IN THE SUPREME COURT OF MISSISSIPPI

KEITH WILLIAMS — **APPELLANT**

V. — **CASE NUMBER: 2007-0517**

HOWARD JACKSON
WAL-MART PROPERTIES, INC.,
WAL-MART STORES, INC., AND
WAL-MART STORES EAST, INC. — **APPELLEES**

REPLY BRIEF OF APPELLANT

Submitted by:

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I. ARGUMENT

Wal-Mart Properties, Inc., Wal-Mart Stores Inc., and Wal-Mart Stores East, Inc. (hereinafter collectively referred to as "Wal-Mart") argue that Keith Williams (hereinafter referred to as "Williams") status changed from that of an invitee to a trespasser because Williams decided to engage in a confrontation between Howard Jackson (herein after referred to as "Jackson") and William's mother and other family members.

Wal-Mart further asserts, assuming *arguendo*, that Williams was an invitee at the time of the altercation with Jackson, summary judgment was appropriate because Wal-Mart had no knowledge of the personal dispute between Jackson and Williams, and therefore, it had no cause to anticipate the altercation. Wal-Mart also argues they had no knowledge that both Jackson and Williams were on the premises. Lastly, Wal-Mart asserts they were entitled to summary judgment because Williams injuries were not the proximate cause of Wal-Mart's negligence.

A. William's Status at the Time of the Altercation was that of an Invitee:

Wal-Mart argues that Williams became a trespasser simply because Williams was compelled to defend his mother in a confrontation taking place between her and Jackson. At the time Williams entered onto the Wal-Mart

premises, all parties agree that Williams was an invitee. A person is considered an invitee when they enter upon the premises of another at the invitation of the owner or occupant for their mutual advantage. *Holliday v. Pizza Inn, Inc.*, 659 So.2d 860, 865 (Miss. 1995). Williams entered the Wal-mart premises to purchase a video game at the implied invitation of Wal-Mart. The duty owed an invitee is to keep the premises reasonably safe and to warn of dangerous conditions not apparent to the invitee. *Drennan v. Kroger Co.*, 672 So.2d 1168, 1170 (Miss. 1996). This duty has been expanded to protect a patron against assaults by other patrons. The owner or occupant has the duty to protect the invitee from reasonably foreseeable injury by other patrons. *Grisham v. John Q. Long V.F.W. Post No. 4057, Inc.*, 519 So.2d 397, 417 (Miss. 1988).

Williams does not disagree with the law cited by Wal-Mart on this issue; however, Williams disagrees with the application of the law to the facts in this case. Wal-Mart contends that Williams abandoned his status as an invitee, and his status changed from that of an invitee to that of a trespasser, when he was compelled to become involved in the altercation taking place between Jackson and Williams' mother. (See Brief of Appellee p. 15) Wal-Mart directs the Court to *Leffler v. Sharp*, 891 So.2d 152 (Miss. 2005), in support of it's argument that an invitee's status can change to that of a trespasser. In *Leffler*, a bar patron was

injured when he fell through the roof of a building adjoining the bar. *Id.* The bar was not the owner of the adjacent roof, and the bar did not permit its patrons to enter on the roof. *Id.* In *Leffler* the Court determined that the bar patron was injured when he had gone beyond the geographical "bounds of his invitation". *Id.* at 157

In the present case Wal-Mart owned the parking lot where Williams was injured. Not only did Wal-Mart own the parking lot, Wal-Mart created the dangerous condition by allowing Jackson to remain on the premises unmonitored. This dangerous condition, which Wal-Mart created, could not serve to convert Williams' status to that of a trespasser. It is undisputed that Williams entered the Wal-Mart premises as an invitee. He had not exceeded the bounds of his invitation. It is also undisputed that Wal-Mart had knowledge of Jackson's presence at the time of altercation. Williams was injured in the exact manner which should have been contemplated by Wal-Mart in allowing the dangerous condition to exist upon its property. Therefore, Wal-Mart should not be allowed to use their own negligence to convert William's status.

