

I

Facts and Travel

Although the details of the trial need not be extensively reiterated, some, of course, are pertinent with respect to the instant motions. Mr. Lambert was a commercial fisherman for over forty years, spending much of that time fishing out of Sakonnet Point in Little Compton, Rhode Island. The two business entities involved, Wilcox and Parascandolo, were owned, and chiefly operated, by the Parascandolo family. The businesses owned a dock at Sakonnet Point where fishermen could unload their catch and package it. There was also a sorting and sales component of the businesses located in Newport, Rhode Island. Together, those businesses bought seafood directly from fishermen, like Mr. Lambert, and then sold it on the retail market.

On April 30, 2013, Mr. Lambert returned from a day at sea to unload his catch at the Sakonnet Point dock (the Dock) owned by Wilcox. In order to unload his catch from the boat, he used the winch located on the dock, which was provided and maintained by Wilcox and employees of Parascandolo.¹ However, while using the winch, he experienced what is known as a “riding turn.”² The riding turn caused the rope Mr. Lambert was holding to be pulled toward the winch drum—which continued to spin—entangling, and ultimately severing, much of his right arm.

¹ To operate the winch, a load is hooked up to a line of rope that feeds up into a pulley and then back down to the winch. An operator stands behind the winch’s drum, around which “turns” of rope are placed, and, as the winch spins clockwise, pulls the rope back towards him. This enables the operator to lift several hundred pounds relatively easily. For a much more detailed pictorial explanation, see Pls.’ Mem. in Supp. of Their Obj. to Defs.’ Mot. for Summ. J. 2–3.

² See generally Pat Langley-Price, Philip Ouvry, Competent Crew: For New Crew and Competent Crew Students (5th ed. 2007) (explaining a riding turn occurs when a turn on the drum of a winch slips over another turn on the winch). On the winch in question, this action caused the rope held by the operator to be pulled towards the winch mechanism while the rope attached to the load quickly, and uncontrollably, rose into the air.

As a result of the injuries he suffered, Mr. Lambert and his wife, Debra L. Lambert (collectively, Plaintiffs or the Lamberts), filed the instant action against Wilcox, Parascandolo, and N. Parascandolo & Sons Transportation, Inc.³ All three of these businesses were owned by the Parascandolo family, but they are separate legal entities. Wilcox's alleged liability arose out of its duty, as the property owner, to maintain the winch in a reasonably safe condition. Meanwhile, Parascandolo's liability was allegedly attributable to the actions of Alan Parascandolo—a member of the Parascandolo family and employed by defendant Parascandolo—who was the primary, if not only, employee at the Dock during the time period surrounding Mr. Lambert's injuries.

Over the course of the two week trial, the jury heard testimony from many witnesses.⁴ Two were Anthony and Alan Parascandolo, who—amongst other things— testified about their duties at the Dock. Notably, over the relevant time period, Anthony Parascandolo's presence at the Dock was significantly reduced. This left his less experienced brother Alan in charge of the day-to-day operations at the Dock.

The jury also heard from Greg Mataronas, Kevin Sullivan, and Earnest St. Laurent—all of whom were fishermen who unloaded and sold their catch at the Dock in the months leading up to Mr. Lambert's injuries. To a man, the fishermen denied ever discussing the condition of the rope with Mr. Lambert during the early months of 2013. Lastly, there was testimony from Mr. Lambert and his deck hand, Stephen Menard, who—along with Alan Parascandolo—were the only individuals present at the Dock on April 30, 2013 at the time of Mr. Lambert's injuries.

³ Judgment as a matter of law entered in favor of defendant N. Parascandolo & Sons Transportation, Inc. and it was dismissed from the action at the close of Plaintiffs' case.

⁴ In addition to the witnesses listed below, the jury heard testimony from Chad Mitchell, Kevin Sullivan's deckhand, Debra Lambert, and Dr. Jon Mukand.

Both at the close of Plaintiffs' case and again prior to the jury being charged, the Defendants moved for judgment as a matter of law. Both times, the arguments were founded on the contention that Mr. Lambert could not sufficiently show that the condition of the rope was the cause of his riding turn and, therefore, his injuries. Additionally, Parascandolo alleged that there was insufficient evidence to show it owed a duty to anyone with regard to the subject winch. Both times, this Court denied the Defendants' motions.

Prior to the jury being charged, both Defendants objected to the Court's decision to exclude an instruction on comparative negligence. After deliberating for two days, the jury returned a verdict in favor of the Lamberts on their respective claims.⁵ Mr. Lambert was awarded \$2,434,600, and his wife received \$259,000. Accordingly, the Court entered judgment on October 15, 2015.

Now, both Defendants submit similar arguments in asking this Court to dismiss the jury verdict and grant them judgment as a matter of law. However, at this late stage in the litigation, Defendants also ask alternatively if the Court denies their renewed judgment as a matter of law motions, that the Court grant their Motion for a New Trial because they were entitled to a jury instruction on comparative negligence. Both motions are timely and will be addressed in seriatim below.

