

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

FILED
CLERK OF DISTRICT COURT
2018 AUG -9 PM 4:17
LINN COUNTY, IOWA

DONALD SANTEE IV,)
)
Plaintiff,)
)
vs.)
)
LISBON COMMUNITY SCHOOL)
DISTRICT,)
)
Defendant.)

No. LACV079780
STATEMENT OF THE CASE
and
INSTRUCTIONS TO THE JURY

MEMBERS OF THE JURY:

In this case Plaintiff Donald Santee IV seeks to recover damages from Defendant Lisbon Community School District resulting from the assault of Plaintiff Donald Santee IV. Plaintiff claims that the assault took place on Defendant's property during the 2011-2012 school year. Plaintiff claims that the Defendant was at fault for the assault and the resulting damages because it was negligent.

Defendant Lisbon Community School District denies that it was negligent, denies that its negligence was a cause of Plaintiff Donald Santee IV's damages and claims Donald Santee IV was at fault.

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

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 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.
4. Any other matter admitted into evidence.

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

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. 5

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in court.

INSTRUCTION NO. 6

The fact that a Plaintiff or Defendant is a corporation should not affect your decision. All person are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 7

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. 8

The mere fact an incident occurred or Donald Santee was injured does not mean Lisbon Community School District was at fault.

INSTRUCTION NO. 9

In these instructions, I will be using the term "fault." Fault means one or more acts or omissions towards another person which constitutes negligence.

INSTRUCTION NO. 10

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

INSTRUCTION NO. 11

Donald Santee claims Lisbon Community School District was at fault in the following way:

1. Lisbon Community School District was negligent in one or more of the following ways:
 - a. In failing to properly supervise Donald Santee and other students enrolled in the Lisbon Community School District;
 - b. In failing to protect Donald Santee from dangerous conditions, known or unknown on school grounds;
 - c. In failing to act as a reasonable school district under the circumstances then and there existing; or
 - d. In failing to enforce appropriate policies with respect to locking and securing the wrestling room when it was not supervised.
2. Lisbon Community School District's negligence was a cause of damage to Donald Santee.
3. The amount of Donald Santee's damages.

If Donald Santee has failed to prove any of these propositions, he is not entitled to damages. If Donald Santee has proved all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. 20, 21, and 22.

INSTRUCTION NO. 12

The Lisbon Community School District is charged with the care and control of children and must exercise the same standard of care toward them that a parent of ordinary prudence would observe in comparable circumstances.

INSTRUCTION NO. 13

A school district is liable for the negligent acts of an employee if the acts are done in the scope of employment.

INSTRUCTION NO. 14

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

INSTRUCTION NO. 15

“Negligence” means failure to use ordinary care. Ordinary care of a child is the care which a reasonable child of like age, intelligence and experience would use under similar circumstances. In determining if Donald Santee’s conduct was negligent, Donald Santee’s conduct must be compared to that of a reasonable child of like age, intelligence and experience. You are to first determine the particular capacity of Donald Santee to avoid the assault based on his age, intelligence and experience. Next, you are to determine how a reasonable child of like age, intelligence and experience would have acted under similar circumstances. “Negligence” is doing something a reasonable child of like age, intelligence and experience would not do under similar circumstances, or failing to do something a reasonable child of like age, intelligence and experience would do under similar circumstances.

INSTRUCTION NO. 16

The duty of a school district concerning the supervision and safety of students is not unlimited. Rather, the scope of the school district's duty is to provide reasonable care for the safety of students from the actions of fellow students or other third persons. To fulfill its duty, the school district is required to employ reasonable safety precautions.

You may consider the following factors in evaluating whether Lisbon Community School District exercised reasonable care:

1. The supervision provided;
2. The foreseeability or possibility of harm.

INSTRUCTION NO. 17

Lisbon Community School District is liable for the misconduct of a student toward another student where the harm that occurred – the student's intentional act and/or misconduct -- was a foreseeable risk under the circumstances.

Lisbon Community School District is not liable to a student for injuries due to the negligent act of other students which it had no occasion to anticipate or foresee.

A risk is foreseeable when the school district has sufficient knowledge of the nature of the immediate circumstances or of the propensities or general character of the particular student or students to foresee their misconduct during the relevant frame of time and place.

“Foreseeability” means something more than awareness of the ever-present possibility a student may engage in inappropriate conduct beyond the boundaries of acceptable behavior.

INSTRUCTION NO. 18

Where a school district's liability is premised on the intentional acts of students toward other students, the school district is not required to take excessive precautions relating to harms that are immediately due to the improper conduct of students, even when that improper conduct can be regarded as somewhat foreseeable or foreseeable in the abstract.

INSTRUCTION NO. 19

If you find the harm that occurred was not a foreseeable risk under the circumstances, your verdict must be for the school district.

