

# Woman's suit against employer over assault tests Ohio ruling

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When Teresa Richard took the trash out to the dumpster at the rear of the Mr. Hero restaurant at 484 W. Market St. on the night of Dec. 10, 1985, the waitress had no idea that it was the start of a chain of events that would change her life — permanently.

She was attacked by an unidentified man and carried into a nearby cemetery, where she was raped. Her hat and one shoe were found next to the dumpster. Her smock was found in the cemetery. Another shoe was found along the street.

She ran to a nearby home, partially clothed, to report the rape.

But the psychological trauma was so severe that Ms. Richard has never been able to tell anyone exactly what happened that night, according to lawyers who say she was diagnosed as having post-traumatic stress syndrome.

Now a Summit County Com-

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## Injury case tests high court ruling

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mon Pleas Court jury has awarded the 24-year-old woman, who returns home Saturday to Ladysmith, Wis., \$150,000 in damages against her former employer. Ms. Richard also may be on the way to having her name memorialized in Ohio law books.

Gary Himmel, lawyer for Mr. Hero, said Thursday that the verdict, which included \$75,000 in punitive damages, will be appealed — mostly over interpretation of laws that have been the focus of bitter debate in both legal and legislative circles since the Ohio Supreme Court first ruled in 1982 that employees could sue their employers for alleged intentional injuries.

The case of Ms. Richard is significant on a number of grounds, according to lawyers familiar with the handling of so-called "intentional torts."

For one thing, her case is the first intentional tort to be tried in the state since the Ohio Supreme Court handed down a group of decisions on April 13. Among other things, those opinions held that a new law effective in 1986 could not be applied retroactively to cases that had started before that time.

One of those decisions, dealing with the case of a man injured at the Babcock & Wilcox Co. in Barberton, spelled out the standards that must be applied if an employer is to be held liable for injury to a worker.

First, it must be shown that the employer knew about a dangerous condition; second, it must be shown that if the worker was subjected to the dangerous condition, there was a substantial certainty of injury, not just a high risk; and third, the employer must still have required the worker to perform the task. The level of proof must exceed both negligence and recklessness.

Summit County Common Pleas Judge Glen Morgan, who heard Ms. Richard's case, used those standards in instructing the jury that returned the verdict.

Michael Bowler, one of the lawyers who represented Ms. Richard, said the standards don't make plaintiffs' cases easy.

"Those standards are very tough for the person bringing a

lawsuit," said Michael Bowler, one of the lawyers who represented Ms. Richard.

In Ms. Richard's case, the argument centered on the allegation that Mr. Hero knew of "past criminal activity" in the area of the West Market Street store and had reason to believe that an assault was substantially likely to occur.

Mr. Hero had hired security guards for the store to work Monday through Saturday, but then the guards' hours were cut so they worked only Thursday through Saturday each week. The attack on Ms. Richard occurred on a Tuesday night.

Himmel said the security guards were not hired for the parking lot, and they were cut back to three nights a week because business was slow. He said

that after the attack on Ms. Richard, there had never been another attack at the West Market Street store.

"Nobody wanted that girl to be injured," Himmel said, "but I do not believe an unforeseen criminal act can be stretched to meet the standard of substantial certainty of injury."

Bowler contended, however, that the significance of the case is that under the state Supreme Court's April 13 guidelines, it is still possible to prove an intentional tort.

Both Timothy Scanlon, whose Scanlon & Gearinger firm represented the employee in the case against Babcock and Wilcox, and A. William Zavarello, president of the Ohio Academy of Trial Lawyers, agree that the key may be getting a case to a jury — not a

judge — for consideration.

Many judges will dismiss a case short of a jury trial because of a legal determination that the standards of proof cannot be met, they said.

"If you can get a case to a jury, I think you can rely on the jurors to do their duty to determine liability and damages," Zavarello said.

In Ms. Richard's case, Bowler suggested at least one juror went a step beyond determining damages. The foreman of the jury that awarded the \$150,000 asked to talk to her after the trial. He went up to her seat at the trial table, knelt and told Ms. Richard the jurors hoped she would use the money to get the help she needed.

Her only response was a nod, Bowler said.