IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kristina Greenwood, and Lynn Greenwood, h/w, Appellants v. Francis R. Mangini, Personal Representative of the Estate of Francis Mangini a/k/a Frank Mangini, Sr. and Francis R. Mangini, Personal Representative of the Estate of Helen V. Mangini a/k/a Helen Mangini and Francis R. Mangini and Daniel Mangini, Personal Representative of the Estate of William Patrick Mangini a/k/a Emilio Mangini and Daniel Mangini, Personal Representative of the Estate of Mollie Mangini a/k/a Mollie Narducci and Daniel Mangini and Dorothy Boyle, Personal Representative of the Estate of Alexander Mangini and Dorothy Boyle, Personal Representative of Estate of Rose Kwasizur and Dorothy Boyle and City of Philadelphia c/o Legal Department and A&E Construction, Inc. and Boilerhouse, LLC and Boilerhouse Development	:	No. 2074 C.D. 2010 Argued: May 9, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: September 23, 2011

Kristina Greenwood (Mrs. Greenwood) and Lynn Greenwood (Mr. Greenwood) (collectively, the Greenwoods) appeal the order of the Court of Common Pleas of Philadelphia County (trial court) which denied the Greenwoods' post-trial motions.

I. Background.

On January 5, 2007, the Greenwoods resided at 1203 South 2nd Street, Philadelphia, Pennsylvania. Mrs. Greenwood was returning to her residence from a Wawa convenience store which was located at 2nd and Christian Street. As she walked in front of 1107 S. 2nd Street (the Property), Mrs. Greenwood noticed a large puddle which covered a portion of one of the concrete slabs in the sidewalk. The puddle took up one concrete sidewalk block and was approximately a foot and a half wide which left room on the sidewalk to skirt around it. As Mrs. Greenwood attempted to avoid the puddle, she did not step far enough to the side and turned her ankle as her foot straddled the adjacent slab which caused her to fall.

No one witnessed the fall. Mrs. Greenwood remained on the ground with her lower legs still in the puddle for twenty or twenty-five minutes until she was assisted by a passerby. Mrs. Greenwood was taken to the emergency room of Pennsylvania Hospital. Her ankle was placed in an Air Cast, she was given crutches and instructed to elevate the ankle and ice it. Within a week, the ankle swelled considerably and her foot turned very white. She returned to the emergency room. She was referred to Dr. Castro at Pennsylvania Foot and Ankle Orthopedics who determined that Mrs. Greenwood had multiple fractures. Her ankle was placed in a "Cam Walker," a big black boot with curved plastic on the

bottom and Velcro straps which extended from her toes to her knee. Mrs. Greenwood wore the Cam Walker until the third week of May. She underwent physical therapy during this period.

Mrs. Greenwood experienced pain in her hip and could not lift her leg. She had difficulty with steps. Mr. Greenwood had to assist her in getting dressed. She began to experience groin pain and pain on the outside of her hip and thigh. The Licoderm patches prescribed for her hip only helped slightly. Mrs. Greenwood stated at trial that she was diagnosed with a labral tear in her hip. She received hip injections which only helped for a few hours. In January 2009, Mrs. Greenwood underwent ankle surgery to repair ligaments which had not healed. She also had a bone chip in her ankle. After that surgery healed, she underwent hip surgery.

II. Pleadings.

On May 29, 2007, the Greenwoods commenced an action against Alexander Mangini, Frank Mangini, and the City of Philadelphia (City). At the time of the accident, Frank Mangini, Daniel Mangini, and Dorothy Boyle owned the Property, either individually or in their capacities as the personal representatives of certain estates. The Greenwoods alleged that the Manginis and the City negligently failed to keep the sidewalk in a safe condition, and permitted dangerous conditions on the Property, failed to warn Mrs. Greenwood of the dangerous condition, failed to repair the condition, permitted Mrs. Greenwood to traverse the Property when the Property owners and the City knew or should have known it was dangerous, failed to provide people lawfully using the Property with

a safe area to traverse the Property, failed to maintain the Property in a proper manner, failed to hire, employ or retain personnel sufficiently qualified to supervise, control and/or maintain the Property, failed to inspect the sidewalk, improperly repaired the sidewalk, failed to exercise the proper degree of care, and failed to observe the statutes of the Commonwealth of Pennsylvania and the ordinances of the City governing the repair, maintenance and control of the Property.

The City answered and denied all allegations and filed a cross claim against the Manginis.

