

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ALICIA CAMPBELL and)
ALICIA CAMPBELL as Parent and)
Guardian of DESTINY CAMPBELL,)
minor child,)
)
Plaintiff,)
)
v.)
)
FRANCIS ROBINSON and)
TURQUOISE ROBINSON,)
)
Defendants.)

No. 06C-05-176-PLA

UPON CONSIDERATION OF PLAINTIFFS' APPEAL FROM
COMMISSIONER'S REPORT AND RECOMMENDATION,
**COMMISSIONER'S REPORT AND RECOMMENDATION
ACCEPTED in part and MODIFIED in part.**

Submitted: May 15, 2007
Decided: June 19, 2007

This 19th day of June, 2007, it appears to the Court that:

1. Plaintiffs Alicia Campbell and Destiny Campbell ("Plaintiffs")
filed this appeal from a Superior Court commissioner's report and
recommendation pursuant to Superior Court Civil Rule 132 ("Rule 132").¹

¹ Super. Ct. Civ. R. 132(a)(4)(iv) provides that when a Superior Court commissioner issues findings of fact and recommendations on a case-dispositive matter that has been referred to such commissioner, "[a] judge of the [Superior] Court shall make a *de novo* determination of those portions of the report or specified proposed findings of fact or recommendations to which an objection is made. A judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner."

Upon *de novo* review of the record, the Court finds that the commissioner's recommendations as to apportionment of damages were inappropriate in light of the joint and several liability of the defendants. Accordingly, the commissioner's report and recommendation is **ACCEPTED** as to the amount of damages and **MODIFIED** as to apportionment of damages.

2. Alicia Campbell filed suit in her individual capacity and as parent and guardian of Destiny Campbell against Frances Robinson and Turquoise Robinson ("Defendants") for injuries arising from a dog attack upon Destiny Campbell. The dog attack caused severe injuries, including the removal of Destiny's right ear and a significant portion of her scalp, and created long-term physical and mental health consequences. After witnessing the attack upon her daughter, Alicia Campbell experienced emotional distress.²

3. Count I of Plaintiffs' complaint alleged that the "negligent and wanton conduct" of Defendants caused the attack and resulted in physical injury, pain and suffering, and physical and mental anguish to Destiny Campbell. Plaintiffs' complaint stated that Turquoise Robinson owned the dog, which was maintained by both defendants at Frances Robinson's

² A more detailed recounting of the facts can be found in the Commissioner's Report and Recommendation, p. 3-5.

home.³ Plaintiffs claimed that Turquoise Robinson, as the dog's owner, was liable under DEL. CODE ANN. tit. 7 § 1711 ("dog bite statute"), which imposes liability upon owners for injuries caused by their dogs. Additionally, Plaintiffs claimed that Turquoise Robinson was negligent in owning and maintaining a dog she knew to be vicious and dangerous and in failing to warn those on the premises of the dog's dangerous and vicious nature. Count I of the complaint also alleged that Frances Robinson was liable for housing and maintaining a dog known to be vicious and dangerous, failure to warn, and failure to protect those who entered the premises.⁴ Count II of Plaintiffs' complaint alleged that Defendants were liable to Alicia Campbell for negligent infliction of emotional distress.⁵

4. Defendants failed to answer Plaintiffs' complaint or file any other responsive pleading. On December 4, 2006, this Court granted default judgment pursuant to Superior Court Civil Rule 55(b)(2) against both defendants.⁶ The Court ordered a hearing to determine damages.⁷ In

³ See Docket 1, Pls.' Compl., ¶¶ 3-6.

⁴ See *id.*

⁵ See *id.*, ¶¶ 7-13.

