

IN THE COURT OF APPEALS OF IOWA

No. 6-328 / 95-1367

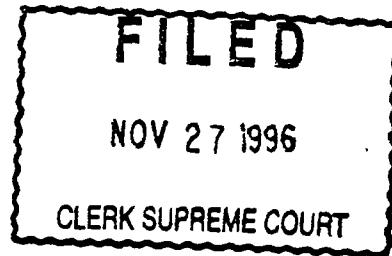
**MARIA WALTERS, KIRBY WALTERS and  
ANDREA WALTERS, A Minor, by Maria Walters,  
Her Mother and Next Friend,**

Plaintiffs-Appellees,

**vs.**

**WAL-MART STORES, INC.,**

Defendant-Appellant.



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Appeal from the Iowa District Court for Dickinson County, John P. Duffy (trial)  
and Joseph J. Straub (motion for new trial)., Judges.

Wal-Mart challenges the rulings denying its motions for directed verdict and  
new trial. **AFFIRMED.**

Fred L. Morris and Joseph M. Barron of Peddicord, Wharton, Thune & Spencer,  
P.C., Des Moines, for appellant.

Donald J. Hemphill of the Hemphill Law Office, Spencer, for appellees.

Heard by Cady, P.J., and Huitink and Streit, JJ.

**STREIT, J.**

Defendant challenges the trial court's finding sufficient evidence to support Plaintiff's arthritic condition was causally related to her slip and fall in Defendant's store. We affirm.

Maria Walters slipped and fell in the bathroom of the Storm Lake Wal-Mart store and fractured her left wrist. Despite the use of a splint and other treatment she continued to experience discomfort. The pain extended into her left forearm and her shoulder began to hurt. She visited Mayo Clinic in Rochester, Minnesota, where it was discovered she had a nondisplaced scaphoid fracture of the left wrist and it was placed in a cast.

Maria worked as a nurse. She experienced additional pain in her extremities including both shoulders, her knees, and her feet while at work. Her orthopedist referred her to a rheumatologist who opined that Maria was suffering from the early stages of rheumatoid arthritis. Several months later Maria's employment was terminated due to her physical condition and she has not worked since that time due to her condition.

Maria underwent a carpal tunnel release, a trigger finger release and a synovectomy of her left index finger to relieve some of the pain and difficulties she was having with her left hand and wrist. She also had surgery on her right shoulder. Her orthopedist opined the inflammatory arthritis she was experiencing in her right shoulder

may have been aggravated by Maria favoring her left hand and arm. Her arthritic condition disabled Maria to the extent that she was unable to work or perform many daily activities. Additionally, she suffered from depression associated with her continued pain, medical procedures and lack of complete function of her extremities.

Maria, her husband, and her daughter brought suit against Wal-Mart. She alleged that her current arthritic condition and resulting depression were caused by the fall in Wal-Mart's store. The jury found in Maria's favor awarding \$131,803.19 for past and future medical expenses, past lost earnings, past loss of function of the body and past physical pain and suffering.

Defendant appeals. It claims the district court erred in denying its motion for directed verdict and new trial due to lack of evidence of a causal connection between Plaintiff's original injury and her arthritis. It also claims the court erred in not finding the jury's damage award was excessive.

***I. Directed Verdict.*** Wal-Mart claims the trial court erred in refusing to direct a verdict because no medical expert could testify that there was a probability there was a causal relationship between Maria's arthritic condition and her fall. Our review of the court's ruling is based on whether substantial evidence exists to support each element of a plaintiff's claim. *See Stover v. Lakeland Square Owners Ass'n*, 434 N.W.2d 866, 873 (Iowa 1989).

Substantial evidence is that which a "reasonable mind would accept as adequate to reach a conclusion." Where reasonable minds could differ

on an issue, directed verdict is improper and the case must go to the jury. The trial court must consider the evidence in a light most favorable to the nonmoving party. On appeal we consider the evidence in a way most favorable to upholding the verdict.

*Baumler v. Hemesath*, 534 N.W.2d 650, 653 (citing *Stover*, 434 N.W.2d at 873).

The trial court found that a factual issue had been developed which should be submitted to the jury. Although Maria may have developed rheumatoid arthritis in her later years, there was lay testimony at trial that indicated she had no such arthritic condition prior to the fall at Wal-Mart. Maria's orthopedist stated her shoulder condition may have been aggravated by Maria favoring her left hand and arm. Her rheumatologist stated her fall may have contributed to the initiation of her arthritis.

