IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 96-CA-00424-COA

CONSOLIDATED WITH

NO. 96-CA-00680 COA

ROBERT ANGUS LADNER	**APPELLANT**
v.	
BRUCE ANDREWS D/B/A LIKE NEW CLEANING SERVICE AND K-MART CORPORATION	**APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	MARCH 14, 1996
TRIAL JUDGE:	HONORABLE JAMES E. GRAVES, JR.
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	LISA B. MILNER
ATTORNEYS FOR APPELLEES:	JAMES D. HOLLAND FOR K-MART
	STUART ROBINSON, JR. FOR ANDREWS
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
TRIAL COURT DISPOSITION:	VERDICT FOR DEFENDANTS
DISPOSITION:	AFFIRMED - 12/02/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/23/97

BEFORE DIAZ, P.J., COLEMAN, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

A jury in the Circuit Court of Hinds County returned a verdict in favor of defendants Bruce Andrews and K-Mart Corporation in a personal injury action. Plaintiff Robert Ladner appeals on the basis of the following issues: (1) the trial court granted improper jury instructions; (2) irrelevant evidence which was obtained in violation of the rules of discovery was admitted ; (3) the burden to prove notice of a dangerous condition was improperly placed upon Ladner; and (4) the verdict was against

the weight of the evidence. None of these issues require reversal. We affirm.

FACTS

On January 24, 1994, Ladner entered the Super K-Mart in Jackson. After retrieving an item from a freezer in the grocery section, Ladner alleged that he fell because of a slippery substance on the floor. He asserted that the slippery area was not roped off, and there were no warning signs in the aisle concerning the dangerous condition on the floor. As a result of the accident, Ladner claimed that he suffered a fracture to his knee which required three separate operations.

At the time of the alleged fall, Like New, a cleaning service owned by Andrews, was in the process of cleaning the floors in the grocery department. K-Mart hired Like New to mop and wax the floors in the store. Like New alleged that there were at least two "bright yellow signs" in the aisle warning customers of the potential hazard.

On October 13, 1994, Ladner filed a negligence suit against K-Mart and Like New. Following trial, the jury returned a verdict in favor of K-Mart and Like New.

DISCUSSION

I. JURY INSTRUCTIONS

a. DB-18, D-19, and P-5-A

Ladner contends that jury instruction P-5-A correctly sets forth the law of premises liability. However, he asserts that the trial court erred in granting jury instructions DB-18 and D-19. Ladner argues that instructions DB-18 and D-19 are incorrect statements of the law because they fail to include the duty to conduct reasonable inspections. Additionally, Ladner asserts that instructions DB-18 and D-19 are contradictory with each other and with instruction P-5-A.

Ladner's instruction P-5-A provided:

> Under Mississippi law, K-Mart owed Mr. Ladner the following duties:
>
> 1. A duty to use reasonable and ordinary care to keep its store reasonably safe for the protection of Mr. Ladner; or
>
> 2. A duty to warn Mr. Ladner of any dangerous conditions not readily apparent existing in the store which K-Mart knew or should have known in the exercise of reasonable care; and
>
> 3. A duty to conduct reasonable inspections to discover and correct dangerous conditions existing in the store.
>
> Mr. Ladner alleges that K-Mart breached its duty to him by one of several ways. First, K-Mart kept leaking coolers on its premises which it knew or should have known was leaking fluid into the aisles. Second, whatever fluid was in the aisle which Mr. Ladner slipped on, K-Mart knew

> or should have known through the exercise of reasonable care and reasonable inspections that the fluid was on the floor and K-Mart failed to remove it or warn Mr. Ladner of the condition. If you find from a preponderance of the evidence that any of these allegations were true and that allegation is a breach of any of the duties listed above, then you may find K-Mart guilty of negligence.
>
> If you further find that negligence was the sole proximate cause or a proximate contributing cause of the injuries of Mr. Ladner, you shall return a verdict for Mr. Ladner against K-Mart and assess damages.

Defense instruction DB-18 provided:

> The Court instructs the jury that if you find that there were one or more signs warning of the condition of the floor upon which Plaintiff allegedly fell, but that Plaintiff ignored the warnings, and that the sole proximate cause of Plaintiff's damages, if any, was his failure to heed the warnings, then you shall return a verdict for both Defendants.

Defense instruction D-19 provided:

> If you find that a dangerous condition existed but that adequate warnings were in place such that the premises were reasonably safe, then you must find for the Defendant.

