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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

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Linda Unger, as personal representative of the Estate of
Marshall B. Unger, deceased

v.

Wal-Mart Stores East, L.P., Naomi Phillips, and Billy Odom

Appeal from Mobile Circuit Court
(CV-15-900099)

SELLERS, Justice.

Linda Unger, as personal representative of the estate of Marshall B. Unger ("Unger"), deceased, appeals from a summary judgment entered by the Mobile Circuit Court in favor of Wal-

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Mart Stores East, L.P., and its employees, Naomi Phillips--the store greeter--and Billy Odom--the store manager (hereinafter referred to collectively as "the Wal-Mart defendants"). We affirm.

On May 20, 2014, Unger, who was 77 years old, and his wife, Linda, visited a Wal-Mart discount store in Mobile. Because of Unger's physical limitations (Unger used a portable oxygen tank and a walking cane to assist with his balance), Linda dropped him off at the entrance of the store while she parked the car. Unger proceeded to the cart corral to retrieve a shopping cart. There were approximately 20 shopping carts available near the rear of the cart corral. However, because Unger had become winded, he chose to retrieve a cart near the front of the corral; the cart he selected was stuck to another cart. Unger placed his oxygen tank and walking cane in one of the shopping carts and proceeded to separate the two carts. When Unger ultimately separated the two shopping carts, he lost his balance and fell to the floor, allegedly suffering two fractured vertebrae in his thoracic spine. Several Wal-Mart employees went to Unger's assistance and offered to call an ambulance, but Unger told the employees

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that he did not require an ambulance. At the time of the incident, Wal-Mart had a standard operating procedure for greeters concerning the "prepping" or "staging" of shopping carts, which included pulling the carts free from the storage rows of the cart corral; removing trash from the carts; and lining up three or four carts in a row for easy access by customers.

In January 2015, Unger sued Wal-Mart Stores East, L.P., Billy Odom, and fictitiously named defendants alleging that, on the day he was injured, Phillips, the store greeter, had been negligent and/or wanton in failing to "stage a clean [shopping] cart for easy access in violation of Wal-Mart's policies"; that "the Wal-Mart employee collecting carts from outside the store overloaded the machine used for collecting carts creating an unsafe condition that consumers would have no knowledge of"; and that Wal-Mart had been negligent and/or wanton in failing to train and/or supervise its employees.

Unger died in April 2016, while his action was pending.¹ The trial court thereafter appointed Linda (hereinafter "the

¹The death certificate lists the causes of death as cardiopulmonary failure, congestive heart failure, atrial fibrillation, and chronic obstructive pulmonary disease.

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plaintiff") as the administrator ad litem of Unger's estate to pursue the claims against the Wal-Mart defendants.² The Wal-Mart defendants moved for a summary judgment pursuant to Rule 56, Ala. R. Civ. P. After considering the evidence, the trial court entered a summary judgment in favor of the Wal-Mart defendants. The plaintiff filed a postjudgment motion, which was denied. This appeal followed.

Standard of Review

"This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala.

²The plaintiff filed an amended complaint to add Naomi Phillips as a defendant and to add a claim alleging wrongful death, asserting that, when Unger entered the Wal-Mart discount store on May 20, 2014, he was in poor condition and that the injuries and pain associated with his fall proximately accelerated his death. The plaintiff does not argue on appeal that the trial court erred in entering a summary judgment in favor of the Wal-Mart defendants on the wrongful-death claim; accordingly, the plaintiff has abandoned on appeal any issue concerning that claim. See Employees of the Montgomery Cty. Sheriff's Dep't v. Marshall, 893 So. 2d 326, 331 (Ala. 2004) (noting that "[a] failure to argue a claim on appeal constitutes an abandonment of that claim by the appellant").

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2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce 'substantial evidence' as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12. '[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989)."

Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004).

Discussion

Initially, we note that the duty owed an injured person in a premises-liability case depends on the legal status of the person when the injury occurred, i.e., whether the person injured was a trespasser, a licensee, or an invitee. Galaxy Cable, Inc. v. Davis, 58 So. 3d 93 (Ala. 2010). It is undisputed that Unger was a business invitee of Wal-Mart Stores East, L.P., on the day he fell on its premises. See Ex parte Mountain Top Indoor Flea Mkt., Inc., 699 So. 2d 158, 161 (Ala. 1997) (noting that, "[i]n order to be considered an invitee, the plaintiff must have been on the premises for some

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purpose that materially or commercially benefited the owner or occupier of the premises'" (quoting Sisk v. Heil Co., 639 So. 2d 1363, 1365 (Ala. 1994)). The scope of the duty owed by an invitor to a business invitee is as follows:

