

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Lisa Weston and Brandon Weston,)
)
Plaintiff,)
)
vs.)
)
Wal-Mart Stores East, LP d/b/a)
Wal-Mart Store #1286, John Doe,)
Danica Adams, and the City of)
Columbia,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO.: 2021-CP-40-02663

**ORDER GRANTING SUMMARY JUDGMENT
TO THE WALMART DEFENDANTS**

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SC Court of Appeals

This lawsuit arises out of Plaintiffs’ allegations that Defendants Wal-Mart Stores East, LP d/b/a Wal-Mart Store #1286 and Danica Adams (collectively, “the Walmart Defendants”) and City of Columbia officers unlawfully stopped Plaintiffs Lisa and Brandon Weston (hereinafter, “Plaintiffs”) at the Walmart store located at 7520 Garners Ferry Road, Columbia, South Carolina. Plaintiffs Lisa and Brandon Weston filed identical but distinct Complaints in this Court on June 2, 2021, alleging five (5) causes of action, including: defamation; false imprisonment; intentional infliction of emotional distress; assault and battery; negligence. The parties engaged in the exchange of written discovery and depositions prior to filing a Proposed Order to Consolidate the two actions on August 30, 2022. Before the Order to Consolidate was filed in this Court, all Defendants filed separate Motions for Summary Judgment in both actions. Subsequently, the two cases, *Lisa Weston v. Wal-Mart, John Doe, Danica Adams, and the City of Columbia* and *Brandon Weston v. Wal-Mart, John Doe, Danica Adams, and the City of Columbia* were consolidated into one case under Civil Action Number: 2021-CP-40-2663 by

order of Judge Jocelyn Newman signed December 29, 2022 and filed with this Court on December 30, 2022.

A hearing was held before me on July 26, 2023 by WebEx at 2:00 p.m. Present at the hearing were Paige B. George, attorney for the Plaintiffs, Nashiba Boyd, attorney for the Walmart Defendants, and W. Mike Hemlepp, Jr., attorney for the Defendant City of Columbia.

Based upon the pleadings and memorandum filed in this action, the footage of an officer's body worn camera, as well as the arguments of counsel, and the statutory, procedural and common of the United States of America and the State of South Carolina, I hereby make the following findings of fact and conclusions of law.

1. This court has jurisdiction over the parties and subject matter of this action.
2. On June 11, 2019, Lisa Weston and her husband, Brandon, were leaving the Wal-Mart store on Garners Ferry Road in the City of Columbia with three (3) very large flat-screen televisions on a rolling cart. A Walmart customer host requested to see Plaintiffs' receipt pursuant to Walmart policies regarding unbagged and high-value merchandise. After the Plaintiffs were allowed to continue, the customer host alerted Asset Protection Associate, Danica Adams, that two customers exited the store and would not produce a receipt. The customer host's actions were consistent with Walmart's receipt checking policy.
3. At the time the customer host conveyed this information, Ms. Adams was in the asset protection office with City of Columbia Police Officers Chelsea Bowen and Gabrielle Mihelich regarding an unrelated incident. Officer Bowen and Officer Mihelich heard the greeter's communication to Ms. Adams. Ms. Adams initially spoke to Plaintiffs, and politely asked to see the Plaintiffs' receipt. Plaintiff Lisa indicated her refusal to Ms. Adams' request and Officer Mihelich, who had followed Ms. Adams to the scene, then directed the Plaintiffs to show their receipt to Ms. Adams. At no time did Ms. Adams or anyone else from Walmart direct law enforcement to intervene in the situation.

4. After some additional back and forth between Plaintiff Lisa and Officer Mihelich, Plaintiff Lisa indicated that she wanted Ms. Adams to tell her why she had to show her receipt. Ms. Adams proceeded to explain Walmart's receipt checking policy regarding un-bagged, high value merchandise. After Plaintiff Lisa listened to this explanation, she then handed Ms. Adams the receipt. Officer Mihelich took the receipt from Ms. Adams and inspected the merchandise and receipt.
5. The encounter was captured on video by the Columbia Police Department Officer's Body Worn Camera, the footage of which was entered into the record of this case and published for the Court's consideration.
6. Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Fleming v. Rose*, 350 S.C. 488, 492, 567 S.E.2d 857, 860 (2002). All inferences arising from the evidence must be viewed in the light most favorable to the non-moving party. *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004). Nonetheless, a court cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts. *Bloom v. Ravoira*, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) (quoting *Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996)). Summary judgment is not appropriate where further inquiry into the facts of a case is desirable to clarify the application of the law. *Hedgepath v. Am. Tel. & Tel Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001). However, when plain, palpable and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Hedgepath*, at 336.
7. The Plaintiff's first cause of action against the Walmart Defendants is defamation. There is no evidence any Walmart Defendant made any false or defamatory statement about the Plaintiffs as Columbia Police Department Officer's Body Worn Camera footage shows that the Walmart associate can be heard telling Ms. Adams that "they won't show me

their receipt” which was a true and accurate statement. There is no evidence that the Walmart Defendants made any other statements other than to explain Walmart’s receipt checking policy to Plaintiffs. Accordingly, the Walmart Defendants’ Motion for Summary Judgment on the cause of action of defamation is hereby GRANTED.