⁵ There were originally six jurors and four alternates but, after taking into account the attentive nature of all the members of the jury, the parties agreed to allow all of them to deliberate on the verdict. In total, there were nine jurors that ultimately deliberated, as one had been excused for personal reasons early on in the trial. The Court notes the great diversity amongst this group which included two mechanical engineers, an accounting analyst, a nurse, a clerical worker, a bus driver, the manager of a bowling alley, a retired professor at Salve Regina University, and another retiree. Once again, the Court thanks them for their diligent efforts in fulfilling their civic duty.

II

Standard of Review

Rule 50 of the Superior Court Rules of Civil Procedure governs Motions for Judgment as a Matter of Law. It provides in pertinent part:

“If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.” Super. R. Civ. P. 50(a)(1).

When addressing a renewed Motion for Judgment as a Matter of Law, the trial justice must “consider the evidence in the light most favorable to the party against whom the motion is made without weighing the evidence or considering the credibility of the witnesses and extract from that record only those reasonable inferences that support the position of the party opposing the motion” Blue Coast, Inc. v. Suarez Corp. Indus., 870 A.2d 997, 1009 (R.I. 2005) (quoting AAA Pool Service & Supply, Inc. v. Aetna Cas. and Sur. Co., 479 A.2d 112, 115 (R.I. 1984)).

The motion must be denied “if there are factual issues upon which reasonable people may have differing conclusions.” Broadley v. State, 939 A.2d 1016, 1020 (R.I. 2008). “However, if the only reasonable conclusion that can be drawn from the evidence is that the plaintiff is not entitled to recover, then the motion must be granted.” Kenney Mfg. Co. v. Starkweather & Shepley, Inc., 643 A.2d 203, 206 (R.I. 1994) (citing Hulton v. Phaneuf, 85 R.I. 406, 410, 132 A.2d 85, 88 (1957)). Thus, for Defendants to prevail on their motions, the Court must find that no reasonable jury could have found for Plaintiffs based upon the evidence presented. See McLaughlin v. Moura, 754 A.2d 95, 98 (R.I. 2000).

Rule 59 of the Superior Court Rules of Civil Procedure governs the granting of a new trial. It provides in pertinent part:

“A new trial may be granted to all or any of the parties and on all or part of the issues for error of law occurring at the trial or for any of the reasons for which new trials have heretofore been granted in the courts of this state.” Super. R. Civ. P. 59(a).

When ruling on a motion for a new trial, the trial justice functions as a “super juror.” Candido v. Univ. of Rhode Island, 880 A.2d 853, 856 (R.I. 2005). In carrying out that role, the trial justice must review the evidence and assess credibility. Crafford Precision Prods. Co. v. Equilasers, Inc., 850 A.2d 958, 963 (R.I. 2004). Accordingly, the trial justice, as the super juror,

“is required to independently weigh, evaluate, and assess the credibility of the trial witnesses and evidence. If the trial justice determines that the evidence is evenly balanced or is such that reasonable minds, in considering that same evidence, could come to different conclusions, then the trial justice should allow the verdict to stand.” Martinelli v. Hopkins, 787 A.2d 1158, 1165 (R.I. 2001) (quoting Graff v. Motta, 748 A.2d 249, 255 (R.I. 2000)).

A trial justice’s decision on a motion for a new trial “will be accorded great weight and will be disturbed only if it can be shown that the trial justice overlooked or misconceived material and relevant evidence or was otherwise clearly wrong.” Id. (quoting Graff, 748 A.2d at 255).

“General Laws 1956 § 8-2-38 requires the trial justice to instruct the jury on the law to be applied to the issues raised by the parties.” State v. Briggs, 787 A.2d 479, 486 (R.I. 2001) (quoting State v. Lynch, 770 A.2d 840, 846 (R.I. 2001)). However, the trial justice is not obligated to issue an instruction where the requesting party has failed to make clear its argument or present any evidence in support of its theory. See Lett v. Giuliano, 35 A.3d 870, 878 (R.I. 2012) (“Trial justices are not required to instruct jurors on matters that are undisputed or for which no evidence has been presented at trial.”); see also Morinville v. Old Colony Coop.

Newport Nat'l Bank, 522 A.2d 1218, 1222 (R.I. 1987) (“A trial justice fulfills his or her obligation to charge the jury properly by framing the issues in such a way that the instructions reasonably set forth all of the propositions of law that relate to material issues of fact which the evidence tends to support.” (Emphasis supplied and internal quotation omitted)). Indeed, “it is well settled that [a jury instruction] ‘must be applicable to the facts that have been adduced in evidence and that a request for instructions is properly denied when there is no basis for such instruction in the evidence.’” Almonte v. Kurl, 46 A.3d 1, 16 (R.I. 2012) (emphasis supplied) (quoting Brodeur v. Desrosiers, 505 A.2d 418, 422 (R.I. 1986)).