"Alabama law is well-settled regarding the scope of the duty an invitor owes a business invitee. 'The owner of premises owes a duty to business invitees to use reasonable care and diligence to keep the premises in a safe condition, or, if the premises are in a dangerous condition, to give sufficient warning so that, by the use of ordinary care, the danger can be avoided.' Armstrong v. Georgia Marble Co., 575 So. 2d 1051, 1053 (Ala. 1991) We have said that a premises owner's duty to warn extends only to 'hidden defects and dangers that are known to [the premises owner], but that are unknown or hidden to the invitee.' Raspilair v. Bruno's Food Stores, Inc., 514 So. 2d 1022, 1024 (Ala. 1987)."

South Alabama Brick Co. v. Carwie, 214 So. 3d 1169, 1176 (Ala. 2016) (emphasis omitted). "Under Alabama law, the existence of a duty [in a premises-liability case] is a legal question to be determined by the court." Id. at 1175.

In support of their motion for a summary judgment, the Wal-Mart defendants argued that the plaintiff could not establish that Wal-Mart had a legal duty to provide Unger with a staged shopping cart on the day of the incident and that she could not establish that two shopping carts stuck together rise to the level of a hazard or a hidden defect of which Wal-

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Mart had a duty to warn. We agree. The plaintiff has not argued that there is anything inherently dangerous about two shopping carts being stuck together, nor has she argued that the two shopping carts Unger undertook to separate constituted a hidden defect of which Wal-Mart had a duty to warn. Rather, the plaintiff argues that Wal-Mart's scope of duty is defined by its standard operating procedure for staging carts and that Phillips violated that procedure by failing to provide Unger with a single, unattached staged shopping cart on the day of the incident.³ The plaintiff concedes, however, that she was unable to find any case in which an Alabama appellate court has addressed the issue whether a company's standard operating procedure can be used to define the scope of a duty owed by

³The plaintiff argues alternatively that Wal-Mart voluntarily assumed a duty to separate shopping carts in a safe manner. The plaintiff, however, advanced that argument for the first time in her postjudgment motion to alter, amend, or vacate the summary judgment. The trial court's order denying the postjudgment motion does not indicate that it considered the argument, and we will not presume that it did so. See Espinoza v. Rudolph, 46 So. 3d 403, 416 (Ala. 2010) (noting that an appellate court will not presume that a trial court considered the merits of an untimely argument presented for the first time in a postjudgment motion absent an indication that it did so). Accordingly, this Court will not consider the plaintiff's argument as a basis for reversing the summary judgment in favor of the Wal-Mart defendants.

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the company to a business invitee in a premises-liability case. Even assuming for the sake of argument that Wal-Mart's standard operating procedure for staging carts could define its scope of duty in this premises-liability case, there is simply no evidence indicating that Phillips violated such procedure. Phillips's job description as a greeter included ensuring good customer service; acknowledging all customers entering and leaving the store; and following company guidelines for "store cleanliness and safety standards, assisting customers with returns, special need requests, and stocking shopping carts and supplies correctly, efficiently, and safely." Phillips testified in her deposition that her primary job responsibility as a greeter was providing customer service, i.e., "we were to speak to every customer that [came] in. We were to acknowledge every customer that went out. If [a customer] had problems with [a shopping cart], we help." Phillips further testified in her deposition that, when Unger entered the store, she was talking to an elderly customer who needed assistance with an electric shopping cart. In fact, the video surveillance recording on the day of the incident demonstrated that, shortly before Unger arrived at the store,

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Phillips had removed four shopping carts from the cart corral for easy customer access. When Unger arrived at the store, however, those four carts had already been taken and, as Phillips explained, Phillips was busy talking to and/or assisting another customer at that time. Accordingly, Unger proceeded to the cart corral to retrieve a cart that, by his own admission, was stuck to another cart; Unger never requested assistance in separating the carts. Odom, the store manager on the day of the incident, testified in his deposition that a standard operating procedure is merely a guide on how to do something; that Wal-Mart's number one priority is customer service; and that, if a greeter is busy assisting a customer, that duty would take priority over a standard operating procedure like staging carts. Bobbie Smith, the store manager who succeeded Odom, testified in his deposition concerning the difference between a store policy and a standard operating procedure. Smith explained in his deposition that a store policy is straightforward--if an employee violates a store policy, there are repercussions. Smith explained that a standard operating procedure, on the other hand, is merely a guide "on how to do certain things."

