NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 1297

HAZEL BRADLEY, ON BEHALF OF HER MINOR CHILD, FREDRICKA BRADLEY

VERSUS

MATTHEW HALL AND STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: FEB 2 4 2016

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On Appeal from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Trial Court No. C621297, Div. D

The Honorable Janice Clark, Judge Presiding

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* * * * *

BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

DRAKE, J.

Defendants, Officer Matthew Hall and State of Louisiana, through the Department of Public Safety and Corrections, appeal a judgment of the trial court finding them at fault for a dog-bite to Fredricka Bradley, a minor child. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On October 20, 2012, Hazel Bradley (Ms. Bradley or Plaintiff), and her daughter, Fredricka, were attending the Kiwanis Club Pancake Festival (Pancake Festival), held at the Louisiana State University Pete Maravich Assembly Center. As part of the community event, Officer Hall brought his K-9, Sita, and Officer Johnny Sparks brought a robot that the state police use for explosives. Sita was a Belgium Malinois, which is similar to a German Shepherd, but smaller. Officer Hall was responsible for Sita, and Officer Sparks was responsible for the robot.

Fredricka attended the Pancake Festival with her mother, Ms. Bradley, her cousin, fifteen-year-old Preston Henderson, and two neighbors, Bradisa White, a nine-year-old, and Sade Townsend, a thirteen-year-old.[1] When the group arrived, they proceeded into the Pancake Festival to eat breakfast, but the children eventually went outside, while Ms. Bradley remained inside.

Sade testified that after eating, the children went outside to see Mike the Tiger and that Sita was also outside. Bradisa and Fredricka went up to Sita, since the patrons to the Pancake Festival were allowed to pet the dog. Sade testified that Fredricka petted Sita, and when she did the officers were away from the dog and playing with the robot. Fredricka was trying to touch the dog when it nipped her face. Sade denied that Fredricka tried to either hug or ride the dog.

[1] Although Ms. Bradley testified that Sade Townsend was fourteen at the time of the incident on October 20, 2012, Sade testified that she was born on December 23, 1998. Therefore, she was thirteen-years-old at the time of the dog-bite.

Bradisa denied that she petted the dog on the date of the incident, but she did see Fredricka petting the dog. Bradisa testified that she and the other children only went to see the dog once. She also stated that when Fredricka was bitten by the dog, the officers were playing with a robot.

Fredricka testified that she and the other children initially went to see Mike the Tiger, went back inside, and then went outside to see Sita. The officer told her she could pet the dog. She stated that she rubbed the dog twice, and then it snapped at her. Fredricka also testified that Officer Hall was not sitting right next to the dog when it snapped at her, but that he was by the robot. Fredricka denied trying to hug or ride Sita. She testified that she was rubbing Sita's head when it snapped at her and that the dog was facing her. She denied seeing a chair for Officer Hall or a leash for Sita.

Officer Hall testified that he was the K-9 handler for the state police emergency service unit, which is the hazmat and bomb squad. Officer Hall was responsible for Sita. He explained that the state police brought the dog to community events to educate the public about what they did with the dog and to show what the robot did. Officer Hall testified that Officer Sparks was responsible for the showing of the robot, and Officer Hall only helped load and unload the robot. Prior to Fredricka being bit by Sita, about one hundred children and parents had come up to the dog that day. Officer Hall informed the patrons of the Pancake Festival that they were allowed to pet the dog. He testified that Sita was right by his side the entire time.

Officer Hall further testified that Sita snapped at Fredricka because he was hugged from behind by her and that Sita had not exhibited any aggression prior to this incident. He first came into contact with Fredricka when she asked to pet Sita. She also tried to hug Sita, which Officer Hall admonished her not to do. Fredricka walked away, but returned a few minutes later. Officer Hall emphasized that Sita

was always next to him and always on a leash. Fredricka again petted Sita, left the area, and returned.

During Fredricka's third visit to the dog, Officer Hall was seated with Sita's paws on his lap and speaking to a man and his two children. Officer Hall testified that Fredricka tried to sit on Sita, and he pulled the dog away and explained that she could only pet the dog. Fredricka continued to try to hug Sita. Fredricka came up behind Sita and began petting the dog on the head, while Officer Hall petted her neck. That is when the dog snapped at Fredricka and bit her face.