III

Analysis

The Defendants each individually make the aforementioned Renewed Motion for Judgment as a Matter of Law or, alternatively, Motion for a New Trial. Although each Defendant’s submission essentially mirrors the other, there are some minor differences; accordingly, they are addressed separately below.

The heart of Wilcox’s Renewed Motion for Judgment as a Matter of Law is that the evidence would not reasonably permit the jury to find that any conduct on the part of Wilcox proximately caused Plaintiff’s injuries without the jury engaging in improper speculation. Wilcox alleges that there was a dearth of evidence relating to Mr. Lambert’s riding turn on the day of the injury which cannot support a verdict in favor of the Plaintiffs. Finally, Wilcox alleges that it was error for the Court not to instruct the jury on comparative negligence, as sufficient evidence was introduced on the issue.

Parascandolo adopts Wilcox’s arguments as to the aforementioned grounds; however, it also contends that there was insufficient evidence introduced at trial that it owned, operated,

controlled or maintained the rope, winch and dock at issue in this case. Parascandolo argues that the Plaintiffs only showed that defendant Wilcox owned, operated, controlled, or maintained the Dock or the winch where Mr. Lambert's injury occurred. As a result, it requests that this Court enter judgment as a matter of law in its favor.

In opposition, Plaintiffs maintain that there was more than sufficient evidence introduced at trial to allow the jury to find that the nature of the rope, and consequently Defendants' negligence by failing to maintain it, was the cause of Mr. Lambert's riding turn. Further, Plaintiffs submit that this Court was correct in refusing to charge the jury on comparative negligence. In support thereof, they aver that there was absolutely no evidence offered at trial that Mr. Lambert was negligent in any manner.

A

Judgment as a Matter of Law

With respect to their Rule 50(b) motions, both Defendants argue that judgment should be entered in their favor as a matter of law because there was insufficient evidence introduced at trial to support a jury's determination that their negligence was the cause of Plaintiffs' injuries. Defendants both point to what they see as the lack of evidence introduced at trial regarding the actual cause of Mr. Lambert's April 30, 2013 "riding turn." Plaintiffs counter this argument by noting that there was both circumstantial evidence, through the testimony of the other Sakonnet Point fishermen who had experienced riding turns over the months leading up to April 2013, and direct evidence, offered by those present on the Dock at the time of Mr. Lambert's injuries, regarding what caused Mr. Lambert's riding turn on April 30, 2013. Plaintiffs believe that the evidence confirms that the condition of the rope was the only plausible explanation for Mr. Lambert's injuries, and they ask this Court to uphold the jury's verdict.

At this late stage in the litigation, the Court must take the evidence in a light most favorable to the nonmoving party—here, the Plaintiffs—reversing the jury verdict only if no reasonable jury could have found for the Plaintiff based on the evidence presented. See McLaughlin, 754 A.2d at 98. Accordingly, in order to rule in favor of the Defendants, the Court must find that, based on the evidence presented, no reasonable jury could have found that the negligent maintenance of the rope was the cause of Mr. Lambert’s riding turn and, ultimately, his injuries. Lastly, it should be noted that the Rhode Island Supreme Court has consistently held that “[t]he issue of proximate cause [i]s a determination for the jury.” Seide v. State, 875 A.2d 1259, 1269 (R.I. 2005) (emphasis supplied).

“It is well established that ‘[i]nferences and presumptions are a staple of our adversary system of factfinding.’” State v. Stone, 924 A.2d 773, 783 (R.I. 2007) (alteration in original) (quoting State v. Ventre, 910 A.2d 190, 198 (R.I. 2006)). To be credible and reliable, evidence need not necessarily be direct. See Michalic v. Cleveland Tankers, Inc., 364 U.S. 325, 330 (1960) (“[c]ircumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence”).

“Causation is proved by inference,” Seide, 875 A.2d at 1269 (quoting Cartier v. State, 420 A.2d 843, 848 (R.I. 1980)), and a “plaintiff ‘is not required to demonstrate with absolute certainty each precise step in the causal chain between the tortfeasor’s breach of duty and the injury.’” Id. (quoting Skaling v. Aetna Ins. Co., 742 A.2d 282, 288 (R.I. 1999)). In other words, “[w]hen inference is employed to establish causation, ‘[p]roof by inference need not exclude every other possible cause, . . . [but] it must be based on reasonable inferences drawn from the facts in evidence.’” Id. at 1268–69 (quoting McLaughlin, 754 A.2d at 98).

At trial, the jury heard from a number of witnesses who were either at the Dock at the time of the accident, unloading their catch at the Dock in the months leading up to the accident, or had worked at the Dock for a number of years. In sum, that testimony showed that for roughly fifty years—leading up to late 2012, early 2013—there had been a very small number of riding turns experienced at the Dock. However, in the months leading up to Mr. Lambert’s injuries, a cluster of riding turns occurred on the winch. When viewed proportionately with the number of riding turns that were known to have occurred on the winch in the decades prior, one can reasonably infer that something was wrong with the winch.

