

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

MENARD, INC.,

Plaintiff,

vs.

MSF TRANSPORT, LLC,

Defendant.

4:19-cv-00147-HCA

FINAL JURY INSTRUCTIONS

Members of the jury, the instructions I gave at the beginning of the trial and during the trial are still in effect. Now I am going to give you some additional instructions.

You have to follow all of my instructions – the ones I gave you earlier, before and during the trial, as well as those I give you now. Do not single out some instructions and ignore others, because they are all important. This is true even though I am not going to repeat some of the instructions I gave you at the beginning of or during the trial. I have repeated some instructions from the preliminary instructions in this final set. That does not make them more important than the other instructions I have given you.

You will have copies of the preliminary and final written instructions in the jury room. Remember, you have to follow all instructions, no matter when I give them, whether or not you have written copies.

I have not intended to suggest what I think your verdict should be by any of my rulings or comments during trial.

FINAL INSTRUCTION NO. 1

Your duty is to decide what the facts are from the evidence. You are allowed to consider the evidence in the light of your own observations and experiences. After you have decided what the facts are, you will have to apply those facts to the law that I give you in these and in my other instructions. That is how you will reach your verdict. Only you will decide what the facts are. However, you must follow my instructions, whether you agree with them or not. You have taken an oath to follow the law that I give you in my instructions.

Do not let sympathy, or your own likes or dislikes, influence you. The law requires you to come to a just verdict based only on the evidence, your common sense, and the law that I give you in my instructions, and nothing else.

FINAL INSTRUCTION NO. 2

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 says, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

FINAL INSTRUCTION NO. 3

Unless you are otherwise instructed, the evidence in the case consists of the sworn testimony of the witnesses regardless of who called the witness, all exhibits received in evidence regardless of who may have produced them, and all facts and events that may have been admitted or stipulated to and all facts and events that may have been judicially noticed.

Statements and arguments by the lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statement, closing arguments, and at other times is intended to help you understand the evidence, but it is not evidence. However, when the lawyers on both sides stipulate or agree on the existence of a fact, unless otherwise instructed, you must accept the stipulation and regard that fact as proved.

Any evidence to which I have sustained an objection and evidence that I have ordered stricken must be entirely disregarded.

FINAL INSTRUCTION NO. 4

You will have to decide whether certain facts have been proved by the greater weight of the evidence. Greater weight of the evidence is not determined by the number of witnesses testifying on one side or the other. A fact has been proved by the greater weight of the evidence, if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

FINAL INSTRUCTION NO. 5

The parties have stipulated -- that is, they have agreed -- that certain facts are as counsel has stated. You must, therefore, treat those facts as having been proved.

FINAL INSTRUCTION NO. 6

Testimony was presented to you in the form of a deposition. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. You should consider the deposition testimony, and judge its credibility, as you would that of any witness who testified here in person.

FINAL INSTRUCTION NO. 7

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

FINAL INSTRUCTION NO. 8

A corporation is liable for the negligent acts of their employees or agents if the acts are done within the scope of their employment.

The parties stipulate that Bryan Teeters was acting within the scope of his duties as an employee of Menard, Inc and that Jose Garza was acting within the scope of his duties as an employee of MSF Transport, LLC.

FINAL INSTRUCTION NO. 9

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

“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.

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

FINAL INSTRUCTION NO. 10

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

FINAL INSTRUCTION NO. 11

Iowa law provides that where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage.

The parties stipulate that Menard, Inc was the owner of the vehicle driven by Teeters, and Teeters had the consent of Menard, Inc to drive the vehicle. The Parties stipulate that MSF Transport, LLC was the owner of the vehicle driven by Garza, and Garza had the consent of MSF Transport, LLC to drive the vehicle.