On January 3, 2008, the trial court granted the Greenwoods' motion to amend the complaint. The Greenwoods filed a second suit and added the personal representatives of the Estates that owned the Property. The Greenwoods named as parties, Francis R. Mangini, Personal Representative of the Estate of Helen V. Mangini a/k/a Helen Mangini and Personal Representative of the Estate of Francis Mangini a/k/a Frank Mangini, Sr.; Daniel Mangini, Personal Representative of the Estate of Emilio Mangini; Dorothy Boyle, Personal Representative of the Estate of Alexander Mangini; the City; A&E Construction Inc. (A&E); and Santora Construction Company (Santora)[1]. The amended complaint contained the same allegations of negligence against the Mangini Defendants and the City. The Greenwoods alleged that prior to January 5, 2007, Santora and/or A&E continuously and repeatedly parked construction vehicles on the sidewalk adjacent

[1] Santora was let out of the case before trial and is not part of the proceedings before this Court.

to the property which caused and/or contributed to the deteriorated, worn out, depressed, broken, and/or otherwise defective sidewalk. Further, the Greenwoods alleged that Santora and/or A&E were negligent because they failed to comply with local ordinances that prohibited construction vehicles from parking on the sidewalk, in causing and/or contributing to the dangerous conditions of the Property, by failing to warn Mrs. Greenwood and the owners of the Property, and were negligent in their failure to inspect the Property, hire employees who negligently parked construction vehicles on the sidewalk, failing to supervise employees, ignoring parking tickets for parking on the sidewalk, failing to arrange for proper and adequate parking facilities, failing to observe the degree of care and regard to the rights and safety of Mrs. Greenwood which was required under the circumstances, and by failing to observe the statutes of the Commonwealth of Pennsylvania and the ordinances of the City governing the parking of construction and motor vehicles.

The City filed a cross claim against the Mangini Defendants, A&E, and Santora. A&E filed a cross claim against the City. The Mangini Defendants filed a cross claim against the City, A&E and Santora. The parties filed a stipulation to allow the joinder of Boilerhouse, LLC as an additional defendant. The trial court denied the stipulation. The Greenwoods moved for leave to file a second amended complaint to correct the name of the Estate of Emilio Mangini to the Estate of William Patrick Mangini a/k/a Emilio Mangini, add the Estate of Rose Kwasizur as a party defendant, add Frank Mangini, Daniel Mangini, and Dorothy Boyle as party defendants, and add Boilerhouse, LLC and Boilerhouse

Development as party defendants. On January 5, 2009, the trial court granted the motion.

In the second amended complaint, Count I alleged negligence on the part of the Mangini Defendants and the City. Count II alleged negligence on the part of A&E, Boilerhouse, LLC and/or Boilerhouse Development. Count III alleged that Francis R. Mangini, Daniel Mangini, and Dorothy Boyle inherited the Property and failed to keep and maintain the Property in a reasonably safe condition for those persons lawfully on the Property. Count IV was Mr. Greenwood's loss of consortium claim. A&E filed a cross claim against the Mangini Defendants and the City. The Mangini Defendants in New Matter requested that the trial court dismiss the suit. The Mangini Defendants also filed a new matter cross claim against Boilerhouse, LLC and/or Boilerhouse Development, A&E, and the City.

The Greenwoods also added A&E Construction, Inc. (A&E) and Boilerhouse Development, LLC (Boilerhouse) because the Property's owners claimed that the sidewalk had been damaged by a construction project performed by A&E and Boilerhouse in 2004. On March 6, 2009, the trial court consolidated the two suits. The City filed a cross claim against the other defendants.

Trial commenced on August 9, 2010. Mrs. Greenwood testified regarding her injury on January 5, 2007:

> So there was this large puddle. And I went to step around this puddle, and I apparently stepped off the edge is what happened. My foot caught like sort of in the

> middle. My foot caught that high edge and I rolled my ankle and I fell on my right side. My legs ended up in the puddle and I couldn't get up.

Notes of Testimony, August 9, 2010, (N.T.) at 34; Reproduced Record (R.R.) at 100a. Mrs. Greenwood testified that before January 5, 2007, she was in good health and practiced martial arts. N.T. at 46-47; R.R. at 112a-113a. Mrs. Greenwood testified that Dr. Castro, the foot and ankle specialist, diagnosed her with multiple fractures. N.T. at 47; R.R. at 113a. An MRI revealed that Mrs. Greenwood had two avulsion fractures in her ankle and a partial tear of another ligament. N.T. at 51; R.R. at 117a. When the "Cam Walker" was removed, Mrs. Greenwood was fitted with a brace over her foot and ankle. N.T. at 52-53; R.R. at 118a-119a. Mrs. Greenwood began to notice pain in her hip and could not lift her leg, could not climb stairs, and had to be dressed by her husband. N.T. at 53; R.R. at 119a. Mrs. Greenwood was then referred to Dr. Elliot Bodofsky, a doctor of physical medicine, who referred her to physical therapy and prescribed lidoderm patches for pain. N.T. at 53-55; R.R. at 119a-121a. In December 2007, Mrs. Greenwood treated with Dr. Curtis Slipman who diagnosed her with a lateral tear in her hip. N.T. at 59; R.R. at 125a. Mrs. Greenwood then treated with Dr. Charles Nelson who in the Spring of 2008 gave her steroid injections in a largely unsuccessful attempt to ease her hip pain. N.T. at 60-63; R.R. at 126a-129a.