Earnest St. Laurent, Kevin Sullivan and Greg Mataronas were all commercial fishermen who had been operating out of the Dock for varying amounts of time. All had been using the Dock fairly consistently in the roughly six months leading up to April 2013. They each testified that during that time period, they had occasion to experience an abnormally high number of riding turns at the Dock. One of them, Mr. Mataronas, experienced a riding turn in the hours leading up to Mr. Lambert’s. While they acknowledged that there are other causes of riding turns, these experienced fishermen attributed their riding turns to the condition of the rope on the winch. This, taken in conjunction with the previous scarcity of riding turns at the Dock, provided one basis of circumstantial evidence from which the jury could infer that the rope was the cause of the Plaintiff’s riding turn.

Likewise, Mr. Lambert testified that he had been using the winch on the Dock for decades with little to no trouble. In the months preceding his riding turn, Mr. Lambert had been operating on a reduced fishing schedule and had not used the winch as frequently as he had in the past. As a result, he had no reason to suspect that anything was wrong with the rope when he

began to use the winch on April 30, 2013.⁶ Although he did not remember exactly what occurred in the moments leading up to his injury, Mr. Lambert stated that he had been using the winch in the same manner as he always had when he was suddenly, and violently, pulled towards the winch's drum.

Mr. Lambert's testimony was supported by that of his deckhand—Stephen Menard. Mr. Menard stated that, on the day of the accident, Mr. Lambert was going about business as he always had, and he did not sense anything was out of the ordinary until he heard Mr. Lambert scream and the load they were hoisting abruptly rose into the air. Likewise, Alan Parascandolo testified that Mr. Lambert was very experienced with the winch and that he normally operated the winch in a safe manner. This direct evidence, in combination with the aforementioned circumstantial evidence, served both to support Plaintiffs' theory of the case—that the rope had a latent defect which had been negligently maintained—while also providing support for the inference that the rope, and not some other unknown defect or act, was the cause of Mr. Lambert's riding turn.⁷

Lastly, the actual rope that was on the winch on the day of the accident was available to the jury, both at trial and during deliberations. They heard conflicting testimony as to whether the rope was suitable for use on the winch, in its present state. The fishermen identified and described what they considered to be defects in the rope. They were able to point to spots on the rope, which the jury had during deliberations, and explain why these alleged defects were

⁶ Mr. Lambert testified that he had inspected the rope and the winch prior to using it on that day, as he was accustomed to doing every time he prepared to use the winch.

⁷ For example, another cause of riding turns is user error, but, accepting the Plaintiff and Stephen Menard's testimony, the jury could have ruled out this cause. Thus, having excluded another possible cause, it was even more likely that the faulty condition of the rope was the cause of Mr. Lambert's injuries.

dangerous. Meanwhile, Alan and Anthony Parascandolo attempted to show that these alleged defects were merely signs of ordinary use, a contention the jury clearly rejected.⁸

The Court finds that taken together, this testimony forms more than a sufficient basis from which a reasonable jury could have concluded that the condition of the rope was the proximate cause of Mark Lambert's riding turn. Having found the rope to be negligently maintained, it is reasonable that the jury could infer that, because Mr. Lambert had always carefully operated the winch, the faulty rope was the only logical cause for his riding turn. Such an inference is not only permissible under Rhode Island law, it is a bedrock principle that our Supreme Court has affirmed time and time again. See, e.g., O'Connell v. Walmsley, 93 A.3d 60, 67–68 (R.I. 2014); Seide, 875 A.2d at 1268; Kurczy v. St. Joseph Veterans Ass'n, 713 A.2d 766, 771 (R.I. 1998). No other evidence was offered to suggest another cause of Plaintiff's riding turn.⁹

In the cases cited above—dealing with different factual circumstances—the Supreme Court repeatedly held that proximate cause can be established through circumstantial evidence. In two of those cases, O'Connell and Seide, the Court overturned a trial justice's grant of judgment as a matter of law. Those cases both dealt with determining proximate causation in car accidents. In O'Connell, the trial justice decided that plaintiff had failed to introduce evidence showing that the defendant could have avoided the accident if he wasn't intoxicated and speeding at the time of the accident. The Supreme Court disagreed stating that the evidence

⁸ Kevin Sullivan testified that when he complained about the rope, Alan Parascandolo told him to “take the assholes out [of the line].” (Kevin Sullivan Tr. 62:11–12, Oct. 1, 2015.). Sullivan explained that “assholes” are understood to be “small turns in the rope, [or] kinks.” Id. at 62:16.

⁹ It was established that there are other possible causes of riding turns, but there was no evidence admitted to suggest that one of these causes could have led to Mr. Lambert's April 30, 2013 riding turn.

would support an “inference of inattention or diminished reaction time on the part of the defendant from which the jury could infer negligence and conclude that [defendant]’s failure to react was a contributing factor resulting in [plaintiff]’s death.” 93 A.3d at 68.