⁶ See Docket 11. Super. Ct. Civ. R. 55(b) provides for default judgment "when a party against whom a judgment for affirmative relief is sought, has failed to appear, plead or otherwise defend as provided by these Rules, and that fact is made to appear[.]" Judgment is to be entered by the Court when the plaintiff's claim is for a sum which is uncertain or cannot be fixed with certainty by computation. Super. Ct. Civ. R. 55(b)(2).

accordance with Rule 132(a)(4), an inquisition to determine the amount of damages was held before a Superior Court commissioner on March 22, 2007.⁸ Defendants appeared at this hearing, but did not testify.⁹

5. In the report and recommendation submitted after the hearing on damages, the commissioner recommended that the Court enter a judgment of \$750,000.00 for compensatory damages against Turquoise Robinson in favor of Destiny Campbell under Count I of Plaintiffs' complaint. Based on the fact that the title of Count I alleged violation of the dog bite statute, the commissioner reasoned that Frances Robinson could not be liable to Destiny Campbell under Count I because she did not own the dog.¹⁰ The commissioner also recommended a judgment of \$40,000.00 in favor of Alicia Campbell for negligent infliction of emotional distress under Count II. The commissioner found Defendants equally at fault under Count

⁷ See Docket 11. Under Super. Ct. Civ. R. 55(b)(2), "[i]f, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute."

⁸ See Super. Ct. Civ. R. 132(a)(4).

⁹ See Commissioner's Report and Recommendation, p. 3.

¹⁰ See *id.*, p. 5.

II and apportioned \$20,000.00 of the award in favor of Alicia Campbell to each defendant.¹¹

6. Plaintiffs timely appealed the commissioner's report and recommendation.¹² Specifically, Plaintiffs objected to the commissioner's recommendation not to enter judgment in favor of Destiny Campbell against Frances Robinson. Plaintiffs argue that Count I of the complaint contained specific allegations of negligent acts by Frances Robinson, notwithstanding the fact that Count I also referenced the dog bite statute.¹³ Plaintiffs note that this Court entered default judgment against both defendants in favor of both plaintiffs.¹⁴ Plaintiffs urge that the scope of the commissioner's report exceeded the purpose of the damages hearing, which was to set the amount of the award, not to apportion it. Therefore, Plaintiffs seek to have the commissioner's report and recommendation modified to reflect a judgment of \$750,000.00 jointly and severally against Frances Robinson and Turquoise Robinson in favor of Destiny Campbell, and a judgment of

¹¹ *See id.*, p. 6.

¹² *See* Super. Ct. Civ. R. 132(a)(4)(ii) ("Within 10 days after filing of a Commissioner's proposed findings and recommendations . . . any party may serve and file written objections to the Commissioner's order which must set forth with particularity the basis for the objections.")

¹³ *See* Docket 11.

¹⁴ *See id.*

\$40,000.00 jointly and severally against Frances Robinson and Turquoise Robinson in favor of Alicia Campbell.¹⁵

7. The Court accepts the commissioner's findings as to the total amount of damages, which Plaintiffs do not appeal.¹⁶ However, upon *de novo* review of the portions of the report from which Plaintiffs appeal, the Court finds that the commissioner's report and recommendation must be modified in light of Defendants' joint and several liability.

8. Delaware has long recognized that "when the negligent acts of two or more persons concur in producing a single indivisible injury, such persons are jointly and severally liable, though there was no common duty, common design, or concerted action."¹⁷ The joint and several liability of two codefendants entitles the plaintiff to seek recovery from either or both of the defendants, provided that total recovery does not exceed the full amount

¹⁵ *See id.* Defendants filed no response to Plaintiff's appeal from the Commissioner's report. *See* Super. Ct. Civ. R. 132(a)(4)(ii) ("The other party shall . . . have 10 days from service upon that party of the written objections to file and serve a written response to the written objections.")

¹⁶ *See* Docket 11.

