

IN THE IOWA DISTRICT COURT FOR POLK COUNTY**THOMAS WILLIAM STARBUCK and
AYNSLEY ANNE STARBUCK,**
Plaintiff,
vs.**JAYSEN CHRISTOPHER MCCLEARY,**
Defendant.**Case No. LACL143177****STATEMENT OF THE CASE AND
INSTRUCTIONS TO THE JURY****Celene Gogerty, Judge**

Members of the Jury: In this case, the Plaintiffs, Thomas Starbuck and Aynsley Starbuck, were defamed by the Defendant, Jaysen McCleary, as a result of statements made by the Defendant between December 19, 2016 and May 14, 2019, in Polk County, Iowa. It has already been determined the Defendant defamed Plaintiff Thomas Starbuck 29 times and defamed Plaintiff Aynsley Starbuck 28 times.

The Plaintiffs claim they are entitled to damages as a result of the Defendant's defamatory statements. The Defendant disputes the nature and extent of the Plaintiffs claimed damages from his statements.

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

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CLERK DISTRICT COURT

INSTRUCTION NO. 1

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. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or 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.

INSTRUCTION NO. 2

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. 3

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.

INSTRUCTION NO. 4

The Defendant was not present at this trial. You must not speculate why he has not appeared. Further, his absence is not evidence that you should consider in deciding this case.

INSTRUCTION NO. 5

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.

INSTRUCTION NO. 6

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

If you find such statement(s) were made, you may regard the statement(s) as evidence in this case the same as if Plaintiffs and Defendant had made it under oath during the trial.

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

INSTRUCTION NO. 7

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.

INSTRUCTION NO. 8

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, Snapchat, LinkedIn, Instagram, Twitter, email, etc. 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 maps or Google Earth or any other program or device to search for or to 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 will be 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.

It is important that we have your full and undivided attention during this trial.

INSTRUCTION NO. 9

Thomas Starbuck and Aynsley Starbuck are entitled to recover compensatory damages for the defamatory statements made by the Defendant. However, the amount of damages for each defamatory statement is for you to determine. You shall consider the following items:

1. Past Loss of Personal Reputation and Mental Anguish and Suffering
2. Future Loss of Personal Reputation and Mental Anguish and Suffering

The amount you assess for loss of personal reputation in the past and future, physical and/or mental anguish and suffering in the past and future, 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 a party 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 special verdicts.

INSTRUCTION NO. 10

Past loss of reputation and mental anguish and suffering is determined from the date of harm through to the present time.

Mental anguish and suffering may include, but is not limited to, mental anguish, shame, and loss of enjoyment of life.

INSTRUCTION NO. 11

Future loss of reputation and mental anguish and suffering is the present value of future of future loss of reputation and mental anguish and suffering.

"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 plaintiffs for future losses.

INSTRUCTION NO. 12

The most current CDC Standard Mortality Table (2018) indicates the normal life expectancy of people who are the same age as Thomas Starbuck at age 73 is 12.6 years and Aynsley Starbuck at age 40 is 42.7 years.

The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Plaintiff's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 13

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. 14

If you find the Plaintiffs are entitled to recover compensatory damages as defined in Instruction No. 9, 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 defamatory statement. These are the kind of damages the law presumes naturally and necessarily result from the communication of defamatory statements.
2. The reasonable value of any loss of reputation suffered by (injured party). In determining this item of damage, you may consider (injured party)'s reputation before the statement was made. You may also consider the extent to which the statement was communicated.

Damages must be limited to those which naturally result from the defendants' statement(s).

INSTRUCTION NO. 15

Punitive damages may be awarded if the plaintiffs have proven by a preponderance of clear, convincing and satisfactory evidence the defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused damage to the plaintiff.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage this defendant from like conduct in the future. You may award punitive damages only if the defendant's conduct warrants a penalty in addition to the amount you award to compensate for plaintiff's actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award.

You may consider the following factors:

1. The nature of defendant's conduct that harmed the plaintiffs.
2. The amount of punitive damages which will punish and discourage like conduct by the defendant. You may consider the defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the defendant's wealth or ability to pay.
3. The plaintiff's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the plaintiff.
4. The existence and frequency of prior similar conduct.
5. The Defendant made statement(s) with actual malice.

INSTRUCTION NO. 16

Evidence is clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

INSTRUCTION NO. 17

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

INSTRUCTION NO. 13

The defendant made statements with actual malice if the statements were made with knowledge that they were false, or with reckless disregard for their truth or falsity.

INSTRUCTION NO. 19

You may not consider the issue of the Defendant's net worth on the issue of compensatory damages as indicated in Instruction No. 14. However, you may consider his net worth on the issue of punitive damages as indicated in Instruction No. 15.

INSTRUCTION NO. 20

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. 21

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully re-reading them. If however, any of you feel it necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return it to the Court with the verdict.

The court attendant who has been working with me on this case is in the same position as I am. She has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put her on the spot by asking her any questions. You should direct your questions to the Court and not to the court attendant.

INSTRUCTION NO. 22

I am giving you one verdict form with eight questions for you to answer. 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 and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from 1000 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 and questions must be signed by all seven jurors who agree.

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

Dated this 8 day of June, 2021.



Celene Gogerty, Judge for the District Court