

[J-47-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

SIDONIE PAVES,	:	Nos. 33-34 EAP 2001
	:	
Appellant	:	Appeal from the judgment of the Superior
	:	Court, Nos. 412 and 478 EDA 2000,
	:	affirming in part and reversing in part the
v.	:	Order of the Court of Common Pleas of
	:	Philadelphia County, Civil Division, No.
	:	2167, April Term, 1993
DR. BARRY CORSON AND CAROL	:	
CORSON,	:	765 A.2d 1128 (Pa. Super. 2000)
	:	
Appellees	:	ARGUED: April 8, 2002

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: July 17, 2002

Five claims against appellant's children went to the jury; the Superior Court vacated verdicts on battery and intentional infliction of emotional distress. The jury heard evidence that was relevant to the dismissed counts that would not have been admitted in a trial on the other three alone. The problem now is not allocating damages between counts; the verdict slip shows how much the jury awarded on each. The real question is the propriety of a jury assigning damages on the three remaining counts when it heard irrelevant and prejudicial evidence because of the two dismissed counts.

Did evidence made relevant only by the battery count affect the level of damages awarded on the conversion count? Can we say evidence of a child battering a mother has no affect on a jury assigning damages for mere financial misconduct? Without the battery count, we would never condone admission of such evidence because of its overall

prejudicial effect¹. The battery and intentional infliction counts are gone; damages on the financial counts should be recalculated without the taint of the irrelevant prejudicial evidence.

I find the Superior Court's solution to be well reasoned. A retrial on liability is not required, but the consequences of that liability, (damages), should be determined without the prejudicial influence of irrelevant evidence of battery and intentional infliction of emotional distress. The new jury should be given only that evidence relevant to damages caused by the sustainable counts.

Accordingly, I respectfully dissent.

¹ See Gallo v. Yamaha Motor Corp., 526 A.2d 359, 366 (Pa. Super. 1987) ("Use of the special verdict in this case does not assure us that the jurors kept their hearts and their minds in the proper perspective").