8. The Plaintiffs’ second cause of action is for false imprisonment. To establish a cause of action for false imprisonment, a plaintiff must prove the following elements: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. *Andrews v. Piedmont Air Lines*, 297 S.C. 367, 377 S.E.2d 127 (Ct.App.1989); *Roberts v. City of Forest Acres*, 902 F.Supp. 662 (D. S.C. 1995). The Court finds based upon the evidence presented that a trial jury could conclude under the facts that the Plaintiffs were unlawfully detained by the City Police Officer. However, Columbia Police Department Officer’s Body Worn Camera footage failed to show any evidence that the Walmart Defendants detained or caused the detention of Plaintiffs. This Court finds that Officer Bowen and Officer Mihelich were acting as agents of the Columbia Police Department and were not agents of the Walmart Defendants. Further, the Court finds that the Walmart Defendants did not have an affirmative duty to intervene or stop any actions of the City Police Officers. Therefore, the Walmart Defendants’ Motion for Summary Judgment on the cause of action of false imprisonment is hereby GRANTED.
9. The Plaintiffs’ third cause of action is for intentional infliction of emotional distress. Under well-established South Carolina law, to recover for intentional infliction of emotional distress, a plaintiff must establish: (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct; (2) the defendant’s conduct was so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused Plaintiff’s emotional distress; and (4) the emotional distress suffered by Plaintiff was severe such that no reasonable man could be expected to endure it. *Hansson*

v. Scalise Builders of S.C., 650 S.E.2d 68, 70-71 (2007) (quoting *Ford v. Hutson*, 276 S.E.2d 776, 778 (1981) (internal quotation marks omitted)). There is no evidence that any of the Walmart Defendants' conduct towards Plaintiffs was so extreme and outrageous that it exceeded all possible bounds of decency. Columbia Police Department Officer's Body Worn Camera footage always showed the Walmart Defendants speaking calmly and reiterating Walmart receipt checking policy. At no time did the Walmart Defendants tell Plaintiffs that they could not leave the store with their merchandise. Therefore, the Walmart Defendants' Motion for Summary Judgment on the cause of action of intentional infliction of emotional distress is hereby GRANTED.

10. The Plaintiffs' fourth cause of action alleges assault and battery. Plaintiffs' counsel concedes that the records contains no evidence any conduct of the Walmart Defendants that could place the Plaintiffs in a reasonable fear of bodily harm and thus the Walmart Defendants' Motion for Summary Judgment on Plaintiffs' cause of action for assault and battery is hereby GRANTED.

11. Based on the prior findings of fact by the Court, there is no evidence of any negligent conduct by the Walmart Defendants. Accordingly, the Walmart Defendants' Motion for Summary Judgment on the negligence and negligent supervision cause of action is hereby GRANTED.

NOW, THEREFORE, BASED UPON THE FOREGOING, it is hereby ordered,

1. That the Motion for Summary Judgment by the Walmart Defendants is hereby **GRANTED** as to the Plaintiffs' first cause of action for defamation;
2. That the Motion for Summary Judgment by the Walmart Defendants is hereby **GRANTED** as to the Plaintiffs' second cause of action for false imprisonment;
3. That the Motion for Summary Judgment by the Walmart Defendants is hereby **GRANTED** as to the Plaintiffs' third cause of action for intentional infliction of emotional distress;

4. That the Motion for Summary Judgment by the Walmart Defendants is hereby **GRANTED** as to the Plaintiffs' fourth cause of action for assault and battery; and
5. That the Motion for Summary Judgment by the Walmart Defendants is hereby **GRANTED** as to the Plaintiffs' fifth cause of action for negligence/negligent supervision.

AND IT IS SO ORDERED!

WILLIAM A. McKINNON, CIRCUIT JUDGE
Fifth Judicial Circuit

_____, 2023

_____, South Carolina



Richland Common Pleas

Case Caption: Lisa Weston vs Walmart Stores East , defendant, et al

Case Number: 2021CP4002663

Type: Order/Summary Judgment

So Ordered

/s William A. McKinnon, #2761, Resident Circuit
Judge and Chief Admin. Judge for CP, 16th Cir.