Officer Sparks testified that he did not see the dog-biting incident but that Fredricka was lingering around Sita, and Officer Hall had had a conversation with her about leaving in a certain tone of voice. Nicole Smith, a paramedic who helped Fredricka after the dog bit her, was near the officers and robot when the incident occurred. Ms. Smith testified that Fredricka kept trying to hug the dog, and Officer Hall told her to stop and only pet the dog. She also testified that Fredricka tried to throw her leg over the dog, and Officer Hall corrected her. Ms. Smith stated that she never heard Officer Hall tell Fredricka to go away, but he did raise his voice and told her to stop doing what she was doing. Ms. Smith never saw Officer Hall using the robot or leaving the dog unattended. The wound suffered by Fredricka was a small puncture wound.

After the December 8, 2014 trial, the trial court issued a dictated "ruling" on April 24, 2015.[2] The court's "ruling," which appears to be its reasons for judgment, states:

> The court ... is of the opinion that the child hugging the dog was not the type of provocation that the Supreme Court spoke of which would deny protection to a minor child. The court considered the lack of sophistication of the child as well as the excitement in the moment at a public event and her natural curiosity.

[2] Although the "ruling" is dated "Friday, April 24, 2014," this court notes that the year must have been "2015" since the trial occurred on December 8, 2014. The court also notes that April 24, 2015, was a Friday.

The trial court signed a judgment on May 5, 2015, in favor of plaintiff in the amount of $10,000.00 for general damages and $1,459.35 in special damages. It is from this judgment that defendants appeal.

ERRORS

On appeal, defendants assign as error the trial court's finding of strict liability pursuant to La. C.C. art. 2321 and the trial court's failure to address comparative fault or assign a percentage of fault to the plaintiff.

LAW AND DISCUSSION

A court of appeal may not overturn a judgment of a trial court absent an error of law or a factual finding that is manifestly erroneous or clearly wrong. *Morris v. Safeway Ins. Co. of Louisiana,* 2003-1361 (La. App. 1 Cir. 9/17/04), 897 So. 2d 616, 617, *writ denied,* 2004-2572 (La. 12/17/04), 888 So. 2d 872. The Louisiana Supreme Court has posited a two-part test for the appellate review of facts in order to affirm the factual findings of the trier of fact: (1) the appellate court must find from the record that there is a reasonable factual basis for the finding of the trier of fact; and (2) the appellate court must further determine that the record establishes that the finding is not clearly wrong (manifestly erroneous). *See Mart v. Hill,* 505 So. 2d 1120, 1127 (La. 1987). Thus, if there is no reasonable factual basis in the record for the trier of fact's finding, no additional inquiry is necessary to conclude there was manifest error. However, if a reasonable factual basis exists, an appellate court may set aside a factual finding only if, after reviewing the record in its entirety, it determines the factual finding was clearly wrong. *See Stobart v. State, through Dep't of Transp. and Development,* 617 So. 2d 880, 882 (La. 1993); *Moss v. State,* 2007-1686 (La. App. 1 Cir. 8/8/08), 993 So. 2d 687, 693, *writ denied,* 2008-2166 (La. 11/14/08), 996 So. 2d 1092. If the trial court's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse those findings, even though convinced that, had it

been sitting as the trier of fact, it would have weighed the evidence differently. *Hulsey v. Sears, Roebuck and Co.,* 1996-2704 (La. App. 1 Cir. 12/29/97), 705 So. 2d 1173, 1176-77.

The liability of animal owners is regulated by La. C.C. art. 2321, which provides as follows:

> The owner of an animal is answerable for the damage caused by the animal. However, he is answerable for the damage only upon a showing that he knew or, in the exercise of reasonable care, should have known that his animal's behavior would cause damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Nonetheless, the owner of a dog is strictly liable for damages for injuries to persons or property caused by the dog and which the owner could have prevented and which did not result from the injured person's provocation of the dog. Nothing in this Article shall preclude the court from the application of the doctrine of res ipsa loquitur in an appropriate case.

With regard to dog owners, the legislature has retained strict liability, yet defined a three-part test to determine liability. First, the dog must have actually caused the damage to the plaintiff's person or property. Second, the owner must have been able to prevent the damage, but failed to do so. Third, the damage must not have been caused by the injured person's provocation of the dog. If the dog is found to have posed an unreasonable risk of harm, then the owner will be presumed to be at fault and will be held strictly liable for an injury caused by his dog, unless he can show that the injury was due solely to the fault of a third party or to a fortuitous event, or, the plaintiff fails to establish that the injuries did not result from the injured person's provocation of the dog. *Terral v. Louisiana Farm Bureau Cas. Ins. Co.,* 39,360 (La. App. 2 Cir. 1/26/05), 892 So. 2d 732, 736 (citing *Pepper v. Triplet,* 2003-0619 (La. 1/21/04), 864 So. 2d 181, 194).