¹⁷ *Leishman v. Brady*, 2 A.2d 118, 120 (Del. Super. Ct. 1938). *See also* *Sears, Roebuck & Co. v. Huang*, 652 A.2d 568, 573 (Del. 1995) ("Multiple defendants may be liable as joint tortfeasors if each defendant's negligence is found to be a proximate cause of a plaintiff's injury.").

of damages.¹⁸ At the election of the plaintiff, either defendant may be held individually liable for the entire judgment.¹⁹

9. Joint and several liability applies when judgment is entered against multiple joint tortfeasors.²⁰ A defendant's status as a joint tortfeasor is generally based upon a "reliable determination, either judicially or by admission, that the person is liable in tort."²¹ Codefendants may be jointly and severally liable for causing the same indivisible injury even though each defendant's individual negligence results from different acts²² or is defined by different statutes or theories.²³

¹⁸ *Brown v. Comegys*, 500 A.2d 611, 613 (Del. Super. Ct. 1985) (citing RESTATEMENT (SECOND) OF TORTS § 879).

¹⁹ *Werremeyer v. K.C. Auto Salvage Co.*, 134 S.W.3d 633, 636 (Mo. 2004).

²⁰ *See, e.g.*, 74 AM. JUR. 2D *Torts* § 57 ("One injured by joint tortfeasors has a single and indivisible cause of action, that he may enforce by proceeding against the wrongdoers either jointly or severally and recovering a judgment against all of them, or a judgment against each of them Joint and several liability applies when there has been a judgment against multiple defendants[.]").

²¹ *Capano v. Capano*, 2003 WL 22843906, at *2 (Del. Ch. Nov. 14, 2003). This "reliable determination" test for joint tortfeasor status arose in the context of claims for contribution among joint tortfeasor defendants under Delaware's Uniform Contribution Among Tort-Feasors Law. *See* DEL. CODE. ANN. tit. 10 § 6301; *Med. Ctr. of Del. v. Mullins*, 637 A.2d 6, 8 (Del. 1994).

²² *See* 74 AM. JUR. 2D *Torts* § 69 ("In actions against two or more persons for a single tort . . . there may be only one verdict for a single sum against all defendants who are found liable of the tort, irrespective of the degree of culpability, even if the defendants . . . are charged with distinct and different acts contributing to the injury.").

²³ For example, an employer may be found jointly and severally liable based solely on the negligence of an employee because of the employment relationship. *See, e.g., Clark v. Brooks*, 377 A.2d 365, 371-73 (Del. Super. Ct. 1977) (holding that because employee and

10. Default judgment can establish joint tortfeasor status and render defendants jointly and severally liable.²⁴ Default judgment constitutes a final judgment that provides a determination of the merits of a case.²⁵ A defaulting party admits all well-pleaded allegations contained in the complaint.²⁶ Entry of default judgment establishes defendant's liability to the plaintiff for each cause of action alleged in the complaint.²⁷ Where

employee can be jointly and severally liable, they are not excluded from statutory definition of "joint tort-feasors"), *aff'd sub nom. Blackshear v. Clark*, 391 A.2d 747 (Del. 1978).

²⁴ See *Entertainment by J&J Inc. v. Medina*, 2002 WL 273306, at *3 (S.D.N.Y. Feb. 26, 2002) (finding multiple defendants subject to default judgment jointly and severally liable where allegations in plaintiff's complaint supported joint and several liability and were uncontroverted); *Porter Hayden Co. v. Bullinger*, 713 A.2d 962, 972 (Md. 1998) (holding that because default judgment establishes liability, it can constitute admission of joint tortfeasor status, without determination of liability by a judge or jury).

²⁵ *Werb v. D'Alesandro*, 606 A.2d 117, 119 (Del. 1992).

²⁶ An allegation is "well-pleaded" if it places the party on notice of the claim being brought against it. *Precision Air, Inc. v. Standard Chlorine of Del., Inc.*, 654 A.2d 403, 406 (Del. 1995).