INSTRUCTION NO. 20

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the Plaintiff and the extent of the causal relation between his conduct and damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

INSTRUCTION NO. 21

Lisbon Community School District claims Donald Santee was at fault in one or more of the following particular(s):

1. Failing to exercise reasonable care for his own safety.
2. Failing to report to school officials "teabagging" which he personally witnessed and which happened before it happened to him.
3. Voluntarily submitting to the "teabagging".
4. Failing to remove himself from a potentially unsafe situation.

These grounds of fault are explained to you in other instructions.

Lisbon Community School District must prove all of the following propositions:

1. Donald Santee was at fault. In order to prove fault, Lisbon Community School District must prove at least one of the four particulars listed above.
2. Donald Santee's fault was a cause of his damage.

If Lisbon Community School District has failed to prove either of these propositions, the school district has not proved its defense. If Lisbon Community School District has proved both of these propositions, then you will assign a percentage of fault against Donald Santee and include his fault in the total percentage of fault found by you in answering the Special Verdicts.

INSTRUCTION NO. 22

Donald Santee is required to exercise reasonable care for his own safety. This means that, if, in the exercise of ordinary care under the circumstances, Donald Santee could have taken some particular action in order to avoid an injury, then he is under a duty to take such action.

INSTRUCTION NO. 23

If you find Donald Santee is entitled to recover damages, you shall consider the following items:

1. **Mental pain and suffering from the date of the injury to the present time.** Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.
2. **Loss of function of mind from the date of the injury to the present time.** Loss of mind is the inability of a particular part of the mind to function in a normal manner.

The amount you assess for past pain and suffering and past loss of function of the 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 a party 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.

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

INSTRUCTION NO. 24.

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

INSTRUCTION NO. 25

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.

Occasionally, after a jury retires to the jury room, the members have questions. Usually questions about instructions can be answered by carefully re-reading them. If, however, any of you feels it necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes considerable time before I can reply. Keep the written question and response and return it to the Court with the verdict.

INSTRUCTION NO. 26

The way you conduct your deliberations is entirely up to you. I am sure each jury uses techniques that are a little different from every other jury.

The following is a list of suggestions. Feel free to use some or all of them. Likewise, feel free to ignore them and choose your own style of deliberations.

1. You may simply want to go around the table and introduce yourself to each other much like you did at the start of the jury selection process.
2. Choose a presiding juror (foreperson). This person will preside over deliberations and speak for the jury when necessary.
3. Jurors examine and evaluate evidence. They also consider the legal instructions. If you would like any items to help you in this process, please ask.
4. If you need additional copies of the instructions, let the court attendant know how many, and we will get them for you.
5. Try free and open discussion. However, if everyone is not getting a fair share of time to talk, consider making a list of those who want to say something. Then go through the list one at a time letting each person state his or her opinion.
6. Use any voting method you like. Votes can be by voice, show of hands, written ballot (secret or signed).
7. Respect each other's views. We all perceive things differently at times. Differences of opinion can often bring matters into focus. When deliberations are over, every juror should go home thinking he or she has had a full opportunity to express his or her views on the case.
8. If you need to call anyone to let him or her know you will be at the courthouse for a while, just tell the court attendant, and we will make a phone available to you.
9. If you need to stretch your legs and take a break from the jury room, just let the court attendant know and arrangements will be made. Wait until you are all together, however, before you resume discussing the case.

INSTRUCTION NO. 27

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

It is important that we have your full and undivided attention during this trial.

INSTRUCTION NO. 28

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. 29

The Court has not by its instructions or by any ruling made, or by any act done, or by anything said during the trial, or by any facial expression, gesture or tone of voice, intended or attempted to give any intimation or opinion as to what the facts are or what are not the facts, what the proof is or what it is not, nor what your verdict should be.

During the trial, the Court has ruled upon objections to evidence which have been made by counsel. Such rulings are the responsibility of the Court, and in your consideration of the case, you will give no significance or weight whatever to such rulings and you will consider only such evidence which has been received before you as part of the record in this case.

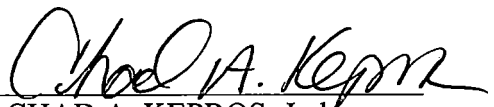
INSTRUCTION NO. 30

I am giving you a Special Verdict form. If you all agree to the answers to the questions, the verdict will be signed by the person you selected to serve as foreman or forewoman.

After deliberating for six hours from 10:30 a.m., excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the verdict. In that case, the verdict must be signed by all seven jurors who are in agreement.

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

DATED at Cedar Rapids, Iowa, this 9th day of August, 2018.


CHAD A. KEPROS, Judge
Sixth Judicial District of Iowa