Mrs. Greenwood underwent ankle surgery in January 2009. Notes of Testimony, August 10, 2010, (N.T. 8/10/10) at 15; R.R. at 139a. The surgery was to repair two ligaments and to remove a bone chip. N.T. 8/10/10 at 18; R.R. at 140a. By April 2009, Mrs. Greenwood's ankle felt "pretty good and the swelling had pretty much subsided by April." N.T. 8/10/10 at 20; R.R. at 140a. On May 12, 2010, Mrs. Greenwood underwent arthroscopic hip surgery. N.T. 8/10/10 at

22; R.R. at 141a. Mrs. Greenwood continued to receive physical therapy for her hip and ankle. N.T. 8/10/10 at 28-29; R.R. at 142a. Mrs. Greenwood continued to have problems with her gait and climbing stairs. She needed her husband's assistance while getting dressed. She had difficulty getting in and out of her jeep and could not walk more than a block. N.T. 8/10/10 at 30-31; R.R. at 143a. Mrs. Greenwood also testified that she was restricted in her leisure and household activities and that her relationship with her husband had been negatively affected. N.T. 8/10/10 at 32; R.R. at 143a.

On cross-examination, Mrs. Greenwood admitted that she had never seen any construction vehicles parked on the sidewalk in front of 1107 South 2nd Street in the two and one-half years she lived there. N.T. 8/10/10 at 57; R.R. at 149a. Mrs. Greenwood also admitted that she went to the beach in July of 2008, and when she returned she had increased pain in her ankle because of her increased activity. N.T. 8/10/10 at 63; R.R. at 151a. On cross-examination, Mrs. Greenwood read from a post-operative note from Dr. Nelson which indicated that Mrs. Greenwood, in his opinion, did not suffer a tear of the labrum in her hip. N.T. at 70; R.R. at 153a.

The Greenwoods presented the videotaped deposition testimony of Joseph P. Gugliardo, D.O. (Dr. Gugliardo), a board-certified orthopedic surgeon. Dr. Gugliardo reviewed medical records, took a history, and evaluated Mrs. Greenwood three times for purposes of this litigation. Dr. Gugliardo testified, "The cause of her injury was the stepping on the uneven pavement which caused an inversion injury to her ankle and, therefore, led to a fracture of the ankle, an

avulsion fracture, a tearing of the ligaments and an injury to the right hip." Deposition of Joseph P. Gugliardo, D.O., June 29, 2010, (Dr. Gugliardo Deposition) at 44; R.R. at 340a. Dr. Gugliardo also opined that the injury to Mrs. Greenwood's ankle was a "permanent injury as portions of bone had to be removed, and injury to the right hip also is an injury that has not been resolved." Dr. Gugliardo Deposition at 46; R.R. at 341a.

Michael Gedraitis (Gedraitis) who resided in the neighborhood where Mrs. Greenwood's fall took place, testified that a few times he saw vehicles parked on the sidewalk in front of the property when construction on neighboring properties took place. N.T. 8/10/10 at 98-101; Supplemental Reproduced Record (S.R.R.) at 28b.[2]

Nicholas Colanzi (Colanzi), a professional engineer who previously worked as a civil engineer with the City of Philadelphia and presently worked as a forensic engineer with Lawrence J. Dove Associates, testified as an expert witness for Mrs. Greenwood that there was a depressed area of concrete sidewalk on the Property when he inspected it on July 16, 2008. N.T. 8/10/10 at 125; S.R.R. at 34b. He testified to a reasonable degree of certainty the condition of the sidewalk resulted from a violation of the Property Maintenance Code of Philadelphia. N.T. 8/10/10 at 139; S.R.R. at 38b.

[2] Stephen Pakech testified that he saw vehicles on the sidewalk in front of the property in 2004 or 2005. N.T. 8/10/10 at 167; S.R.R. at 45b. On cross-examination, he admitted that he did not see the vehicles cause any damage. N.T. 8/10/10 at 171; S.R.R. at 46b.