Ladner relies on ***Moore v. Winn-Dixie Stores, Inc.*, 252 Miss. 693, 173 So. 2d 603 (Miss. 1965)** to support his contention that instructions DB-18 and D-19 are incorrect statements of the law. Ladner interprets *Moore* to hold that a property owner owes an invitee the duty to keep its premises in a reasonably safe condition or to warn of any dangerous conditions not readily apparent which the owner knows or should have known of in the exercise of reasonable care. Most importantly, he interprets *Moore* also to impose on an owner a duty to conduct reasonable inspections to discover and correct dangerous conditions on the premises.

The supreme court has consistently held that a business owner owes a duty to an invitee "to keep its premises in a reasonably safe condition and to warn of dangerous conditions which are not readily apparent to the invitee." ***Drennan v. Kroger Co.*, 672 So. 2d 1168, 1170 (Miss. 1996).** However, the court has not held that an owner owes a duty independent of the general one to maintain safe premises that consists of conducting inspections of the premises. While conducting reasonable inspections supports an owner's obligation to keep the premises in a reasonably safe condition, the inspections, in and of themselves, are not an independent duty. The court's reference to an inspection duty in *Moore* has not been repeated in any case cited by the parties or that we have discovered.

In paragraph 1 of instruction P-5-A the court properly submitted the central question in the casewhether the defendants kept the premises in a reasonably safe condition. Focusing on this question, we now examine the court's decision to grant instructions DB-18 and D-19.

Ladner asserts that instructions DB-18 and D-19 should not have been granted because they are contradictory with each other and also with instruction P-5-A. He contends that the instructions apply the open and obvious defense that the supreme court has held is no longer an absolute bar to

recovery. ***Tharp v. Bunge Corp.*, 641 So. 2d 20, 25 (Miss. 1994).**

Instructions DB-18 and D-19 were given to assist the jury in determining whether K-Mart or Like New breached their duty to Ladner. Under these instructions, the jury was to determine the following: (1) whether a dangerous condition existed; (2) if a dangerous condition existed, whether Like New and K-Mart provided adequate warning of the potential hazard such that the premises were reasonably safe; and (3) whether Ladner proceeded in the face of such warnings, so that he was the sole proximate cause of his damages.

Instructions DB-18 and D-19 are correct statements of the law concerning premises liability. Contrary to Ladner's assertion, the instructions are not an application of the open and obvious defense. Instruction DB-18 informs the jury that if Ladner was the sole proximate cause of his own injuries, then it must find for K-Mart and Like New. That is certainly true. Ladner argues that if a defendant is as little as 1% negligent, it would be improper to exonerate him. ***Tharp,* 641 So. 2d at 24.** Conversely, this instruction states that if the plaintiff is 100% liable for the accident, then the jury must exonerate the defendants. D-19 directs the jury to find for K-Mart and Like New if the warnings made the premises reasonably safe. That instruction is a correct statement of the principle of premises liability and is in accord with the court's holding in *Tharp.* Moreover, the two defense instructions are not in conflict with instruction P-5-A. They highlight from the defense perspective aspects of P-5-A, but do not contradict any part of it.

Ladner also contends that the trial court erred by inserting the term "adequate" as a qualifier for the warnings that the defendants were to give of a dangerous condition. However, Ladner failed to object to the term during trial. "Adequate" as an undefined term does not appear misleading or confusing. Regardless, whatever problems Ladner now argues the insertion of that word caused could have been dealt with by the trial court had the issue been raised at trial. The point cannot be raised for the first time on appeal. ***See Lewis v. Hiatt*, 683 So. 2d 937, 944 (Miss. 1996).**

b. P-10 and P-15

Ladner next asserts that the trial court erred in modifying instructions P-10 and P-15 by adding the term "if any" to qualify negligence and damages. Ladner contends that there was unrefuted evidence presented during the trial that he suffered knee injuries as a result of his slip and fall in K-Mart.

Jury instruction P-10 provided:

> It is not necessary that all twelve of you agree upon a verdict in this case. When any nine or more of your members have agreed upon a verdict, it may be returned in the Court as the verdict of the entire jury.
>
> Listed below are the parties to this lawsuit. You are to decide who, if anyone, was negligent and in what percentages. Then you must decide the total damages, if any, without regard to which party caused the damages, if any. Therefore, your verdict should be brought back in the following form:
>
> We, the jury, find the following persons guilty of negligence which proximately caused the

> damages suffered by the plaintiff in the following percentages:
>
> K-Mart Corporation _______%
>
> Bruce Andrews d/b/a
>
> Like New Cleaning Service _______%
>
> Robert Angus Ladner _______%
>
> (The percentages you assess for these persons should together total 100%).
>
> Without regard to the fault assessed above, we further find Mr. Ladner's total actual damages in the amount of $_____________."

