

² We note the Adamases filed the notice of appeal from the June 28, 2018 order of the trial court denying post-trial relief. **See** Notice of Appeal, 7/23/2018. Although an appeal “does not properly lie from an order denying post-trial motions, but rather upon judgment entered following disposition of post-trial motions[,]” this Court will treat an appeal as timely filed if judgment is later entered on the docket. **McConaghy v. Bank of New York**, 192 A.3d 1171, 1173 n.1 (Pa. Super. 2008). Here, judgment was entered via praecipe on August 21, 2018.

trial on the issue of Berisha's negligence. After a thorough review of the submissions by the parties, relevant law, and the certified record, we affirm.

The underlying facts of this matter have been taken from the trial court opinion as well as from the notes of testimony of the trial.³ Plaintiff, Aaron Adams, 14 years old at the time of the incident, was visiting his friend, Dominic Gergar, on July 7, 2014. N.T. Trial, 1/8/2018, at 154, 98-99. Dominic lived with his father and grandfather, Terry Gergar, Jr. and Terry Gergar, Sr., in a residence leased from Besart Berisha. ***Id.*** at 96, 124. The Gergars owned a pit bull named Tyson. ***Id.*** at 98. On July 7, 2014, the dog, without warning or provocation, bit Aaron Adams on the arm. ***Id.*** at 98-99. The dog gashed Aaron's arm, crushing an artery and partially severing a tendon. ***Id.*** at 156. The bite went to the bone, leaving visible marks on the bone. ***Id.*** The Gergars transported Aaron to his home. ***Id.*** at 103. From there, Aaron's father, Andrew Adams took his son to an emergency medical facility, where the wound was cleaned and sutured. ***Id.*** at 104-105. The Adamses were instructed to see a specialist as soon as possible. ***Id.*** at 88. The wound became infected overnight and the next day Aaron was taken to Hershey Medical Center, where he came under the care of Dr. Alexander Payatakes, a specialist in arm and hand surgery. ***Id.*** at 146. The wound was reopened and debrided. ***Id.*** at 150-151. The tendon, which helped control the thumb, was

³ Trial was held from Monday, January 8, 2018 to Wednesday, January 10, 2018, before the Honorable Joseph J. Matika.

surgically repaired. **Id.** at 157. Drains were placed to help keep the wound free from purulent material. **Id.** at 158. Aaron remained hospitalized for eight days. **Id.** at 92. After rehabilitation, Aaron regained most, if not all, of the use of his hand and arm, although occasional numbness remains. **Id.** at 161.

Prior to biting Aaron, the dog had also bitten a young girl, Madison Donlin, and injured her arm. N.T. Trial, 1/9/2018, at 6. That bite was not reported to the authorities nor to either Agim Berisha⁴ or Besart Berisha. **Id.** at 12-13. Kristie Muffley, Tyson's original owner and prior paramour of Terry Gergar, Jr., had also been bitten by Tyson when she tried to intervene in an altercation between Tyson and another dog she owned.⁵ N.T. Trial 1/8/2018, at 142. Muffley testified she told Agim Berisha about the bite. **Id.** at 131. However, Agim Berisha testified while he was aware the dogs did not get along, he was unaware Tyson had bitten Muffley. N.T. Trial, 1/9/2018 at 30,

⁴ Agim Berisha is defendant Besart Berisha's father, and was the original owner of the property. At the time of the incident, Besart Berisha was the owner of record. Agim acted as an agent to Besart regarding the property.

⁵ The relationship between Muffley and Gergar, Jr. is somewhat convoluted, but partially explains the circumstances of how Muffley was bitten. The two lived together and had children together. Muffley then found another paramour who moved in with her in the residence next door to the Gergars. Muffley had two dogs but gave Tyson to Gergar when their relationship ended. Both Muffley and Gergar tried to have the other evicted. Eventually Muffley and her new paramour found a different place to live. The two dogs, once separated, still did not get along and usually the two dogs were let outside at different times so they would not fight. However, at least once the two dogs were outside at the same time and Muffley was bitten by Tyson when Muffley put her hand in Tyson's mouth, attempting to pry the two dogs apart. Muffley, her paramour, and the dog moved away before Tyson bit Aaron.

32. Besart Berisha also testified he had never been told Tyson had bitten Donlin; the only bite to a child Berisha knew of was the bite to Aaron Adams. ***Id.*** at 23.

The jury deliberated upon these facts and determined all defendants, the Gergars and Berisha were negligent. However, the jury also determined that Berisha's negligence was not a substantial factor in causing harm to Aaron Adams. Accordingly, the jury assigned 100% of actionable negligence to the Gergars.

The Adamses filed a post trial motion claiming the failure to find Berisha's negligence was a factual cause of Aaron Adams' injury was against the weight of the evidence and therefore the Adamses were entitled to a new trial. That motion was denied. In this appeal, the Adamses argue the trial court abused its discretion in failing to award a new trial.