Daniel Mangini testified on cross-examination about the ownership of the Property. Francis Mangini testified on cross-examination regarding the ownership of the Property. He also testified that he once saw a truck parked on the sidewalk in front of the Property. N.T. 8/10/10 at 199; S.R.R. at 53b. He also testified that he reported the vehicle to a policeman who later informed Francis Mangini that he issued a ticket. N.T. 8/10/10 at 199-200; S.R.R. at 53b.

Fred Zeitter (Zeitter), project manager for A&E Construction, testified that Boilerhouse Development, LLC was the development company for the Penns Point Project located near the property and A&E Construction was the contractor hired by Boilerhouse Development, LLC. N.T. 8/10/10 at 201-202; S.R.R. at 53b-54b. Zeitter testified regarding the Penns Point Project. Zeitter never saw any contractors parking on the sidewalk on 2nd street. Notes of Testimony, August 11, 2010, (N.T. 8/11/10) at 51; R.R. at 173a. He never received any complaints that vehicles were parking on the sidewalk. N.T. 8/11/10 at 54; R.R. at 174a.

Scott Helms, administrative specialist for the City of Philadelphia Streets and Highway Department, testified that under the City Code the abutting property owner was responsible for maintenance of a sidewalk. N.T. 8/10/10 at 215; S.R.R. at 57b.

Mr. Greenwood testified that when he and Mrs. Greenwood went to the beach they only walked down to the water and "[W]e weren't playing volley

ball or anything like that, it was just a walk down to the water." N.T. 8/10/10 at 224; S.R.R. at 59b.[3]

Brendan Mellon, a superintendent and carpenter for A&E, testified that he was the superintendent of the Penns Point Project from May or June of 2005, and that he never saw heavy construction equipment along the sidewalk of South 2nd Street. N.T. 8/11/10 at 80-81; R.R. at 180a.

Daniel M. Honig (Honig), a civil and structural consulting engineer, testified as an expert witness on behalf of A&E by videotaped deposition. Honig testified to a reasonable degree of engineering certainty that the depressed area in which Mrs. Greenwood claimed that she tripped and fell was caused by long-term deterioration and "[t]here was no evidence of any construction or truck loading impact or damage that could explain the conditions I saw in the pictures, in the photos and that I see under current circumstances that I looked at earlier this year." Deposition of Daniel M. Honig, P.E., July 8, 2010, at 21; R.R. at 521a.

III. Verdict.

The jury found the Mangini Defendants (Frank Mangini, Dorothy Boyle, and Daniel Mangini) negligent and A&E, Boilerhouse and the City not negligent. The jury determined that the Mangini defendants were 60% negligent and Mrs. Greenwood 40%. The jury found Mrs. Greenwood suffered economic

[3] Steven Miller of the City of Philadelphia Law Department read a portion of a deposition of Dorothy Boyle, who did not appear, and who stated that between April of 2004 and January 2007, Dorothy Boyle walked by the property once every two weeks and her husband walked by every day. Notes of Testimony, August 11, 2010, (N.T. 8/11/10) at 44; R.R. at 171a.

loss of $8,500, pain and suffering of $10,863, loss of life's pleasures $2,750, and loss of consortium for Mr. Greenwood of $5,166 for a total of $27,279 which when reduced by Mrs. Greenwood's 40% negligence was $16,367.40. The trial court polled the jurors. Ten of the twelve jurors agreed with the verdict. Juror Number One and Juror Number Nine did not. The Greenwoods' attorney, Robert Gelinas, told the trial court that the verdict could be recorded. Notes of Testimony, August 12, 2010, at 102-107; R.R. at 251a-252a.

IV. Post-Trial Relief.

On August 20, 2010, the Greenwoods moved for post-trial relief and alleged:

> 3. After the jury rendered its verdict and the jury was dismissed, Juror Number One (Margaret Robinson) approached plaintiffs KRISTINA GREENWOOD and LYNN GREENWOOD while they were sitting on a bench at the northwest corner of City Hall.
>
> 4. At that time Juror Number One (Margaret Robinson) told plaintiffs that she felt that the other jurors had engaged in juror misconduct by deliberating the issues in this case without her.
>
> 5. Specifically, Juror Number One (Margaret Robinson) said that while she was in the hallway making a cellular phone call, the other jurors 'continued to deliberate without her.
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> 6. Juror Number One (Margaret Robinson) told plaintiffs that after she went back into the jury deliberation room after making her telephone call, the other jurors '*had already decided two or three issues*' on the verdict sheet while she was outside of the jury room.
>
> 7. Juror Number One (Margaret Robinson) told plaintiffs that the other jurors told her that her opinions were 'not

