

IN THE IOWA DISTRICT COURT FOR DES MOINES COUNTY

ROBERT G. BRILL, and
CHERYL L. BRILL

Plaintiffs,

v.

LUKE A. GERLING, and
JESSICA E. GERLING,

Defendants.

CASE NO. LALA005845

JURY INSTRUCTIONS

100.1

INSTRUCTION NO. 1

Statement of the Case

Members of the Jury:

In this case Plaintiffs, Robert and Cheryl Brill, have asserted claims against the Defendants, Luke and Jessica Gerling, based on nuisance, trespass, negligence, increase in water discharge, and breach of restrictive covenants, following the Gerlings' purchase and development of real estate to the west of the Brills' property.

The Gerlings have denied these claims and assert that the Brills bear responsibility for any damages that the Brills incurred.

Do not consider this summary as proof of any claim. Decide the facts upon the evidence and the law I will now give you.

100.2

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.

100.3

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

I have not by these instructions or by any ruling made or by any act done or by anything said during the trial intended or attempted to give you any opinion as to what the facts or, what the proof is, or what your verdict should be.

100.4

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 (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.

100.5

INSTRUCTION NO. 6

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.

100.9

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.

100.15

INSTRUCTION NO. 8

You have heard evidence claiming the parties made statements before this trial while under oath and while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the parties had made it under oath during the trial.

If you find such a statement was made and was inconsistent with the parties' testimony during the trial you may also use the statement as a basis for disregarding all or any part of their testimony during the trial but you are not required to do so. You should not disregard their testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

100.11

INSTRUCTION NO. 9

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.

100.12

INSTRUCTION NO. 10

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.

100.13

INSTRUCTION NO. 11

You have heard evidence claiming a witness or witnesses made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

INSTRUCTION NO. 12

DEFINITIONS

FAULT:

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

CAUSE:

The conduct of a party or their contractor is a cause of damage when the damage would not have happened except for the conduct. There can be more than one cause of an injury or damage.

400.1 (modified)

COMPARATIVE FAULT:

With respect for the negligence claim, 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 Brills, the Gerlings, 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.

700.2

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.

NUISANCE:

A "nuisance" is an actionable interference with a person's interest in the private use and enjoyment of the person's land. A "nuisance" is anything that is injurious to health, indecent, or unreasonably offensive to the senses or an obstruction to the free use of property so as to interfere unreasonably with the comfortable enjoyment of life or property.

The normal-person standard is used to determine whether one's personal discomfort or annoyance is significant enough to elevate an ordinary irritant to the status of a nuisance. The normal-person standard is the standard of normal persons using and enjoying property in the neighborhood. If normal persons living in that locality would regard the invasion as definitely offensive, seriously annoying, or intolerable, then the invasion into use and enjoyment of property is significant. On the other hand, if normal persons in that neighborhood would not be substantially annoyed or disturbed by the

situation, the invasion is not a significant one even though the idiosyncrasies of a particular plaintiff or their specific circumstances of life may make the situation unendurable for them.

In the absence of evidence to the contrary, it is presumed that a plaintiff has ordinary sensibilities.

TRESPASS:

A “trespass” occurs when someone or something is not rightfully upon the property of another, but enters it without consent, either express or implied, of the owner or occupier.

400.3

INSTRUCTION NO. 13

After you have compared the conduct of all parties, if you find the Plaintiffs Robert and Cheryl Brill were at fault and their fault was more than 50% of the total fault, they cannot recover damages on their negligence claim.

However, if you find their 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. 14

The general rule of the Natural Flow Doctrine is that an owner of property is entitled to drain surface water in a natural watercourse from his or her land over an adjoining owner's land and if any damage results, the adjoining owner is without remedy.

This rule, however, is subject to qualification. If the volume of water is substantially increased or if the manner or method of drainage is substantially changed and actual damage results, the adjoining owner is entitled to relief.

INSTRUCTION NO. 15

Nuisance, Elements for Recovery

The Brills allege that the Gerlings caused water drainage onto their property creating a nuisance. It is the Brills' duty to prove by a preponderance of the evidence that the Gerlings have created a nuisance. To succeed, the Brills must prove:

1. A substantial increase in the volume of water flowing onto their property; and
2. That the substantial increase was caused by the Gerlings; and
3. That Plaintiffs suffered actual damages as a result.

If the Brills have proved each of these elements, they are entitled to damages. If they have failed to prove any of these elements, the Brills are not entitled to damages for their claim of nuisance.