To ascertain whether an owner could have prevented the injury or damage, the plaintiff must establish that the dog posed an unreasonable risk of harm. *Pepper,* 864 So. 2d at 195. The test for determining whether a defendant has created or maintained an unreasonable risk of harm is a balancing of the claims and

interest, a weighing of the risk and gravity of harm, and a consideration of individuals and societal rights and obligations. *Pepper,* 864 So. 2d at 195-96.

Defendants claim that the trial court did not address whether Sita posed an unreasonable risk of harm and refer to the reasons of the trial court. It is well-settled that an appeal is taken from a final judgment, not from written reasons for judgment that are the trial court's explanations of determinations made. *See* La. C.C.P. art. 2083. It is, however, not improper for the court of appeal to consider written reasons for judgment in determining whether the trial court erred. *State in the Interest of Mason,* 356 So. 2d 530, 532 (La. App. 1 Cir. 1977); *see* La. C.C.P. art. 1917. A judgment and reasons for judgment are two separate and distinct legal documents and appeals are taken from the judgment, not the written reasons for judgment. La. C.C.P. art. 1918; *Huang v. Louisiana State Bd. of Trustees for State Colleges & Universities*, 1999-2805 (La. App. 1 Cir. 12/22/00), 781 So. 2d 1, 6. The court of appeal reviews judgments and, where the court of appeal believes that the trial court reached the proper result, the judgment will be affirmed. Accordingly, even if the trier of fact erred in findings of fact, we are constrained to affirm the judgment if the judgment is reasonable in light of the record as a whole. *Id.* (citations omitted).

Even though the reasons for judgment do not address whether Sita posed an unreasonable risk of harm, that does not mean that the trial court did not consider and find that Sita did indeed pose such a risk. Because a determination that a defect presents an unreasonable risk of harm predominantly encompasses an abundance of factual findings, which differ greatly from case to case, followed by an application of those facts to a less-than-scientific standard, a reviewing court is in no better position to make the determination than the jury or trial court. Consequently, the findings of the jury or trial court should be afforded deference and we therefore hold that the ultimate determination of unreasonable risk of harm

is subject to review under the manifest error standard. A reviewing court may only disturb the lower court's holding upon a finding that the trier of fact was clearly wrong or manifestly erroneous. *Reed v. Wal-Mart Stores, Inc.,* 1997-1174 (La. 3/4/98), 708 So. 2d 362, 364-65 (citing *Stobart,* 617 So. 2d at 882).

The trial court must have made the factual finding that Sita posed an unreasonable risk of harm in order to find the defendants strictly liable. The evidence was that Sita was on a leash at all times on the day of the incident and had been petted by at least a hundred children and parents. There was also evidence that Sita showed no aggression prior to this incident and that the dog had been around children. The purpose of Sita's presence at the Pancake Festival was to educate the public. The evidence conflicted as to exactly what Officer Hall was doing at the time Fredricka was bit. The three children who testified, all stated that Officer Hall was playing with the robot at the time of the dog-bite. While Officer Hall's testimony differed, he did admit that he was speaking to a man and his two sons when Fredricka was bit.

The defendants rely on *Pepper, supra,* in their assertion that Sita did not present an unreasonable risk of harm. In *Pepper,* the dog at issue was in a fenced yard which was locked when the plaintiff entered the yard and was bit. The Louisiana Supreme Court noted that the plaintiff was a trespasser and the owner had taken reasonable steps to reduce the risk to the plaintiff. *Id.* at 200.

Courts have found a dog to be an unreasonable risk of harm when the injured party was an invitee, even if the dog was fenced or tethered. In *McBride v. XYZ Ins.,* 41,129 (La. App. 2 Cir. 6/28/06), 935 So. 2d 326, a mother and her three-year-old daughter were invited into a friend's yard when the child was bit. Even though the dog was tethered in the fenced back yard and there were warning signs about the dog on the fence, the court found the owner strictly liable for the actions of the dog. On the facts of the case, the court found the dog posed an unreasonable

risk of harm. *Id.* at 331-32. In *Thibodeaux v. Krouse*, 2007-2557 (La. App. 1 Cir. 6/6/08), 991 So. 2d 1126, the plaintiff was bitten by a dog while performing work at a dog-owner's home. The dog was kept in a fenced yard. The worker had to enter the yard to complete her job and was bitten by the dog who was roaming free in the fenced backyard. *Id.* at 1127-28. The defendants claimed that because the dog was kept in a fenced yard, he did not present an unreasonable risk of harm. The court determined that the plaintiff's presence in the backyard was authorized, and the dog presented an unreasonable risk of harm. *Id.* at 1130. The court noted that "[n]o significant individual or societal rights or obligations [were] presented under [the] facts that would outweigh the risk and gravity of harm presented by [the dog]." *Id.* at 1131. The plaintiff did not carelessly invade or disregard the owner's ownership or privacy interests. *Id.* The plaintiff was an invitee and unaware of any danger presented by the dog, especially since she had worked around the dog for several days. *Id.*

