

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

FILED
OCT 18 2001
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

JERRY MILES,

Plaintiff,

vs.

SANDRA CALDWELL, as

Executor of the Estate of

KENNETH CALDWELL,

R. HALEY, J. JENKINS, and

K. SYMMONS,

Defendants.

Civil No. 4-97-CV-10454

JURY INSTRUCTIONS

MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE FOLLOWING
INSTRUCTIONS.

INSTRUCTION NO. 1

Now that you have heard the evidence, the time has come to instruct you as to the law governing this case. You are to consider all of the instructions together, apply them as a whole to the facts as you find them to have been established by the evidence, and return your verdict accordingly.

You as jurors are the sole judges of the facts. No language used by the court in these instructions and no statements, conduct, remarks, or rulings of the court during the progress of the trial should be considered by you as an indication that the court has any opinion as to the facts of the case or what your verdict should be.

You are to follow the instructions now given you in your deliberations. You are not to be concerned with the wisdom of any rule of law. Regardless of your opinion as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the court.

In considering these instructions, you will attach no importance or significance whatever to the order in which they are given.

INSTRUCTION NO. 2

This is a civil case brought by plaintiff, Jerry Miles. The defendants in this case are Sandra Caldwell, as Executor of the Estate of Kenneth Caldwell, Robin Haley, Julie Jenkins, and Kathy Symmonds.

Plaintiff was an inmate at the Iowa State Penitentiary in Fort Madison, Iowa. Dr. Kenneth Caldwell was a physician at the Iowa State Penitentiary. Julie Jenkins and Robin Haley were registered nurses employed at the Iowa State Penitentiary. Kathy Symmonds was Administrator of Health Services at the Iowa State Penitentiary.

In November 1995, plaintiff injured his foot during a basketball game at the Iowa State Penitentiary. The injury was later diagnosed as a ruptured Achilles tendon, for which plaintiff was treated and underwent surgery to repair. The parties do not dispute that at the point the diagnosis was made, plaintiff's medical needs were serious. Plaintiff contends defendants Caldwell, Haley, Jenkins, and Symmonds were deliberately indifferent to plaintiff's medical needs by intentionally denying or delaying medical care or intentionally interfering with treatment or medication that was prescribed. Plaintiff seeks damages for the resulting injuries. Defendants deny these claims and contend they treated plaintiff properly at all times.

You are asked to resolve these disputes between the parties.

INSTRUCTION NO. 3

During this trial, I permitted you to take notes. Many courts do not permit note-taking by jurors, and a word of caution is in order. There is always a tendency to attach undue importance to matters one has written down. Some testimony that is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory and you should not compare your notes with other jurors in determining the context of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and are by no means a complete outline of all the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

INSTRUCTION NO. 4

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, prejudice or emotion.

INSTRUCTION NO. 5

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.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide. The law makes no distinction between direct and circumstantial evidence, and either or both may be used by a party to prove a particular fact. The weight to be given any evidence is for you to decide.

The following are not evidence:

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

INSTRUCTION NO. 10

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 so that all of it may be given weight. 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 witness' 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 witness' appearance, conduct, age, intelligence, memory and knowledge of the facts;
3. The witness' interest in the trial, their motive, candor, bias, and prejudice.

INSTRUCTION NO. 7

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was when received by you.

INSTRUCTION NO. 8

Certain testimony has been received into evidence from deposition transcripts or played as a videotape. A deposition is testimony taken under oath and preserved in writing or on videotape. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 9

Whenever a party must prove something they must do so by the preponderance or greater weight 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.

Whenever in these instructions the words "prove," "proven," or "established" are used in connection with any matter, they shall be construed to mean that the matter referred to must be established by the preponderance of the evidence.

INSTRUCTION NO. 10

Your verdict must be for plaintiff and against the defendant whose case you are considering if all of the following elements have been proved by the preponderance of the evidence:

First, plaintiff had a serious need for medical care, and

Second, the defendant whose case you are considering was aware of plaintiff's serious need for such medical care, and

Third, the defendant whose case you are considering, with deliberate indifference, failed to provide the medical care within a reasonable time, and

Fourth, as a direct result, plaintiff was damaged, and

Fifth, the defendant whose case you are considering was acting under color of state law.

