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High court to weigh liability of Wal-Mart in drunken customer case

Ruling could have far-reaching consequences for businesses that evict customers

By Bobby Allyn
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Businesses across Tennessee could be held responsible for the actions of drunken customers they kick out if the state's high court sides with a woman injured in a Wal-Mart parking lot.

Jolyn Cullum, 38, was hurt in the parking lot of a Wal-Mart near Chattanooga in February 2011, when Jan McCool, 53, hit her while backing out of a parking space. Minutes earlier, McCool had been kicked out of the store, allegedly for being belligerently drunk.

Later, Cullum filed a http://www.tsc.state.tn.us/sites/default/files/cullumopn_1.pdf alt="" title="" target="_blank">negligence lawsuit against both McCool and Wal-Mart for her physical and emotional injuries.

The lawsuit ignited debate about whether Wal-Mart should have done more to protect its customers. That argument has extended all the way to the Tennessee Supreme Court, which last week agreed to hear the case.

Lower courts have come down on different sides of the question of how much Wal-Mart should be held liable.

A Hamilton County trial court dismissed the case against Wal-Mart, claiming that the store could not have done anything to control the inebriated McCool.

That's not necessarily so, ruled the Tennessee Court of Appeals, explaining that since McCool was invited onto its property, as a customer, the store had a special duty to protect its other customers from harm.

Implications for businesses around the state could be significant, according to Nashville attorney Ben Raybin. He predicted that the high court will ultimately find Wal-Mart responsible, and he said bars in particular should be paying close attention.

"This could potentially open the door for bars having to be a lot more careful with how they treat intoxicated patrons," Raybin said. "Not serving and telling them to leave might not be enough to protect them from liability."

In ruling on this case, the Tennessee Supreme Court will not be rewriting the law. Instead, the court will be deciding how future situations fit into existing law.

But the court is expected to clarify just how responsible businesses are for customers they kick out.

Wal-Mart's responsibility?

Could Wal-Mart have done more to protect Cullum from harm? And were her injuries foreseeable? The answers to those two questions will figure prominently into whether Wal-Mart is legally responsible for her injuries.

Cullum charged that Wal-Mart's employees should have called the police to have McCool removed from the property.

The lawsuit's description of Wal-Mart's role was unsparing, if legalistic. The employees, according to the suit, "acted wantonly, willfully, maliciously and/or recklessly with an indifference to and blatant disregard of the safety of others."

But Wal-Mart countered that the store did nothing to contribute to the injury and had no legal obligation to prevent McCool from getting in her car and driving away.

Attorney Raybin offered an analogy.

"If there was a spilled bottle of milk in a store aisle that caused a hazard, the store has a duty to warn customers," he said. "The question now is whether having an intoxicated customer is a similar type of hazard."

However, Raybin added, "There is a valid question of what else the store could have done."

Personal injury lawyer Bill Leaders expects the Supreme Court to find Wal-Mart liable, yet he does not believe that it will set off policy changes for businesses.

"If a bar owner has a drunk patron in the bar, they have a duty to act reasonably from keeping that patron from injuring others," he said. "I don't see this court's decision stretching the limits of a business owner's responsibility."

Additional Facts

Existing law

Current law is unclear on the question of whether businesses are responsible for protecting their customers for the actions of someone they expel from their property. That's true even if they cause an injury while on the premises.

If the court finds Wal-Mart liable

Businesses could be responsible for protecting customers after someone is kicked out of a property. The customers could, in theory, become potential plaintiffs if injured by the person who has been removed.