Jury instruction P-15 provided:

> The Court instructs the jury that it is not necessary for you to determine whether the slippery substance on the floor, if any, came from the cleaning solution and/or water allegedly left behind on the floor by Bruce Andrews d/b/a Like New Cleaning Service or whether it came from leaking coolers of K-Mart Corporation in order for you to render a verdict for the plaintiff. Should you find that the negligence, if any, of both Bruce Andrews d/b/a Like New Cleaning Service and K-Mart Corporation contributed to the injury and damages, if any, suffered by Mr. Ladner, your verdict shall be for the plaintiff and you should access percentages of fault for each party found to be negligent in accordance with this Court's other instructions.

During the trial, the defense asserted that Ladner suffered from a pre-existing injury to his knee. The defense introduced medical records which revealed that Ladner suffered from gout and from some swelling of his knee. The defense also presented testimony and engaged in cross-examination to support its theory that Ladner staged the entire incident at K-Mart. No one witnessed the alleged incident. Although Ladner testified that he was on the floor for approximately five minutes after he fell, several witnesses testified that they did not see Ladner on the floor after the alleged incident. In fact, a witness who turned around immediately after hearing Ladner yell, observed him standing by a table. Another witness testified that Ladner's clothing did not appear to be wet, which it might have been expected to be had he fallen on water.

Accordingly, we find that even if Ladner had a knee injury, the jury did not have to believe that he suffered it at this store. The defense presented sufficient evidence to draw into question the fact of a slip and fall. There was no error when the trial court modified the jury instructions.

c. D-19-A, DB-6, and P-10

Ladner asserts that jury instructions D-19-A and DB-6 directly contradict instruction P-10 in regard to the form of the verdict. He contends that instructions D-19-A and DB-6 allowed the jury to return

a verdict which did not apportion fault, while instruction P-10 required the jury to determine the percentages of fault, if any, among the parties. Consequently, Ladner argues that the jury combined instructions D-19-A and DB-6 in formulating the verdict and ignored instruction P-10 because the jury did not allocate fault among the parties.

Jury instruction D-19-A provided:

> The Court instructs the jury that if you find from a preponderance of the evidence that the Plaintiff is not entitled to recover any monetary damages from the Defendant K-Mart, then the form of your verdict may be as follows:
>
> "We, the Jury, find for the Defendant, K-Mart."
>
> Your verdict is to be written on a separate sheet of paper.

Jury instruction DB-6 provided:

> The Court instructs the jury that your verdict is to be written on a separate sheet of paper, and if your verdict be for Defendant, Bruce Andrews d/b/a Like New Cleaning Service, the form of your verdict should be as follows:
>
> "We, the jury, find for the Defendant Bruce Andrews d/b/a Like New Cleaning Service."

Reviewing instructions D-19-A, DB-6, and P-10 together as a whole, we find that while there may be a redundancy in the instructions, there is not an inconsistency. Instruction P-10 appears to be an adequate instruction. However, it is understandable that K-Mart and Like New would want instructions D-19-A and DB-6 submitted to the jury for clarity. The alternative instructions provided the jury with a way to express its conclusion that K-Mart or Like New were not negligent. Ladner as plaintiff was entitled to instructions that presented his theory of the case if supported by evidence. Similarly, the defendants had a right to have instructions submitted that highlighted their theory of the case if in the trial court's discretion they were supported by evidence, were useful and were not misleading nor confusing. That is what occurred here.

Had the jury filled in P-10 consistent with its verdict that the jury expressed, it would have read as follows: K-Mart 0%, Bruce Andrews d/b/a Like New Cleaning Service 0%, and Robert Angus Ladner 100%. We will not imply an inconsistency in the jury actions when no evidence of one exists. The jury's decision was clear, which is the purpose of a verdict form.

II. ADMISSION OF EVIDENCE

a. Pharmacy Records

Ladner contends that K-Mart and Like New obtained his pharmacy records from Wal-Mart in violation of the rules of discovery. Ladner asserts that he never received any notice or acknowledgment that the records were subpoenaed from the pharmacy. Consequently, he argues that the trial court erred by allowing any testimony relating to the records.