If any of the above elements has not been proved by the preponderance of the evidence as to the particular defendant you are considering, your verdict must be for that defendant.

INSTRUCTION NO. 11

Acts are done under color of law when a person acts or purports to act in the performance of official duties under any state, county or municipal law, ordinance or regulation.

INSTRUCTION NO. 12

A serious medical need is one that has been diagnosed by a physician as requiring treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.

INSTRUCTION NO. 13

Deliberate indifference is established only if there is actual knowledge of a substantial risk that plaintiff had a serious medical need and if the defendant disregards that risk by intentionally refusing or failing to take reasonable measures to deal with the problem. Mere negligence or inadvertence does not constitute deliberate indifference.

INSTRUCTION NO. 14

If you find in favor of plaintiff, then you must award plaintiff such sum as you find from the preponderance of the evidence will fairly and justly compensate plaintiff for any damages you find plaintiff sustained and is reasonably certain to sustain in the future as a direct result of the conduct of the defendant whose case you are considering as submitted in Instruction 10. You should consider the following elements of damages:

1. The physical pain and mental, emotional suffering the plaintiff has experienced and is reasonably certain to experience in the future; the nature and extent of the injury, whether the injury is temporary or permanent and whether any resulting disability is partial or total; and any aggravation of a pre-existing condition;
2. The reasonable value of the medical (hospital, nursing, and similar) care and supplies reasonably needed by and actually provided to the plaintiff and reasonably certain to be needed and provided in the future;
3. The wages, salary, profits, reasonable value of the working time the plaintiff has lost and the reasonable value of the earning capacity the plaintiff is reasonably certain to lose in the future because of his (inability, diminished ability) to work.

Remember, throughout your deliberations you must not engage in any speculations, guess, or conjecture and you must not award any damages under this Instruction by way of punishment or through sympathy.

INSTRUCTION NO. 15

If you find in favor of plaintiff under Instruction 10, but you find that plaintiff's damages have no monetary value, then you must return a verdict for plaintiff in the nominal amount of One Dollar (\$1.00).

INSTRUCTION NO. 10

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award the injured person punitive damages in order to punish the defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

If you find in favor of plaintiff and against the defendant whose case you are considering and if you find the conduct of that defendant as submitted in Instruction No. 10 was recklessly and callously indifferent to plaintiff's medical needs, then, in addition to any other damages to which you find plaintiff entitled, you may, but are not required to, award plaintiff an additional amount as punitive damages if you find it is appropriate to punish that defendant or deter that defendant and others from like conduct in the future. Whether to award plaintiff punitive damages and the amount of those damages are within your sound discretion.

You may assess punitive damages against any or all defendants or you may refuse to impose punitive damages. If punitive damages are assessed against more than one defendant, the amounts assessed against such defendants may be the same or they may be different.

Factors you may consider in awarding punitive damages include, but are not limited to the following: the nature of defendant's conduct; the impact of defendant's conduct on the plaintiff; the relationship between the plaintiff and defendant; the likelihood that the defendant would repeat the conduct if a punitive award is not made; the defendant's financial condition; and any other circumstances shown by the evidence, including any circumstances of mitigation, that bear on the question of the size of any punitive award.

INSTRUCTION NO. 17

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members foreperson of the jury. The person so elected is responsible for the orderly, proper and free discussion of the issues by any juror who wishes to express his or her views. The foreperson will supervise the balloting and sign the verdicts that are in accord with your decision and will also sign any written inquiries addressed to the court.

Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion in a case or determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans. You are judges--judges of the facts. Your sole interest is to ascertain the truth.

INSTRUCTION NO. 18

The verdict must represent the considered judgment of each juror.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. 19

Submitted to you with these instructions is a verdict form with several questions. The verdict you give must be unanimous. After you have agreed and appropriately signed the interrogatories in accordance with the directions contained therein, inform the jury officer outside the room.

Dated this 18th day of October, 2001.


RONALD E. LONGSTAFF, JUDGE
UNITED STATES DISTRICT COURT