

10/16/01 “See News Release for any concurrences and/or dissents.”

**SUPREME COURT OF LOUISIANA**

**NO. 01-C-0299**

**GLADYS MARIE HUNTER, ET VIR.**

**V.**

**WAL-MART SUPERCENTER OF NATCHITOCHES**

KNOLL, Justice, dissenting.

Where the trial court is convinced that, under the evidence, reasonable minds could not differ as to the amount of damages, it has the authority to grant the appropriate judgment notwithstanding the verdict. LA. CODE CIV. PROC. ANN. art. 1811(F). I find that the trial judge properly granted plaintiffs’ motion for JNOV. Therefore I would affirm the judgment of the court of appeal.

The appellate court’s review of the evidence showed that the trial court properly found that the jury’s award of damages was abusively low and that the evidence pointed so strongly in favor of the plaintiff that the jury was unreasonable in reaching its quantum award. Even though Mrs. Hunter may have had pre-existing spondylosis and bulging discs, all witnesses testified that Mrs. Hunter was pain free and asymptomatic prior to the accident. Accordingly, it is well settled that Mrs. Hunter may recover all medical expenses she incurred as a result of her injury. It was simply unreasonable for the jury to conclude that Mrs. Hunter was injured as a result of the accident at Wal-Mart and fail to award all of the medical expenses she incurred as a result of that accident.

Fundamental to the jury’s unreasonably low quantum award was its misapprehension that Mrs. Hunter’s injuries were not permanent. In stark contrast to that appreciation, the appellate court reviewed record testimony that showed that Mrs.

Hunter's foot is permanently swollen, that she often has to depend upon a cane to walk, and that she suffers constant pain from the foot up into the leg, hip and back area. Based upon these findings, I concur in the trial judge's decision to raise the award for pain and suffering from \$15,000 to \$50,000, to award \$20,000 for Mrs. Hunter's embarrassment and humiliation (the jury awarded none), and to award \$40,000 for the permanent injuries she received (the jury awarded none).

I likewise find that the jury unreasonably determined not to make an award to Mrs. Hunter's husband for loss of consortium. The appellate court's opinion is replete with reference to evidence that the Wal-Mart accident significantly changed the close relationship which formerly existed between Mr. and Mrs. Hunter. Mr. Hunter has had to assume countless household tasks, they are no longer able to participate in activities "as a team," and their romantic life has been negatively impacted. Despite this clear evidence, the jury awarded nothing for Mr. Hunter's loss of consortium. Based upon this appreciation of the facts, I find that the appellate court properly determined the trial judge awarded \$20,000 for this item of damages that the jury unreasonably excluded.

For these reasons, I find that this Court improperly reverses a decision of the trial judge which corrects an unreasonable determination of the jury. Accordingly, I respectfully dissent from the decision of this Court. Therefore, I find that the judgments of the trial judge and the appellate court should be affirmed.