During cross-examination of Ladner, the defense counsel inquired into the possibility that Ladner suffered from depression prior to his alleged accident at K-Mart. The defense further questioned Ladner about his pre-accident treatment by a specific psychiatrist and his prescription for Prozac and Xanax. Ladner's counsel objected on the grounds that the testimony was not relevant. The trial court overruled Ladner's objection and allowed the testimony.

We first address the relevancy of the cross-examination. Relevant evidence is any evidence having a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." **M.R.E. 401.** Although relevant evidence is generally admissible, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. **M.R.E. 403.**

Evidentiary rulings are within the broad discretion of the trial judge and will not be reversed absent an abuse of discretion. ***Sumrall v. Mississippi Power Co.*, 693 So. 2d 359, 365 (Miss. 1997).** Given the contours of Rules 401 and 403, this Court finds that there was no abuse of discretion. In the complaint, Ladner sought compensation for the depression he suffered as a result of the alleged accident. Ladner testified that he was in good mental health prior to the incident. The testimony elicited on cross-examination, however, established the possibility that K-Mart and Like New were not the proximate cause of Ladner's decline in mental health. Consequently, evidence that Ladner suffered from a pre-existing condition was relevant to the issue of causation and also to Ladner's credibility. ***See Boyd v. Smith*, 390 So. 2d 994, 997-98 (Miss. 1980).** Furthermore, the probative value of the testimony was not substantially outweighed by the danger of unfair prejudice.

On appeal, Ladner also asserts that the cross-examination about his previous mental condition amounted to a trial by ambush. Ladner alleges that he had no knowledge that the defendants had procured pharmacy records and that their use violated his physician/patient privilege under Rule of Evidence 503. Defense counsels contend that a copy of the subpoena was served on Ladner and no objection was made nor privilege asserted.

The issue of whether the defense notified Ladner about the subpoenaed pharmacy records presented a factual question for the trial judge. In denying Ladner's motion for a new trial, the trial court did not make any specific, on-the-record finding. However, since Ladner raised the notice issue in his motion, it was necessary for the trial court to resolve the over-all issue of these records in favor of K-Mart and Like New before denying the motion for a new trial. Consequently, in reviewing the propriety of the trial court's decision, we are required "to proceed on the assumption that the trial judge resolved all such fact issues in favor of the appellee."

"We review these presumed findings under the clearly erroneous standard. . . ." ***Id.***

Our review of the trial court's admission of the testimony and denial of the motion for new trial in relation to the records leaves two possible conclusions. The first plausible explanation is that the trial court determined that notice of the subpoena was given to Ladner, but that Ladner misplaced the

notice or for other reasons failed timely to object to the release of the records. The other interpretation is that though Ladner may not have received prior notice of the subpoena, the defense was entitled to the discovery of the records anyway because Ladner's complaint sought compensation for his decline in mental health. By seeking such compensation, Ladner placed the condition of his mental health in issue, and thus, he waived any claim of physician/patient privilege on that issue. We can find no clear error in either possible conclusion.

Ladner also objects to the defenses' failure to notify him of the intended use of the pharmacy records at trial. He contends that the defenses' failure to reveal the use of the records violated the rules of discovery. However, Ladner fails to direct this Court's attention to any specific interrogatory or request for production of documents in which he requested such information. Rather, Ladner makes a blanket assertion that the withholding of the pharmacy records by the defense amounted to a trial by ambush.

A review of the interrogatories propounded by the parties and the requests for production of documents indicates, at most, three inquiries that might have necessitated the defense to respond by mentioning these records. First, Ladner's seventh request in his requests for production of documents solicited "All demonstrative evidence which you will seek to utilize at the trial of this case." Second, Ladner's eleventh request sought "Any and all medical reports, opinions and letters from physicians regarding medical condition(s) and treatment(s)." Last, interrogatory fourteen in Ladner's first set of interrogatories asked that defendants "Please state the factual basis for any defenses you are asserting against liability in this matter."

