

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DIANE L. SMITH,	§
	§
Plaintiff Below-	§ No. 236, 2001
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
DEEDRE R. CALHOUN,	§ C.A. No. 97C-11-135
	§
Defendant Below-	§
Appellee.	§

Submitted: December 4, 2001
Decided: January 10, 2002

Before **HOLLAND**, **BERGER**, and **STEELE**, Justices.

ORDER

This 10th day of January 2002, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The plaintiff-appellant, Diane L. Smith, filed this appeal from a jury verdict in favor of the defendant, Deedre Calhoun, in this slip and fall personal injury action. In her opening brief, Smith asserts that the jury verdict should be overturned because it was based on misinformation. Calhoun has filed a motion to affirm the judgment of the Superior Court on

the ground that the issue on appeal is factual, and clearly there is sufficient evidence to support the jury's verdict.¹

(2) Having carefully considered Smith's brief and Calhoun's motion to affirm, we find it manifest that the judgment of the Superior Court should be affirmed. The "misinformation" about which Calhoun complains is merely conflicting testimony that was in the jury's discretion to resolve.² The issue on appeal is factual, and we find there clearly was sufficient evidence to support the jury's verdict. The motion to affirm must be granted because it is manifest on the face of Smith's brief that her appeal is without merit.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹ DEL. SUP. CT. R. 25(a).

² See *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982) (the jury is the sole trier of fact responsible for determining witness credibility, resolving conflicts in testimony and drawing any inferences from the proven facts).