

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**RYAN AND SHAYLIN GLADSON, as next
best friends to H.G., a minor,**

Plaintiffs,

v.

**THE YOUNG MEN'S CHRISTIAN
ASSOCIATION OF GREATER DES
MOINES, IOWA,**

Defendant.

CASE NO. LACL151896

FINAL JURY INSTRUCTIONS

JURY INSTRUCTION 1

Members of the Jury:

Members of the Jury: In this case the Plaintiffs, Ryan and Shaylin Gladson, on behalf of their daughter, Harper Gladson, seek damages against the Defendant, YMCA of Greater Des Moines, claiming the YMCA was negligent in relation to injuries Harper Gladson suffered in a fall from a bunk bed which occurred in a cabin at the YMCA Y-Camp in Boone, Iowa on or about July 18, 2021. The YMCA denies it was negligent, and asserts that Harper Gladson's negligence caused her injuries. YMCA also disputes the amount of damages claimed by the Gladsons.

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.

JURY INSTRUCTION 2

Ryan and Shaylin Gladson have brought this claim in each's capacity as Harper Gladson's legal next friend. They are entitled to assert this claim on behalf of Harper Gladson.

Whenever I refer to "plaintiff" or "plaintiffs," I will be referring to Harper Gladson.

I will refer to the Defendant, the Young Men's Christian Association of Greater Des Moines, Iowa, as "defendant" or "the YMCA".

JURY INSTRUCTION 3

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.

JURY INSTRUCTION 4

Unless otherwise instructed, 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.

JURY INSTRUCTION 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

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 pretrial 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 are 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 ruling on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside this courtroom.

JURY INSTRUCTION 6

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

JURY INSTRUCTION 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 the 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.

JURY INSTRUCTION 8

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

JURY INSTRUCTION 9

You have heard testimony from a person described as an expert. 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 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.

JURY INSTRUCTION 10

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.

JURY INSTRUCTION 11

You have heard evidence claiming the Plaintiffs, Shaylin Gladson, Ryan Gladson, and Harper Gladson; and YMCA employees Alex Kretzinger, Annemarie Auvenshine and Elizabeth Moore, made a statement or statements before this trial.

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

If you find such a statement was made and was inconsistent with that person's testimony during the trial you may also use the statement as a basis for disregarding all or any part of that person's testimony during the trial but you are not required to do so.

You should not disregard that person's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

JURY INSTRUCTION 12

You have heard evidence claiming David Sherry made statements before this trial while under oath which were inconsistent with what he 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 David Sherry. You may disregard all or any part of the testimony if you find the 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.

JURY INSTRUCTION 13

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.

JURY INSTRUCTION 14

"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.

With respect to Harper Gladson, ordinary care of a child is the care which a reasonable child of like age, intelligence and experience would use under similar circumstances. In determining if Harper Gladson's conduct was negligent, Harper Gladson's conduct must be compared to that of a reasonable child of like age, intelligence and experience. You are to first determine the particular capacity of Harper Gladson to perceive and take action to avoid an injury based on her age, intelligence and experience. Next, you are to determine how a reasonable child of like age, intelligence and experience would have acted under similar circumstances. "Negligence" is doing something a reasonable child of like age, intelligence and experience would not do under similar circumstances, or failing to do something a reasonable child of like age, intelligence and experience would do under similar circumstances.

JURY INSTRUCTION 15

The plaintiffs are not claiming that the YMCA was negligent based upon any failure of Elizabeth Moore to diagnose or suspect that Harper Gladson suffered a fractured clavicle (collar bone).

You are not to consider evidence of any failure of Elizabeth Moore to diagnose or suspect that Harper Gladson suffered a fractured clavicle as evidence of YMCA's negligence or a cause of damage in this case. You may, however, consider other claims of actions or omissions by Elizabeth Moore as otherwise instructed in these jury instructions.

JURY INSTRUCTION 16

The YMCA has a duty to exercise reasonable care in supervising campers at its camp.

