Figuly. The trial judge did make reference to *Anslinger v. Martinsville Inn, Inc.*, 121 *N.J.Super.* 525, 298 *A.*2d 84 (App. Div.1972), certif. den. 62 *N.J.* 334, 301 *A.*2d 449 (1973). He concluded:

> Were this court authorized to reject New Jersey precedent and make policy it would find the legal relationship of Hiers [the tort-feasor] and Goody [the commercial host] sufficient at this posture of the case to defeat the motion. To do so, however, would be to fly in the face of the clear policy and direction of the Appellate Courts. The clear proposition of the statutory scheme and judicial language is that the extension of vicarious liability for alcohol consumption should not be usurped by the trial courts and, thus, liability in the instant case based upon alcohol consumption is not deemed by this court to be a cognizable cause of action. Thus, as to the issue of vicarious liability for alcohol consumption the motion is granted ....

Unsatisfied, however, that fact questions remaining respecting agency between the commercial host and the tort-feasor permitted the grant of summary judgment, he denied the motion. We granted leave to appeal the *Kelly* issue. We now reverse and remand.

Since the argument of this appeal the Supreme Court has reversed the Appellate Division in *Kelly.* That opinion holds "that where a host provides liquor directly to a social guest and continues to do so even beyond the point at which the host knows the guest is intoxicated, and does this knowing that the guest will shortly thereafter be operating a motor vehicle, that host is liable for the foreseeable consequences to third parties that result from the guest's drunken driving." *Kelly v. Gwinnell,* 96 *N.J.* 538 at 559, 476 *A.*2d 1219 (1984). It is abundantly clear to us that liability in this State depends not on the nature or character of the supplier of the alcoholic beverage nor on whether the tort-feasor is a minor or an adult. Rather, liability depends upon the "conventional negligence analysis" (*id.*, at 543, 476 *A.*2d 1219) respecting foreseeability. That is a fact question at least in the circumstances of this case.

We reverse the determination of the trial judge denying, as a matter of law, vicarious liability for alcohol consumption and remand the matter for further proceedings consistent with *Kelly v. Gwinnell, supra.* We do not retain jurisdiction. No costs to any party.

195 N.J.Super. 426

Robert Dana PAUL and Carol Paul, his wife, Plaintiffs-Appellants,

v.

NATIONAL EDUCATION ASSOCIATION, New Jersey Education Association, Cranford Education Association, Yvonne Hamilton, Lissa Brown, Bridget DePinto, Barbara Kinnear, Carol Rosenfeld, Margaret Kotliar, Constance James, Welthy Garges, Franklyn Preston and Evelyn Hamilton, all individually and as members of the Executive Committee of the Cranford Education Association, Goldberg & Simon, P.A., Gerald M. Goldberg and Theodore M. Simon, individually and as members of Goldberg & Simon, P.A., Awbrey Communications In New Jersey, Inc., Ann Whitford and Ronald Harvey,[1] Defendants-Respondents.

Superior Court of New Jersey,
Appellate Division.

Argued Feb. 23, 1984.

Decided Aug. 8, 1984.

School superintendent filed an action for malicious prosecution arising out of civ-

1. We are told in the procedural history of counsel for appellants that "[w]hile Carol Paul is also

il and administrative proceedings against him for putting teachers under surveillance and for recording telephone conversations and intercepting mail of school board members. Defendants moved for summary judgment. The Superior Court, Law Division, Union County, Griffin, J.S.C., 189 N.J. Super. 265, 459 A.2d 1213, dismissed the complaint, and school superintendent appealed. The Superior Court, Appellate Division, Fritz, P.J.A.D., held that the failure of trial judge to be more precise and expository with findings of fact did not serve to defeat his conclusions and determination, which on careful review of the record appeared to be sound, that dismissal was proper.

Affirmed.

1. Malicious Prosecution ⇐20

There is no immunity from risk of malicious prosecution in cases where no thought was given by the original suitor to the reliability of the information motivating his action.

2. Malicious Prosecution ⇐20

As regards liability for malicious prosecution, the burden to investigate prior to instituting the underlying suit is slight and parties may rely on facts which they reasonably believe to be true and concerning which they might reasonably expect subsequent pretrial discovery to be supportive.