> needed' because 'they only needed ten jurors to decide the verdict.'
>
> 8. Juror Number One (Margaret Robinson) told plaintiffs that the court crier was made aware of this.
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> 9. Juror Number One (Margaret Robinson) told plaintiffs that Juror Number Nine (Tanesha Strong) . . . would corroborate her statements.
>
> 10. Juror Number One (Margaret Robinson) told plaintiffs that if she was 'subpoenaed,' she would 'tell the judge' what occurred while she was in the hallway making her telephone call. . . .
>
> 11. The right to have a jury of twelve decide one's case means that the jurors who have been empanelled are required to consider and decide *each of the issues* submitted to them by the court. The absence of any one voice from that process or the relegation of that voice to the margins by diminishing its influence invalidates the sanctity of the jury trial. . . . (Emphasis in original. Footnote and citations omitted).

Plaintiffs' Motion for Post-Trial Relief, August 20, 2010, Paragraph Nos. 3-11 at 2-3; R.R. at 261a-262a.

The Greenwoods moved for an evidentiary hearing to determine whether there was juror misconduct and moved to set aside the verdict because the verdict for economic damages was against the weight of the evidence because it was uncontroverted that the recoverable medical expenses were $19,360.70, and the jury only awarded $8,500 for economic loss.

The trial court heard the motions on September 2, 2009, and denied both. With respect to the motion for an evidentiary hearing on the conduct of the jurors, the trial court determined:

> Plaintiffs' position is that if one juror was outside the jury room during deliberations the plaintiffs' right to a jury of twelve (12) have [sic] been violated because the absence of any one vote invalidates the jury's verdict. . . . Plaintiff also contends that if one juror leaves the room, the jury is not deliberating and therefore the jurors can be questioned as to what happened when the juror left the room. . . . Furthermore, plaintiffs' [sic] argue that the Court can pose specific questions to the jurors without asking about what occurred during deliberations. . . . This Court disagrees. Under these circumstances, it is impossible to receive testimony from any juror without delving into the occurrences in the deliberation room and violating the 'no impeachment' rule. Once jurors are subpoenaed and questioned as to the manner of their deliberations, the veil of sanctity that protects our American jurisprudence will be pierced. Even if plaintiffs' position is correct, the Court cannot test the veracity and credibility of any juror's testimony without cross-examining the remaining jurors regarding the alleged conduct during deliberation. Furthermore, assuming these allegations are true, juror number one cannot testify as to what issues were decided in her absence without testifying as to how, upon returning to the jury room, she discovered they were already decided. Such an inquiry is clearly protected by the sanctity of the juror room and Pa.R.Evid. 606(b). Jurors are forbidden from testifying about deliberations to protect the integrity of the process and prevent this exact situation here: *minority or equivocating jurors impugning verdicts*. . . . The trial record reflects that juror number one disagreed with the verdict. . . . The Court cannot now allow this self-interested testimony to impugn the verdict and require the unwarranted expenditure of judicial resources. Therefore, this Court has no choice but to deny plaintiffs' request for an evidentiary hearing regarding the deliberations of the jury. (Emphasis in the original. Citations omitted).

Trial Court Opinion, November 22, 2010, at 4-5.

With respect to the Greenwoods' claim that the verdict for medical expense damages went against the weight of the evidence, the trial court ruled that the Greenwoods waived the issue because they failed to object when the verdict was recorded.

V. Issues Before this Court.

The Greenwoods contend that the trial court erred and abused its discretion when it refused to schedule an evidentiary hearing to determine whether the jurors engaged in jury misconduct by deliberating issues when Juror Number One was not present and when it refused to grant the Greenwoods a new trial when the jury disregarded uncontroverted evidence that the Greenwoods' recoverable medical expenses (economic loss) totaled $19,360.70 and only awarded them $8,500.00.[4]

A. Jury.

Initially, the Greenwoods contend that the trial court committed an error of law and abused its discretion when it failed to schedule an evidentiary hearing after Juror Number One informed the Greenwoods that the other jurors engaged in juror misconduct when they deliberated issues in the case without her.

Rule 606(b) of the Pennsylvania Rules of Evidence, Pa.R.E. 606(b), entitled Competency of Juror as Witness, Inquiry into validity of verdict, provides:

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[4] In reviewing an appeal from the denial of post-trial motions, this Court's review is limited to a determination of whether the trial court abused its discretion or committed an error of law. Milan v. Department of Transportation, 620 A.2d 721 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 535 Pa. 650, 633 A.2d 154 (1993).