Similarly, in Seide, the Court held that a jury could infer the proximate cause of an accident at a police roadblock from the evidence adduced at trial that the police should have ceased what was a potentially dangerous chase of a nonviolent suspect. 875 A.2d at 1267. Despite plaintiff’s inability to show that this was the only possible cause of the suspect striking her vehicle, the Court found that the evidence would support an inference that, but for the police department’s arguably negligent conduct, the injury to plaintiff would not have occurred.

Finally, in Kurczy, a child fell down a flight of stairs that was alleged to be negligently maintained and the cause of the child’s injuries. 713 A.2d at 769–70. The plaintiff was unable to testify and there were no other eyewitnesses to the accident. Id. at 770. The jury eventually found that the defendant was negligent but was unable to conclude that that negligence was the cause of the child’s injuries, and the trial justice agreed characterizing the accident as a “mystery” in denying plaintiff’s motion for a new trial. Id. at 770–71. The Supreme Court disagreed, stating that the presence of the defect in conjunction with the child’s injury supported “a logical conclusion that the injury resulted from the defendant’s negligent acts.” Id. at 772.

When the facts of the present case are juxtaposed with those in the aforementioned jurisprudence, it becomes clear that the Plaintiffs offered a plethora of evidence from which the jury could determine that the condition of the rope caused Mr. Lambert’s injuries. Like the plaintiffs in O’Connell and Seide, there were several possible causes of Mr. Lambert’s injuries, but, unlike those plaintiffs, the Lamberts were able to produce the physical embodiment of

Defendants' negligence, the rope. With that physical evidence, the jury could affirmatively assess the state of disrepair it was in and, accordingly, determine whether it was likely the cause of Plaintiff's injuries. While such direct evidence need not be offered to establish causation, its existence here only bolsters the jury's final determination that the Defendants' negligent maintenance of the rope caused the Plaintiff's riding turn. See Kurczy, 713 A.2d at 772.

Furthermore, the weight of the evidence proffered by the Plaintiffs was in excess of what the Supreme Court found sufficient to support a causal inference in Kurczy. There, the plaintiff could offer neither eyewitnesses nor the testimony of the infant plaintiff. Conversely, the present case included testimony from Mr. Lambert, who offered testimony about the moments leading up to his riding turn. Additionally, Alan Parascandolo and Stephen Menard testified. They were both present on the Dock at the time of the injury and were within a few yards of Mr. Lambert. Having the testimony of witnesses who were at the scene further enhanced the ability of the jury to accurately appraise what took place on the Dock that day. That evidence further aided the jury in its fact-finding role. Notably, the Supreme Court has acknowledged that while this evidence is persuasive, it is not indispensable in a negligence case as is Plaintiffs'. See id. For that reason, the Plaintiffs' evidence exceeded what was necessary to support a jury verdict that the rope was the proximate cause of Plaintiffs' injuries.

In sum, the Plaintiffs presented more than enough evidence from which a reasonable jury could conclude that the negligent maintenance of the rope was the cause of Mr. Lambert's riding turn. In light of the foregoing, the Court denies the Defendants' renewed motions as they relate to proximate causation.

Parascandolo's Liability

Additionally, defendant Parascandolo moves for this Court to enter judgment as a matter of law in its favor because the evidence at trial failed to demonstrate that it owned, operated, controlled, or maintained the Dock or the winch that caused Mr. Lambert's injuries. Instead, Parascandolo avers that only Wilcox was shown to have a sufficient association to the property to incur liability. On the other hand, Plaintiffs maintain that the evidence introduced at trial was sufficient for a reasonable jury to conclude that an employee of Parascandolo—Alan Parascandolo—was negligent in carrying out his duties at the Dock, and therefore, Parascandolo was liable for Mr. Lambert's injuries.

“It is well established that traditional vicarious liability rules ordinarily make principals or employers vicariously liable for acts of their agents or employees in the scope of their authority or employment.” Meyer v. Holley, 537 U.S. 280, 285 (2003) (citing Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 756 (1998) (“An employer may be liable for both negligent and intentional torts committed by an employee within the scope of his or her employment.”)). Indeed, Rhode Island Courts have long recognized this bedrock legal principle. See generally Landry v. Richmond, 45 R.I. 504, 124 A. 263, 265 (1924) (acknowledging that “[t]he elementary rules regulating the question of liability of the master for the negligent act of his servant have been [] long and firmly established” in Rhode Island).

Alan Parascandolo testified that he was employed by N. Parascandolo & Sons, Inc. at all pertinent times. In carrying out his duties for Parascandolo, he testified that he was generally in charge of the day-to-day operations at the Dock. These duties included maintaining the property in a manner so as to assure the safety of the fishermen who used the Dock day in and day out. By failing to maintain the rope on the winch in a safe and prudent manner, Alan Parascandolo

was negligent, and consequently, that negligence was attributable to his employer, Parascandolo. See Meyer, 537 U.S. at 285.

The jury also heard testimony that Alan Parascandolo was notified about the deficient condition of the rope by multiple fishermen. One of the fishermen, Mr. Sullivan, reported that he told Alan about the problem and that he never took any action to rectify it. Moreover, Mr. St. Laurent stated that when he told Alan he was having trouble with the rope on the winch, Alan proceeded to demonstrate to him how to “properly” use the winch.¹⁰ Taking such an authoritative role with regard to the winch clearly demonstrated that Alan, and in turn Parascandolo, was in charge of maintaining the winch for daily operation.