Wal-Mart's position seems to be that Williams somehow voluntarily chose to engage in this altercation which was occurring between Jackson and William's mother, and that this "voluntary" action served to convert his status from that of an

invitee to that of a trespasser. To believe or accept Wal-Mart's position, one would have to accept the premise that Williams should have sat idlely by while his mother was being accosted by a dangerous condition allowed to exist by Wal-Mart. This certainly cannot be the law. The facts of this case do not support the legal conclusion that Williams forfeited his rights as an invitee, by responding to a dangerous condition, created by the owner of that property, to protect his mother.

B. Wal-Mart had Knowledge of Jackson's Violent Behavior, and had Cause to Anticipate the Injuries Inflicted upon Williams:

As Wal-Mart has correctly stated, the duty imposed upon a business owner to protect patrons from assaults by other patrons is that the business owner has a duty to exercise reasonable care to protect the invitee from reasonably foreseeable injury at the hands of other patrons. *Lyle v. Mladinich*, 584 So.2d 397, 399 (Miss. 1991). Wal-Mart asserts that a premises owner must have "cause to anticipate" the assault in order for the duty to arise. *Id.* The cause to anticipate an assault can arise from "(1) actual or constructive knowledge of the assailant's violent nature, or (2) actual or constructive knowledge that an atmosphere of violence exists..." *Id.*

The issue here turns upon foreseeability, which asks whether it was foreseeable that Jackson, while upon Wal-Mart's premises, would perpetrate an

assault and battery upon any patrons of Wal-Mart, including Williams or Williams' mother. *Crain v. Cleveland Lodge 1523, Order of Moose, Inc.*, 641 So.2d 1186 (Miss. 1994). In *Crain*, the Court held that foreseeability and "the requisite 'cause to anticipate' the assault may arise from 1) actual or constructive knowledge of the assailant's violent nature, or 2) actual or constructive knowledge that an atmosphere of violence exist...." *Id.* at 1189.

Wal-Mart argues it did not have 'cause to anticipate' the personal feud, because the limit of Wal-Mart's knowledge of Jackson was that he had some form of a personal dispute with one of its employees, Ms. Bradford. (See Brief of Appellee p. 16). Wal-Mart claims 'there is no evidence, whatsoever, to suggests that Wal-Mart knew of any problem between Mr. Jackson and Mr. Williams. (See Brief of Appellee p. 16). However, the issue is not whether Wal-Mart had knowledge of any problems between Jackson and Williams, but whether Wal-Mart had 'cause to anticipate' an assault based upon Jackson's violent nature. *Id.* Wal-Mart had actual knowledge of Jackson's violent nature and did nothing to protect its patrons from this dangerous condition.

Ms. Bradford made sure Wal-Mart management was aware of Jackson's violent nature. *R. at 107.* Brian Flowers, one of Wal-Mart's managers, stated that he knew Jackson was not supposed to be on the property. *R. at 129.* Wal-Mart

had knowledge of Judge Bustin's admonishment to Jackson that he was not to go near Bradford. *R. at 130.* More importantly, Wal-Mart had knowledge that Jackson was on their premises prior to the altercation. *R. at 99 and 131.* Wal-Mart managers had been told on numerous occasions, starting over two weeks prior to the altercation, that Jackson was known to be violent. Foreseeability as to whether Wal-Mart had 'cause to anticipate' Jackson's violent nature is certainly a genuine issue of material fact, and therefore, the lower courts grant of summary judgment was inappropriate.

C. Whether or not Wal-Mart's breach of duty was a proximate cause of Williams' injuries is an issue to be determined by a jury:

Wal-Mart claims that summary judgment was appropriate because Williams' own actions were the proximate cause and/or intervening/superseding cause of his injuries. (See Brief of Appellee p. 18-21). However, questions of proximate cause and of contributory negligence are generally for determination by a jury. *Hankins Lumber Co., v. Moore*, 774 So.2d 459, 464 (Miss. Ct. App. 2000) (*citing American Creosote Works of Louisiana v. Harp*, 60 So.2d 514, 517 (Miss. 1952)). Under proper instructions from the court as to the applicable principles of law, the question of proximate cause should be presented to the jury. *Id.* (*citing Smith v. Walton*, 217 So.2d 409, 413 (Miss. 1973)).