> Upon an inquiry into the validity of a verdict, including a sentencing verdict pursuant to 42 Pa.C.S.A. § 9711 (relating to capital sentencing proceedings), a juror may not testify as any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions in reaching a decision upon the verdict or concerning the juror's mental processes in connection therewith, and a juror's affidavit or evidence of any statement by the juror about any of these subjects may not be received. However, a juror may testify concerning whether prejudicial facts not of record, and beyond common knowledge and experience, were improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.

Under the plain language of Pa.R.E. 606(b), the two exceptions to the prohibition against a juror testifying as to what occurred during the course of the jury's deliberations involve 1) whether prejudicial facts not of record and beyond common knowledge and experience were improperly brought to the jury's attention and 2) whether any outside influence was improperly brought to bear upon any juror.

It is undisputed that neither of these two exceptions were present here. Based on this rule, it would appear that there was no basis in the Greenwoods' claim that the trial court erred when it failed to order an evidentiary hearing to determine if decisions were made while Juror Number One was out of the room.

The Greenwoods assert that Pa.R.E. 606(b) does not apply because when Juror Number One was absent from the deliberations, the eleven remaining jurors did not constitute a jury because a jury trial requires the participation of all

twelve jurors. See Blum v. Merrell Dow Pharmaceuticals, Inc., 534 Pa. 97, 626 A.2d 537 (1993).[5] The Greenwoods also assert that because the eleven jurors did not constitute a jury their actions in the absence of Juror Number One could not be called deliberations.

The Greenwoods cite no statute, rule, or case law for their unique interpretation of what constitutes a jury. Under their interpretation, all deliberations in the jury room would have to grind to a halt if even one juror excused himself for a moment and what, if anything, occurred while a juror was out of the room would be open to scrutiny. Here, the jury deliberated for almost five hours. Juror Number One certainly had the opportunity to participate and to express her opinions on the various issues. Unlike in Blum, the Greenwoods had a jury of twelve decide their case.

For support of their overall position that an evidentiary hearing is warranted, the Greenwoods cite to Fritz v. Wright, 589 Pa. 219, 907 A.2d 1083 (2006) and Pratt v. St. Christopher's Hospital, 581 Pa. 524, 866 A.2d 313 (2005). In Fritz, a personal injury case, the issue before our Pennsylvania Supreme Court was whether 42 Pa.C.S. § 5104(b) and Article I, Section 6 of the Pennsylvania Constitution required that the same ten jurors vote identically on each question

[5] In Blum, one of the twelve jurors became ill and did not participate in deliberations. Our Pennsylvania Supreme Court held that the Court of Common Pleas of Philadelphia County erred when it denied Merrell Dow Pharmaceuticals, Inc.'s (Merrell) motion for a mistrial and proceeded to verdict with only eleven jurors. Our Pennsylvania Supreme Court determined that Section Six of Article I of the Pennsylvania Constitution entitled Merrell to a verdict from a jury of twelve persons where a twelve person jury was properly demanded and was available.

listed on a special interrogatory verdict sheet to sustain a proper verdict in the case. Gordon Fritz (Fritz) fell on a driveway owned by Hazel Wright, Carolyn Temple, Bonnie Stuart, and Samuel Wright (the owners) and suffered a shoulder injury. Fritz sued and alleged that the owners of the driveway were negligent with respect to the design and maintenance of the driveway. After a jury trial, the Court of Common Pleas of Chester County submitted a verdict slip to the jury which contained seven interrogatories. The jury returned a verdict of $51,300 in favor of Fritz. Ten of twelve jurors agreed that Fritz's contributory negligence was not a substantial factor in bringing about his harm. Jurors four and eight disagreed. As to the amount of damages, ten of twelve jurors agreed on $51,300. Jurors four and nine thought Fritz should only receive $6,300. While ten jurors agreed on each individual interrogatory, the identities of the dissenters were not consistent. The owners moved for a mistrial and argued that the jury was confused and had not reached a proper verdict because the same ten jurors did not agree on each question. The Court of Common Pleas of Chester County denied the motion. The owners appealed to the Pennsylvania Superior Court which reversed on the basis that only nine jurors agreed with the verdict in its entirety and remanded for a new trial. Fritz appealed to the Pennsylvania Supreme Court. Fritz, 589 Pa. at 223-226, 907 A.2d at 1085-1087.

Our Pennsylvania Supreme Court reversed:

> The jury's verdict in this case was for Appellant [Fritz] in the amount of $51,300. When asked by the trial court [Court of Common Pleas of Chester County] if that was their verdict, ten out of twelve jurors agreed that it was. The fact that two jurors dissented on one of the preceding interrogatories, in effect disputing nothing more than the path the jury followed to reach the consensus, is

> irrelevant to the fact that ten jurors agreed on the final verdict.