Considering the evidence in a light most favorable to the Plaintiffs, this Court finds that there was a sufficient evidentiary basis for a reasonable jury to find that Parascandolo was liable for the negligent maintenance of the rope in question. Applying the fundamental principle of respondeat superior, Parascandolo was liable for the negligent actions of Alan Parascandolo at the Dock. As such, Defendant Parascandolo’s renewed Motion for Judgment as a Matter of Law is denied.

The Court finds that the Plaintiffs surpassed the minimal weight of evidentiary support required to withstand the renewed Motions for Judgment as a Matter of Law by Wilcox and Parascandolo. Accordingly, those motions are denied.

¹⁰ According to Mr. St. Laurent, he was already operating the winch consistently with the instruction offered by Alan Parascandolo.

B

Motion for a New Trial

With regard to the Motion for a New Trial, Wilcox and Parascandolo argue that it was error for the Court not to instruct the jury on comparative negligence. Defendants claim that the facts and circumstances surrounding the accident would allow a jury to find that a reasonably prudent fisherman in Plaintiff's position would have declined to use the winch in the condition it was in. Although the jury refused the contention that Mr. Lambert assumed the risk,¹¹ the Defendants claim it could have used the same evidence proffered in support of that defense to find that he was comparatively negligent.

Conversely, Plaintiffs' position is simply that there was absolutely no evidence offered at trial that Mr. Lambert was negligent in any manner, and the Court was correct in refusing to charge the jury on comparative negligence. In support thereof, Plaintiffs accentuate the total lack of evidence pertaining to any duty existing on the part of Mr. Lambert or, assuming arguendo the existence of a duty, any breach thereof.

“An instruction on comparative negligence must [] be given if the evidence establishes a genuine controversy as to whether [the Plaintiff] placed himself in foreseeable danger even though safer alternatives were available, and whether his choice was the proximate cause of his injuries.” Wilson v. Mar. Overseas Corp., 150 F.3d 1, 11 (1st Cir. 1998) (applying federal admiralty doctrine of comparative negligence). “The standard for determining whether a factual issue is sufficiently contested to require an instruction is identical to the standard for determining whether a factual controversy prevents the entry of judgment as a matter of law.” Id. at 10.

¹¹ The Court did instruct the jury on Defendants' assumption of the risk defense, over the Plaintiffs' objection.

(comparing Fashion House, Inc. v. K mart Corp., 892 F.2d 1076, 1088 (1st Cir. 1989) (“[A] mere scintilla of evidence is not enough to forestall a directed verdict, especially on a claim or issue as to which the burden of proof belongs to the objecting party.”) with Farrell v. Klein Tools, Inc., 866 F.2d 1294, 1297 (10th Cir. 1989) (“There must be more than a mere scintilla of evidence to support an instruction.”)). In deciding whether it would have been proper to give an instruction to the jury, the Court will “determine whether the record contains sufficient evidence from which a reasonable jury could reach the conclusion set forth in the requested instruction.” Gianquitti v. Atwood Med. Assocs., Ltd., 973 A.2d 580, 594 (R.I. 2009).

As an initial matter, this Court notes that a party can be entitled to an instruction on assumption of the risk and comparative negligence. In their motions and at the hearing held on the motions, Defendants seem to suggest that the Court belabored under a false belief that a party could only avail itself of one defense or the other. Clearly, in Kennedy v. Providence Hockey Club, Inc., 119 R.I. 70, 77, 376 A.2d 329, 333 (1977), the Rhode Island Supreme Court acknowledged the differences between the two defenses and noted that “[the comparative negligence statute] does not affect the validity of assumption of the risk as a complete bar to recovery.” Indeed, “assumption of the risk differs from the doctrine of comparative negligence in that assumption of the risk is concerned with ‘knowingly’ encountering a danger whereas comparative negligence is concerned with ‘negligently’ encountering a danger.” Mignone v. Fieldcrest Mills, 556 A.2d 35, 38 (R.I. 1989) (citing Kennedy, 119 R.I. at 76, 376 A.2d at 333). It is therefore possible that, under the proper circumstances, a party could present a case where an instruction on both principles of law would be warranted.

Rather, the fatal flaw in Defendants’ argument is that they failed to present even a scintilla of evidence at trial relating to comparative negligence. See Gianquitti, 973 A.2d at 594

(the record must contain “sufficient evidence” to warrant an instruction); Lett, 35 A.3d at 878 (an instruction is unnecessary where “no evidence has been presented at trial”). Accord Ouellette v. Carde, 612 A.2d 687, 690 (R.I. 1992) (affirming a trial justice’s refusal to instruct the jury on comparative negligence where the “defendant did not assert that plaintiff acted [sufficiently to establish liability]”). Rhode Island’s comparative negligence statute, R.I.G.L. § 9-20-4, “comes into play only after negligence is first established on the part of both the plaintiff and the defendant.” Calise v. Hidden Valley Condo. Ass’n, Inc., 773 A.2d 834, 837 (R.I. 2001) (emphasis supplied). Axiomatically, for comparative negligence to be applicable, the defendant must first establish that the plaintiff was negligent. See id. (noting that only “[o]nce [the plaintiff’s negligence] is established” will comparative negligence become germane).

