ALTEIRI v. COLASSO

Supreme Court of Connecticut, 1975.
168 Conn. 329, 362 A.2d 798.

LOISELLE, ASSOCIATE JUSTICE.

This action is one for battery brought by a minor, the plaintiff Richard Alteiri, to recover for injuries he suffered, and by his mother, the named plaintiff, to recover for expenses incurred. The complaint alleges that while the minor plaintiff was playing in the back yard of a home at which he was visiting, the defendant threw a rock, stone or other missile into the yard and struck the minor plaintiff in the eye and "[a]s a result of said battery by the defendant, the plaintiff Richard Alteiri suffered severe, painful and permanent injuries." ...

[The defendant asserted that the plaintiff's complaint actually alleged the commission of a negligent act, and that the one-year statute of limitations for negligence actions had run prior to the filing of the

complaint. The complaint had been filed within the three-year statute of limitations for battery.]

Six interrogatories were submitted to the jury. Two interrogatories were answered in the affirmative as follows: "On April 2,1966, did the defendant John Colasso, throw a stone which struck the plaintiff, Richard Alteiri, in the right eye?" Answer: "Yes." "[W]as that stone thrown by John Colasso with the intent to scare any person other than Richard Alteiri?" Answer: "Yes." The jury answered "No" to four other questions concerning whether the defendant had intended to strike either the minor plaintiff or any other person and whether he had thrown the stone either negligently or wantonly and recklessly. A plaintiff's verdict was returned. The defendant had appealed from the judgment rendered....

The jury specifically found, as evidenced by their answers to the interrogatories, that the conduct of the defendant was neither negligent nor reckless and wanton but that it was intentional. Consequently, the Statute of Limitations relied upon by the defendant ... § 52–584, by its terms does not apply to this action; rather General Statutes § 52–577 which limits actions founded upon a tort to be brought within three years from the date of the act or omission complained of would govern.... The issue to be determined on this appeal is whether a jury upon finding that the defendant threw the stone with the intent to scare someone other than the one who was struck by the stone can legally and logically return a verdict for the plaintiffs for a wilful battery....

It is not essential that the precise injury which was done be the one intended. 1 Cooley, Torts (4th Ed.). § 98. An act designed to cause bodily injury to a particular person is actionable as a battery not only by the person intended by the actor to be injured but also by another who is in fact so injured.

This principle of "transferred intent" applies as well to the action of assault. And where one intended merely an assault, if bodily injury results to one other than the person whom the actor intended to put in apprehension of bodily harm, it is battery actionable by the injured person.

The defendant claims that comment b to subsection 2 of § 16 of the Restatement (Second) indicates that subsection 2 applies only to negligent acts where a person not intended to be injured is injured. The comment states in pertinent part that "[i]t is not necessary that the actor know or have reason even to suspect that the other is in the vicinity of the third person whom the actor intends to affect, therefore, that he should recognize that his act, though directed against a third person, involves a risk of causing bodily harm to the other so that the act would be negligent toward him." It is clear that the gist of this comment is that the actor need not know or suspect the presence of the third party, that is, need not be negligent.

It follows that the jury could logically and legally return a plaintiff's verdict for wilful battery, and that the court in accepting that verdict

and denying the defendant's motion [for judgment N.O.V.] was not in error.

Notes

1. Assault, like battery, requires intent. The meaning of intent is the same as in battery cases—either a purpose or substantial certainty.

2. *Transferred intent*. Can you now state two versions of "transferred intent"?

3. Defendant sneaks up behind A with intent to beat his head with a board. B sees this and deflects the blow so that A is not touched, but A turns in time to see the blow coming toward him and is put in apprehension. What legal claims can be successfully asserted?

4. In light of the wide principle of "transferred intent" should we restate the *object* of intent required to establish an intentional tort? Prosser took the view that transferred intent originated with the old writ or form of action called *Trespass*. This writ was "the progenitor not only of battery, but also of assault, false imprisonment, trespass to land and trespass to chattels; and it seems fairly clear that when the defendant intends any one of the five, his intent will be 'transferred' to make him liable for any of the five, provided the harm is direct and immediate." WILLIAM PROSSER, TORTS 33 (4th ed. 1971).

5. *Liability for all damages*. It is said that the defendant who is guilty of an intentional tort, at least if it involves conscious wrongdoing, is liable for all damages caused, not merely those intended or foreseeable. We will call this the extended liability principle. That principle will actually explain most transferred intent cases, as where the defendant intends an assault and puts the plaintiff in apprehension, and then accidentally causes a harmful touching as well. See Osborne M. Reynolds, Jr., *Transferred Intent: Should its "Curious Survival" Continue?*, 50 OKLA. L. REV. 529 (1997). No doubt there is a limit somewhere. Still, stating the rule in terms of extended liability is probably less likely to produce error than stating it in terms of transferred intent.