Fritz, 589 Pa. at 239-240, 907 A.2d at 1095-1096. Our Supreme Court also stated that jurors who have been empanelled are required by the Court to consider and decide each of the issues submitted to them. Fritz, 589 Pa. at 238, 907 A.2d at 1094.

In Pratt, after a jury verdict for the defendant in a medical malpractice action, a juror wrote to the Court of Common Pleas of Philadelphia County and stated that she had learned from other jurors that they had discussed the case with outside medical professionals who were friends, relatives and/or personal physicians. The juror also expressed her belief that improper contacts had influenced the verdict. Sharon Pratt and Michael Nesmith (Pratt and Nesmith), the plaintiffs, moved for post-trial relief on the basis that a new trial or a hearing was warranted because of the allegation of taint relative to the jury deliberations. The Court of Common Pleas of Philadelphia County denied the post-trial motion. Pratt and Nesmith appealed to the Superior Court which reversed. Pratt, 581 Pa. at 527-532, 866 A.2d at 314-317. Our Pennsylvania Supreme Court affirmed and determined that the alleged activity came under Pa.R.E. 606(b). Pratt, 581 Pa. at 534-535, 866 A.2d at 319.

Here, as in Fritz, ten of the twelve jurors agreed on the final verdict. Further, Juror Number One did deliberate with the rest of the jurors for approximately five hours. While a vote on two issues may have been taken, while Juror Number One was not present, Juror Number One had the opportunity to express her opinions on those issues during the deliberative process. Pratt is

inapplicable because the outside influence exception of Pa.R.E 606(b) was clearly implicated in Pratt. These cases are unpersuasive regarding the Greenwoods' position.

B. Damages.

The Greenwoods next contend that the trial court erred and abused its discretion when it refused to grant the Greenwoods a new trial when the jury disregarded the uncontroverted evidence that the Greenwoods' recoverable medical expenses were $19,360.70 and only awarded the Greenwoods the sum of $8,500 for medical expenses (economic loss).

The trial court ruled that while the evidence was uncontroverted as to the medical expenses, the Greenwoods waived any right to object because they did not object at the time the verdict was recorded. The trial court relied on Picca v. Kriner, 645 A.2d 868 (Pa. Super. 1994). In Picca, Lester Kriner (Kriner) drove his car into Jennifer Picca's (Picca) vehicle from behind as Picca was stopped at a stoplight. Picca sued Kriner and alleged that she suffered neck and back pain. The Court of Common Pleas of Dauphin County directed the jury to find Kriner negligent. The jury did so but determined that Kriner's negligence was not a substantial factor in causing Picca's injuries. When the jury returned the verdict, Picca did not object. In a post-trial motion Picca moved for a new trial which the Court of Common Pleas of Dauphin County granted. Kriner appealed to the Superior Court. Picca, 645 A.2d at 869. Our Pennsylvania Superior Court reversed, "By failing to object to the verdict before the jury was dismissed, Picca has waived her right to move for a new trial because of the verdict's problems.

Hence, we must reverse the trial court's order granting a new trial, and reinstate the jury's verdict in favor of Kriner." Picca, 645 A.2d at 872.

In Criswell v. King, 575 Pa. 34, 834 A.2d 505 (2003), our Pennsylvania Supreme Court looked at cases subsequent to Picca and where the Superior Court narrowed Picca's application. For instance, in Rozane v. Urbany, 664 A.2d 619 (Pa. Super. 1995), the Superior Court concluded that the waiver rule articulated in Picca was inapplicable where the post-trial claim was not that the jury verdict was ambiguous or flawed but that it was contrary to the evidence admitted at trial.

In Criswell, the jury determined that David S. King (King) was negligent in the operation of his motor vehicle but that the negligence did not cause the injuries of Gerald Criswell (Criswell). When the verdict was announced, Criswell's attorney did not poll the jury, and the jury was discharged. One week after the verdict, Criswell filed a timely post-trial motion and requested a new trial based on the jury's verdict being against the weight of the evidence. The Court of Common Pleas of Mifflin County granted a new trial on the weight of the evidence ground. King appealed to the Superior Court which reversed on the basis that Criswell waived any right to a new trial when he failed to object to the allegedly invalid verdict before the jury was dismissed. Criswell, 575 Pa. at 36-39, 834 A.2d at 506-508.

Criswell appealed to the Pennsylvania Supreme Court which reversed:

> In holding that appellant had waived his weight claim in the case sub judice, the panel below cited to Picca

without acknowledging the refinement in the post-Picca decisions, and particularly the cases specifically involving weight of the evidence claims. For the reasons that follow, we agree with those post-Picca decisions which recognize that a claim challenging the weight of the evidence is not the type of claim that must be raised before the jury is discharged. Rather, it is a claim which, by definition, ripens only after the verdict, and it is properly preserved so long as it is raised in timely post-verdict motions.

