NOT DESIGNATED FOR PUBLICATION

JAMES E. GRINSTAFF	*	**NO. 2003-CA-0527**
VERSUS	*	**COURT OF APPEAL**
WALGREENS LOUISIANA CO., INC., WALGREENS HEALTHCARE PLUS, INC. AND KEMPER CASUALTY INSURANCE COMPANIES	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-4192, DIVISION "A"
HONORABLE CAROLYN GILL-JEFFERSON, JUDGE
* * * * * *
JUDGE MAX N. TOBIAS, JR.
* * * * * *

(COURT COMPOSED OF JUDGE MICHAEL E. KIRBY, JUDGE MAX N. TOBIAS, JR., AND JUDGE LEON A. CANNIZZARO, JR.)

ROBERT J. CALUDA
CALUDA & REBENNACK
3232 EDENBORN AVE.
METAIRIE, LA 70003
COUNSEL FOR PLAINTIFF/APPELLANT

JACK E. TRUITT
THE TRUITT LAW FIRM
251 HIGHWAY 21
MADISONVILLE, LA 70447

COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED.

In this slip and fall case, the plaintiff, James E. Grinstaff ("Grinstaff"), appeals from a judgment in favor of the defendant, Walgreen Louisiana Company, Inc. ("Walgreens"). For the following reasons, we affirm the judgment entered below.

Grinstaff filed suit against Walgreens alleging that on 17 August 2000 he slipped and fell on clear liquid in an aisle of the Walgreens store located at 6201 Elysian Fields Avenue in New Orleans. The case was tried before a jury, which found that Walgreens had exercised reasonable care in the maintenance of its store. The trial court entered judgment in favor of Walgreens on 21 November 2002. On 16 January 2003, the trial court denied motions for judgment notwithstanding the verdict ("JNOV") and new trial filed by Grinstaff.

On appeal, Grinstaff assigns three errors for review. First, he argues that the trial court erred in framing the jury interrogatory form, specifically

interrogatory number 4. Second, he contends that the jury committed manifest error when it found that Walgreens exercised reasonable care on the date of the accident. Finally, he argues that the trial court erred when it denied the motions for JNOV and new trial.

The record reveals that Grinstaff entered Walgreens at approximately 11:30 a.m. on 17 August 2000 to purchase prescription medication for his father. About five minutes earlier, a delivery of milk had been made to Walgreens; the assistant manager, Russell Avery ("Avery") had checked in the delivery and did not observe any water on the floor at that time. While walking down an aisle in the store, Grinstaff claims that he fell in a clear liquid on the floor. Grinstaff did not report the accident at that time, but did so later that day by telephone.

Soon thereafter, Avery saw a four-inch area of water on the floor and speculated that the milk deliveryman, who had just passed that area on his way to the coolers, may have dripped it. Avery testified that when he inspected the liquid, he noticed that it was not dirty or disturbed by track marks or footprints.

Avery further testified that at the time of the accident, he was the

acting store manager. He stated that it was the milk deliveryman's responsibility to insure that no leaks or spills were left on the floor. However, Avery also stated that Walgreens had a general policy requiring all employees to inspect the floors and, in this particular instance, for him to follow behind the deliveryman to make sure no spills were present. Avery acknowledged the usual milk delivery required several trips by the deliveryman and that the delivery process often resulted in a small accumulation of water on the floor through condensation, particularly in the summer.

The first assignment of error concerns the jury interrogatory form utilized by the trial court. In particular, Grinstaff objected to Interrogatory number 4, which read:

> 4. Did the defendants act in a reasonably prudent manner to keep its premises free from any hazardous condition on or about August 17, 2000?
>
> Yes_____ No_____
>
> If your answer to Question No. 4 was "No," on to Question No. 5. If your answer to Question No. 4 was "Yes," date and sign this form and return to the courtroom.

Grinstaff argues that this interrogatory was confusing to the jury because the jury found by answering the first three jury interrogatories that an accident occurred on the date in question, a hazardous substance was on the floor, and Walgreens knew of the hazardous condition. Grinstaff contends that the trial court utilized prior (old) law when phrasing this interrogatory and that the response would have been different if the interrogatory had been properly drafted.

In response, Walgreens maintains that nothing was inappropriate about the way the trial court drafted the verdict form and that each interrogatory corresponded to an element of a plaintiff's burden of proof in a slip and fall accident on the premises of a merchant.

La. R. S. 9:2800.6, as revised in 1990 and in effect at the time of the instant accident, provides in relevant part:

> 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, that:
>
> (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 which caused the damage, prior to the occurrence; and
>
> (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.

