

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

MAGGIE GREENHAW,

Plaintiff,

vs.

CITY OF CEDAR RAPIDS, IOWA

Defendant.

No. 07-CV-109-LRR

FINAL JURY INSTRUCTIONS

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of trial or during trial are not repeated here.

In considering these instructions, the order in which they are given is not important.

INSTRUCTION NO. 1

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

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

In deciding what testimony to believe, you may consider a witness's intelligence, the opportunity a witness had to see or hear the things testified about, a witness's memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, 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, a 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.

INSTRUCTION NO. 3

In these instructions you are told that your verdict depends on whether you find certain facts have been proven. The plaintiff, Maggie Greenhaw, bears the burden to prove the facts in this case by the greater weight of the evidence. To prove something by the greater weight of the 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, you cannot find that issue has been proven.

The greater weight of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

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. 4

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 5

Certain testimony has been received 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 here in court.

INSTRUCTION NO. 6

You have heard testimony from a person described as an expert. Persons who have become experts in a field because of their education or 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's education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 7

A city is responsible for the acts of its on-duty police officers.

INSTRUCTION NO. 8

For the plaintiff to recover on her claim of intentional infliction of emotional distress, she must prove all of the following propositions:

1. Outrageous conduct by the defendant.
2. The defendant intentionally caused emotional distress or acted with reckless disregard of the probability of causing emotional distress.
3. The plaintiff suffered severe or extreme emotional distress.
4. The defendant's outrageous conduct was a proximate cause of the emotional distress.
5. The nature and extent of the plaintiff's 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, the plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 9

The term "outrageous conduct" means conduct so extreme as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.

Outrageous conduct does not extend to mere insults, indignities, threats, annoyances, petty oppressions, hurt feelings, bad manners or other trivialities which a reasonable person could be expected to endure. All persons must necessarily be expected and required to be hardened to a certain amount of rough language and to occasional acts that are inconsiderate and unkind.

INSTRUCTION NO. 10

A person intends to inflict emotional distress when they want to cause distress, or know such distress is substantially certain to result from their conduct.

A person's conduct is reckless if they know or have reason to know their conduct creates a high degree of probability that emotional distress will result and they act with deliberate disregard of that probability.

INSTRUCTION NO. 11

The emotional distress must in fact exist, and it must be severe or extreme, but it need not reveal itself physically.

The term "severe or extreme" means substantial or enduring as distinguished from mild or brief.

The term "emotional distress" includes all highly unpleasant mental reactions such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment and worry. It must be so substantial or enduring that no reasonable person could be expected to bear it.

INSTRUCTION NO. 12

“False arrest” is the unlawful restraint of an individual’s personal liberty or freedom of movement.

To recover on her claim of false arrest, the plaintiff must prove all of the following propositions:

1. The plaintiff was detained or restrained against her will.
2. The detention or restraint was done by the defendant.
3. The detention or restraint was a proximate cause of the plaintiff’s damage.
4. 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, then you shall consider the defense of good faith as set forth later in these instructions.

INSTRUCTION NO. 13

“Arrest” means taking a person into custody. It includes restraint or detention of the person or her submission to custody. An arrest does not have to be accomplished by physical force or threats of physical force.

INSTRUCTION NO. 14

The defendant claims it acted in good faith and with a reasonable belief.

The defense of good faith applies only to the plaintiff's false arrest claim. To prove its good faith defense, the defendant must prove both of the following propositions:

1. The defendant believed in good faith that the person who was arrested had committed a crime.
2. The defendant's belief was reasonable.

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, the plaintiff cannot recover and your verdict will be for the defendant.

INSTRUCTION NO. 15

A person's belief is reasonable if it is based on reasonably trustworthy information about the facts and circumstances which would allow a reasonably careful person to believe a crime had been committed.

Whether an arrest is based on a reasonable belief is determined by the circumstances existing and known to the defendant when the arrest was made, and not later investigation of the facts or the outcome of later criminal charges.

INSTRUCTION NO. 16

The plaintiff claims the defendant was negligent. "Negligence" is explained later in these instructions.

In order to recover on her claim of negligence, the plaintiff must prove all of the following propositions:

1. The defendant was at fault. In order to prove fault, the plaintiff must prove that the defendant was negligent in failing to protect the plaintiff from injury while she was restrained.
2. The defendant's fault was a proximate cause of the plaintiff's damage.
3. The amount of damage.

If the plaintiff has failed to prove any of these propositions, she is not ~~yet~~^{is} entitled to damages. If the plaintiff has proved all of these propositions, you must find in favor of the plaintiff on this claim.

INSTRUCTION NO. 17

“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. 18

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct. There can be more than one proximate cause of an injury or damage.

“Substantial” means the party’s conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

INSTRUCTION NO. 19

In these instructions I use the term "fault." Fault means one or more acts or omissions toward the person of the actor or of another which constitutes negligence.

INSTRUCTION NO. 20

If you find that plaintiff is entitled to recover damages, you shall consider the following items:

1. The reasonable value of necessary hospital charges, doctor's charges, prescriptions and other medical services from the date of the injury to the present time;
2. Loss of function of the body from the date of the injury to the present time. Loss of body is the inability of a particular body part to function in a normal manner;
3. Physical and mental pain and suffering from the date of the 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; and
4. The present value of future physical and mental pain and suffering.

The amount you assess for physical and mental pain and suffering in the past and future and loss of function of the body in the past 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 defendant 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 Verdict Form.

INSTRUCTION NO. 21

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

INSTRUCTION NO. 22

If the greater weight of the evidence shows that the plaintiff has been permanently injured, you may consider her life expectancy. A Standard Mortality Table indicates the normal life expectancy of people who are the same age as the plaintiff is 21.68 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about the plaintiff's health, habits, occupation and lifestyle when deciding issues of future damages.

INSTRUCTION NO. 23

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. 24

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 25

In conducting your deliberations and returning your Verdict Form, there are certain rules you must follow. I shall list those rules for you now.

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 each other in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because your decisions 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 Court Security Officer, 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.

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INSTRUCTION NO. 25 (cont'd)

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

Fifth, I am giving you a Verdict Form. A Verdict Form is simply the written notice of the decisions that you reach in this case. The answers to the questions in the Verdict Form must be the unanimous decisions of the jury. You will take the Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed on the answers to the Verdict Form, your foreperson will fill out the form, and sign and date it. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your decisions. When you have reached your decisions, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return your verdict in accord with the evidence and these instructions.

DATED this 31st day of March, 2009.


Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa