

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

LINDSEY C. BAKER	:	
Plaintiff	:	NOVEMBER TERM, 2010
	:	
vs.	:	NO. 3703
	:	
JENNIFER A. MAYHART and	:	
DEBORAH MAYHART	:	
Defendants	:	

ORDER

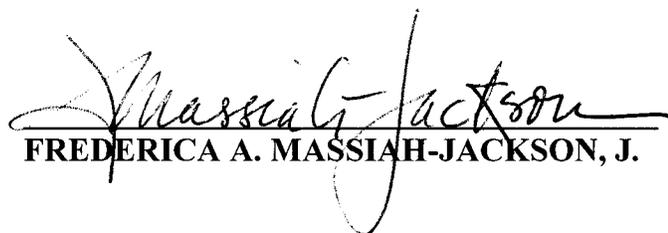
And Now, this ^{9th}5 day of September, 2012, after considering of the Motions for Post-Trial Relief filed by Plaintiff, Lindsey C. Baker, and Defendant-Jennifer Mayhart's Responses thereto, and for the reasons set forth in the Memorandum filed this date, it is hereby ORDERED that all of the Plaintiff's Motions are **DENIED**.

DOCKETED

SEP - 5 2012

R. POSTELL
DAY FORWARD

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.

Baker Vs Mayhart Etal-ORDMM



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**MEMORANDUM IN SUPPORT OF ORDER DENYING
PLAINTIFF'S MOTIONS FOR POST-TRIAL RELIEF**

MASSIAH-JACKSON, J.

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September *5*, 2012

I. FACTUAL BACKGROUND and PROCEDURAL HISTORY

In October, 2009, Lindsey Baker, age 26, and her girlfriends met at the home of Sarah Toner. The group went out for drinks and a social gathering. When they returned in the early morning hours on October 24, 2009, they were sitting in Sarah's living room "relaxing", "unwinding" and eating cheese and cracker snacks. Vol. 3, N.T. 143. Ms. Baker was sitting on a sofa and a dog was sitting on the sofa next to her. Ms. Baker handed the dog a piece of cheese. A few moments later she bent down in front of the dog with her hand out. The dog growled and then clamped its mouth and teeth on her face. Ms. Baker stated that the dog "swatted" her face with its paw, causing bruising. When she was able to release the dog's jaw, Ms. Baker was bleeding and suffered injuries to her right eye, her face and scalp. Vol. 3, N.T. 142-153, 162-165.

Ms. Baker explained to the jury that she has recovered from several surgeries to her eye and face. The medical testimony indicated that she has a droop of her right eyelid; her pupil is more oval than round; and, she has a 5% decrease in vision in one eye.

In November, 2010, the plaintiff filed suit against Jennifer Mayhart and both Mayhart parents, Deborah and Gerald. Although Jennifer was not present at the time of the incident, she was Sarah's roommate in October, 2009. Plaintiff-Baker contends that the dog is owned by Jennifer and Deborah Mayhart. Gerald Mayhart was dismissed from the litigation by agreement.

Following a week long trial the jury rendered a verdict on April 20, 2012, in favor of both remaining defendants, Jennifer and Deborah.

Ms. Baker filed post-trial motions against Jennifer Mayhart only. The Plaintiff contends that she is entitled to Judgment Notwithstanding the Verdict and a New Trial for Damages only. After the trial transcript was completed, counsel and the Court coordinated a briefing schedule. Oral argument was waived. After careful consideration of the record, all Motions for Post-Trial Relief are **DENIED**.

II. LEGAL DISCUSSION

A. Absolute Liability is Not the Law in Pennsylvania.

JNOV may be entered only in a clear case. It is an extreme remedy. Niles v. Fall Creek Hunting Club, 545 A.2d 926 (Pa. Superior Ct. 1988), “a drastic remedy.” JNOV is appropriate where either the evidence is such that no two reasonable minds could disagree, or, the movant is entitled to judgment as a matter of law. Quinby v. Plumsteadville Family Practice, Inc., 907 A.2d 1061, 1074 and cases cited (Pa. 2006); Somerset Community Hospital v. Allan B. Mitchell, Inc., 685 A.2d 141, 146 (Pa. Superior Ct. 1996).

