, 2013. Dr. Pitre stated in response to Ms. Weiley's counsel's questions that he examined Ms. Weiley's lumbar spine, her left knee and her left ankle, and had x-rayed those three areas. He noted that the x-rays showed no fractures or abnormalities. Dr. Pitre further testified that Ms. Weiley gave him no indications that anything other than the accident at Wal-Mart would have caused her to be injured in these three areas. After being shown the Wal-Mart videotape of the incident, he agreed that it was more probable than not that the slip and fall at Wal-Mart could have hurt Ms. Weiley's back, left knee, and ankle. He also testified that his subsequent treatment of her for over two years was a result of the fall.

On cross-examination, Dr. Pitre was asked by Wal-Mart's counsel if Ms. Weiley had told him of a long history of chronic bilateral knee pain, off and on low back pain since 2006, and having received narcotic medications for that before the Wal-Mart incident. He responded that he did not remember Ms. Weiley telling him of those preexisting conditions. Then, Dr. Pitre had the following colloquy with counsel for Wal-Mart:

> Q. Assuming all that's true, that's something you would have liked to have known as her treating physician, wouldn't you?
> A. You know, it's always good to have more pieces to put together than not.
> Q. It's always helpful to have an honest picture of somebody's medical history, isn't it?
> A. Yes.
> . . . .
> Q. So what we've got then is she comes [to] see you on June 1st, we got a normal x-ray or a non-impressive x-ray of the ankle, a non-impressive [x-ray] of the knee, and we've got a normal MRI

scan of the left knee, correct?
A. Correct.
Q. And the MRI scans are very sophisticated diagnostic tool[s] which [reveal] all kinds of things that an x-ray cannot reveal?
A. Correct.
. . . .
Q. You would expect a normal sprain, typical sprain to heal within weeks or perhaps months, fair statement?
A. Usually it's months, yeah.
Q. Okay, 3-4-5.
A. Everybody's different. It depends on what area it is.

Wal-Mart's counsel continued by asking Dr. Pitre specifically about the issue of a sprained ankle:

Q. And what happens is first it hurts like –
A. Yes.
Q. It hurts. It really hurts. And secondly, it swells up about like that. And then thirdly, it turns colors, correct?
A. Correct.
Q. And when you do it you know it right then, correct?
A. Correct.
Q. And that's what you would expect with an ankle, a significant ankle sprain or strain?
A. Correct.

After taking Dr. Pitre through other medical records showing no complaints of ankle injury for the period between the time of the accident and when Dr Pitre saw Ms. Weiley, Wal-Mart's counsel asked Dr. Pitre about that:

Q. I'll put it a different way. So you have a severely strained or sprained ankle and not to complain of it for six weeks would in fact be incompatible with a severely strained ankle, wouldn't it?
A. I would say it would not be the norm.
Q. You would expect it to hurt immediately, wouldn't you?
A. Yes.
Q. And you would expect it to swell up like this immediately, wouldn't you?
A. Yes.
Q. It didn't happen here at least according to the records, did it?
A. No.

Subsequently, on re-direct examination, Ms. Weiley's counsel asked Dr. Pitre a point raised on cross-examination about Ms. Weiley's not mentioning parts of her medical history. Ms. Weiley's counsel asked whether a patient would be expected to remember treatment for back pain from eight months earlier:

Next, Dr. Partington stated that he also had examined x-rays of Ms. Weiley's low back taken in June of 2010, before the accident. From Dr. Partington's review of those images, he concluded that Ms. Weiley had "some mild arthritis in the facet joints at the lower levels. That is kind of an important finding because it could be a cause for her to be having intermittent back pain." Wal-Mart's counsel then asked him about his review of x-rays of Ms. Weiley's low back taken after the Wal-Mart accident:

> A. I was able to confirm that there was arthritis in the facet joints at the lower three levels, but everything else looked normal. And it really hadn't changed, at all, in its appearance from the earlier set of x-rays we had. So my conclusion was there was no real change in the spine. She had some arthritic disease in the lower levels, but no disc herniation. Her discs spaces were normal and the bones were normal.
> Q. And what about the MRI scan?
> A. So we have an MRI done from Ascension Open MRI on January 19th, 2012. . . . So my conclusion was the findings we had seen on the plain x-rays were confirmed and that she had some mild arthritic disease involving the facet joints in her low back, but no focal disc herniation, spinal stenosis, nerve root compression, or focal abnormality to suggest a superimposed injury.