The approach of Picca, the panel below, and appellee here have lost sight of the very nature of a claim challenging the weight of the evidence. A weight challenge is sui generis. Such a claim is not premised upon trial court error or some discrete and correctable event at trial, but instead ripens only after, and because of, the jury's ultimate verdict in the case. The challenge does not dispute the power of the jury to render the verdict it rendered, nor does it even allege any facial error in the verdict of the jury (be it, in the eyes of the challenger, a flaw, an inconsistency or a total injustice.) Assuming that the case properly was ripe for jury consideration – i.e., neither of the parties was entitled to a directed verdict because a properly joined issue of material fact remained for resolution—the jury is fully empowered to rule in favor of either or any party. The basis for a weight claim derives from the fact that the trial court, like the jury, had an opportunity to hear the evidence and observe the demeanor of the witnesses; the hope and expectation animating a weight challenge is that the trial court will conclude that the verdict was so contrary to what it heard and observed that it will deem the jury's verdict such a miscarriage of justice as to trigger the courts time-honored and inherent power to take corrective action.

. . . .

A verdict may be perfectly consistent and yet be a shock to the losing party, as well as a shock to the conscience of the jurist who oversaw the presentation of evidence. Verdict-related claims arising from perceived evidentiary weight cannot be addressed and averted by resubmission to the same jury. Since the complaint cannot be

> redressed to the jury, there is no reason under the principles animating Dilliplaine [v. Lehigh Valley Trust Co., 457 Pa. 255, 322 A.2d 114 (1974)] and its progeny, to require an objection before the jury is discharged. Nor should a party be forced to litigate a claim of verdict inconsistency when in fact its true complaint sounds in evidentiary weight.

Criswell, 575 Pa. at 45-46, 48, 834 A.2d at 512-513.

Here, the Greenwoods made a challenge based upon the weight of the evidence. Under Criswell a weight of the evidence claim does not require an objection before the jury is discharged. Though the trial court erred when it determined that the Greenwoods waived the issue, this Court's inquiry must not stop here. A new trial should be granted only in truly extraordinary circumstances such as when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is so necessary so that right may be given another opportunity to prevail. Armbruster v. Horowitz, 572 Pa. 1, 813 A.2d 692 (2002).

The amount of the medical bills alleged by the Greenwoods was uncontroverted. A review of the record reveals that the causal connection between the medical bills and the January 2007, fall was controverted. On cross-examination, Mrs. Greenwood read from a post-operative note from Dr. Nelson which indicated that Mrs. Greenwood, in his opinion, did not suffer a tear of the labrum in her hip. N.T. at 70; R.R. at 153a. Dr. Gugliardo, however, testified that Mrs. Greenwood did suffer a torn labrum as a consequence of the January 2007, fall. Some of the medical bills undoubtedly included treatment for the torn

labrum.[6] Similarly, Mrs. Greenwood admitted that her ankle was much worse after she went to the beach in July 2008. She later underwent ankle surgery. The jury, as the factfinder, could have concluded that treatment for the labrum and/or the ankle was at least partially unrelated to the fall. Although the trial court erred when it determined that the Greenwoods waived this issue, the error was harmless because the jury's action did not require a new trial.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

[6] The bills were not broken down by provider or by dates of treatment.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kristina Greenwood, and Lynn Greenwood, h/w, Appellants	:	
v.	:	
Francis R. Mangini, Personal Representative of the Estate of Francis Mangini a/k/a Frank Mangini, Sr. and Francis R. Mangini, Personal Representative of the Estate of Helen V. Mangini a/k/a Helen Mangini and Francis R. Mangini and Daniel Mangini, Personal Representative of the Estate of William Patrick Mangini a/k/a Emilio Mangini and Daniel Mangini, Personal Representative of the Estate of Mollie Mangini a/k/a Mollie Narducci and Daniel Mangini and Dorothy Boyle, Personal Representative of the Estate of Alexander Mangini and Dorothy Boyle, Personal Representative of Estate of Rose Kwasizur and Dorothy Boyle and City of Philadelphia c/o Legal Department and A&E Construction, Inc. and Boilerhouse, LLC and Boilerhouse Development	:	No. 2074 C.D. 2010

O R D E R

AND NOW, this 23rd day of September, 2011, the order of the Court of Common Pleas of Philadelphia County in the above-captioned matter is affirmed.

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BERNARD L. McGINLEY, Judge