In evaluating whether the YMCA exercised reasonable care in supervising campers at the Y-Camp you may consider the following factors:

- a. The foreseeability of harm;
- b. The activity or conduct the camper was engaged in at the time of injury
- c. Efforts made by YMCA staff members in supervising the camper;
- d. Any policies, procedures or standards that the YMCA had in place at the time regarding supervision of campers at the Y-Camp;
- e. Any other facts or circumstances shown by the evidence bearing on this question.

JURY INSTRUCTION 17

The YMCA has a duty to exercise reasonable care in preventing injury to campers at its camp.

In evaluating whether the YMCA exercised reasonable care in preventing injury to campers at the Y-Camp, you may consider the following factors:

- a. The foreseeability of harm to the camper;
- b. The activity or conduct the camper was engaged in at the time of injury;
- c. Efforts made by YMCA staff members to prevent injury to the camper;
- d. Your consideration of Instruction No. 18;
- e. Any other facts or circumstances shown by the evidence bearing on this question.

JURY INSTRUCTION 18

Relative to YMCA's duty to exercise reasonable care in preventing injury to campers at the Y-Camp, you have received evidence of the American Camp Association's Bunk Guardrail Standard. Compliance with such standard is evidence that the YMCA was not negligent and non-compliance with such standard is evidence that YMCA was negligent. Such evidence is relevant, and you should consider it, but it is not conclusive proof.

JURY INSTRUCTION 19

The YMCA has a duty to exercise reasonable care in determining when to notify a camper's parent or guardian of an injury to a camper at the Y-Camp, and if so, to take reasonable steps to notify the parent or guardian of such injury.

In evaluating whether the YMCA exercised reasonable care in determining when to notify a camper's parent or guardian of an injury to the camper at the Y-Camp, and if so, to take reasonable steps to notify the parent or guardian of such injury, you may consider the following factors:

- a. The camper's age;
- b. The nature of any injury known to YMCA staff members;
- c. Any behavior of the child observable by YMCA staff members relative to any known injury;
- d. The foreseeability of harm;
- e. Any policies, procedures or standards that the YMCA had in place at the time regarding notification to parents of an injury to a camper;
- f. Efforts made by YMCA staff members to notify the camper's parent or guardian of the injury;
- g. Any other facts or circumstances shown by the evidence bearing on this question.

JURY INSTRUCTION 20

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

JURY INSTRUCTION 21

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

JURY INSTRUCTION 22

An employer is liable for the negligent acts of an employee if the acts are done in the scope of the employment.

For an act to be within the scope of an employee's employment, the act must be necessary to accomplish the purpose of the employment, and it must be intended to accomplish that purpose.

JURY INSTRUCTION 23

The plaintiffs claim the YMCA was at fault in the following particular(s): failure to exercise reasonable care in supervising Harper Gladson prior to her fall from the top bunk of a bunk bed; failure to exercise reasonable care to prevent injury to Harper Gladson from a fall from the top bunk of a bunk bed; and failure to exercise reasonable care in determining when to notify Harper Gladson's parent or guardian of an injury to Harper Gladson, and if so, to take reasonable steps to notify Harper Gladson's parent or guardian of such injury. These grounds of fault have been explained to you in other instructions.

The plaintiffs must prove all of the following propositions:

1. The YMCA was at fault. In order to prove fault, the plaintiff must prove that the YMCA was negligent in:
 - a. Failing to exercise reasonable care in supervising Harper Gladson prior to her fall from the top bunk of a bunk bed; and/or
 - b. Failing to exercise reasonable care to prevent injury to Harper Gladson from a fall from the top bunk of a bunk bed; and/or
 - c. Failing to exercise reasonable care in determining when to notify Harper Gladson's parent or guardian of an injury to Harper Gladson, and if so, to take reasonable steps to notify Harper Gladson's parent or guardian of such injury.
2. The YMCA's fault was a cause of damage to Harper Gladson.
3. The amount of damage.

If the plaintiffs have failed to prove any of these propositions, the plaintiffs are not entitled to damages. If the plaintiffs have proved all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. 24 through 27.

JURY INSTRUCTION 24

The YMCA claims Harper Gladson was at fault in the following particular(s): by failing to safely use the bunk bed and by failing to follow an instruction of the counselor to not lean over the end of the bunk bed. This ground of fault has been explained to you in other instructions.