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Smith further testified in his deposition that a greeter's primary responsibility is customer service and that, because a greeter has other responsibilities, the greeter cannot provide a shopping cart for every customer who enters the store; rather, a greeter's responsibility for staging shopping carts is merely a courtesy for customers at Wal-Mart stores. In other words, the evidence was undisputed that Wal-Mart's standard operating procedure for staging shopping carts was intended as only a procedural guideline for greeters; it did not create an affirmative duty on the part of a greeter to provide every customer entering the store with a staged shopping cart.

The plaintiff also alleges that the Wal-Mart employee collecting carts from outside the store overloaded the machine used for collecting carts, creating an unsafe condition by pushing the carts so tightly together that they became stuck. The plaintiff states that the maximum "safe" number of shopping carts to be placed on the machine collecting the carts from outside the store is 20 and that, when Phillips was asked if she had ever seen a machine loaded with over 20 carts, she responded "[m]aybe 25, but, you know." This

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testimony by Phillips, however, is merely speculation. The plaintiff offered no evidence concerning the manner in which shopping carts from outside the store are to be collected or are actually collected, nor did the plaintiff identify the name of the person who she alleged collected the carts on the day of the incident. In fact, Unger testified in his deposition that he had no idea whether the two carts he had separated were brought into the Wal-Mart store by a machine and, if so, whether the machine had been loaded with an excess number of carts:

"Q. Do you know whether the two carts that you attempted to separate were brought into [the Wal-Mart store] by [a] machine?

"A. No, I don't.

"Q. Do you know whether the two carts that you tried to separate ... were brought in by the machine with an excess number of carts of the machine?

"A. No, I don't."

Rather, Unger testified in his deposition that he had talked to several employees from other Wal-Mart stores in the area concerning problems associated with overloading the machines that collect shopping carts from outside those stores. In other words, the plaintiff has failed to offer any evidence,

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other than speculative theories, as to how the two carts Unger was separating when he fell got stuck together. See Blackburn v. State Farm Auto. Ins. Co., 652 So. 2d 1140, 1142 (Ala. 1994) (noting that "[m]ere conclusory allegations or speculation that fact issues exist will not defeat a properly supported summary judgment motion, and bare argument or conjecture does not satisfy the nonmoving party's burden to offer substantial evidence to defeat the motion"). Accordingly, the trial court did not err in entering a summary judgment in favor of the Wal-Mart defendants. Because we hold that the plaintiff's claim alleging negligence and wantonness on the part of the Wal-Mart defendants was properly dismissed on summary judgment, her negligent-and/or-wanton-supervision-and-training claim is without merit. See University Fed. Credit Union v. Grayson, 878 So. 2d 280, 291 (Ala. 2003) (noting that "a party alleging negligent supervision and hiring must prove the underlying wrongful conduct of the defendant's agents").

The plaintiff finally argues that the trial court erred in denying her motion to compel certain discovery. The plaintiff's argument is without merit. The plaintiff

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apparently filed three motions to compel discovery, yet she does not disclose to this Court the specific discovery that she requested, nor does she argue that she was unable to adequately respond to the Wal-Mart defendants' summary-judgment motion in the absence of the requested discovery. See Parr v. Goodyear Tire & Rubber Co., 641 So. 2d 769, 771 (Ala. 1994) (noting that, "if it can be ascertained that the information sought by pending interrogatories and requests for production of documents is crucial to the nonmoving party's case, it is error to enter a summary judgment before the party moving for summary judgment has produced the documents and answers to the interrogatories"). Moreover, the plaintiff's argument--that the trial court erred in failing to compel discovery--does not comply with Rule 28, Ala. R. App. P., insofar as she cites only one case, in which the purpose of discovery is stated in a special concurrence. See Mitchell's Contracting Serv., LLC v. Gleason, [Ms. 1160376, December 8, 2017] ___ So. 3d ___, ___ (Ala. 2017) (Sellers, J., concurring specially). "It is well established that general propositions of law are not considered 'supporting authority' for purposes of Rule 28[, Ala. R. App. P.]." S.B. v. Saint James Sch., 959

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So. 2d 72, 89 (Ala. 2006); see also Butler v. Town of Argo, 871 So. 2d 1, 20 (Ala. 2003) (noting that "[i]t is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument'" (quoting Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994))).

Conclusion

The plaintiff failed to establish by substantial evidence that Wal-Mart had a legal duty to provide Unger, a business invitee, with a staged shopping cart when he entered the store on May 20, 2014. Accordingly, the summary judgment in favor of the Wal-Mart defendants is affirmed.

AFFIRMED.

Stuart, C.J., and Bolin, Parker, and Wise, JJ., concur.