INSTRUCTION NO. 16

Trespass, Elements for Recovery

In order to recover damages on their claim for trespass, the Brills must prove all of the following by a preponderance of the evidence:

1. That the Gerlings entered the Brills' land, or caused a thing to enter the Brills' land, causing a substantial increase in the flow of water, to enter onto the Brills' land;
2. That the Brills suffered actual damages as a result.
3. The amount of damages.

If the Brills have proven each of the above elements, they are entitled to damages. If the Brills have failed to prove any one of these elements, then they are not entitled to damages for their claim of Trespass.

INSTRUCTION NO. 17

Negligence, Elements for Recovery

In order to recover damages on their claim for negligence, the Brills must prove all of the following by a preponderance of the evidence:

1. The Gerlings were negligent in failing to use ordinary care in one or more of the following respects: (a) in the construction of their home, (b) OR in the grading of their property surrounding their home, OR (c) in the construction of drainage on the property surrounding their home.

2. The Gerlings' failure to use ordinary care substantially increased the flow of water onto the Plaintiffs' property.
3. The Defendants' negligence was a cause of damage to the Plaintiffs.
4. The amount of damage.

If the Brills have proven all of these elements, they are entitled to damages in some amount. If the Brills have failed to prove any of these elements, they are not entitled to damages for their claim of negligence.

INSTRUCTION NO. 18

Increase in Water Discharge, Elements for Recovery

In order to succeed on a claim for increased water discharge, the Brills must prove all of the following by a preponderance of the evidence:

1. There was a substantial increase in the volume of water coming onto their property from the Gerlings' property, OR there was a substantial change in the manner or method of drainage;
2. That the Gerlings caused either of the conditions in paragraph 1 above;
3. That the increased volume in water resulted in actual damages to the Brills; and
4. The amount of damages.

If the Brills have proven all of these elements, they are entitled to damages in some amount. If the Brills have failed to prove any of these elements, they are not entitled to damages for their claim of increase in water discharge.

INSTRUCTION NO. 19

Breach of Restrictive Covenants, Elements for Recovery

To prove a breach of Restrictive Covenants, the Brills must prove all of the following by a preponderance of the evidence.

1. That the Gerlings were lot owners subject to the Wildlife Lakes Subdivision Restrictive Covenants;
2. That the Gerlings: (a) failed to revegetate and restore ground cover for erosion and appearance reasons; OR (b) failed to conserve and protect trees, top soil, rock formations, and unique landscape features, OR (c) failed to provide for site

drainage and grading in the construction of their home and surrounding lot to be done with a minimum of disruption to the lot and drainage to adjoining lot or cause a condition which could lead to soil erosion;

3. That the Brills suffered actual damages as a result; and
4. The amount of the damages.

If the Brills have proven all of these elements, they are entitled to damages in some amount. If the Brills have failed to prove any of these elements, they are not entitled to damages for their claim of breach of restrictive covenants.

INSTRUCTION NO. 20

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.

INSTRUCTION NO. 21

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 estimate shall be your item of damage or percentage of fault.

100.23

INSTRUCTION NO. 22

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform including but not limited to Facebook, LinkedIn, YouTube, X, TikTok, Instagram, Snapchat, and any other social media applications you may use. 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 or application-based maps or programs, or any other application, program, or device to

search for or 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 was 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. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished accordingly.

100.21

INSTRUCTION NO. 23

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

100.18

INSTRUCTION NO. 24

Upon retiring you shall select a foreman or forewoman. It will be his or her 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. 25

Occasionally, jurors want to ask questions after they begin deliberating. If that should occur, please consider the following:

- A. Words not defined in these instructions should be given their ordinary meanings.
- B. There will be no additional evidence and no additional instructions on the law. These instructions contain all the law you need to decide the case.
- C. If you ask me a question during your deliberations, your presiding juror must reduce the question to writing and give it to the court attendant who will deliver it to me. I must then contact the lawyers and conduct a hearing with them, but not in your presence. After that, I will send you a written answer consistent with subparagraphs (A) and (B).

If, after considering these matters, you still wish to ask me a question, follow the procedure outlined here. Then save your written question and written answer I send you and return them with your verdict form when you have completed your deliberations and returned a verdict.

The court attendant who has been working with me on this case is in the same

position I am. She has taken an oath not to communicate with you except to ask you if you have agreed upon a verdict. Please do not put her on the spot by asking her any questions. You should direct any questions to the court and not to the court attendant.

300.1

INSTRUCTION NO. 26

I am giving you five verdict forms with questions. You must answer the questions as indicated. 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 must be signed by your foreman or forewoman.

After deliberating for six hours from 4:30 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 must be signed by all seven jurors who agree.

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

Signed at 4:30 o'clock A.m. this 18th day of July, 2025.


Clinton R. Boddicker
Judge, Eighth Judicial District