FINAL INSTRUCTION NO. 12

Menard, Inc. alleges Defendant MSF Transport, LLC, through Jose Garza, was at fault for the accident that occurred on December 5, 2018. To be entitled to damages, Menard, Inc. must prove the following propositions:

1. MSF Transport, LLC was at fault, through Garza, in one or more of the following ways:
 - a) Garza failed to keep a proper lookout;
 - b) Garza failed to operate the tractor-trailer in a prudent and reasonable manner;
 - c) Garza failed to have the tractor-trailer under proper and reasonable control;
 - d) Garza failed to avoid a collision;
 - e) Garza failed to use due and reasonable care in the operation of the tractor-trailer; and/or
 - f) Garza failed to yield the right of way.
2. MSF Transport, LLC's fault was a cause of the damage to Menard, Inc.
3. The amount of damages to Menard which the Parties have stipulated is \$199,222.50.

If Menard, Inc. has failed to prove any of these propositions, Menard, Inc. is not entitled to damages. If Menard, Inc. has proved all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. 13,14.

FINAL INSTRUCTION NO. 13

MSF Transport, LLC claims Menard, Inc., through Teeters, was at fault for the accident in one or more of the following ways:

- a. Teeters failed to keep a proper lookout;
- b. Teeters failed to operate the tractor-trailer in a prudent and reasonable manner;
- c. Teeters failed to have the tractor-trailer under proper and reasonable control;
- d. Teeters failed to avoid a collision;
- e. Teeters failed to use due and reasonable care in the operation of the tractor-trailer.

MSF Transport, LLC must prove both of the following propositions:

1. Menard, Inc. was at fault in one or more of the ways mentioned above.
2. Menard, Inc.'s fault was a cause of its damages.

If MSF Transport, LLC has failed to prove either of these propositions, MSF Transport, LLC has not proved its defense. If MSF Transport, LLC has proved these propositions, then you will assign percentage of fault against Menard, Inc. and include Menard, Inc.'s fault in the total percentage of fault found by you in answering the verdict form.

FINAL INSTRUCTION NO. 14

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 Menard, Inc. (through Teeters), MSF Transport, LLC (through Garza), and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

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

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

FINAL INSTRUCTION NO. 15

Both drivers had a right to use the road, but each had to respect the rights of the other. Each driver could assume the other would obey the law until they knew, or in the exercise of ordinary care, should have known the other driver was not going to obey the law.

FINAL INSTRUCTION NO. 16

Any person driving a vehicle on a highway shall drive at a careful speed not greater than nor less than is reasonable and proper, having due regard for the traffic, surface and width of the highway and of any other existing conditions.

A violation of this law is negligence.

FINAL INSTRUCTION NO. 17

1. At the time and place in question the speed of any vehicle over 70 miles per hour was unlawful.

2. At the time and place in question the speed of any vehicle less than 40 miles per hour, road conditions permitting, was unlawful.

A violation of this law is negligence

FINAL INSTRUCTION NO. 18

No person shall drive any vehicle on a highway at a speed greater than will permit them to stop within the assured clear distance ahead. The words "within the assured clear distance ahead" mean the distance from which noticeable objects, reasonably expected or anticipated to be upon the highway, may be seen.

A violation of this law is negligence.

FINAL INSTRUCTION NO. 19

A driver must have his or her vehicle under control. It is under control when the driver can guide and direct its movement, control its speed and stop it reasonably fast.

A violation of this duty is negligence.

FINAL INSTRUCTION NO. 20

A driver shall not move a vehicle which is stopped, standing, or parked unless the movement can be made with reasonable safety.

A violation of this law is negligence.

FINAL INSTRUCTION NO. 21

"Proper lookout" is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of the operation of the driver's vehicle in relation to what the driver saw or should have seen. A driver need not keep a lookout to the rear all the time, but must be aware of the presence of others when the driver's actions may be dangerous to others.

A violation of this duty is negligence.

FINAL INSTRUCTION NO. 22

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.

FINAL INSTRUCTION NO. 23

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

First, you will select a 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 this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

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

Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges – judges of the facts. Your only job is to study the evidence and decide what is true.

Third, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the court security officer and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone - including me - how many jurors are voting for any side.

Fourth, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

Finally, the verdict form is your written decision in this case. The form reads: (read form)].
You will take this form to the jury room, and when you have all agreed on the verdict, your foreperson will fill in the form, sign and date it, and tell the court security officer that you are ready to return to the courtroom.

IT IS SO ORDERED

Dated January 20, 2021



Helen C. Adams

Chief U.S. Magistrate Judge