An expert may express his opinion either as to the "possibility, probability, or actuality" of causation. *Winter v. Honeggers' & Co.*, 215 N.W.2d 316, 321 (Iowa 1974). Evidence indicating a probability or likelihood of the causal connection is necessary to generate a jury issue. *Bradshaw v. Iowa Methodist Hospital*, 251 Iowa 375, 379-80, 101 N.W.2d 167, 170 (1960). However, this "probability" may be inferred by combining an expert's "possibility" testimony with nonexpert testimony that the described condition of which complaint is made did not exist before the occurrence of those facts alleged to be the cause thereof. *Winter*, 215 N.W.2d at 323.

The Iowa Supreme Court has addressed a similar issue in *Hutchison v. American Family Mutual Ins.*, 514 N.W.2d 882 (Iowa 1994). In *Hutchison*, the testimony of a non-board certified neuropsychologist who testified at trial to the causal relationship

of an automobile accident and head injury was challenged. *Id.* at 884. The Supreme Court stated:

We understand the concern that expert testimony regarding the causes of personal injury can fall ‘wholly in the realm of conjecture, speculation, and surmise.’ (citations omitted). Nevertheless, we agree with the *Daubert* court that the trial court in its discretion and the jury in its deliberation provide the most effective determination of the admissibility and weight of expert psychological testimony.

*Id.* at 888 (referring to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 125 L. Ed. 2d 469, 113 S. Ct. 2786 (1993)).

The weight and credibility of testimony are matters for the jury. *Becker v. D & E Distributing Co.*, 247 N.W.2d 727, 730 (Iowa 1976). Three months lapsed between Maria’s fall at Wal-Mart and development of arthritis in her wrist and then her left shoulder. In *Daubert*, Justice Blackman stated “[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditions and appropriate means of attacking shaky but admissible evidence.” *Id.* at 595 (citing *Rock v. Arkansas*, 483 U.S. 44, 61, 107 S. Ct. 2704, 2714, 97 L. Ed. 2d 37 (1987)). This case is an application of the familiar principle that a tort-feasor takes the person he injures as he finds him. *Id.* The jury found Maria’s arthritic condition was related to her fall at Defendant’s store. We affirm Plaintiff’s judgment.

**II. New Trial.** Wal-Mart next argues the trial court erred by failing to grant Defendant a new trial. Defendant urges reversal on two grounds. First Defendant claims as an alternative to its motion for directed verdict, there was insufficient

evidence to support any finding that Maria's arthritic condition was related to her fall. Second, Defendant claims the jury's verdict was excessive. We find no merit to either contention.

Our decision on the sufficiency of evidence is driven by our analysis above. We find the trial court did not abuse its discretion as a matter of law in refusing to grant a new trial based upon the sufficiency of evidence.

When reviewing verdicts for excessive damages, we view the evidence in a light most favorable to the plaintiff. *Olson v. Prosoco, Inc.*, 522 N.W.2d 284, 292 (Iowa 1994). We will not disturb a jury verdict for damages unless it is "flagrantly excessive or inadequate, so out of reason so as to shock the conscience, the result of passion or prejudice or lacking in evidentiary support." *Id.* (citing *Harsha v. State Sav. Bank*, 346 N.W.2d 791, 799 (Iowa 1984)). None of these factors are evident in this case.

Defendant complains a substantial portion of Plaintiff's past and future damages were associated with the rheumatoid arthritis and the verdict was not supported by the evidence such that the verdict was a result of passion and prejudice on the part of the jury. The jury found in Maria's favor awarding her \$30,525.19 for past medical expenses, \$17,064 future medical expenses, \$22,000 in past lost earnings, \$24,932 in past loss of function of the body, and \$39,282 for past physical pain and suffering.

Several factors may have influenced the jury to award the amount of damages. The most compelling factor is the jury believed Maria's arthritis and depression were

caused by the fall in Wal-Mart. Maria and other witnesses testified that she did not have problems with her extremities before her fall. Her doctors opined she would need future care for her rheumatoid arthritis. Post-accident ailments are proper areas of consideration for the jury. *McDonnell v. Chally*, 529 N.W.2d 611, 615 (Iowa App. 1994). We cannot find the trial court abused its discretion in denying the request for a new trial.

**AFFIRMED.**