

***James v James No 3* [2020] NSWDC 797 (16 November 2020) – New South Wales District Court**

‘Assault and assault and battery’ – ‘Assessment of damages’ – ‘Civil matter’ – ‘Emotional and psychological abuse’ – ‘People affected by trauma’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Social abuse’ – ‘Tort’

Proceedings: Assessment of damages for the torts of assault and assault and battery.

Facts: The plaintiff woman brought proceedings against her former husband, and obtained default judgment, which the court refused to set aside ([1]). The plaintiff and the defendant had two children, and previously lived on a farm (the subject of settlement proceedings in the Federal Circuit Court) ([4], [18]).

The first torts occurred on 26 September 2017. The defendant caused the plaintiff to fear that she would be battered by calling her names in an aggressive and violent manner, restrained the defendant by her shoulders and arms, and then ordered her to leave the property with her daughter ([2], [5]-[8]). The defendant was prosecuted but the charges were dropped by way of an apparent plea bargain ([7]).

The second torts occurred on 20 February 2018. There was an audio recording of these events, which the plaintiff was permitted to tender despite a ‘technical breach’ of the *Surveillance Devices Act 2007* (see decision in *James v James No 2* [2020] NSWDC 796 (13 November 2020)) ([11]). The defendant physically assaulted and verbally assaulted the plaintiff ([10]-[17]). The defendant was also prosecuted for this offending, and sentenced to an Intensive Corrections Order for 16 months and an Apprehended Violence Order for two years ([19]).

Issues: Assessment of damages.

Decision and reasoning: Judgment for the plaintiff, damages of \$358,520 plus costs.

For the torts on 26 September 2017, the court held at [9] that “[t]he tort of assault and the tort of assault and battery are actions which do not depend upon proof of damage. In any event there was actual bodily harm sustained by the plaintiff”. For the torts on 20 February 2018, the court again held that the torts were actionable per se without proof of damage but here there was “grave damage proven to the Court’s satisfaction”. This included evidence of chronic post-traumatic stress disorder, a recurrent major depressive disorder, and recurrent panic attacks caused by the events of 20 February 2018 ([28]-[32]). The court noted that the plaintiff’s ongoing psychiatric problems would have a continuing impact on her (including her earning capacity) and that (at [29]):

“When this case is finished no doubt she can try to put the events of the past behind her and try to get on with her life. Not having to relive the events by coming to Court and telling the Court of them will no doubt assist in her recovery”.

The plaintiff was awarded compensatory damages, aggravated damages and exemplary damages ([9], [32]). The plaintiff was also awarded damages for past and future economic loss ([33]-[35]).

See also: *James v James No 2* [2020] NSWDC 796 (13 November 2020) – New South Wales District Court.