Our standard of review for this issue is as follows:

Appellate review of a weight claim is a review of the [trial court's] exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence. Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence. One of the least assailable reasons for granting or denying a new trial is the lower court's conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice.

In re Estate of Smaling, 80 A.3d 485, 490 (Pa. Super. 2013) (citing ***Commonwealth v. Clay***, 619 Pa. 423, 64 A.3d 1049, 1055 (2013)). "The factfinder is free to believe all, part, or none

of the evidence and to determine the credibility of the witnesses.” ***Samuel-Bassett v. Kia Motors Am., Inc.***, 613 Pa. 371, 34 A.3d 1, 39 (2011). The trial court may award a judgment notwithstanding the verdict or a new trial “only when the jury’s verdict is so contrary to the evidence as to shock one’s sense of justice. In determining whether this standard has been met, appellate review is limited to whether the trial judge’s discretion was properly exercised, and relief will only be granted where the facts and inferences of record disclose a palpable abuse of discretion.” ***Id.*** (citing ***Commonwealth v. Cousar***, 593 Pa. 204, 928 A.2d 1025, 1035-36 (2007)). When a fact finder’s verdict is “so opposed to the demonstrative facts that looking at the verdict, the mind stands baffled, the intellect searches in vain for cause and effect, and reason rebels against the bizarre and erratic conclusion, it can be said that the verdict is shocking.” ***Farelli v. Marko***, 349 Pa.Super. 102, 502 A.2d 1293, 1295 (1985) (quoting ***Green v. Johnson***, 424 Pa. 296, 227 A.2d 644, 645 (1967)).

Haan v. Wells, 103 A.3d 60, 70 (Pa. Super. 2014).

Here, we find the trial court did not abuse its discretion in denying the Adamses’ weight of the evidence claim. The trial court provided ample reasons for its decision in its Pa.R.A.P. 1925(a) opinion, dated October 22, 2018. During deliberation, the jury asked the judge to “please give an explanation of factual cause.”⁶ In response, and without objection from either party, the trial judge reread the jury instruction regarding factual cause. Shortly thereafter, the jury returned its verdict.

We now quote from the portion of the trial court’s opinion regarding the evidence presented and the jury’s determination that Besart Berisha’s negligence was not a factual cause of Aaron Adams’ injury.

The charge given and re-read to the jury was the Pennsylvania Suggested Standard Civil Jury Instruction for factual cause, one

⁶ N.T. Trial, 1/10/2018, at 59.

which had been labelled as “a complete definition of factual cause.” **Gorman v. Costello**, 929 A.2d 1208, 1213 (Pa. Super. Ct. 2007). Thus, it was up to the jury to decide, based upon its finding that Berisha was negligent, whether such negligence was a factual cause that brought about the harm to Aaron Adams. In finding negligence, the jury considered the facts regarding Berisha’s imputed knowledge of the subject pit bull’s “dangerous propensities” and whether that knowledge imposed a duty to use reasonable care to prevent injuries to Adams. This jury did in finding Berisha negligent. However, the jury refused to find that this negligence was a factual cause of the injuries [Aaron] Adams sustained.

In **Palermo v. Nails**, 483 A.2d 871, 873 (1984), the Court held that a landlord may be responsible for injuries to a person caused by an animal owned and maintained by his tenant where the landlord was aware of the possibility of a dangerous animal and where the landlord had the right to control or remove the animal or re-take the premises. (emphasis ours).

All this begs the question: “What was the jury thinking during the deliberations and thereafter with the responses they gave to the verdict interrogatories?” Needless to say, the court cannot delve into that and question a jury’s deliberations. It is conceivable that the jury could have found that: 1) Berisha knew of a situation that occurred between Gergar’s dog and Gergar’s ex-girlfriend’s dog; 2) that this was an “alpha male” fight between these two dogs and that was the only dangerous propensities the subject pit bull had (this was the only testimony presented that could be imputed to Berisha on the issue of the dog’s dangerous propensities); 3) the moving of the ex-girlfriend and her dog resolved what Berisha felt was the situation that caused the dangerous propensities; and 4) once the ex-girlfriend and her dog moved, there was no need to control or remove the subject pit bull any longer by retaking the premises from the Gergars. These inferences could have been drawn from the testimony by the jury. In weighing the testimony in light of these inferences, the jury was of the belief that, despite what happened to Aaron Adams, his injuries were not attributed to Berisha and perhaps that Berisha was no longer required to take steps to alleviate all possible dangers based upon the information imputed to him through his agent/father Agim Berisha that this dog fought with another dog.

Trial Court Opinion, 10/22/2018, at 9-11.

The trial judge's reasoning, which is supported by the evidence of record, demonstrates the verdict did not shock the conscience of the trial court. Therefore, there was no abuse of discretion in the denial of the Adamses' request for a new trial. Accordingly, we affirm.

Judgment affirmed.

Judge Lazarus joins the memorandum.

President Judge Emeritus Gantman concurs in the result.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 9/4/19