Then, on cross-examination, Dr. Partington had the following colloquy with counsel for Ms. Weiley:

> Q. Now, you are not giving an opinion as to whether or not Ms. Weiley was injured at Wal-Mart; are you?
> A. No. I am not. I am just saying I don't see any evidence of it on these studies.
> . . . .
> Q. But you are not suggesting that she could not have aggravated her arthritis by the slip at Wal-Mart; are you?
> A. No. I am not.
> Q. And, typically speaking, would a sprained ankle show up in an x-ray?
> A. Sometimes you see soft tissue swelling and joint effusion. But you can sprain your ankle and have normal x-rays.

Mindy Weiley

Also testifying at trial was Mindy Weiley herself. In response to questions from her counsel, she testified on direct examination that, when she had walked

into Wal-Mart, she did not have any pain in her low back, her left knee, or her left ankle. She also testified that, as of the time of the trial, she hurt in "[m]y lower back and it comes into my butt, and then my ankle, and every once in a while my knee." She further stated that, at the time of trial, she was in constant pain and agreed she could not envision a day in the future when the pain would not be with her.

On cross-examination, counsel for Wal-Mart directed Ms. Weiley's attention to the deposition at which she had testified before the trial. Asked if she recalled her deposition testimony about medical treatment for back pain before the Wal-Mart accident, she said she vaguely remembered that. Counsel for Wal-Mart then drew her attention to her testimony on that topic in the deposition transcript in a line of questioning designed to impeach her testimony:

> Q. Yeah, had you ever received medical treatment for back pain before this accident? Answer: No, sir. Question: Had you ever had significant problems with back pain before this accident? Answer: No, sir. Did I read that correctly, Ms. Weiley?
> A. Yes, sir.
> Q. Now those answers were not correct; they weren't true, were they?
> A. Well, to my understanding when you asked me those questions it was meaning like the present time.
> A. Well, let me read it over slowly to make sure I didn't trick you or anything. Had you ever received medical treatment for back pain before this accident? Answer: No, sir. So you just misunderstood the question?
> A. Yes, sir.
> Q. I think I asked you about prior knee pain too, do you remember? I had asked you: Had you ever [received] medical treatment for your knees before the Wal-Mart accident? You remember when I asked that?
> A. Yes, sir.
> Q. And I think if – do you remember what you told me?
> A. No, sir.
> Q. I think that's on [page] 36. Do you remember what you told me when I asked you had you ever been treated by a doctor for knee pain before the Wal-Mart accident?
> A. I told you no, sir.
> Q. I believe what it said was: "What about knee pain, you ever had medical treatment for knee pain, either knee before this? Answer: No, sir." That answer wasn't true either, was it, Ms. Weiley?

A. I didn't understand how you was asking me.

Subsequently, Ms. Weiley's counsel also questioned her on the topic of her deposition testimony, and the following colloquy took place:

> Q. Do you have your deposition?
> A. Yes, sir.
> Q. Later on in the deposition the defense counsel asked you: Let's talk about your medical history over the last five years. Over the last five years what doctors have you seen other than the ones you told me for this accident, what kind of hospitalizations have you undergone? Did he ask you that type of question?
> A. Yes, sir.
> Q. Now on that type of question what were your thoughts?
> A. I told him my history.
> Q. Your history, right?
> A. Yes, sir.

