

Damages for strip search

De Reus & Ors v Gray [2003] VSCA 84

THE FACTS

Gray was a 30-year-old mother of four who had incurred unpaid parking fines that with costs and expenses totalled some \$400. She failed to comply with an order to pay and a warrant was issued for her arrest.

Gray was arrested and taken to Narre Warren Police Station. At the station, the officer in charge, De Reus, told the arresting officer, Pike, that he wanted Gray strip searched and that Pike should teach a probationary officer, Hatch, how to do a strip search.

Pike and Hatch took Gray to the end of a corridor and told her to remove all of her clothes. Her clothes were taken and searched. She was not provided with a gown while this occurred. The jury found that the search was carried out by Pike and observed by Hatch.

Gray described feeling embarrassed and humiliated by the search. These feelings were enhanced because she had a vaginal discharge as a result of a recent medical procedure and because a cell door adjacent to where she was searched had what she thought was a mirror window through which others could see her.

THE JURY TRIAL

The plaintiff brought proceedings against Hatch, De Reus and Pike,

alleging negligence, assault and misfeasance in a public office. Proceedings were also issued against the State of Victoria. By agreement, the trial was conducted on the basis that the state would pay any damages awarded to Gray.

The plaintiff claimed damages for distress, anxiety, depression and PTSD, together with aggravated and exemplary damages. Although initially disputed, the defendants admitted under cross-examination that they knew the strip search was unlawful.

The trial was before a jury. In an attempt to simplify the issues, the jury was given ten questions to answer. The first nine questions asked whether each defendant was liable for each cause of action, and for an assessment of compensatory and exemplary damages in respect of each combination of defendant and cause of action.


The final question to the jury asked for an overall figure for compensatory and exemplary damages, without reference to defendant or cause of action. In answer to this question, the jury assessed compensatory damages at \$62,000 and exemplary damages at \$275,000. Reconciling these amounts with the answers given for the first nine questions revealed that the overall figure for exemplary damages included amounts for both assault and negligence, and that despite a finding that Hatch had acted lawfully, an award of exemplary damages against her was made. Further, the jury awarded a higher sum for exemplary damages for negligence than for assault.

THE APPEAL

Winneke P, with Ormiston and Charles JJA agreeing, held that once the jury had found the defendants liable for assault, they had no basis for finding them negligent. A finding of trespass was a finding that the defendants had acted intentionally and as such subsumed the claim in negligence, it being a claim that the defendants had acted unintentionally.

The court accepted that there might be cases where the facts can support findings of trespass and negligence against respective tortfeasers. In this case, however, the conduct comprised one event in which all the defendants jointly participated and the injury for which damages were sought was the same.

The court held that the jury should not have been asked to assess separate amounts for aggravated damages for each defendant. The court accepted that there may be cases where separate awards are appropriate, but identified a number of factors warranting a joint award in this case, namely that all the defendants had acted together to have the plaintiff searched and that each had contributed to the aggravation of her harm and humiliation. The court also noted that none of the defendants had distinguished themselves in their conduct up to and at trial so as to justify a separate award.

The Appeal Court assessed compensatory damages at \$60,000 and exemplary damages at \$50,000 against De Reus and \$25,000 against Pike. 

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