

UNREPORTED – NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 00-3297

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RAYMOND T. PRYER

v.

C.O. 3 SLAVIC; C.O. 1 COOK; C.O. 1 D. BURSEY,

Appellants

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Appeal from the United States District Court  
for the Western District of Pennsylvania  
(D.C. Civ. No. 92-1461)  
District Judge: Honorable Gary L. Lancaster

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Argued

October 26, 2000

Before: MANSMANN, ALITO, and FUENTES, Circuit Judges.

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ORDER AMENDING OPINION

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The opinion filed on May 30, 2001 is amended as follows:

Page 18, line 2 – delete the word “effectively”;

Page 18, insert the following paragraphs before the paragraph beginning

“Rather than reversing . . . .

The majority seeks to justify its departure from our established standard of review, and its consequent substitution of its discretion for that of the trial judge, by invoking two purported exceptions: First, the majority asserts that no deference is due “where a trial court fails to explain its grounds for exercising discretion, and its reasons for doing so are not otherwise apparent from the record”. Supra at 7 n.4. However, the District Court’s reasons for limiting the second trial to damages are made abundantly clear in its opinion: As the Court explained, “a new trial is appropriate on the issue of damages because the court failed to properly instruct the jury on damages” (by, inter alia, giving an unwarranted nominal damages instruction), and because the resulting nominal damages award was against the weight of the evidence. Implicit in the Court’s recital of errors in the damages instructions and award was its recognition that there was no error in the liability instructions or verdict.<sup>1</sup> Ordinarily, the presence of error limited to a single issue should be considered reason enough to limit retrial to that issue. Although the majority may consider the stated reasons insufficient, it cannot fairly be said that the trial Court “articulated no rationale”.<sup>2</sup>

Second, the majority asserts that the District Court’s grant of a partial retrial “turns on the application of a legal precept to the evidence”. Supra at 7 n.4. The majority does not identify what “legal precept” it deems controlling. The due process and fairness concerns set forth in Gasoline

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<sup>1</sup> That the District Court’s decision was predicated on the absence of error affecting the liability verdict is further “apparent from the record” through the Court’s express reliance on Wheatley v. Beetar, 637 F.2d 863 (2d Cir. 1980), in which the Second Circuit upheld a new trial limited to damages because the defendant had received a fair trial on the issue of liability.

<sup>2</sup> Where a trial court articulates its reasons for an exercise of discretion, it need not anticipate and address every possible concern in order to be entitled to deference. Here, for example, the District Court cannot reasonably be faulted for failing to address the possibility that the damages verdict was the result of compromise, as that suggestion was never advanced by the Defendants, but instead originated with the majority in this appeal.

Products clearly speaks to discretion, and we (and other courts) have always considered its application to be an exercise of discretion, rather than a legal determination. The majority's cryptic invocation of the "legal precept" exception, without identifying a controlling question of law, threatens to eviscerate the abuse of discretion standard: potentially, every exercise of discretion may be subjected to plenary review at the whim of the reviewing court by pointing out that some "legal precept" is somehow involved. By substituting its judgment for that of the District Court (in which the discretion is intended to be reposed) on the basis of such ill-considered, amorphous exceptions, the majority has fundamentally altered our standard of review, effectively overruling sub silentio our decisions in Vizzini and Stanton.

Page 19, line 2 – delete "finding an abuse of discretion by" and substitute "overriding"

Page 19, line 3 – after Court add "'s discretion"

IT IS HEREBY ORDERED

/s/ Carol Los Mansmann

Circuit Judge

Dated: June 5, 2001