Competing Narratives

The illustrations of the testimony adduced at trial show that the parties offered the jury two competing narratives: one, that Ms. Weiley suffered multiple injuries from her slip and fall at Wal-Mart; the second, that Ms. Weiley suffered no injuries from her slip and fall at Wal-Mart. Further, credibility was a bone of contention during the trial. Placed at issue was the credibility of Ms. Weiley's testimony. In addition, Ms. Weiley's credibility had the ability to have a corresponding effect on the credibility of her treating physicians' opinions. The weight accorded an expert's opinion depends upon whether the record substantiates the facts upon which that opinion is based. See Robin v. Mississippi Fast Freight Co. Inc., 97-2556 (La. App. 1st Cir. 12/28/98), 744 So.2d 42, 46, writ denied, 99-0688 (La. 4/30/99), 741 So.2d 16. Part of what a treating physician relies upon in forming a professional opinion is the information provided by the patient. Thus, a trier of fact may consider the credibility of the patient when deciding how much to credit the testimony of that patient's treating physicians.

Under the manifest error standard, if there are two permissible views of the evidence, it is not reversible error for the trier of fact to reach either of those two

views. Rosell, 549 So.2d at 844. The record shows the parties presented to the jury two starkly different narratives. Ms. Weiley contended that she suffered multiple injuries from her slip and fall at Wal-Mart; while Wal-Mart contended that Ms. Weiley suffered no injury from her slip and fall at its store. The verdict shows the jury chose to believe the Wal-Mart narrative. In his closing argument, counsel for Wal-Mart had urged the jury to find that Wal-Mart was not the cause of injury to Ms. Weiley, contending "[t]he evidence shows she was not injured." Although the jury verdict form did not ask the jury to explain how it reached its conclusions, the verdict suggests that the jury was persuaded that the evidence supported the argument by Wal-Mart's counsel: that Wal-Mart's negligence was not a cause of injury to Ms. Weiley because Ms. Weiley had not suffered an injury at Wal-Mart.

Our review of the record shows that it contains evidence to support either of the competing narratives; however, the jury chose to believe the narrative that Ms. Weiley did not suffer injury from the Wal-Mart accident. When there is a reasonable basis for the jury's verdict when the record is viewed in its entirety, an appeal court may not substitute its own conclusions for that of the jury. See Hulsey v. Sears, Roebuck and Co., 96–2704 (La. App. 1st Cir. 12/29/97), 705 So.2d 1173, 1176–77. In addition, when credibility is part of the picture, and the testimony of witnesses supporting the prevailing party is not implausible or internally inconsistent, the trier of fact's conclusion can virtually never be manifestly erroneous or clearly wrong. See Rosell, 549 So.2d at 844-45. As credibility was an element of the trial in the present case, and as the testimony that supported Wal-Mart's version of events was neither implausible nor inherently inconsistent, Ms. Weiley's first assignment of error lacks merit.

Assignment of Error Number Two

In her second assignment of error, Ms. Weiley argues that the jury's verdict was so internally inconsistent as to constitute an abuse of discretion. Put more directly, Ms. Weiley argues that it was internally inconsistent for the jury to have found Wal-Mart negligent and to also have found Wal-Mart to not have been the cause of injury to her. Ms. Weiley contends that certain testimony she points to from the trial makes this internal inconsistency clear. However, this argument by Ms. Weiley misperceives this court's task in this appeal. Our task here is to review the record as a whole, not just selected parts. See Hulsey, 705 So.2d at 1176–77.

In addition, Ms. Weiley directs attention to two appellate decisions in support of her contention that when a jury verdict is internally inconsistent to the point of giving rise to the inference that the jury misunderstood the evidence or the law, then appellate court may reverse the jury's findings for abuse of discretion and award appropriate damages. We will examine the applicability of each decision.

The first case Ms. Weiley cites regarding an internally inconsistent jury verdict warranting reversal is Lewis v. State Farm Ins. Co., 41,527 (La. App. 2nd Cir. 12/27/06), 946 So.2d 708. Lewis stemmed from a two-vehicle, intersectional collision that occurred after one vehicle, driven by Leslie Brock, had run a stop sign. In the second vehicle were the driver, Carl Griffin, and a passenger, Arthur Lewis. Mr. Griffin and Mr. Lewis brought suit against Mr. Brock and his insurer, and also against the Coregis Insurance Company, the insurer that provided the uninsured-underinsured motorist coverage for the vehicle they were in. Mr. Brock's insurer settled with Mr. Griffin and Mr. Lewis, and they then proceeded to trial against Coregis. At trial, the jury found Mr. Brock 100% at fault, found that Messrs. Griffin and Lewis had suffered injuries from the accident, and found that

Coregis owed them specific damages related to those injuries as well as damages for failing to tender payment on their claims. Coregis appealed, arguing that the damages were excessive. Messrs. Griffin and Lewis answered, arguing that the jury award was inadequate. Id. at 715-16.