Even though the defendants were attempting to educate the public, no significant individual or societal rights or obligations were presented under the facts that would outweigh the risk and gravity of harm presented by Sita. *See Pepper,* 864 So. 2d at 195-96; *Thibodeaux,* 991 So. 2d at 1131. Given the facts of this case, *i.e.,* that the incident occurred at a public place where children were invited and told they could pet Sita, that at least a hundred people had petted Sita, meaning Fredricka had no reason to be aware of any danger Sita presented, and that Officer Hall attention was diverted at the time of the bite, we find no manifest error in the trial court's finding that Sita presented an unreasonable risk of harm.

Secondly, to prove liability of the defendants under La. C.C. art. 2321, plaintiff had to prove that Fredricka's injuries did not result from her own provocation of the dog. Defendants argue that Fredricka disregarded Officer

Hall's instructions, approached the dog from behind, and hugged the dog, startling her.

Fredricka and her friends testified that she was petting Sita when the dog snapped at her. Officer Hall also testified that Fredricka was petting the dog when she was bit. The trial court made the factual finding that hugging the dog was not the provocation that would deny Fredricka protection of strict liability. Given the facts that the public was invited to pet Sita and that Fredricka, a ten-year-old child, had petted Sita, we cannot find manifest error in the trial court's finding. Even if Fredricka was hugging Sita at the time, we agree that this does not rise to the level of provocation to find no strict liability under La. C.C. art. 2321. This is not the case of a person entering a fenced yard without invitation; rather, the public was invited to touch the dog. Although defendants argue that Fredricka attempted to sit on Sita, she was not bitten at that time, but later when she was either petting or hugging Sita. Therefore, the trial court did not err in finding that Fredricka did not provoke Sita.

Finally, the defendants claim the trial court erred in not apportioning a percentage of fault to the plaintiff, for the actions of Fredricka and Ms. Bradley's actions in not supervising her daughter. Defendants rely upon *Howard v. Allstate Ins. Co.,* 520 So. 2d 715, 719 (La. 1988), which held that comparative fault applies in cases where a domesticated animal inflicts injury and an owner is held liable under La. C.C. art. 2321.

The trier of fact is owed some deference in allocation of fault, since the finding of percentages of fault is a factual determination. *Smegal v. Gettys,* 2010-0648 (La. App. 1 Cir. 10/29/10), 48 So. 3d 431, 439 (citing *Duncan v. Kansas City S. Ry. Co.,* 2000-0066 (La. 10/30/00), 773 So. 2d 670, 680-81, *cert. dismissed,* 532 U.S. 992, 121 S.Ct. 1651, 149 L.Ed.2d 508 (2001)). Thus, a trier of fact's

allocation of fault is subject to the manifestly erroneous or clearly wrong standard of review. *Smegal,* 48 So. 2d at 439 (citing *Stobart,* 617 So. 2d at 882).

In determining the percentages of fault, the trier of fact should consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed. In assessing the nature of the conduct of the parties, various factors may influence the degree of fault assigned, including: (1) whether the conduct resulted from inadvertence or involved an awareness of the danger; (2) how great a risk was created by the conduct; (3) the significance of what was sought by the conduct; (4) the capacities of the actor, whether superior or inferior; and (5) any extenuating circumstances which might require the actor to proceed in haste, without proper thought. *Smegal,* 48 So. 3d at 439 (citing *Watson v. State Farm Fire and Cas. Ins. Co.,* 469 So. 2d 967, 974 (La. 1985)).

The evidence at trial from both the children and Officer Hall was that he was speaking to a man and his two sons when Fredricka was bit. The trial court noted in its reasons the lack of sophistication of Fredricka, a minor child. It is undisputed that Officer Hall was a K-9 handler. There was also conflicting testimony as to whether Fredricka was petting or hugging the dog at the time she was bit. Based on the record before us, there is a reasonable factual basis for the allocation of fault, and the trial court's allocation of fault of 100% to the defendants is not clearly wrong.

CONCLUSION

For the above and foregoing reasons, the trial court's judgment in favor of plaintiff, Hazel Bradley, on behalf of her minor child, Fredricka Bradley, and against defendants, Officer Matthew Hall and State of Louisiana, through the Department of Public Safety and Corrections, is hereby affirmed. Costs of this

appeal are assessed against Officer Matthew Hall and State of Louisiana, through the Department of Public Safety and Corrections, in the amount of $1,188.50.

AFFIRMED.