Therefore, the Defendants bore the burden of establishing that Mr. Lambert was negligent on the day of the accident. See Barber v. LaFromboise, 908 A.2d 436, 443 (Vt. 2006) (“A fundamental tenet of the comparative negligence doctrine in this and other states is that the defendant, in asserting such a defense, bears the burden of proving by a preponderance of the evidence that the plaintiff was negligent and that such negligence was a proximate cause of the plaintiff’s injuries.”). Despite bearing that burden, the Defendants never put forward evidence that Mr. Lambert was negligent, nor did they even attempt to establish that such negligence could have been the cause of his injuries. Independently, either of these grounds could have been the basis for the Court to deny an instruction on comparative negligence; however, when taken together, they overwhelmingly support the Court’s decision to deny any instruction on comparative negligence.

Defendants maintain that the same facts that supported a jury instruction on assumption of the risk also entitled them to an instruction on comparative negligence. However, Defendants’

reliance on this reasoning is flawed, for the same reasons espoused by the Supreme Court in Mignone. 556 A.2d at 38. There, the Supreme Court noted the primary difference between the two defenses—assumption of the risk focusing on the subjective knowledge of the plaintiff encountering the danger while comparative negligence is centered around the “negligent,” or objectively flawed, actions of the plaintiff. Id. Taking the evidence in a light most favorable to the Defendants,¹² the Court believed the evidence established that an experienced fisherman, like Mr. Lambert, could have appreciated the risk involved with operating the winch, despite his uncontradicted testimony that he did not originally find the rope to be in a dangerous condition.¹³ In a similar manner, the jury could have chosen to believe or discredit the testimony of the fishermen that they had not discussed with Mr. Lambert the potential hazard that the rope posed. Ultimately, the possibility that the Plaintiff had subjective knowledge of the danger the rope presented persuaded the Court to issue an instruction on assumption of the risk.

It does not, however, follow that, based on the same evidence, a reasonable person in Mr. Lambert’s position would have refused to use the winch on the day in question. This objective standard necessitated the Defendants to present evidence beyond Mr. Lambert’s subjective knowledge of the danger. For example, evidence that other fishermen had refused, or would refuse, to use the winch because they believed it represented an unacceptable risk. Rather, the evidence presented was that all of the fishermen at the Dock categorically continued to use the winch, even in the hours before Mr. Lambert’s injuries. Even taking this evidence in a light most

¹² See Wilson, 150 F.3d at 10 (identifying the standard for whether to issue a jury instruction to be the same as the weight of evidence required to withstand judgment as a matter of law, i.e., taking the evidence in a light most favorable to that party).

¹³ It was the function of the jury to weigh the credibility of the witnesses and choose to accept or reject their testimony in making an appropriate finding.

favorable to the Defendants, it suggested only that Plaintiff was acting reasonably when he chose to use the winch on April 30, 2013.

The failure of Defendants to establish Plaintiff's negligence bars an instruction on comparative negligence. In Quellette, the Supreme Court held that for a defendant to be entitled to a comparative negligence instruction against a rescuer he must show that the rescuer acted rash or recklessly. 612 A.2d at 690. Similarly, here, the Defendants had to make the requisite showing that Plaintiff acted negligently, and, without any evidence thereof, a finding by the jury that Plaintiff failed to act like a reasonable person in a similar situation would have been based purely on conjecture or speculation. Thus, it was proper for the Court to refuse to instruct the jury on comparative negligence.

Furthermore, the Defendants did not, at trial or in their motions, establish any duty that the Plaintiff owed to them, and, "[e]ven in the face of tragic consequences, liability for alleged negligent conduct cannot attach to a defendant absent a recognized duty of care." Gushlaw v. Milner, 42 A.3d 1245, 1252 (R.I. 2012) (citation omitted). While their assumption of the risk defense focused merely on the Plaintiff's subjective knowledge, their comparative negligence defense was not cognizable "until a legal duty [was] established." Id. (citations omitted). As the burden rested on Defendants to establish a duty, the failure to do so likewise justified this Court's decision not to instruct the jury on the defense of comparative negligence. See Barber, 908 A.2d at 443 (placing the burden to prove negligence upon the party asserting comparative negligence).

