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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

RONALD K. SMITH,	*	
	*	4-98-CV-90368
Plaintiff	*	
	*	
v.	*	
	*	
DES MOINES PUBLIC SCHOOL SYSTEM,	*	JURY INSTRUCTIONS
	*	
	*	
Defendant.	*	

The Court enters the following set of jury instructions for trial in this case:

98.

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INSTRUCTION NO. 1

Introduction and statement of the case

Ladies and gentlemen: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed.

This is a civil case brought by the plaintiff Ronald K. Smith against the defendant, Des Moines Independent Community School District. The plaintiff alleges that the defendant slandered him by making certain statements and through the publication of an audit. The defendant denies that it slandered Plaintiff. The defendant claims any statements it made — including those made in connection with the audit — were true.

It will be your duty to decide from the evidence whether the plaintiff has proven his claim for slander. If the Plaintiff has proven his claim for slander, then it is also your duty to determine how much in damages to award the Plaintiff. If, however, you find the statements — including those made in connection with the audit — were true, then the Plaintiff is awarded nothing in damages. Instruction numbers 15 to 17 explain in greater detail the rules you must apply regarding the claim for slander. Please read them over carefully.

INSTRUCTION NO. 2

Outline of trial

Before I give you further instructions, let me tell you how this trial will proceed.

First, the plaintiff's attorney will make an opening statement. Next, the defendant's attorney will make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The plaintiff will then present evidence and counsel for defendant may cross-examine. Following the plaintiff's case, the defendant may present evidence and plaintiff's counsel may cross-examine.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. The court will instruct you further on the law. After that you will retire to deliberate on your verdict.

INSTRUCTION NO. 3

General duty of jurors

It will be your duty to decide from the evidence what the facts are. You, and you alone, are the judges of the facts. You will hear the evidence, decide what the facts are and then apply those facts to the law which I will give you in these preliminary instructions, any instructions given during the trial, and in the final instructions at the conclusion of the case. You will then deliberate and reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

* * * *

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the parties. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and other law as I will give it to you.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. An individual, such as Mr. Smith, and a school district, like Des Moines Independent Community School District, stand equal before the law, and are entitled to the same fair consideration by you. The mere fact that the Defendant is a school district, and not an individual, does not mean that it is entitled to any greater or lesser consideration by you.

However, because a school district is involved, it may act only through natural persons like its agents or employees; and in general, any agent or employee of the district may bind the district by the acts and declarations made while acting within the scope of the authority delegated to the agent or employee by the district, or within the scope of the employee's or agent's duties as an employee or agent of the district.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

INSTRUCTION NO. 4

Burden of proof

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim depends upon that fact. The party who has the burden of proving a fact must prove it by "clear and convincing" evidence. To prove something by clear and convincing evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, then you must conclude that issue has not been proved.

"Clear and convincing" evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented. The testimony of a single witness that produces a belief in the likelihood of truth is sufficient for proof of any fact and would justify a verdict in accordance with such testimony. This is so, even though a number of witnesses may have testified to the contrary, if after consideration of all of the evidence in the case, you hold a greater belief in the accuracy and reliability of that one witness.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

INSTRUCTION NO. 5

Evidence

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses; documents and other things received as exhibits; any facts that have been stipulated - that is, formally agreed to by the parties.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions and comments by lawyers are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I shall tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

INSTRUCTION NO. 6

Credibility of witnesses

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness' intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness' memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time,[1] the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You may hear testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinions on matters in that field and the reasons for their opinions. 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's education and experience, the reasons given for the opinion, and all the other evidence in the case.

Also, an expert witness may be asked to assume certain facts are true and to give an opinion based on that assumption. This is called a hypothetical question. If any facts assumed in the question are not proved by the evidence, you should decide if that omission affects the value of the expert's opinion.

INSTRUCTION NO. 7

Stipulated facts

Plaintiff and Defendant have agreed or "stipulated" to certain facts and have reduced these facts to a written agreement or stipulation. Any counsel may, throughout the trial, read to you all or a portion of the stipulated facts. You should treat these stipulated facts has having been proved.

INSTRUCTION NO. 8

Depositions

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

INSTRUCTION NO. 9

Interrogatories

During this trial, you may hear 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. 10

Objections

From time to time during the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. It is the duty of the lawyer for each party to object when another party offers testimony or other evidence that the lawyer believes is not properly admissible. You should not show prejudice against a lawyer or the party the lawyer represents because the lawyer has made objections. You should not infer or conclude from any ruling or other comment I may make that I have any opinions on the merits of the case favoring one side or the other. Also, if I sustain an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question itself.

INSTRUCTION NO. 11

Bench conferences

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 12

Transcripts and note taking

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it may not be practical for the court reporter to read back lengthy testimony. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. And do not let note-taking distract you so that you do not hear other answers by the witness.

When you leave at night, your notes will be secured and not read by anyone.

