IN THE SUPREME COURT OF THE STATE OF DELAWARE

STACIE T. GIBBS (a/k/a STACIE BRITTINGHAM),	§	No. 291, 2010
Plaintiff Below, Appellant,	§	Court Below—Superior Court of the State of Delaware, in and for Sussex County
v.	§	
JEFFREY DAVIS,	§	
Defendant Below, Appellee.	§	C.A. No. S08C-07-013

Submitted: October 26, 2010
Decided: January 14, 2011

Before **STEELE,** Chief Justice, **HOLLAND** and **RIDGELY,** Justices.

O R D E R

This 14th day of January 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) In July 2008, the appellant, Stacie T. Gibbs ("Gibbs"), filed a personal injury lawsuit against the appellee, Jeffrey Davis ("Davis"), for damages arising out of an automobile accident.[1] The jury found Davis and Gibbs both negligent

[1] The record reflects that Gibbs' complaint was filed in the name "Stacie Brittingham." In her opening brief on appeal, Gibbs refers to herself as "Stacie Brittingham Gibbs."

and assessed a greater percentage of liability to Gibbs,[2] which precluded Gibbs from recovering any damages.[3]

(2) On April 5, 2010, Gibbs filed a motion for new trial. The motion asserted:

> [T]he verdict of the jury in this case should be set aside since: (a) there was no evidence upon which the jury may have rationally found that [Gibbs] was negligent in any respect; (b) that even if this Court finds that there was some negligence no reasonable jury could have found that [Gibbs'] negligence exceeded [Davis']; and (c) that the verdict of the jury finding negligence of both [Gibbs and Davis] was internally inconsistent and cannot stand.

By order dated April 14, 2010, the Superior Court denied Gibbs' motion for new trial, concluding that the jury was free to accept the defense evidence as more credible, and that Gibbs had not shown "that the jury's determination was inconsistent with the evidence."[4]

(3) Gibbs filed an appeal from the Superior Court's order denying her motion for new trial. On appeal, Davis has filed a motion to affirm, in which he also claims that the appeal was untimely filed.

(4) The Superior Court's public access docket does not support Davis' claim that Gibbs' appeal was untimely filed. The docket reflects that the April 14,

[2] The jury assigned fifty-five percent fault to Gibbs and forty-five percent fault to Davis.
[3] *See* Del. Code. Ann. tit. 10, § 8132 (1999).
[4] *Brittingham v. Davis*, 2010 WL 1493446 (Del. Super.).

2010 order denying Gibbs' motion for new trial was "docketed" on April 15, 2010.[5] Consequently, Gibbs' notice of appeal, which she filed on Monday, May 17, 2010, was timely filed.[6]

(5) This Court reviews an appeal from the Superior Court's denial of a motion for new trial for an abuse of discretion.[7] In this case, the Superior Court determined that the jury's determination and apportionment of liability, which was dependent largely upon its assessment of the credibility of the parties, was not against the weight of the evidence.[8] Having carefully considered the parties' positions on appeal, including the excerpts of the trial transcript ordered by Gibbs, the Court concludes that the Superior Court's determination was well within its discretion and is without legal error.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

[5] The Court notes that the Superior Court's lexis nexis docket entry for the April 14, 2010 order does not reflect a "docketed" date.

[6] In a civil case, a notice of appeal must be filed within thirty days after entry upon the docket of the order from which the appeal is taken. Del. Supr. Ct. R. 6(a)(i). *See* Del. Supr. Ct. R. 11(a) (regarding computation of time when last day of period is a Saturday or Sunday).

[7] *Storey v. Camper*, 401 A.2d 458 (Del. 1979).

[8] *See id.* at 465 (holding that "a trial judge should not set aside a jury verdict on [weight of the evidence] unless, on a review of all the evidence, the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result.").