Lastly, assuming arguendo the existence of duty and breach, the Defendants also bore the burden of establishing that any negligence on the part of Plaintiff was the proximate cause of his injuries. See id. Not only did Defendants wholly fail to present any evidence of this at trial but,

before this Court, they contend that there was insufficient evidence introduced at trial to attribute the Plaintiff's riding turn to the condition of the rope. See supra at 7. Despite being tasked with "belling the cat"¹⁴ in this regard, Plaintiffs were able to adequately do so, as discussed supra. Conversely, Defendants actively denied that the condition of the rope was the likely cause of Mr. Lambert's injuries, and they put forward absolutely no evidence that any supposed negligence on the part of Plaintiff was the cause of his injuries. Now, despite attacking the sufficiency of the evidence Plaintiffs put forward in establishing causation, Defendants ask this Court to grant their motion for a new trial based on a contention for which they provided no evidence of causation. This double standard cannot hold water, and it is contrary to the law. See Gianquitti, 973 A.2d at 594 (there must be adequate evidence to warrant a jury instruction). Therefore, the Court properly denied an instruction on comparative negligence as the paucity of evidence relating to proximate causation would have been insufficient to withstand the entry of judgment as a matter of law. Almonte, 46 A.3d at 16 (instruction is properly denied when there is no basis for the instruction in the evidence); see also Wilson, 150 F.3d at 10 (identifying the standard for warranting a jury instruction as evidence sufficient to withstand the entry of judgment as a matter of law).

The Court finds the Defendants' position on comparative negligence and assumption of the risk akin to that of a gambler standing at the roulette table in a casino. The gambler surveys the table and eventually decides to place a bet on black fifteen, hoping for a high payout, but he also considered betting on even. When the wheel stops, it reveals the roulette ball in the black twenty-six pocket. The gambler feels cheated because he thought about betting on even, but he

¹⁴ See Aesop's Fables 71 (Hayes Barton Press 2005) (to bell the cat is to be tasked with a nearly impossible task).

never did. Instead, he chose to risk it all on the potentially sizable payout of a straight up bet.¹⁵ Similarly, here, Defendants went for the “big payout” by pursuing an assumption of the risk theory at trial which, if successful, would have been a complete bar to recovery for the Plaintiffs. However, having lost on that high risk calculation, they also wanted to have the opportunity to hedge their bets with a comparative negligence instruction, an alternative which would merely reduce the total jury award. Fatal to this attempt is that, like the gambler who took no action on the even bet, Defendants never presented evidence of comparative negligence at trial.

In sum, the Court finds that the Defendants failed to carry their burden at trial by presenting no evidence of comparative negligence. This complete absence of evidence relating to comparative negligence would have been insufficient to withstand the entry of judgment as a matter of law, and it is likewise insufficient to warrant a jury instruction. Due to the dearth of evidence, the Court was correct not to instruct the jury on comparative negligence and, as a result, the Defendants’ Motions for a New Trial are denied.

C

Conduct of Counsel

The Court pauses to briefly discuss the unprofessional conduct of defense counsel during trial. Frequently, counsel attempted to speak over the Court or would continue to make arguments on issues that the Court had already decided.¹⁶ What’s more, counsel’s tone and demeanor was often unbecoming of an attorney addressing the Court. As former United States

¹⁵See generally John Gollehon, All About Roulette 24 (1987) (A “straight up” bet is betting on a single number and has a substantial payout of roughly thirty-five to one, while an even or odd bet pays out at one to one.)

¹⁶Additionally, counsel impliedly made unsubstantiated accusations that Plaintiffs’ counsel had coached witnesses to testify in a particular manner, only to have those erroneous accusations soundly put aside through further examination.

Supreme Court Chief Justice Warren E. Burger once said, “. . . lawyers who know how to think but have not learned how to behave are a menace and a liability, not an asset, to the administration of justice.” Honorable Warren E. Burger, The Necessity for Civility, 52 F.R.D. 211, 215 (1971). Taking heed of these prudent words, attorneys should strive to hold themselves to the highest standard of professional courtesy and to show the utmost respect for the Court in the performance of their roles as advocates. Defense counsel’s failure to do so was a poor representation of what is, and always has been, such an honorable profession.

IV

Conclusion

Having carefully reviewed the entire record, the evidence before it, and the arguments of counsel, this Court agrees with the jury’s verdict, finding there was sufficient evidence to permit a jury to establish causation, and finds that Defendants wholly failed to put forward adequate evidence to warrant a jury instruction on comparative negligence. Accordingly, this Court must allow the jury’s verdict to stand, and the Defendants’ Renewed Motions for Judgment as a Matter of Law and Motions for New Trial are denied. Counsel shall confer and submit an appropriate order for entry that is consistent with this Decision.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Mark W. Lambert and Debra L. Lambert v. N. Parascandolo & Sons, Inc. and H.N. Wilcox Fishing, Inc.

CASE NO: NC 2014-0107

COURT: Newport County Superior Court

DATE DECISION FILED: January 29, 2016

JUSTICE/MAGISTRATE: Stone, J.

ATTORNEYS:

For Plaintiff: Mark B. Decof, Esq.; Michael P. Quinn, Jr., Esq.; Richard S. Humphrey, Esq.

For Defendant: Mark W. Shaughnessy, Esq.; Scott M. Carroll, Esq.