

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

JOSEPH ORUSKA AND CYNTHIA  
ORUSKA, HUSBAND AND WIFE, AND  
ANTHONY ORUSKA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

PAUL A. KELLY AND JOHN L.  
VANDERMARK, EXECUTOR OF THE  
ESTATE OF GUY E. VANDERMARK, SR.

Appeal of: Paul A. Kelly

No. 1120 MDA 2013

Appeal from the Judgment entered June 6, 2013  
In the Court of Common Pleas of Susquehanna County  
Civil Division at No: 2006-01754

BEFORE: GANTMAN, P.J., DONOHUE, and STABILE, JJ.

MEMORANDUM BY STABILE, J.

**FILED JULY 11, 2014**

Appellant Paul A Kelly, Esq., appeals from the judgment entered June 6, 2013 in Court of Common Pleas of Susquehanna County in favor of Appellees Joseph and Cynthia Oruska, and Anthony Oruska.<sup>1</sup> Upon review,

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<sup>1</sup> Appellant appealed from the order denying his post-trial motions. However, appeals are not properly taken from orders denying post-trial motions or exceptions. **See *Prime Medica Assocs. v. Valley Forge Ins. Co.***, 970 A.2d 1149, 1154 (Pa. Super. 2009). We have changed the caption accordingly.

we remand to the trial court for the issuance of an opinion consistent with this memorandum.

Because we are writing for the parties, we need not recount the factual and procedural background of this matter. Briefly, Appellees filed a complaint against Appellant alleging wrongful use of civil proceedings and abuse of process. Following a jury trial, the jury returned a verdict in favor of Appellees. The jury also awarded punitive damages against Appellant. Appellant filed post-trial motions for judgment notwithstanding the verdict (JNOV) with respect to each count of the complaint and with regard punitive damages. The trial court denied the motions. This appeal followed.

On appeal, Appellant raises 17 issues for our review. Despite the confusing and rather peculiar nature of some of the arguments raised by Appellant,<sup>2</sup> Appellant essentially argues the evidence is “grossly insufficient”

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<sup>2</sup> For example, according to Appellant “[i]t is incumbent on the Appellee to demonstrate the existence of the evidence in the record to sustain the verdict.” Appellant’s Brief at 14. Obviously, Appellant cannot provide authority for such a novel proposition of the law when it is he who is seeking JNOV. It is also incumbent on Appellant to articulate, develop, and support his claims. **See, e.g.**, Pa.R.A.P. 2119. Similarly, Appellant designated no part of the record to be reproduced and the “‘lack of designation’ was ‘meant to challenge the Appellees to designate such parts of the record as they thought would demonstrate the existence of evidence to sustain their cases against Appellant Kelly.’” Appellant’s Brief at 15-16. While we discern the point Appellant is attempting to make, there is no support in law or logic for this tactic. Finally, we note Appellant’s brief does not comply with Pa.R.A.P. 2119(a), which reads:

The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part-  
(Footnote Continued Next Page)

to support Appellee's causes of action and award of punitive damages. As such, the trial court erred in not granting Appellant's JNOV motions. Because we are unable to entertain a meaningful review of the issues raised on appeal,<sup>3</sup> we remand to the trial court for the issuance of an opinion consistent with this memorandum.

*(Footnote Continued)* \_\_\_\_\_

-in distinctive type or in type distinctively displayed--the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent.

***Id.*** Here, as noted above, Appellant raised 17 issues for our review. The argument section, however, does not match the list of the issues raised on appeal.

<sup>3</sup> Our standard of review of a trial court's denial of a motion for JNOV is as follows:

A JNOV can be entered upon two bases: (1) where the movant is entitled to judgment as a matter of law; and/or, (2) the evidence was such that no two reasonable minds could disagree that the verdict should have been rendered for the movant. When reviewing a trial court's denial of a motion for JNOV, we must consider all of the evidence admitted to decide if there was sufficient competent evidence to sustain the verdict. In so doing, we must also view this evidence in the light most favorable to the verdict winner, giving the victorious party the benefit of every reasonable inference arising from the evidence and rejecting all unfavorable testimony and inference. Concerning any questions of law, our scope of review is plenary. Concerning questions of credibility and weight accorded the evidence at trial, we will not substitute our judgment for that of the finder of fact. If any basis exists upon which the jury could have properly made its award, then we must affirm the trial court's denial of the motion for JNOV. A JNOV should be entered only in a clear case.