²⁷ The implications of an entry of default and default judgment can vary by jurisdiction. See 46 AM. JUR. 2D *Judgments* § 305. Delaware's default judgment rules differ from their federal counterpart in eliminating any provision for an "entry of default" prior to the entry of default judgment. See Fed. R. Civ. P. 55; *Richards v. Hamon*, 178 A.2d 140, 142 (Del. 1962). Despite this difference, under the Chancery Court's default judgment provision, which contains language similar to Superior Court Rule 55(b), the effect of the default judgment rule is to cause the defaulting party to admit all well-pleaded allegations in the complaint. Default judgment is entered only if those well-pleaded allegations demonstrate that the plaintiff is entitled to relief. See Ct. Ch. R. 55(b); *Beal Bank, SSB v. Lucks*, 791 A.2d 752, 756 (Del. Ch. 2000); *Carlton Investments v. TLC Beatrice Int'l Holdings*, 1996 WL 426501, at *1 (Del. Ch. July 24, 1996). See also *Vaughan v. Veasey*, 125 A.2d 251, 254 (Del. Super. Ct. 1956) (stating that effect of default provision contained in willful timber trespass statute "is that a defendant, by his failure to appear or answer, admits the trespass and the willfulness thereof; by his default and the consequent

the well-pleaded allegations of a complaint support joint and several liability and the Court enters default judgment against multiple defendants for the same tort claim without providing for apportionment, the codefendants are jointly and severally liable for the full amount of damages.²⁸

11. In the instant case, this Court's entry of default judgment established that Defendants are joint tortfeasors and are jointly and severally liable for all damages arising from both of the claims contained in Plaintiffs' complaint. Upon entering default judgment, the Court accepted as true all well-pleaded allegations in Plaintiffs' complaint.²⁹ Those well-pleaded allegations supported joint and several liability. The allegations in Plaintiffs' complaint described wanton and negligent acts by Defendants which combined to proximately cause Plaintiffs to suffer harms which were not "divisible" or separately attributable to either defendant.³⁰ Accordingly, the Court entered default judgment against Defendants without providing for

admission, he waives the trial of those issues, leaving the amount of damages as the only matter for determination[.]").

²⁸ See *In re Baldwin*, 245 B.R. 131, 137 n.6 (B.A.P. 9th Cir. 2000) (stating that where default judgment in tort action was entered against multiple joint tortfeasors without apportionment of fault, individual defendant was jointly and severally liable). See also *Coca-Cola Bottling Co. v. Lucky Stores, Inc.*, 14 Cal. Rptr. 2d 1372, 1376 (Cal. Ct. App. 1992) (stating that where apportionment of damages on tort action was neither sought nor obtained from jury, jury verdict against two codefendants imposed joint and several judgment liability upon both).

²⁹ See *supra* note 27.

apportionment.³¹ The default judgment imposed joint and several liability against both defendants in favor of both plaintiffs.

12. The fact that Count I of Plaintiffs' complaint was labeled "Count I – Violation of 7 Del.C. § 1711"³² does not permit Frances Robinson to evade joint and several liability to Destiny Campbell. While Frances Robinson was not the dog's owner and is not liable under the dog bite statute, Count I established negligent and wanton conduct unrelated to the dog bite statute. Count I stated that both Defendants maintained a vicious and dangerous dog on premises owned by Frances Robinson, failed to warn those on the premises of the dog's vicious and dangerous nature, and failed to protect those entering the premises from a dog known to be dangerous and vicious.³³ Despite Count I's title, violation of the dog bite statute was not the crux of Plaintiffs' negligence claim against Frances Robinson for the injuries to Destiny Campbell. Rather, accepting the well-pleaded allegations of Plaintiffs' complaint as true renders Frances Robinson

³⁰ See *Leishman*, 2 A.2d at 120.

³¹ See Docket 11. See also 74 AM. JUR. 2D *Torts* § 69 ("In actions against two or more persons for a single tort, it is improper to return two verdicts for different sums against different defendants at the same trial; there may be only one verdict for a single sum against all defendants who are found liable of the tort, irrespective of the degree of culpability[.]").