INSTRUCTION NO. 13

Conduct of the jury

Finally, to insure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case - you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side - even if it is simply to pass the time of day - an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, remember it is because they are not supposed to talk or visit with you either.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. In fact, until the trial is over I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but if there are you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case, you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research or make any investigation about the case on your own.

INSTRUCTION NO. 14

Jury conduct during recesses

We are about to take our first recess and I remind you of the instruction I gave you earlier. During this recess or any other recess, you must not discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else. If anyone tries to talk to you about the case, please let me know about it immediately. Do not read, watch or listen to any news reports of the trial. Finally, keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

I may not repeat these things to you before every recess, but keep them in mind throughout the trial.

INSTRUCTION NO. 15

Slander Per Se

In order for the Plaintiff to recover on the claim for slander per se in this case, the Plaintiff must prove, by clear and convincing evidence, all of the following propositions:

1. The Defendant made the statements.
2. The Defendant communicated the statements to someone other than Plaintiff.
3. The statements would reasonably be understood to be an expression which would (a) attack a person's integrity or moral character, (b) expose the person to public hatred, contempt or ridicule, (c) deprive the person of the benefits of public confidence and social dealings, OR (d) injure the Plaintiff in the maintenance of his business.
4. The Defendant made the statements with "actual malice." The definition of actual malice is contained in Instruction No. 16.

If, however, you find the Defendant has proven the "defense of truth" as that phrase is defined in Instruction No. 17, then that will be a complete defense to the claim of slander per se.

Authority

Iowa Civil Jury Instruction 2100.2

INSTRUCTION NO. 16

Actual malice – defined

The Defendant made the statements with actual malice if the statements were made with ill-will or wrongful motive. Ill-will or wrongful motive may be inferred from all relevant circumstances surrounding the statement.

Actual malice can be shown by proving knowledge of a false statement or reckless disregard for the truth.

Authority

Iowa Civil Jury Instruction 2100.5
Johnson v. Nickerson, 542 N.W.2d 506, 510, 512 (Iowa 1996)
Haldeman v. Total Petroleum, Inc., 376 N.W.2d 98, 104 (Iowa 1985)

INSTRUCTION NO. 17

Defense of truth – defined

The Defendant claims the statements complained about are true. The fact the statement is true or substantially true is a complete defense, regardless of bad faith or malicious purpose.

The Defendant must prove the truth of the statement. To do so, the Defendant must establish the truth of the entire language of the statement, and establish it in the sense attributed to it by the Plaintiff. Slight inaccuracies of expression are not important so long as the statement is substantially true.

If the Defendant has proved the truth of the statements, then the Plaintiff cannot recover. If the Defendant has failed to prove the truth of the statements, then you shall consider whether the Plaintiff is entitled to recover damages in accordance with other instructions.

Authority

Iowa Civil Jury Instruction 2100.6

INSTRUCTION NO. 18
Slander damages

If you find Ronald K. Smith is entitled to recover damages, it is your duty to determine the amount. In doing so, you shall consider the following items:

1. General damages. General damages are presumed to result from the communication of a slanderous statement. These are the kind of damages the law presumes naturally and necessarily result from the communication of slanderous statements.
2. Reasonable value of any loss of reputation suffered by Smith. In determining this item of damage, you may consider Smith's reputation before the statement was made. You may also consider the extent to which the statement was communicated.
3. Loss of time — earnings. The reasonable value of lost wages from the date of injury to the present time.
4. Loss of future earning capacity. The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.
5. Loss of full mind and body — past. Loss of function of the mind and/or body from the date of injury to the present time. Loss of mind and/or body is the inability of a particular part of the mind or body to function in a normal manner.
6. Loss of full mind and body — future. Future loss of function of the mind and/or body.
7. Physical and mental pain and suffering — past. Physical and mental pain and suffering from the date of injury to the present time. 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.
8. Physical and mental pain and suffering — future. Future physical and mental pain and suffering

The damages you award must be limited to those damages which naturally result from the Defendant's statements — including statements made in connection with the audit — and which are supported by the evidence.

Authority

Iowa Civil Jury Instructions 200.8 - 200.13, 2100.7
Schlegel v. Ottumwa Courier, 585 N.W.2d 217, 221-24 (Iowa 1998)
Johnson v. Nickerson, 542 N.W.2d 506, 512-13 (Iowa 1996)

INSTRUCTION NO. 19

Rules during deliberation

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

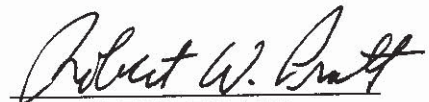
Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.[1]

Finally, the verdict form is simply the written notice of the decision that you reach in this case. The form reads: (read form). You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

If more than one form was furnished, you will bring the unused forms in with you.

IT IS SO ORDERED

Dated this 23rd day of March 2000.



ROBERT W. PRATT
U.S. DISTRICT JUDGE