COURT OF APPEALS
DECISION
DATED AND RELEASED

DECEMBER 10, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0453

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

JULIE YOUNG,

Plaintiff-Appellant,

v.

WAL-MART STORES, INC.,
DELAWARE d/b/a SAM'S CLUB, INC.,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Outagamie County: JOHN A. DES JARDINS, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Julie Young appeals a judgment on a verdict that dismissed Young's personal injury lawsuit against Wal-Mart Stores, Inc. Young suffered injuries while shopping in one of Wal-Mart's many Sam's Club warehouse stores. Numerous industrial size, twenty-five-pound, aluminum foil boxes fell on her back, neck, and shoulders when she attempted to remove one from a stacked merchandise display. The jury found Wal-Mart 33% causally negligent and Young 67% causally negligent. On appeal, Young argues that the verdict contradicts the evidence and that she deserves a new trial in the interest

of justice. We reject these arguments and therefore affirm the judgment dismissing her complaint.

Negligence is the failure to exercise ordinary care under the circumstances. ***Marciniak v. Lundborg,*** 153 Wis.2d 59, 64, 450 N.W.2d 243, 245 (1990). The apportionment of causal negligence is a jury question and will not be upset on appeal except where it is unreasonably disproportionate as a matter of law. ***Skybrock v. Concrete Constr. Co.,*** 42 Wis.2d 480, 490, 167 N.W.2d 209, 214 (1969). Someone is causally negligent whenever his negligent actions were a substantial factor contributing to the result. ***Morgan v. Pennsylvania Gen. Ins. Co.,*** 87 Wis.2d 723, 735, 275 N.W.2d 660, 666 (1979). Like other jury questions, appellate courts sustain jury verdicts on the issue as long as the record contains any credible evidence to support them. ***Ford Motor Co. v. Lyons,*** 137 Wis.2d 397, 442, 405 N.W.2d 354, 372 (Ct. App. 1987).

In negligence cases, the trier of fact, not appellate courts, judge the weight of the evidence and the credibility of witnesses. ***Fehring v. Republic Ins. Co.,*** 118 Wis.2d 299, 305, 347 N.W.2d 595, 598 (1984). As an appellate court, we view the evidence in the light most favorable to the verdict, ***Black v. Gundersen Clinic, Ltd.,*** 152 Wis.2d 210, 214, 448 N.W.2d 247, 249 (Ct. App. 1989), and search the record for evidence to sustain the verdict, not for evidence to sustain a verdict that the jury could have but did not reach. ***Fehring,*** 118 Wis.2d at 306, 347 N.W.2d at 598. Furthermore, we give additional deference to verdicts that trial courts have approved against challenges for insufficient evidence. ***Watts (Bishoff) v. Watts,*** 152 Wis.2d 370, 381, 448 N.W.2d 292, 296 (Ct. App. 1989). Here, the trial court did not affirmatively confirm the verdict, allowing the postverdict motions to lapse.

Nonetheless, the jury could reasonably find Young 67% causally negligent and Wal-Mart 33% causally negligent. The jury had an obligation to consider the facts as a whole and make a judgment on the degree of diligence exercised by reasonable warehouse store shoppers. Each juror could consider his own experience in warehouse stores in evaluating the kind of care necessary in that shopping environment. Warehouse store shoppers regularly encounter stacked merchandise when shopping. In fact, other shoppers have the opportunity to restack the merchandise, without the store's knowledge or control. For these reasons, warehouse store shoppers must exercise reasonable care in judging the nature of the stacking method, the danger posed by the

stacked merchandise, and the feasibility of attempting to unstack the merchandise without assistance from store personnel. They may not overestimate their competence in such matters. After considering Young's testimony and the incident's inherent nature, a reasonable jury of experienced shoppers could rationally find that Young should have recognized the risk of a faulty stack method and solicited assistance from store personnel before attempting to remove the box herself. On this basis, the jury could reasonably find Young twice as causally negligent as Wal-Mart.

We also reject Young's request for a new trial in the interest of justice. We possess the discretionary power to reverse judgments in the interests of justice. ***State v. McConnohie,*** 113 Wis.2d 362, 374, 334 N.W.2d 903, 909 (1983). We will not exercise this discretionary power, however, unless the real controversy was not tried or justice has miscarried. ***State v. Wyss,*** 124 Wis.2d 681, 734-35, 370 N.W.2d 745, 770-71 (1985). Here, the trial court fully tried the issue of Wal-Mart's liability. Young introduced a substantial amount of evidence on the subject. She fully argued her case to the jury, and the trial court furnished proper instructions. Although the jury drew inferences that Young wishes it had not drawn, the jury had the right, as the fact finder, to apportion the causal negligence in the manner that it did. In the final analysis, we are persuaded that Young's trial resolved the real controversy at issue and produced no miscarriage of justice.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.