The jury is a fact finding body. These jurors had one week to weigh the contradictory evidence and inferences, to consider all of the experts, to judge the credibility of the witnesses, and to draw their ultimate conclusions. See, Criswell v. King, 834 A.2d 505, 512 (Pa. 2003), holding that a new trial based on weight of the evidence should occur only in “truly extraordinary circumstances”; Martin v. Evans, 711 A.2d 458 (Pa. 1998), the jury may believe all, part or none of the witnesses’ testimony. A jury is not required to accept everything or anything presented from a witness, even if the testimony is uncontradicted.

Plaintiff-Baker proceeded to trial on theories of both common law negligence and statutory violations of the Pennsylvania Dog Law, 3 Pa. C.S. §459-502-A. At this post-trial juncture, when considering either theory and assuming arguendo that the jury accepted that Jennifer was the owner of the dog, there are multiple deficits in the plaintiff's position, including inter alia:

◆ Plaintiff-Baker has declined to address the role and/or responsibilities of Sarah on October 24, 2009. Jennifer was out of town. The jury may have concluded that Sarah Toner was responsible for the decisions made that evening.

◆ In the absence of any explanation of why she reached out with her hand or why she leaned her face in front of the dog or why she fed the dog, the jury may have concluded that Plaintiff-Baker did provoke the dog.

◆ The triers of fact learned that the dog was "skittish" or "nervous" around cars and bicycles. They may have concluded that under all of the circumstances presented and because the dog was at home, the actions taken were reasonable.

Common Law

It is true that negligence per se and common law negligence impose different standards and can lead to different outcomes. McCloud v. McLaughlin, 837 A.2d 541 (Pa. Superior Ct. 2003). See also, Andrew v. Smith, 188 A. 146 (Pa. 1936); Deardorff v. Burger, 606 A.2d 489 (Pa. Superior Ct. 1992). In this case, all of the plaintiff's post-trial arguments

are simply challenges to the weight of the evidence. Defendant-Jennifer Mayhart correctly points out that plaintiff's contentions rest on a thin reed. See, Mayhart Memorandum, page 2:

“In the instant case, there was no testimony that this dog, Milo, had ever been aggressive or had bitten anyone. Plaintiff's disingenuous reliance on a veterinary note that Milo exhibited “fear aggression for anaes” was never ever seen by Jennifer Mayhart, and was referring to a fear of a veterinary procedure.”

With this in mind, under a common law analysis, it was up to a jury to assess whether the plaintiff met her burden of proof to establish unreasonable conduct by the defendant. The jury's decision does not shock this Court's sense of justice. Armbruster v. Horowitz, 813 A.2d 698, 703 (Pa. 2002).

The Dog Law

The Dog Law specifies that an owner is negligent per se, if the jury concludes:

- “(1) The dog has done one or more of the following:
 - (i) Inflicted severe injury on a human being without provocation on public or private property. . .
 - (iii) Attacked a human being without provocation. . .
- (2) (ii) A propensity to attack human beings and/or domestic animals without provocation.”

Plaintiff-Baker argues in her memoranda that “considerations of provocation” are relevant solely in a comparative negligence analysis. She asserts that there was no “actual” evidence of provocation. Neither argument is actually accurate. One of the jury's first tasks

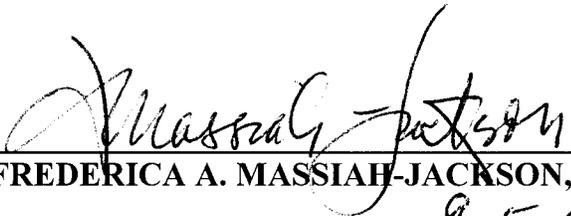
was to evaluate the facts and inferences, then determine whether the dog bite occurred with or without stimulation or irritation or aggravation or annoyance. The jury's verdict does not shock this Court's sense of justice. Armbruster v. Horowitz, 813 A.2d 698, 703 (Pa. 2002).

It may be that Plaintiff-Baker is confusing negligence per se with absolute liability. Absolute civil liability for dog injuries is not the law in Pennsylvania. Where proof of negligence rests on a violation of the Dog Law, liability does not attach unless the violation is a substantial factor in bringing about the injuries sustained. Thus even if the plaintiff had met her burden to prove a statutory violation, she would then be expected to establish causation before she could be awarded a trial for money damages.

III. CONCLUSION

For all of the reasons set forth above the Motions for Post-Trial Relief filed by Plaintiff Lindsey C. Baker are **DENIED**.

BY THE COURT:



FREDERICA A. MASSIAH-JACKSON, J.
9-5-2012