

IN THE IOWA DISTRICT COURT FOR DELAWARE COUNTY

SANDRA K. MORMANN, individually and)	Law No. LACV 8847
as Administrator of the Estate of)	
AUGUSTIN G. MORMANN, and DANIEL)	
J. MORMANN, individually,)	
)	JURY INSTRUCTIONS
Plaintiffs,)	
)	
vs.)	
)	
CITY OF MANCHESTER, IOWA, and)	
JAMES LOUIS WESSELS,)	
)	
Defendants.)	

STATEMENT OF THE CASE

Members of the Jury:

This is a civil case brought by plaintiffs Sandra and Daniel Mormann, individually and on behalf of the Estate of their deceased son, Augustin (Gus) Mormann, against defendants James Wessels and the City of Manchester.

The Mormanns claim that the actions of Lt. Wessels constitute an assault and battery upon Gus Mormann.

The Mormanns seek money damages for their son's pain and suffering before his death and for the loss of their relationship with their son. Defendants deny these claims and deny that the Mormanns are entitled to an award of money damages.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law, which I will now give you.

INSTRUCTION NO. 1

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

INSTRUCTION NO. 2

Whenever a party must prove something, they must do so by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 3

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys. Defendants have stipulated that the City is liable for the conduct of Lt. Wessels since he was acting within the scope of his duties as a police officer at the time of the incident. The parties stipulate that all of Gus Mormann's injuries on the date of his death were caused by the accident on December 10, 2020.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 4

Certain Testimony has been read into evidence from a deposition or played from a deposition video. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 5

You will decide the facts from the evidence. Consider the evidence using your observations, common sense, and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory, and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias, and prejudice.

INSTRUCTION NO. 6

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 7

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

INSTRUCTION NO. 8

You have heard evidence claiming a party made statements before this trial while under oath and while not under oath.

If you find such statements were made and were inconsistent with that party's testimony during the trial, you may also use the statements as a basis for disregarding all or any part of that party's testimony during the trial, but you are not required to do so. You should not disregard that party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 9

The fact that the City of Manchester is a governmental entity should not affect your decision. Cities, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person. All parties stand equal before the law and are to be dealt with as equals.

INSTRUCTION NO. 10

The fact that an accident occurred, or that a party was injured, does not automatically mean that a party is responsible.

INSTRUCTION NO. 11

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

INSTRUCTION NO. 12

An assault is committed when a person does an act which is intended to put another in fear of physical pain or injury which a reasonable person would deem insulting or offensive, and the victim reasonably believes that the act may be carried out immediately.

In order to prove their claim of assault, the Mormanns must prove all of the following propositions:

1. Lt. Wessels did an act by which he intended to put Gus Mormann in fear of physical pain or injury.
2. A reasonable person would deem Wessels' act insulting or offensive.
3. Mormann reasonably believed that the act would be carried out immediately.
4. Wessels' act was a cause of damage.
5. The amount of damage.

If the Mormanns failed to prove any of these propositions, they are not entitled to damages on their claim of assault. If the Mormanns proved these propositions, then you will consider the defense of "justification," as explained in Instruction No. 14.

INSTRUCTION NO. 13

A battery is committed when a person intentionally does:

1. An act resulting in bodily contact causing physical pain or injury, or
2. An act which results in bodily contact which a reasonable person would deem insulting or offensive.

In order to prove their claim of battery, the Mormanns must prove all of the following propositions:

1. Wessels intentionally struck Mormann's motorcycle with his police cruiser.

Intent means doing something on purpose as opposed to accidentally. Because intent requires a finding of what a person is thinking when doing an act, it is seldom capable of being proven by direct evidence. You may use your common experience when considering all of the facts surrounding the doing of an act to determine what a person's intent was when committing the act. You may find that if a person does an act on purpose, the person also intended the natural results of the act.

2. Wessels' act resulted in physical pain or injury to Gus Mormann.
3. Wessels' act was a cause of damage.
4. The amount of damage.

If the Mormanns failed to prove any of these propositions, they are not entitled to damages on their claim of battery. If the Mormanns proved each of these propositions, then you will consider the defense of justification, as explained in Instruction No. 14.