In *White v. Wal-Mart Stores, Inc.*, 97-0393 (La. 9/9/97), 699 So. 2d 1081, the Supreme Court held:

> This statute is clear and unambiguous. The statute uses the mandatory "shall." Thus, in addition to all other elements of his cause of action, a claimant must also prove each of the enumerated requirements of Section (B). The conjunctive "and" follows Section (B)(2). **Thus, Sections (B)(1), (B)(2), and (B)(3) are all mandatory.**

Id. at p. 4, 699 So. 2d at 1984 (emphasis added).

Thus, we find no error in the jury interrogatory form at issue. Grinstaff was required to prove each element of La. R. S. 9:2800.6 in order to prevail. The fact that the trial court used wording from the pre-1990 statute is of no moment. Within the guidelines of La. C. C. P. art. 1812, the trial court is given wide discretion in framing questions to be posed as

special jury interrogatories, and absent some abuse of that discretion, this court will not set aside those determinations. *Grayson v. R. B. Ammon & Assoc. Inc.*, 99-2597, p. 11 (La. App. 1 Cir. 11/3/00), 778 So. 2d 1, 11, *writs denied,* 2000-3270, 2000-3311 (La. 1/26/01), 782 So. 2d 1026, 1027; *Citgo Petroleum Corporation v. Yeargin*, Inc., 95-1574, p. 31 (La. App. 3 Cir. 2/19/97), 690 So.2d 154, 172, *writs denied*, 97-1223, 97-1245 (La. 9/19/97), 701 So.2d 169, 170; *Tramontin v. Glass*, 95-744, pp. 11-12 (La. App. 5 Cir. 1/30/96), 668 So.2d 1252, 1258. We find no abuse of discretion and this assignment of error is without merit.

Grinstaff next argues that the jury was clearly wrong in its factual finding that Walgreens acted reasonably on the date of the accident. We review this finding under the clearly wrong/manifest error standard. *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989).

Pursuant to La. R. S. 9:2800.6(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.

"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." La. R. S. 9:2800.6(B)(3). In the case at bar, Walgreens had a verbal safety procedure, which was heard and considered by the jury.

In addition, Avery testified that he walked the area of the accident about five minutes before it occurred. He was on his way to meet the deliveryman and sign in the milk delivery at the coolers, just adjacent to the camera counter, when the accident happened. Avery testified that he inspected the floor and found it clean as he walked through the area.

Obviously, the jury believed Avery's testimony on this issue. In addition, the jury obviously concluded from the evidence presented at trial that Walgreens' employees conducted regular and periodic inspections that were reasonable under the circumstances. Where testimony conflicts, reasonable inferences of fact should not be disturbed, even when the appellate court may feel its own evaluations and inferences are as reasonable as the trial court's. *Rosell, supra*, 549 So.2d 840. "Where there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong." *Id.* at 844.

Based on the evidence in the record, we cannot say that the jury was clearly wrong or manifestly erroneous. Consequently, this assignment of error is without merit.

Finally, Grinstaff argues that the trial court erred in denying the motions for JNOV and new trial, contending that the jury's verdict was so inconsistent as to require action by the trial court.

La. C. C. P. art. 1811 provides for and controls the use of JNOV. A JNOV may be granted on the issue of liability or on the issue of damages or on both issues. La. C. C. P. art. 1811(F). Although the codal article does not specify the grounds upon which the trial court may grant a JNOV, the Louisiana Supreme Court has stated that a JNOV is warranted when the facts and inferences point so strongly and overwhelmingly in favor of one party that the trial court believes that reasonable persons could not arrive at a contrary verdict from the evidence presented. The motion should be denied if there is evidence opposed to the motion, which is of such quality and weight that reasonable and fair-minded persons in the exercise of impartial judgment might reach different conclusions. *Joseph v. Broussard Rice Mill, Inc.*, 00-0628, pp. 4-5 (La. 10/30/00), 772 So. 2d 94, 99.

Our review of a trial court's ruling on a motion for new trial is also limited. An appellate court may not disturb the trial court's factual findings unless the record clearly establishes that those findings are manifestly erroneous or clearly wrong. *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978).

In this case, we do not find that the trial court abused its discretion in denying the motions for JNOV and new trial. The evidence in the record clearly support's the jury's determination of the facts. Therefore, their findings are reasonable. This assignment of error is without merit.

Based on the foregoing, we affirm the judgment below.

AFFIRMED.