3. Malicious Prosecution ⇐71(2)

In malicious prosecution action, question as to whether defendants proceeded on probable cause in the underlying action is, as a matter of law, one for trial court; if factual disputes essential to that determination appear, those disputes are to be decided by jury.

4. Malicious Prosecution ⇐73

In malicious prosecution action, failure of trial judge to be more precise and expository with findings of fact did not serve to defeat his conclusions and determination, which on careful review of the record appeared to be sound, that plaintiffs' complaint should be dismissed.

Paul R. Williams, Jr., Westfield, for plaintiffs-appellants (Williams & Schirmer, Westfield, attorneys).

Steven Backfisch, Newark, for defendant-respondent National Educ. Ass'n (Thompkins, McGuire & Wachenfeld, attorneys; Dennis M. Cavanaugh, Newark, of counsel; Steven Backfisch, Newark, on brief).

Robert A. Fagella, Newark, for defendants-respondents Cranford Educ. Ass'n, Yvonne Hamilton, Lissa Brown and Carol Rosenfeld (Zazzali, Zazzali & Kroll, Newark, attorneys).

Michael J. Herbert, Trenton, for defendants-respondents Bridget DePinto, Barbara Kinnear, Margaret Kotliar, Constance James, Welthy Garges, Franklyn Preston and Evelyn Hamilton (Sterns, Herbert & Weinroth, attorneys; Michael J. Herbert and Jane F. Kelly, Trenton, on brief).

Raymond J. Fleming, West Orange, for defendants-respondents Goldberg & Simon, P.A., and Gerald M. Goldberg and Theodore M. Simon (Feuerstein, Sachs, Maitlin, Rosenstein & Fleming, West Orange, attorneys).

Richard A. Friedman, Pennington, for defendants-respondents Ronald Harvey, Ann Whitford and New Jersey Educ. Ass'n (Ruhlman, Butrym & Friedman, Pennington and Shanley & Fisher, attorneys; Richard A. Friedman, Barbara G. Rapkin and Richard A. Levao, Newark, on briefs).

Before Judges FRITZ and DEIGHAN.

The opinion of the court was delivered by

FRITZ, P.J.A.D.

The substance of the matters in question appears sufficiently in the opinion of the

listed as a plaintiff, she was dismissed by the trial court as a party plaintiff, and this dismissal is not being contested in this action." Further,

Awbrey Communications is not a respondent on this appeal.

trial judge. *Paul v. National Education Ass'n*, 189 *N.J.Super.* 265, 459 *A.*2d 1213 (Law Div.1983). We see no need for either supplementation or iteration here. We affirm substantially for the reasons expressed in that opinion. However, we believe it appropriate to augment that opinion with observations of our own, principally for emphasis.

[1] At the outset we caution that the opinion below may not be read to confer immunity from the risk of malicious prosecution in cases where no thought was given by the original suitor to the reliability of the information motivating his action. The reliance of the trial judge on the undeniable rule of law respecting the disfavored nature of malicious prosecution actions, coupled with that which was characterized as the holding of the case (189 *N.J.Super.* at 271, 459 *A.*2d 1213), might lead to that hasty conclusion. But that is not what Judge Griffin said and we are certain not what he meant. He said:

> This court now holds that in light of the disfavored nature of these actions, the burden to investigate prior to instituting suit *is slight.* Parties may rely on facts which, they believe to be true and which, supplemented by subsequent pretrial discovery, would reasonably support a suit. To hold otherwise would be to unnecessarily restrict legitimate litigation. [189 *N.J.Super.* at 271, 459 *A.*2d 1213; emphasis supplied.]

[2] For the sake of clarity we would modify that only to the extent of observing that parties may rely on facts which they reasonably believe to be true and concerning which they might reasonably expect subsequent pretrial discovery to be supportive.

[3] We also note that the question of whether defendants proceeded on probable cause is, as a matter of law, one for the court. *Restatement, Torts* 2d, § 673 at 448 (1977). If factual disputes essential to that determination appear, those factual disputes are to be decided by the jury. *Lind v. Schmid*, 67 *N.J.* 255, 266, 337 *A.*2d 365 (1975). But as suggested in the comment to § 673(2)(a) of the *Restatement, supra,*

> ... a jury has no function to perform with reference to the issue of probable cause unless there is a conflict in the testimony as to the circumstances under which the defendant acted in initiating the proceedings. If these circumstances are admitted by either party or if the evidence upon them is clear and uncontradicted, there is no need for a finding of the jury to give the court information upon which to determine the existence or nonexistence of probable cause. [At 450–451.]