Discovery is not a revival of ancient forms of pleading, to be interpreted by arcane and technical rules. **M.R.C.P. 26.** The ethical requirements of responding to discovery have recently been addressed. ***Mississippi Bar v. Land*, 653 So. 2d 899, 906-909 (Miss. 1994).** All civil rules are to be "construed to secure the just, speedy, and inexpensive determination of every action." **M.R.C.P. 1.** The drafters stated that "no provision in these rules [is] more important than this mandate. . . ." **M.R.C.P. 1, cmt.** In light of these directives, a party responding to an interrogatory or a request for production of documents must adhere to a good faith reading of any such request. A party should not read a discovery request so narrowly as to conceal information which is fairly requested. At the same time, a party is not obliged to read beyond what is actually requested and try to determine what the inquirer would have asked had all the facts been known.

Applying these principles, we find that none of the requests by Ladner can fairly be interpreted to encompass with any degree of clarity or specificity the pharmacy records. K-Mart objected to the request for all demonstrative evidence that would be utilized at trial, stating that evidence to be used as impeachment would not be provided. These pharmacy records were used as impeachment. Like New objected on the basis that the request was overbroad. Ladner could have raised any disagreement with the defendants' positions in a motion to compel, but did not do so. Medical "reports, opinions and letters from physicians" would not encompass pharmacy records.

K-Mart answered the interrogatory demanding the "factual basis for any defenses to liability" by stating that the burden of proof was upon the plaintiff to prove each allegation. The response then directed the plaintiff to the answer to the complaint and to the other discovery responses. Like New stated that if in fact the accident occurred as alleged, the signs adequately warned of any water. To

the extent Ladner would argue that "a defense to liability" for a slip and fall encompassed the argument that one of Ladner's alleged injuries from the fall was actually pre-existing depression, we find that was not a necessary reading of the request. A specific inquiry regarding evidence that some of Ladner's injuries were pre-existing would not have required an overly imaginative reading. Like New's response in terms of how the accident itself occurred seems the proper one to this inquiry.

Thus, none of the discovery requests required submission or mention of the pharmacy records.

b. Medical Records

Ladner's next assignment of error is that the trial court improperly admitted his medical records into evidence. He contends that the medical records related to his prior treatment for gout in one of his toes and for follow-up treatment after a colonoscopy. Consequently, Ladner argues that the records were irrelevant, highly prejudicial, and confusing to the jury.

1. September Medical Records

During the trial, Ladner testified that he was in top physical shape prior to the alleged accident. On cross-examination, the defense questioned Ladner about his medical history in the months preceding the incident. The defense also introduced medical records relating to Ladner's visit to the emergency room in September. The records stated that prior to the accident Ladner complained of severe pain in both of his feet, hot feet, and he was unable to walk upstairs. Ladner objected to the admission of the records asserting that he did not stipulate to their admission. He also objected to the admission of the records on the grounds of relevancy and hearsay. The trial court overruled Ladner's objection and admitted the records into evidence.

Any party may attack the credibility of a witness. **M.R.E. 607.** However, specific instances of conduct of a witness that might undermine credibility, other than evidence of conviction of a crime, may not be proved by extrinsic evidence. **M.R.E. 608(b).** In ***Ball v. Sloan*, 569 So. 2d 1177, 1179 (Miss. 1990),** the supreme court held that under Rule 608(b) a party could not attack the credibility of a witness with extrinsic evidence of specific instances of conduct. Ball instituted a personal injury action against Sloan following an automobile accident. ***Id.* at 1178.** On cross-examination, the defense questioned Ball concerning the possibility that she altered prescriptions. ***Id.* at 1179.** After Ball denied the allegation, the defense called a pharmacist to testify that he had refused to fill the prescriptions. ***Id.*** In reversing the trial court's admission of the testimony, the supreme court concluded that the only possible relevance of the altered prescriptions related to Ball's credibility, and therefore, the extrinsic evidence was inadmissible. ***Id.*** The court noted that cross-examination on the alteration should have ended after Ball denied the allegation. ***Id.***

Although a witness may not be impeached using extrinsic evidence of misconduct under Rule 608(b), there have developed discrete categories of impeachment under Rule 607 that are relevant here. One is that "a witness may be contradicted as to a part of his testimony where as a matter of human experience he would not be mistaken if the thrust of his testimony were true." **John W. Strong, *McCormick on Evidence* §49, at 184 (4th ed. 1992).** In support of this proposition, Strong cites the early Texas case of ***Gulf, Colorado & Santa Fe Ry. Co. v. Matthews*, 100 Tex. 63, 93 S.W. 1068, 1070 (1906)** in which the court held that "[e]vidence . . .which bears upon the story of a witness with sufficient directness and force to give it appreciable value in determining whether or not that story is

true cannot be said to be addressed to an irrelevant or collateral issue."

