

SUPREME COURT OF TENNESSEE

Jolyn Cullum et al. v. Jan McCool et al.

432 S.W.3d 829 (Tenn. 2013) · No. E2012-00991-SC-R11-CV · Decided December 18, 2013

SUMMARY

The Tennessee Supreme Court held that a store patron’s complaint sufficiently alleged that Wal-Mart owed a duty of care to protect another patron from a visibly intoxicated and belligerent customer whom employees ordered to leave despite knowing she was alone and would drive. Applying Tennessee’s foreseeability-and-burden balancing approach, the Court concluded that the alleged risk of harm outweighed the minimal burden of calling police or taking another reasonable protective measure. The Court affirmed the Court of Appeals’ reversal of the trial court’s dismissal and remanded the case.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Sharon G. Lee; Gary R. Wade, C.J.; Cornelia A. Clark; William C. Koch, Jr.
JURISDICTION	Tennessee
DECIDED	December 18, 2013
DOCKET	E2012-00991-SC-R11-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Wal-Mart appealed by permission under Tennessee Rule of Appellate Procedure 11 from the Tennessee Court of Appeals' reversal of the trial court's dismissal of the Cullums' negligence and gross-negligence claims under Tennessee Rule of Civil Procedure 12.02(6).
STANDARD OF REVIEW	The sufficiency of the complaint and the legal conclusions of the lower courts are reviewed de novo. On a Tennessee Rule of Civil Procedure 12.02(6) motion, the court liberally construes the complaint, presumes factual allegations are true, and gives the plaintiff the benefit of reasonable inferences.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Wal-Mart Stores East, LP v. Jolyn Cullum, Andrew Cullum

TOPICS

premises liability

duty of care

negligence

motions to dismiss

standard of review

PRACTICE AREAS

torts

premises liability

negligence

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appellate procedure

QUESTIONS PRESENTED

1. Whether a business owes a customer a duty to protect her from the reasonably foreseeable negligent or criminal conduct of a visibly intoxicated customer whom employees knew was alone and would operate a vehicle in the business's parking lot.
2. Whether the Cullums' complaint alleged sufficient facts to survive Wal-Mart's motion to dismiss under Tennessee Rule of Civil Procedure 12.02(6).

HOLDINGS

1. Taking the complaint's allegations as true, Wal-Mart owed Cullum a duty to protect her from the reasonably foreseeable risk of harm posed by a belligerent, visibly intoxicated patron operating a motor vehicle in Wal-Mart's parking lot.
2. The complaint alleged sufficient facts to state a negligence claim and could not be dismissed at the pleading stage.

KEY QUOTATIONS

“Taking the plaintiffs’ allegations as true and drawing all reasonable inferences in her favor, we hold that the foreseeability of harm and the gravity of harm to the injured patron outweighed the burden placed on the store to protect the patron against that harm.” (432 S.W.3d at 831)

“This middle-ground, or balancing approach, weighs the foreseeability of harm and the gravity of harm against the burden on the business to protect against that harm.” (432 S.W.3d at 835)

“We are only holding that at this stage of the proceedings, Wal-Mart cannot show as a threshold matter of law that it did not have a duty to protect its patron, Ms. Cullum.” (432 S.W.3d at 839)

FACTUAL BACKGROUND

Jolyn Cullum was struck and injured in Wal-Mart's parking lot when another patron, Jan McCool, backed her vehicle into Cullum. Wal-Mart employees had refused to fill McCool's prescriptions because they believed she was intoxicated, knew she was belligerent, alone, and likely to drive, and ordered her to leave without calling police or taking further action. The complaint alleged that Wal-Mart's employees were familiar with McCool's habitual intoxication and that Wal-Mart negligently and grossly negligently failed to protect Cullum.

PROCEDURAL HISTORY

The Cullums sued Jan McCool, William Harry McCool, and Wal-Mart after Jolyn Cullum was struck by McCool's vehicle in Wal-Mart's parking lot. The Hamilton County Circuit Court granted Wal-Mart's motion to dismiss and certified the judgment as final under Tennessee Rule of Civil Procedure 54.02. The Court of Appeals

reversed, holding that the complaint sufficiently alleged a duty of care, and the Tennessee Supreme Court granted Wal-Mart's Rule 11 application.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Circuit Court for Hamilton County for further proceedings on the Cullums' claims against Wal-Mart.

CASES CITED

- Trau-Med of Am., Inc. v. Allstate Ins. Co., 71 S.W.3d 691 (Tenn. 2002)
- Webb v. Nashville Area Habitat for Humanity, 346 S.W.3d 422 (Tenn. 2011)
- McClung v. Delta Square Ltd. P'ship, 937 S.W.2d 891 (Tenn. 1996)
- Staples v. CBL & Assocs., 15 S.W.3d 83 (Tenn. 2000)
- Satterfield v. Breeding Insulation Co., 266 S.W.3d 347 (Tenn. 2008)
- Giggers v. Memphis Hous. Auth., 277 S.W.3d 359 (Tenn. 2009)
- Nichols v. Atnip, 844 S.W.2d 655 (Tenn. 1992)
- Lindsey v. Miami Dev. Corp., 689 S.W.2d 856 (Tenn. 1985)
- Downs ex rel. Downs v. Bush, 263 S.W.3d 812 (Tenn. 2008)
- West v. East Tenn. Pioneer Oil Co., 172 S.W.3d 545 (Tenn. 2005)
- Lett v. Collis Foods, Inc., 60 S.W.3d 95 (Tenn. Ct. App. 2001)
- Cornpropt v. Sloan, 528 S.W.2d 188 (Tenn. 1975)
- Taylor v. Hynson, 856 P.2d 278 (Okla. 1993)
- Edington v. A & P Enter., Inc., 900 P.2d 453 (Okla. Civ. App. 1994)
- Philon v. Knerr, 2012 WL 1900540 (Ohio Ct. App. May 25, 2012)
- Morris v. De La Torre, 113 P.3d 1182 (Cal. 2005)
- Mills v. White Castle Sys. Inc., 421 N.W.2d 631 (Mich. Ct. App. 1988)
- Del Lago Partners, Inc. v. Smith, 307 S.W.3d 762 (Tex. 2010)
- Welton v. Ferrara, 2009 WL 1312569 (Conn. Super. Ct. Apr. 9, 2009)
- Burroughs v. Magee, 118 S.W.3d 323 (Tenn. 2003)
- Marshall v. Burger King Corp., 856 N.E.2d 1048 (Ill. 2006)
- Carlile v. Wal-Mart, 61 P.3d 287 (Utah Ct. App. 2002)
- Hepp v. Joe B's, Inc., 1997 WL 266839 (Tenn. Ct. App. May 21, 1997)