

Burke v. Mesniaeff

Brief Summary: Assault and battery case where liability was barred via the special defenses of justification and defense of others. Justification instructions were deemed improper and harmful to the verdict because it required the jury to erroneously find that the plaintiff-wife was trespassing in a home where she retained occupancy interests that was owned by her defendant-husband at the time. However, court held the improper instruction did not affect the defense of self verdict as it was not related to the supposed trespass. Lastly, court held that the jury could have reasonably found the defendant believed he was defending others and the belief was reasonable.

In 1998 the defendant purchased a historic house in Sharon (the Sharon house) which was titled solely in his name. However, the plaintiff had keys to home, stored personal possessions there and spent time there. The Sharon house has a historic preservation easement requiring the house to be occasionally open for public viewing. On December 5, 2009, the defendant was hosting a tour of the house that the plaintiff was not invited to. At the time, their marriage was “not on the best terms.” The plaintiff saw online that the defendant was hosting the tour and was “shocked and puzzled” because she thought he was at work, consequently, she went to the Sharon house. When the plaintiff arrived at the house Osborne (one of the guests) walked across to the television room to greet her, thinking she was another guest. At the same time the defendant entered the same room. Upon seeing the defendant and Osborne in the same room she flew into a rage, screaming, “who is that woman?” and “what are you doing in my house?” Osborne testified that she was afraid of the plaintiff, who “came in like a raging bull, screaming,” and who “was aggressively attempting to enter the house.” The defendant testified that the plaintiff was “angry,” “enraged” and “shrieking . . . hysterically high.” The defendant

then asked the plaintiff to leave, when she refused, he held her by her upper arm and escorted her out of the door and down the driveway. Another guest, Teasdale, testified that the plaintiff was out of control and that she was afraid for her own safety and everyone else's safety. The plaintiff testified that the defendant dragged her down the driveway by her arm, head, and neck and repeatedly flung her to the ground and yanked her back up again. However, Teasdale testified that the defendant had his arm on her elbow gently and that she was slipping on the snow but the defendant held her up. After they divorced the plaintiff sued her ex-husband for: (1) intentional assault and battery; (2) reckless assault and battery; (3) negligent assault and battery; (4) intentional infliction of emotional distress; (5) negligent infliction of emotional distress; and (6) reckless infliction of emotional distress. The defendant raised the following special defenses: (1) contributory negligence; (2) justification; (3) self-defense; (4) defense of others; and (5) wrongful conduct of the plaintiff. When asked about the justification defense the defendant responded that he was justified in the use of force because the plaintiff was a criminal trespasser. The court allowed the trespass instruction to be given to the jury as well instructions pertaining to the other four

defenses. The jury found that the defendant committed an assault and battery however, the plaintiff's recovery was barred by the defenses of justification and defense of others. The plaintiff appealed arguing: (1) the jury was improperly charged on the defendant's special defense of justification because the trial court incorporated an instruction on criminal trespass, even though a spouse cannot trespass on marital property as a matter of law and (2) the evidence was insufficient to support the defendant's special defense of defense of others. The Appellate court affirmed. The issues before the Supreme Court of Connecticut were: (1) whether the instruction was improper because the plaintiff was not a criminal trespasser; (2) if the instruction

was improper, whether it harmed the verdict; and (3) whether there was sufficient evidence to support the defense of others verdict.

The court rejected the plaintiff's argument that she could not be a trespasser because they were married. The court also rejected the defendant's argument that she was a trespasser because he had sole title to the home and the Sharon house was not their marital home. Instead, the court referenced sister state decisions regarding trespass by a spouse and held that whether one has a right or privilege to enter property is determined by whether the spouse had any possessory or occupancy interest in the premises at the time of entry. Factors to assess this include: the relationship status of the couple, the existence of extended period of separation, the applicability of any court orders, the establishment of separate residences, the existence of any agreement regarding the property and the manner of entry. Furthermore, the party requesting a jury charge on criminal trespass by a spouse must show that both parties understood that the possessory interest of one was being relinquished.

Based on this rule the court found that the instruction was improper because the plaintiff had a possessory interest in the Sharon house as she had a key, stored her belongings there, visited the home and listed the home as her residential address on her Connecticut driver's license. They were also not separated at the time and at trial the defendant stated that he did not think of her as a trespasser at the time. Thus, the defendant asking her to leave was insufficient to support the trial court's criminal trespass instruction as she retained a possessory interest and he did not have the requisite state of mind (believing she was trespassing) as the defense requires the defendant to believe the use of force was necessary to terminate a trespass.

However, not every improper instruction requires a new trial. A new trial is required if it harmed the verdict. An instructional impropriety is harmful if it is likely that it affected the

verdict. Thus, the court looked at whether the instruction was harmful to both the justification and defense of others verdicts.

The only example of justification given to the jury in their instructions was defense of premises and the instruction informed them that they did not have to find that the victim was using or about to use physical force against the defendant. Thus, the court determined that the justification defense was treated by the court, parties, and jury as the functional equivalent of a defense of premises defense. Thus, by finding in favor of the defense the jury must have found that the use of force was justified by the plaintiff's trespass. Therefore, the court concluded that the instruction misled the jury because the verdict depended on the erroneous finding that the plaintiff was trespassing.

However, the court held that the improper instruction did not harm the defense of others verdict because the instructions included no reference to criminal trespass or defense of others. The jury was given the proper instructions for defense of others and found that: (1) the defendant believed that the plaintiff was about to use imminent physical force against his guests; (2) his belief was reasonable; and (3) he used a degree of force that he reasonably believed to be necessary to defend his guests. The court concluded that none of these findings depended on the plaintiff being deemed a trespasser, thus, the verdict was not harmed.

The court then addressed the plaintiff's last argument that there was insufficient evidence to sustain the above verdict. When a court is tasked with reviewing the sufficiency of evidence presented in a lower court the standard of review is rigorous. The court is required to view the evidence in favor of supporting the verdict. Meaning if the jury could reasonably reach the conclusion it did, the verdict must stand even if the court disagrees with it. To prevail on a defense of others defense, a defendant must introduce evidence that they reasonably believed the

attacker's unlawful violence was imminent or immediate. The subjective and objective component of the defense is: (1) the defendant must have subjectively believed that an attack was imminent; and (2) the defendant's subjective belief must have been objectively reasonable under the circumstances. The court held that the jury could have reasonably found the subjective component was met based on the plaintiff's aggressiveness and the defendant testifying that he was terrified that she would harm his guests. The court also held that the jury could have reasonably found the objective component was satisfied based on Osborne and Tesdale testifying that they felt threatened by and afraid of the plaintiff. Consequently, the decision was affirmed.

The concurrence agreed with the court on all issues and added that because the standard for reviewing evidence is in light most favorable to the defendant the court cannot assume the jury believed the plaintiff's account of the facts—that she was slammed to the ground multiple times by the defendant.

The key takeaway from this case is the court clarifying the law regarding trespass by a spouse. It is irrelevant if title is possessed by only one of the partners, rather, the key question in determining whether it was a trespass is whether both parties understood the other's possessory interests were terminated.