

**IOWA DISTRICT COURT IN AND FOR POLK COUNTY**

<b>SUSAN VAN HILL,</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>DUANE W. HOUGE and KATHY HOUGE</b>  <b>Defendants.</b>	<b>CASE NO. LACL151014</b>  <b>JURY INSTRUCTIONS AND VERDICT</b> <b>FORM</b>  <b>JUDGE COLEMAN McALLISTER</b>
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**MEMBERS OF THE JURY:**

This is a civil action in which the Plaintiff, Susan Van Hill, is seeking damages she claims were caused by a fall that occurred on May 10, 2020 on a rope swing at Defendant Duane and Kathy Houge's property.

Plaintiff alleges that the Defendants were negligent and that their negligence was the cause of Plaintiff's injuries.

Defendants deny that they were negligent, and contend that Plaintiff assumed the risk in using the rope swing and was thereby negligent, and that such negligence was a cause of her injuries.

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

CLERK OF DISTRICT COURT  
POLK COUNTY, IOWA  
MAY 23 2023

**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 these instructions together with the preliminary instructions I gave you at the outset of the trial and any verbal instructions I gave you during the trial because no one instruction includes all of the applicable law.

The order in which I give you 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 parties.
4. Any other matter admitted into evidence.

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**

Certain testimony has been read into evidence from a deposition or shown by videotape from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing or by videotape. Consider that testimony as if it had been given in court.

#### **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.
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

#### **INSTRUCTION NO. 6**

You have heard evidence claiming that a party made statements before this trial while under oath and/or 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 party had made it under oath during the trial.

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

#### **INSTRUCTION NO. 7**

You have heard evidence claiming a witness made statements before this trial while under oath which were inconsistent with what the witness said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe the witness. You may disregard all or any part of the testimony if you find the statements



statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

#### **INSTRUCTION NO. 8**

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.

#### **INSTRUCTION NO. 9**

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

#### **INSTRUCTION NO. 10**

"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. 11**

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 Plaintiff Susan Van Hill and the Defendants Duane and

Kathy Houge, 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.

**INSTRUCTION NO. 12**

After you have compared the conduct of all parties, if you find the Plaintiff has some fault and her fault was more than 50% of the total fault, she cannot recover damages.

However, if you find the Plaintiff's 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. 13**

Plaintiff claims the Defendants were at fault and caused damage. The Plaintiff must prove all of the following propositions:

1. The Defendants knew or in the exercise of reasonable care should have known of a condition on the premises and that it involved an unreasonable risk of injury to a person in Plaintiff's position.
2. The Defendants knew or in the exercise of reasonable care should have known:
  - a. The Plaintiff would not discover the condition; or
  - b. The Plaintiff would not realize the condition presented an unreasonable risk of injury; or
  - c. The Plaintiff would not protect herself from the condition.
3. The Defendants was negligent in one of more of the following particulars:
  - a. In creating a dangerous condition in the barn; or
  - b. In allowing a dangerous condition to exist in the barn; or
  - c. In failing to discover the condition of the rope swing; or
  - d. In failing to use ordinary care.
4. The Defendants' negligence was a cause of Plaintiff's damage.

5. 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 will consider the defense of comparative fault as explained in Instruction No. 16.

#### **INSTRUCTION NO. 14**

Owners and occupiers owe a duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors. You may consider the following factors in evaluating whether the Defendants have exercised reasonable care for the protection of lawful visitors:

1. The foreseeability or possibility of harm;
2. The purpose for which the visitor entered the premises;
3. The time, manner, and circumstances under which the visitor entered the premises;
4. The use to which the premises are put or are expected to be put;
5. The reasonableness of the inspection, repair, or warning;
6. The opportunity and ease of repair or correction or giving of the warning; and
7. The burden on the land occupier and/or community in terms of inconvenience or cost in providing adequate protection.
8. Any other factor shown by the evidence bearing on this question.

#### **INSTRUCTION NO. 15**

The owner of a premises is presumed to know all conditions on the premises that are caused or created by the owner or the owner's employee. The owner of a premises is not responsible for an injury suffered by a person on the premises which resulted from a condition of which the owner had no knowledge, unless the condition existed for a long enough time that in the exercise of reasonable care the owner should have known about it.