On appeal, the Second Circuit could not reconcile the specific damages that the jury had awarded the two injured men with the facts in the record, and found the damages internally inconsistent. The court reasoned as follows:

> Specifically, we find irreconcilable the jury verdict awarding special damages for past and future medical expenses (albeit not even equaling the stipulated medical expenses) and awarding general damages in the form of past mental anguish to Mr. Lewis and future mental anguish for Mr. Griffin. Further, the verdict reflects an unclear award for past lost wages to Mr. Lewis and awards an inordinate amount of damages to both plaintiffs for Coregis' alleged breach of its duty to tender. We find that the inconsistent awards constitute an abuse of discretion and legal error.

Id. at 716.

An example of what made the Lewis verdict confounding was that the jury awarded Mr. Lewis damages for past mental anguish, but nothing for future mental anguish. Id. at 715. At the same time, the jury awarded Mr. Griffin nothing for past mental anguish, but did award him damages for future mental anguish. Id. Such anomalies make it understandable how an appellate court would find that jury verdict internally inconsistent. However, we simply do not find any such contradictions in the jury verdict in the case before us. In Lewis, there were two, similarly situated plaintiffs, and the damages the jury awarded to one plaintiff directly contradicted the damages it awarded to the other. There is no such problem here. In the present appeal, there was but a single plaintiff, and the jury here never even reached the question of how much in damages should be awarded. Thus, Lewis does not bear upon the appeal before us.

Ms. Weiley also cites a Third Circuit decision, Corbello v. Berken, 10-710

(La. App. 3rd Cir. 12/8/10), 52 So.3d 1060. In that case, the plaintiff was injured when her vehicle was hit by a farm implement being towed by a truck. The jury found the driver of the truck pulling the farm implement negligent. While it awarded the injured driver damages for past medical expenses and past lost wages, it declined to award general damages. On appeal, the Third Circuit found the jury's award of damages for the plaintiff's past medical expenses and for her lost wages due to inability to return to work, combined with the testimony of the plaintiff's complaints of pain to her doctor, meant that that the jury had abused its discretion by failing to award general damages. Id. at 1066. Thus, Corbello stands for the proposition that, when a jury awards damages for past medical expenses and past lost wages, and the plaintiff has complained to her treating physician of pain, then the jury's failure to also award damages for the plaintiff's general damages may constitute an abuse of discretion meriting reversal. However, the jury verdict in Corbello differs from the jury verdict here. The jury here found Ms. Weiley's case fatally deficient before ever reaching the question of damages. Thus, Corbello simply does not speak to the case before us.

In sum, we find nothing internally inconsistent about the jury's verdict. The parties did present conflicting evidence as to whether Ms. Weiley was injured from her slip at Wal-Mart. At that point, the jury had a duty to resolve that conflicting evidence. See Aetna Life and Cas. Co. v. Solloway, 25,462 (La. App. 2nd Cir. 1/1/9/94), 630 So.2d 1353, 1358, writ denied, 637 So.2d 162 (La. 1994). The jury resolved the conflicting evidence in a straightforward, non-contradictory way: it found Wal-Mart negligent but also found that Wal-Mart's negligence was not the legal cause of injury to Ms. Weiley.

Accordingly, we find Ms. Weiley has failed to demonstrate that the jury verdict was internally inconsistent.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court rendered in accordance with the jury's verdict, dismissing the petition of Mindy Weiley with prejudice. All costs of this appeal are cast to Mindy Weiley.

AFFIRMED.