*(Footnote Continued Next Page)*

With regard to the wrongful use of civil proceedings cause of action,<sup>4</sup> the trial court summarized some of the relevant facts, but failed to identify the trial evidence supporting a finding that Appellant acted in a “grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based.” 42 Pa.C.S.A. 8351(a)(1).

(Footnote Continued) \_\_\_\_\_

***Am. Future Sys., Inc. v. Better Bus. Bureau of E. Pa.***, 872 A.2d 1201, 1215 (Pa. Super. 2005) (citation omitted).

<sup>4</sup> “The wrongful use of civil proceedings is a tort arising when a person institutes civil proceedings with a malicious motive and lacking probable cause.” ***Keystone Freight Corp. v. Stricker***, 31 A.3d 967, 971 (Pa. Super. 2011) (citation omitted). Section 8351 defines the tort as follows:

**Elements of action.**--A person who takes part in the procurement, initiation or continuation of civil proceedings against another is subject to liability to the other for wrongful use of civil proceedings:

(1) He acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and

(2) The proceedings have terminated in favor of the person against whom they are brought.

42 Pa.C.S.A. § 8351(a).

Similarly, with regard to the abuse of process action,<sup>5</sup> the trial court's analysis of the relevant trial evidence is limited to the following statement: "The facts and credibility of witnesses was at issue for jury to decide why the underlying suit was continued." Trial Court Opinion, 8/7/13, at 5. Once again, the trial court failed to identify the trial evidence pertaining to the improper use of process after its issuance.

Since the trial court failed to identify the trial evidence pertaining to both the wrongful use of civil proceedings and abuse of process causes of action, we are unable to conduct a meaningful review of the trial court's denial of Appellant's motion for JNOV. The nature of a motion for JNOV compels that the trial court conduct a detailed review of the record evidence. Without such a review, we are unable to fulfill our appellate role.

Finally, Appellant argues the trial court erred in denying his JNOV motion with regard to punitive damages because the evidence offered at trial was insufficient to show his conduct was outrageous under the circumstances. Appellant's Brief at 46. The trial court's analysis of the claim is as follows:

The testimony regarding [Appellant]'s actions are set forth on the record and discussed in part herein. It was possible, based

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<sup>5</sup> **See Publix Drug Co. v. Breyer Ice Cream Co.**, 32 A.2d 413, 415 (Pa. 1943) ("The gist of an action for abuse of process is the improper use of process after it has been issued, that is, a perversion of it. An abuse is where the party employs it for some unlawful object, not the purpose which it is intended by the law to effect; in other words, a perversion of it[.]")

upon the testimony, for a jury to conclude [Appellant] acted outrageously under the circumstances. This is especially so given [Appellant]'s personal involvement in the Lease Agreements, his financial interest in the Oruska and Vandermark quarries, his alleged comments to the Oruskas, and his knowledge as an attorney in filing the underlying action.

Trial Court Opinion, 8/7/13, at 6.

While the trial court earlier in its opinion mentioned some of the facts described above, the trial court failed to set forth all relevant facts to allow us to conduct a meaningful review of the propriety of the trial court's denial of Appellant's motion for JNOV.

In light of the foregoing, we remand to the trial court for the issuance of an opinion setting forth all the relevant facts pertaining to the wrongful use of civil proceedings and abuse of process causes of action, and the punitive damage award, followed by legal analysis and conclusions. Said opinion shall be filed with this Court within thirty days of the return of the certified record.

Case remanded for proceedings consistent with this memorandum.  
Jurisdiction retained.