**INSTRUCTION NO. 16**

The Defendants claim that Plaintiff was at fault and caused damages. The Defendants must prove both of the following propositions:

1. Plaintiff was at fault by unreasonably assuming the risk of swinging on the rope swing in Defendants' barn.
2. Plaintiff's fault was a cause of her damage.

If the Defendants have failed to prove either of these propositions, the Defendants have not proved its defense. If Defendants have proved both of these propositions, then you will assign a percentage of fault against Plaintiff and include the Plaintiff's fault in the total percentage of fault found by you answering the special verdicts.

**INSTRUCTION NO. 17**

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

**INSTRUCTION NO. 18**

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

**INSTRUCTION NO. 19**

If you find the Plaintiff is entitled to recover damages, it is your duty to determine the amounts. In doing so you shall consider the following items of damage:

1. Medical expenses from the date of injury to the present time.
2. Physical and mental pain and suffering from the date of injury to the present time.
3. The present value of future physical and mental pain and suffering.
4. Loss of function of the mind and body from the date of injury to the present time.



5. The present value of future loss of function of the mind and body.
6. Past lost wages.
7. Present value of loss of future earning capacity.

Past medical expenses are the reasonable cost of necessary doctor charges, from the date of injury to the present time. In determining the reasonable cost of necessary doctor charges, you may consider the amount actually paid on behalf of the Plaintiff and any amounts necessary to satisfy the medical care charges that have been incurred but not yet satisfied.

Lost wages are the reasonable value of lost wages from the date of injury to the present time.

The present value of loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.

Loss of function of the mind and body is the inability of a particular part of the mind and body to function in a normal manner.

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, anxiety, embarrassment or loss of enjoyment of life, a feeling of uselessness or other emotional distress.

The amount you assess for physical and mental pain and suffering and loss of function of the mind and body 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 damages. Similarly, damages awarded to one party shall not be included in any amount awarded to another party. The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

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. 20**

If you find Plaintiff had a condition before this incident and this condition was aggravated by this incident causing further suffering or disability then that Plaintiff is entitled to recover damages caused by the aggravation. Plaintiff is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which Plaintiff now has which were not caused by the defendant's actions.

#### **INSTRUCTION NO. 21**

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. 22**

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Plaintiff is 27.41 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. 23**

Nothing I have said or done during the trial was intended to give any opinion as to the facts, proof, or what your verdict should be.

**INSTRUCTION NO. 24**

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. 25**

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. 26**

Sometimes during deliberations, an individual juror or the jury as a whole may have a question about the evidence presented in the trial or the law in these instructions. Please understand that most questions can be answered by a close review of these instructions. However, if during your deliberations you have a

question you want to ask the Court, the question should be presented to the court attendant by the person you have selected as foreperson. The question must be put in writing with the foreperson signing the written question, and including, in writing, the time and date of the question.

Once the Court receives such a question, the Court is obligated to advise and discuss the question with the attorneys and parties involved in the case. Therefore, you must understand that some time may elapse prior to the Court responding to such a question. You must keep the question and any written response you receive from the Court and return them, unaltered, to the Court with any verdict.

The Court Attendant who is working with you has taken an oath not to communicate with you about the trial, the evidence or the court's instructions. The Court Attendant may only ask you whether or not you have agreed upon a verdict, deliver messages to and from the jury to the Court and arrange for recesses during deliberations. Please do not ask the Court Attendant any questions about any other subject.

#### **INSTRUCTION NO. 27**

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, 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. 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.

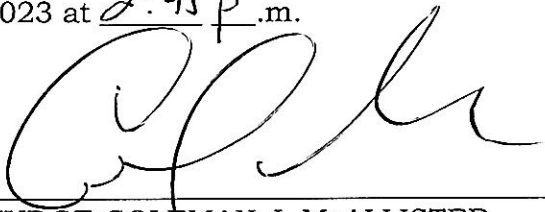
#### **INSTRUCTION NO. 28**

I am giving you one verdict form and special interrogatories. 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 interrogatories must be signed by your foreperson.

After deliberating six (6) hours from 2:45 o'clock p.m., excluding meals or recesses outside your jury room, then it is necessary that only seven (7) of you agree to the verdict. In that case, the verdict must be signed by all seven (7) jurors.

When you have agreed upon the verdict, and appropriately signed it, tell the Court attendant.

Submitted this 23rd day of May, 2023 at 2:45 p.m.



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JUDGE COLEMAN J. McALLISTER