INSTRUCTION NO. 14

Plaintiffs allege Defendant Wessels engaged in assault and battery against Gus Mormann. Defendant Wessels was, at all times material hereto, a peace officer. A peace officer, while making a lawful arrest, is justified in the use of any force which the peace officer reasonably believes to be necessary to effect the arrest or to defend any person from bodily harm while making the arrest. However, the use of deadly force is only justified when a person cannot be captured any other way and either the person has used or threatened to use deadly force in committing a felony or the peace officer reasonably believes the person would use deadly force against any person unless immediately apprehended.

To determine whether the force used was reasonable, you must determine whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting the officer, without regard to his underlying intent or motivation.

If you find that Defendant Wessels reasonably believed the force he used was necessary to arrest Gus Mormann and/or to defend any person from bodily harm, you must find for the Defendants and against the Plaintiffs on Plaintiffs' claim of assault and battery.

INSTRUCTION NO. 15

You have heard testimony and received evidence of Manchester Police Department policies and procedures. Those procedures do not establish a standard of care that Defendant Wessels had to follow. The mere fact that such a policy or procedure was violated does not automatically mean that Defendant Wessels committed assault or battery. You must make findings on assault and battery based upon the standards given to you in these instructions.

INSTRUCTION NO. 16

If you find Sandra K. Mormann, as personal representative of the Estate of Augustin G. Mormann, is entitled to recover, it is your duty to determine the amount. In doing so you shall consider the following items in determining an amount which will fully compensate the Estate for the injuries incurred:

1. Physical and mental pain and suffering from December 10, 2020, to January 15, 2021. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.
2. Gus Mormann's loss of function of the mind and body from December 10, 2020, to January 15, 2021. Loss of function of the mind and body is the inability of a particular part of the mind or body to function in a normal manner.

The amount you assess for physical and mental pain and suffering, or loss of function of body and mind cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the defendants as proved by the evidence. A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

The amounts, if any, you find for each of the above items will be used to answer the verdict form.

INSTRUCTION NO. 17

If you find that Sandra K. Mormann or Daniel J. Mormann or both of them are entitled to recover damages as the result of the death of Augustin G. Mormann, it is your duty to determine the amount. In doing so you shall consider the following items:

1. The reasonable value of the past loss of services, which include loss of companionship and society of Gus Mormann, from the date of the death to the present time.
2. The present value of the future loss of services, which includes loss of companionship and society of the parent and child.

In determining loss of companionship and society, you may consider the circumstances of the life of Gus Mormann, including:

1. His age, health, strength, intelligence, character, interests, and personality.
2. Activities in the household and community.
3. All other facts and circumstances bearing on the issue.

The amount you assess for loss of services in the past and future cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damages must not exceed the amount caused by the defendants as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

The amounts, if any, you find for each of the above items will be used to answer the verdict form.

INSTRUCTION NO. 18

Under Iowa law an individual has the right not to be kept alive by artificial means.

INSTRUCTION NO. 19

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiffs for future losses.

INSTRUCTION NO. 20

A Standard Mortality Table indicates that the normal life expectancy of females who are the same age as Sandra Mormann is 23.27 years. You may use this information, together with all the other evidence about Sandra Mormann's prior health, habits, occupation, and lifestyle, when deciding issues of future damages.

A Standard Mortality Table indicates that the normal life expectancy of males who are the same age as Daniel Mormann is 19.85 years. You may use this information, together with all the other evidence about Daniel Mormann's prior health, habits, occupation, and lifestyle, when deciding issues of future damages.

The statistics from a Standard Mortality Table are not conclusive.

INSTRUCTION NO. 21

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage, and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 22

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

INSTRUCTION NO. 23

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 24

I am giving you one verdict form. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock _____.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict must be signed by all seven jurors who agree.

When you have agreed upon the verdict and appropriately signed it, tell the Court Attendant.

This case is submitted to you this 21st day of March, 2024.

Thomas A. Bitter
Judge of the First Judicial District of Iowa



State of Iowa Courts

Case Number
LACV008847

Case Title
SANDRA MORMANN ET AL VS CITY OF MANCHESTER ET
AL
Type: JURY INSTRUCTIONS

So Ordered

A handwritten signature in black ink, appearing to read "Tom Bitter", is written over a horizontal line.

Thomas A. Bitter, District Court Judge,
First Judicial District of Iowa

Electronically signed on 2024-03-21 11:18:40