³² See Docket 1, Pls.' Compl.

³³ See *id.*, ¶¶ 3-6.

liable under general negligence principles, specifically premises liability.³⁴

The fact that the title to Count I specifically referenced the dog bite statute is irrelevant given that the content of Count I provided Frances Robinson with clear and adequate notice of potential liability under general negligence principles.³⁵ Therefore, the default judgment order imposed joint and several liability against both defendants in favor of Destiny Campbell under Count I of Plaintiffs' complaint.

13. The order of default judgment also imposed joint and several liability between Defendants to Alicia Campbell based upon the allegations of negligent infliction of emotional distress contained in Count II of Plaintiffs' complaint. The well-pleaded allegations of the complaint demonstrated that Defendants acted as joint tortfeasors by failing to warn or

³⁴ See *id.* DEL. CODE ANN. tit. 25 § 1501 (the "premises guest statute") shields the owners or occupiers of private residential premises from liability to guests without payment, unless the owner or occupier acts intentionally or with "wilful or wanton disregard of the rights of others." Frances Robinson's conduct falls outside the premises guest statute's liability shield because, accepting the well-pleaded allegations of the complaint as true, she acted in manner demonstrating "willful or wanton" disregard for the rights of others. See Docket 1, Pls.' Compl., ¶ 4. The premises guest statute also does not shield Turquoise Robinson as a premises occupier because the dog bite statute has been held to supersede the premises guest statute where the two statutes conflict. See, e.g., *McCormick v. Hoddinott*, 865 A.2d 523, 526 (Del. Super. Ct. 2004) ("The dog bite statute was undoubtedly enacted to specifically address a type of incident, a dog bite, which was previously only covered, in general terms, by the premises guest statute [T]o the extent that there is any overlap, then the dog bite statute supersedes the premises guest statute.") (citations omitted).

³⁵ Under Super. Ct. Civ. R. 8(f), "[a]ll pleadings shall be so construed as to do substantial justice." Delaware's pleading rules are governed by a notice-pleading standard. See, e.g., *Precision Air, Inc.*, 654 A.2d at 406.

protect Plaintiffs, by placing Plaintiffs at unreasonable risk of bodily and emotional harm, and by causing bodily and emotional harm to Alicia Campbell.³⁶ Because Alicia Campbell's injuries cannot be divided for attribution to one or the other defendant and because both defendants proximately caused her injuries, joint and several liability was appropriate. In cases of joint and several liability, a court does not apportion damages when granting judgment for the plaintiff.³⁷ Accordingly, the Court did not apportion damages in its order of default judgment and will not adopt the commissioner's recommendation that each defendant be liable for \$20,000.00 of Alicia Campbell's \$40,000.00 award. Defendants are each jointly and severally liable for the entirety of the \$40,000.00 judgment in favor of Alicia Campbell.

14. Based on the foregoing analysis and in accordance with Rule 132, the findings contained in the commissioner's report and recommendation are **ACCEPTED** as to the amount of damages. The commissioner's recommendation is **MODIFIED** to reflect that (1) damages

³⁶ See Docket 1, Pls.' Compl., ¶¶ 7-13.

³⁷ In an action for contribution, joint tortfeasors may seek an apportionment of fault in order to determine their pro rata share of a judgment, but contribution actions arise *after* the plaintiff has sought damages from whichever defendant or defendants she chooses and a joint tortfeasor has paid the common liability or more than his or her pro rata share of the common liability. See DEL. CODE. ANN. tit. 10 § 6302.

are awarded jointly and severally against Frances Robinson and Turquoise Robinson in favor of Destiny Campbell in the total amount of \$750,000.00, and (2) damages are awarded jointly and severally against Frances Robinson and Turquoise Robinson in favor of Alicia Campbell in the total amount of \$40,000.00.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary
cc: Edward T. Ciconte
Turquoise Robinson
Frances Robinson