

IN THE SUPREME COURT OF THE STATE OF NEVADA

WAL-MART STORES, INC., D/B/A WAL-
MART STORE #1838,
Appellant,
vs.
YVONNE KARIM,
Respondent.

No. 51092

WAL-MART STORES, INC. D/B/A WAL-
MART STORE #1838,
Appellant,
vs.
YVONNE KARIM,
Respondent.

No. 51936

FILED

JAN 29 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Yonne
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court judgment on a jury verdict in a tort action and a post-judgment order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Respondent Yvonne Karim filed a negligence complaint against appellant Wal-Mart Stores, Inc., for a slip-and-fall incident that occurred at Wal-Mart's store #1838. Before trial, Wal-Mart brought a motion in limine to exclude evidence of prior incidents that occurred at that store. The district court granted Wal-Mart's motion in limine, but at trial the district court allowed into evidence an incident involving Karim's husband, Jeff Raithel, who had slipped and fallen just prior to Karim's incident at the same store.

Following a three-day trial, the jury found in favor of Karim and awarded her \$367,346.90. Wal-Mart timely filed a notice of appeal

and posted a supersedeas bond. Thereafter, Karim filed a motion for attorney fees that the district court ultimately granted.¹

Standard of review

We afford a district court with wide discretion in determining the admissibility of evidence at trial. Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 492, 117 P.3d 219, 226 (2005). As such, we will not reverse a district court's determination to admit or exclude evidence absent a showing of palpable abuse. Id.

Wal-Mart argues that the district court abused its discretion in allowing Karim to present evidence about Raithel's slip-and-fall.² We disagree because we conclude that this evidence is not the type disapproved of by our holding in Eldorado Club, Inc. v. Graff, 78 Nev. 507, 377 P.2d 174 (1962).³

In Eldorado Club, we held that evidence of prior slip-and-fall incidents caused by a temporary substance on the defendant's premises

¹The parties are familiar with the facts, and we do not recount them further here except as necessary to our disposition.

²Wal-Mart also argues that the district court abused its discretion in: (1) allowing settlement negotiation statements into evidence, (2) giving the jury an adverse inference instruction, (3) not allowing Wal-Mart to introduce impeachment evidence, (4) not allowing Wal-Mart to present rebuttal witnesses, and (5) awarding Karim attorney fees and costs. We conclude that these issues are without merit. As such, we do not discuss them further here.

³Karim argues that this issue was not preserved for appeal and thus we should not consider it. We conclude that Karim's argument is without merit because Wal-Mart's manner of objection properly preserved this issue for appeal.

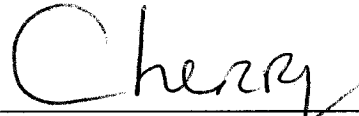
were inadmissible at trial. 78 Nev. at 511, 377 P.2d at 176. We further concluded that this type of evidence was inadmissible because of its prejudicial effect and its propensity to confuse the jury rather than aid the jury in its verdict. Id. at 512, 74 P.2d at 176-77.

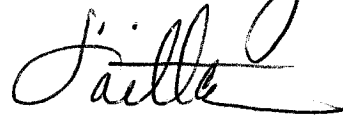
We conclude that Karim's testimony that Raithel had slipped on a substance at the Wal-Mart store minutes prior to Karim's slip-and-fall incident was not evidence of a prior incident caused by a temporary condition in that store and, thus, was properly admitted by the district court. We further conclude that we must defer to the decision of the district court in admitting this evidence. We make this determination because we are not convinced that the district court committed a palpable abuse of discretion when it determined that this evidence was not being admitted as evidence of a prior slip-and-fall incident. Therefore, we agree with the district court's conclusion that the admission of the evidence in question did not violate Wal-Mart's motion in limine. Our conclusion is bolstered by the district court's own words at trial that "[t]he motion in limine I didn't think really sought to preclude anything related to these folks." According to the district court's statement, Raithel's slip-and-fall incident was not to be excluded by the motion in limine.


We also conclude that, because Raithel's slip-and-fall incident occurred just minutes before Karim's slip-and-fall incident, the prejudicial value and potential jury confusion issues presented in Eldorado Club are not present here. 78 Nev. at 512, 74 P.2d at 176-77. Karim's testimony of Raithel's slip-and-fall incident was merely a part of the story of her slip-and-fall incident and not evidence of a prior incident that had no impact on Karim's slip-and-fall incident. As such, we conclude that that she had a right to present this evidence to the jury. We thus conclude that the

district court did not abuse its discretion in allowing Karim to testify about Raithel's slip-and-fall incident. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
William F. Buchanan, Settlement Judge
Phillips, Spallas & Angstadt, LLC
Hutchison & Steffen, LLC
Eighth District Court Clerk