The YMCA must prove both of the following propositions:

1. Harper Gladson was at fault. In order to prove fault, the YMCA must prove that Harper Gladson was negligent by failing to safely use the bunk bed and/or by failing to follow an instruction of the counselor to not lean over the end of the bunk bed.
2. Harper Gladson's fault was a cause of Harper Gladson's damage.

If the YMCA has failed to prove either of these propositions, the YMCA has not proved its defense. If the YMCA has proved both of these propositions, then you will assign a percentage of fault against Harper Gladson and include Harper Gladson's fault in the total percentage of fault found by you answering the verdict questions.

JURY INSTRUCTION 25

A party is required to exercise reasonable care for their own safety. This means that, if, in the exercise of ordinary care under the circumstances, a party could have taken some particular action after an act of fault of another party, in order to avoid an injury, then they are under a duty to take such action.

JURY INSTRUCTION 26

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 plaintiff and defendant 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.

JURY INSTRUCTION 27

After you have compared the conduct of the parties, if you find Harper Gladson was at fault and her fault was more than 50% of the total fault, she cannot recover damages.

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

JURY INSTRUCTION 28

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

1. Past Physical and Mental Pain and Suffering. Physical and mental pain and suffering from the date of 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 it not limited to, mental anguish or loss of enjoyment of life.
2. Past Loss of Full Mind And Body. Loss of function of the mind and/or body from the date of injury to the present time. Loss of function of the body is the inability of a particular part of the body to function in a normal manner.

The amount you assess for physical and mental pain and suffering or loss of full mind and body cannot be measured by any exact or mathematical standard. You should 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 questions.

JURY INSTRUCTION 29

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

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant and others from like conduct in the future. You may award punitive damages only if a YMCA employee's conduct warrants a penalty in addition to the amount you award to compensate for Harper Gladson'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 the YMCA employee's conduct that harmed Harper Gladson.
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. Harper Gladson's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to Harper Gladson.
4. The existence and frequency of prior similar conduct.

INSTRUCTION NO. 30

With respect to Harper Gladson's claim for punitive damages as identified in Instruction 29, 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. 31

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

INSTRUCTION NO. 32

The YMCA is liable for the punitive damages by reason of the acts of its employee if one of the following occurred:

1. YMCA management authorized the act and the way it was done; or
2. The employee was employed in a managerial capacity and was acting in the scope of employment; or
3. YMCA management ratified or approved the act.

JURY INSTRUCTION 33

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.

JURY INSTRUCTION 34

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.

JURY INSTRUCTION 35

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.

JURY INSTRUCTION 36

Occasionally, during jury deliberations, jurors may have questions for the court, particularly about the instructions. I have prepared the instructions after carefully considering the facts of this case, researching the law and discussing them with the lawyers. I have tried to use language which is generally understandable. Usually, questions about the instructions can be answered by carefully re-reading them. If after doing so, however, you still feel it necessary to ask the court a question, you must submit it in writing and deliver the question to the judicial assistant, who will deliver it to the court.


I cannot communicate with you until first discussing your question and the potential response with the lawyers, which will naturally take time before I can reply. Once the court's answer is received in the jury room, the jury foreperson shall read the court's response to the jury. You are to keep any written question and response and return it to the court with the verdict.

JURY INSTRUCTION 37

I am giving you a verdict form and questions. 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 foreman or forewoman.

After deliberating for six hours from 12:24 o'clock 0 m. on September 15, 2023, 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 interrogatories must be signed by all seven jurors who agree.

When you have agreed upon the verdict and interrogatories and appropriately signed it, tell the Judicial Assistant.



Joseph W. Seidlin, Judge

9/15/23 11:17:29

Did the judge
say anything about
~~the~~ Zach's flight on Saturday?

9/15/23

Zach RJ

Zach will have to be excused if no
verdict today.

L. W. Hilli

2023 SEP 18 7:29
Can we extend past
4:30 PM CST.?

John [Signature]

9/15/23

No. The 7 remaining jurors
will have to report back for
deliberations at 9:00 a.m. on
Monday, the 18th.

[Signature]