

**No. 30000— *Patrick B. Belcher v. Wal-Mart Stores, Inc.,
Joyce Hoover and David Walker***

FILED

July 3, 2002

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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McGraw, J., dissenting:

The majority finds that the lower court was right to grant summary judgment on both the defamation claim and the unlawful detention claim. Our law favors disposition on the merits, and we have long held that summary judgment is not preferred:

Because summary judgment forecloses trial on the merits, this Court does not favor the use of summary judgment, especially in complex cases, where issues involving motive and intent are present, *Masinter [v. Webco Co.]*, 164 W. Va. [241] at 243, 262 S.E.2d [433] at 436, or where factual development is necessary to clarify application of the law. *Lengyel v. Lint*, 167 W. Va. 272, 281, 280 S.E.2d 66, 71 (1981).

Alpine Property Owners Ass'n v. Mountaintop Development Co., 179 W. Va. 12, 17, 365 S.E.2d 57, 62 (1987). In light of this preference for resolution on the merits, I feel that Mr. Belcher deserved to have a jury hear his case.

With respect to Mr. Belcher's claim of unlawful detention, the majority finds that Mr. Belcher was free to go at any point during his ninety minute ordeal. It is clear that Mr. Belcher would not wish to leave the store without either the computer or his \$845.88. While the lower court found Mr. Belcher free to leave, it is unlikely in the extreme that Mr. Belcher could have picked up the computer and strolled out the door. Whether or not the actions of the store employees rose to the level of unlawful detention should have been decided by a jury.

To support its holding with respect to the claim of defamation, the majority finds that Mr. Belcher presented insufficient evidence that the store employees made a defamatory statement or communicated such a statement to a third party. Mr. Belcher presented evidence that the employees accused him, in the presence of other shoppers, of presenting a fraudulent receipt. It is clear that Mr. Belcher had to wait some time at the return desk as several employees were called over to “investigate” his receipt. It is also clear that the presence of the police officer, combined with the activities of the employees, would suggest to anyone within sight or earshot that something was amiss with Mr. Belcher. I believe that a jury should have been allowed to determine if the actions and statements of the employees, either together or separately, resulted in the communication of a defamatory statement.

Finally, the majority notes that Mr. and Mrs. Belcher undermined their defamation claim by relating their story to friends or co-workers. Considering that Mr. Belcher had to spend an hour and a half in the store on suspicion of stealing a computer he had purchased, it is little wonder that the Belchers would tell others of the miserable treatment Mr. Belcher suffered at the hands of the country’s largest retailer .

Of course, in an earlier time, the very threat that a customer would become dissatisfied with his or her treatment and communicate this dissatisfaction to friends and family would prevent a store from treating its shoppers so poorly. Today however, apparently the bottom line is the only thing that interests most people, so we have traded personal service from a local retailer for suspicion of robbery from one of the worlds largest companies.

Wal-Mart is West Virginia's largest employer, largest retailer, and in many communities is the only game in town. Clearly Mr. Belcher couldn't gain any satisfaction from the empty threat of taking his business elsewhere. Filing suit was essentially his only means of redress. In my view, Mr. Belcher deserved to have his case heard by a jury, thus I must, respectfully, dissent.