We are aware this matter was decided as one appropriate for summary judgment. We are also aware of the teachings of *Judson v. Peoples Bank & Trust Co. of Westfield*, 17 *N.J.* 67, 110 *A.*2d 24 (1954):

> ... All inferences of doubt are drawn against the movant in favor of the opponent of the motion. The papers supporting the motion are closely scrutinized and the opposing papers indulgently treated .... [At 75, 110 *A.*2d 24.]

The record in this case, thus viewed, demonstrates some factual differences which might well impact on the question of probable cause, as Judge Griffin clearly realized. The existence of these factual disputes is not fatal to the determination, however, because for the purpose of determining the question of law involved, *i.e.*, the sufficiency of the probable cause, he accepted plaintiff's contentions. In other words, as a practical matter the motions were determined as though defendants had admitted plaintiff's factual averments and "the evidence upon [the circumstances] is clear and uncontradicted." Or, in terms of *Lind v. Schmid, supra,* the facts were, for these purposes undisputed. This being so it would constitute a frivolity for us to reverse and remand for jury assistance to the judge on the basis that the minds of reasonable men could differ.

[4] In such a case the failure of the trial judge, here apparent and the subject of complaint by plaintiff, to be more precise and expository with findings of fact, will not serve to defeat conclusions and a determination which appear on careful review of the record to be sound. The fact that Lissa Brown and Charles McCarty may have had less than a full complement of the characteristics a Utopian world would design for a teacher or a school board member does not establish a want of probable cause.

Affirmed.

195 N.J.Super. 430

Peter LANG and Jane A. Lang, Plaintiffs-Respondents,

v.

Barbara BAKER and Thomas Carroll, Defendants-Appellants.

Superior Court of New Jersey, Appellate Division.

Submitted Feb. 16, 1984.

Decided Aug. 8, 1984.

Passenger of one of two vehicles involved in accident and her husband brought action against both drivers. The Superior Court, Law Division, Morris County, denied defendants' motion to limit damages to those asserted in statement of damages, and defendants appealed. The Superior Court, Appellate Division held that: (1) statement of damages is limiting, and although jury verdict exceeding amount thus limited shall not for that reason invalidate the verdict, trial judge shall on motion reduce verdict to come within the limited amount; (2) jury was properly instructed with respect to controlling law and charge in its entirety was neither ambiguous nor misleading; (3) interrogatories did not improperly create strong inference that jury must find at least one defendant negligent; and (4) verdicts were not excessive.

Reversed and remanded.

1. Pleading ⇐327

Statement of damages is limiting, and although jury verdict exceeding amount thus limited shall not for that reason invalidate the verdict, trial judge shall on motion reduce verdict to come within the limited amount; overruling *Perdomo v. Goldstein*, 122 N.J.Super. 14, 298 A.2d 305. R. 4:5–2.

2. Pleading ⇐325

Statement of damages can be amended pursuant to civil practice rules. R. 4:5–2, 4:9–1, 4:9–2.

3. Appeal and Error ⇐1064.1(1)

Error in instructing jury on controlling law which has no capacity to lead to unjust result is harmless.

Ozzard, Rizzolo, Klein, Maruo & Savo, Somerville, attorneys for defendant-appellant Barbara Baker (Michael S. Feldman and Arthur D. Fialk, Somerville, on the brief).

O'Donnell, McCord, Leslie & O'Toole, Morristown, attorneys for defendant-appellant Thomas Carroll (John J. O'Donnell, Morristown, on the brief).

Rand & Algeier, Morristown, attorneys for plaintiffs-respondents (Gary C. Algeier, Morristown, of counsel and on the brief).

Before Judges FRITZ and DEIGHAN.

PER CURIAM.

Before us are consolidated appeals by the drivers of two vehicles involved in an automobile accident. The jurors found each driver 50% negligent. They awarded plaintiff Jane Lang, a passenger in one of the cars, $450,000 and her husband, plaintiff Peter Lang, $50,000.