Wal-Mart would have the Court believe that Williams' conduct in voluntarily exiting his vehicle, approaching Jackson, and engaging in the ongoing confrontation between Jackson and Williams' mother is the intervening/superseding cause of Williams' injuries. Despite the fact that proximate cause is generally for determination by a jury, if Wal-Mart had discharged its duty by not allowing Jackson to remain on the premises or at a minimum monitoring Jackson while on the premises, the altercation between Jackson and William's mother and thereafter Williams would not have occurred. The confrontation between Williams and Jackson occurred solely because Wal-Mart unreasonably allowed Jackson to remain on the premises. Clearly, Wal-Mart's failure to exercise their duty and remove Jackson from the premises, or monitor Jackson while on the premises was a proximate cause of Williams' injuries. For this reason the Circuit Court erred in granting Wal-Mart's Motion for Summary Judgment.

D. The Evidence must be Viewed in Favor of Williams, Giving Williams the Benefit of Every Reasonable Doubt.

On appeal, "[t]his Court employs a *de novo* standard or review of a lower court's grant or denial of summary judgment.." *Quinn v. Mississippi State University*, 720 So.2d 843, 846 (Miss. 1998) (citing *McCullogh v. Cook*, 679

So.2d 627, 630 (Miss. 1996)). When considering a motion for summary judgment, the "evidence must be viewed in the light most favorable to [Williams]." *Lumberman's Underwriting v. Rosedale*, 727 So.2d 710, 713 (Miss. 1998). Williams is also given the benefit or every reasonable doubt. *Tucker v. Hinds County*, 558 So.2d 869, 872 (Miss. 1990).

In the present case it is undisputed that Williams was an invitee when he entered upon the Wal-Mart premises. It is undisputed that Wal-Mart had knowledge of Jackson's presence on the premises at the time of the altercation. It is undisputed that Wal-Mart had knowledge of Jackson's violent nature. These undisputed facts, when viewed in the light most favorable to Williams, and giving Williams the benefit of every reasonable doubt, require reversal of the Circuit Court's grant of summary judgment.

II. CONCLUSION

Keith Williams respectfully request this Court to reverse the Circuit Court's grant of summary judgment to defendants, Wal-Mart Properties, Inc., Wal-Mart Stores, Inc., and Wal-Mart Stores East, Inc. The foreseeablility of Williams injuries, and the proximate cause thereof are genuine issues of material fact which should be determined by a jury. For these reasons and the reasons contained in the Brief of Appellant, Keith Williams request this Court to reverse the Circuit

Court's grant of summary judgment as to all claims and remand the case to the Circuit Court of Scott County, Mississippi.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Grady L. "Mac" McCool, III, do hereby certify that I have this day forwarded, by United States mail, postage prepaid, a true and correct copy and electronic copy of the above and foregoing Reply Brief of Appellant to:

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Honorable Vernon R. Cotton
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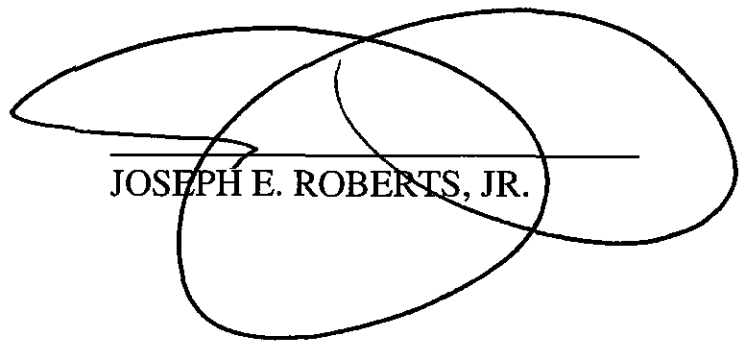
THIS, the 21ST day of February, 2008.



JOSEPH E. ROBERTS, JR.