

IN THE IOWA DISTRICT COURT FOR CARROLL COUNTY

**ESTATE OF ZAYNE MICHAEL
DOLPH, By and Through the
Administrator of the Estate,
SECURITY NATIONAL BANK OF
OMAHA,**

Plaintiff,

vs.

**MANNING FAMILY RECOVERY
CENTER, a part of the MANNING
REGIONAL HEALTHCARE
CENTER, an Iowa Non-profit
Corporation,**

Defendant.

Case No. LACV039632

JURY INSTRUCTIONS

FILED
DISTRICT COURT CARROLL CO.
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INSTRUCTION No. 1

Members of the Jury: This is an alleged simple negligence case for damages. Plaintiff Estate of Zayne Michael Dolph alleges that Defendant Manning Family Recovery Center was negligent in its care and safety of Zayne Dolph while he was under their custody and control and that this alleged negligence resulted in Zayne Dolph's suicide.

Defendant denies that it was negligent in any respect and denies that any alleged negligence caused Zayne Dolph's suicide.

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. 2

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.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION No. 3

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. 4

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 (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. 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. Consider that testimony as if it had been given in court.

INSTRUCTION No. 6

During this trial, you have heard the word ‘interrogatory’. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION No. 7

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. 8

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. 9

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. 10

Upon retiring you shall select a foreperson. It will be the foreperson's 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. 11

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.

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

INSTRUCTION No. 12

If you find Security National Bank of Omaha, as personal representative of the Estate 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 of Zayne Dolph for the damages incurred:

Present Worth of the Value of the Estate

The present value of the additional amounts Zayne Dolph would reasonably be expected to have accumulated as a result of his own effort if he had lived out the term of his natural life.

Physical and Mental Pain and Suffering from the Date of Injury to the Date of Death

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.

The amount you assess for physical and mental pain and suffering 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.

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

INSTRUCTION No. 13

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 plaintiff for future losses.

INSTRUCTION No. 14

Standard Mortality Table indicates the normal life expectancy of people who are the same age as Zayne Dolph is 59.12 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Zayne Dolph's prior health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION No. 15

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. 16

In these instructions I will be using the term “fault”. Fault means one or more acts or omissions towards Zayne Dolph of the actor or of another which constitutes negligence.

INSTRUCTION No. 17

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 Zayne Dolph and Manning Family Recovery Center and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each party's fault contributed to the damages.

INSTRUCTION No. 18

After you have compared the conduct of all parties, if you find the plaintiff, Zayne Dolph, was at fault and the plaintiff's fault was more than 50% of the total fault, the plaintiff, Zayne Dolph, cannot recover damages.

However, if you find the plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of plaintiff's fault.

INSTRUCTION No. 19

The Plaintiff claims the defendant was at fault in one or more of the following particular(s):

- a. In failing to exercise ordinary care under the circumstances;
- b. In failing to exercise ordinary care for the safety of its patients, namely Zayne Michael Dolph;
- c. In failing to supervise its patients, namely Zayne Michael Dolph, and protect him from harm and from reasonably foreseeable risks;
- d. In failing to keep Zayne Michael Dolph under adequate supervision and keep him safe;
- e. By allowing Zayne Michael Dolph to retain his belt and articles of clothing and personal property that he could and did use to commit suicide;
- f. In failing to properly take precautions to prevent Zayne Michael Dolph from harming himself and from committing suicide, despite the warnings included in his medical history and from family members.

These grounds of fault have been explained to you in other instructions.

The plaintiff must prove all of the following propositions:

1. The defendant was at fault. In order to prove fault, the plaintiff must prove defendant was negligent.
2. The defendant's fault was a cause of the plaintiff's damage.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. 17, 18, and 20.

INSTRUCTION No. 20

The defendant claims the plaintiff was at fault in one or more of the following particular(s):

- a. Zayne Dolph was at fault in the taking of his own life.
- b. Zayne Dolph was at fault in failing to notify anyone at the Manning Family Recovery Center of his change in condition in that he was having suicidal thoughts.

These grounds of fault have been explained to you in other instructions.

The defendant must prove both of the following propositions:

- 1. The plaintiff was at fault. In order to prove fault, the defendant must prove plaintiff was negligent.
- 2. The plaintiff's fault was a cause of the plaintiff's damage.

If the defendant has failed to prove either of these propositions, the defendant has not proved its defense. If the defendant has proved both of these propositions, then you will assign a percentage of fault against the plaintiff and include the plaintiff's fault in the total percentage of fault found by you answering the special verdicts.

INSTRUCTION No. 21

A party is required to exercise reasonable care for their own safety. This means that, if, in the exercise of ordinary care under the circumstances, a party could have taken some particular action after an act of fault of another party, in order to avoid an injury, then they are under a duty to take such action.

In this case defendant claims that plaintiff unreasonably failed to take action to avoid an injury because:

- a. Zayne Dolph took his own life.
- b. Zayne Dolph failed to notify anyone at the Manning Family Recovery Center of his change in condition in that he was having suicidal thoughts.

INSTRUCTION No. 22

“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. 23

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

INSTRUCTION No. 24

The mere fact an accident occurred or a party was injured does not mean a party was negligent.

INSTRUCTION No. 25

The fact that Security National Bank of Omaha is a corporation should not affect your decision.

The fact that Defendant Manning Family Recovery Center is a non-profit corporation should not affect your decision.

All persons 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. 26

I am giving you one (1) verdict forms and (6) six questions. 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 and answers to questions must be signed by your foreperson.

After deliberating for six hours from 11:00 o'clock a.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 and questions must be signed by all seven jurors who agree.

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



Handwritten signature and date: 04-2, 2019