We find that the cross-examination of Ladner and the admission of his September medical records squarely fit into this latter category. Unlike *Ball*, the primary focus of the inquiry into Ladner's prior medical records was not to prove his character of being untruthful with extrinsic evidence of specific instances of misconduct. That is the kind of exploration prohibited by Rule 608(b). Rather, the inquiry attempted to reveal that Ladner was not telling the truth in regard to the entire theory of his case. Rule 608(b) is not applicable, but Rule 607 is since it allows the credibility of any witnesses to be attacked. The elicited testimony presented a serious question as to whether Ladner's injuries resulted from the alleged accident at K-Mart.

The trial court properly allowed the cross-examination and admitted the medical records into evidence. This issue is without merit.

2. December Medical Report

The defense also introduced a written medical report from Dr. Reed which revealed that Ladner continued to have problems with his right foot, and that he had some swelling in his knee (the report did not state which knee) the week before the accident. The defense also presented a summary of the testimony Dr. Reed gave during his deposition. Dr. Reed was not certain, but believed it probable that it was Ladner's right knee that bothered him before the accident. That was the same knee that allegedly had been injured in the K-Mart incident.

Although Ladner objected to the September medical records, he failed to raise any objection to the admission of the December medical report. After defense counsel offered the report into evidence, the trial court asked if there were any objections. Ladner stipulated to the admission of the medical report. Later in the trial, Ladner also stipulated to a summary of Dr. Reed's deposition. Consequently, Ladner waived any right to object on appeal because he specifically stipulated to the admission and authenticity of the report during the trial. Regardless, Dr. Reed's lack of absolute certainty regarding which knee he had earlier treated affected weight, not admissibility of that evidence.

III. BURDEN OF PROOF - NOTICE

Ladner argues that the trial court improperly placed the burden upon him to prove that K-Mart received notice of a slippery substance on the floor. Ladner asserts that he did not have a duty to prove actual notice because the slippery substance was the result of either a continually-leaking cooler or the negligence of Like New who was under the direct control of K-Mart. Consequently, K-Mart was already on constructive notice of the potentially dangerous condition according to Ladner.

The briefs submitted by both K-Mart and Like New contend that Ladner's assignment of error is confusing and misleading. The brief submitted by K-Mart alleges that other than the form of the verdict, "Ladner provides no hint as to why the trial court saddled him with an improper burden of proof." K-Mart argues that the only instruction which even remotely suggests imposing the burden on Ladner is Instruction P-5-A -- Ladner's own instruction.

In response to defense counsels' assertion of lack of specificity, Ladner advances that the submission of the three forms of the verdict, two of which did not apportion fault, improperly shifted the burden

of proof. Although we agree that Ladner should not have to prove defendants had actual notice of the condition, the trial judge did not place this burden on him. Having previously addressed Ladner's objection to the form of the verdict, we find that no further discussion beyond that section is necessary.

IV. WEIGHT OF THE EVIDENCE

Ladner's final assignment of error is that the verdict was against the overwhelming weight of the evidence. Ladner contends that he presented unrefuted evidence that a slippery substance existed on the floor in the grocery department of K-Mart. As a result of the dangerous condition, Ladner alleges that he suffered serious injuries and damages. Consequently, he argues that the unapportioned verdict was clearly erroneous, and thus, the verdict is contrary to the weight of the evidence.

In reviewing the denial of the motion, this Court views all of the evidence in the light most favorable to the non-moving party. ***Green v. Grant*, 641 So. 2d 1203, 1207 (Miss. 1994).** A motion for a new trial should only be granted to prevent a miscarriage of justice. ***Id.* at 1207-08.** Accordingly, we will reverse and remand for a new trial only upon reaching the conclusion that the trial court has abused its discretion in failing to grant a new trial. ***Allstate Ins. Co. v. McGory*, 697 So. 2d 1171, 1174 (Miss. 1997).**

The jury heard the testimony of several witnesses who testified to facts that would indicate Ladner suffered no compensable injury. None of this evidence was incredible, unbelievable, or substantially impeached. The jury was entitled to conclude, after hearing all of the testimony, that the proof established that K-Mart and Like New were not negligent and not liable for Ladner's alleged injuries. The verdict was not against the overwhelming weight of the evidence.

THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT IN FAVOR OF THE APPELLEES IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, AND PAYNE, JJ., CONCUR.