

FILED

IN THE IOWA DISTRICT COURT FOR WEBSTER COUNTY

2019 AUG 28 PM 3:36

STEPHANIE HARVEY,

Plaintiff,

v.

CHAD RENNIE,

Defendant.

Case No. LACV319912

JURY INSTRUCTIONS

JURY INSTRUCTION NO. 1

Members of the Jury: This matter arises from a motor vehicle accident on or about January 13, 2017, at the intersection of 31st Street and 12th Avenue North, in Fort Dodge, Webster County, Iowa. Plaintiff Stephanie Harvey alleges her vehicle was struck by a vehicle operated by Defendant Chad Rennie. Plaintiff Stephanie Harvey alleges that Defendant Chad Rennie was negligent in the following ways:

- a. In failing to maintain control of his vehicle;
- b. In failing to yield the right of way;
- c. In driving at an unsafe speed; and
- d. In failing to maintain a proper lookout.

Defendant Chad Rennie admits that an accident occurred, but denies that he was negligent in the manner alleged by Plaintiff Stephanie Harvey. Defendant Chad Rennie also denies the nature and extent of Plaintiff Stephanie Harvey's allegations of injury, loss and damages. Further, Defendant Chad Rennie alleges that Plaintiff Stephanie Harvey was negligent in the following ways:

- a. In failing to recognize a known or obvious condition;
- b. In failing to exercise reasonable care for her own safety;
- c. In failing to exercise ordinary care under the circumstances;
- d. In failing to keep a proper lookout,
- e. In traveling at a speed which was excessive for the then and there existing circumstances;
- f. In failing to maintain control of her vehicle;
- g. In failing to yield the right of way; and
- h. In voluntarily leaving a place of safety.

Defendant Chad Rennie further alleges that Plaintiff Stephanie Harvey's injuries and damages were the result of a superseding-intervening cause. Finally, Defendant Chad Rennie alleges that the sole proximate cause of Plaintiff Stephanie Harvey's damages was a condition not under the control of any party. 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 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.

JURY INSTRUCTION NO. 3

Whenever a party must prove something they must do so by 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 NO. 4

You shall base your verdict only upon 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, 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. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside to this courtroom.

JURY INSTRUCTION NO. 5

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.

JURY INSTRUCTION NO. 6

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try and 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 NO. 7

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 witnesses' education and experience, the reasons given for the opinion, and all the other evidence in the case.

JURY INSTRUCTION NO. 8

You have heard evidence claiming that Stephanie Harvey 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 Stephanie Harvey had made it under oath during the trial.

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

JURY INSTRUCTION NO. 9

Upon retiring you shall select a foreperson. It will be the foreperson's 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 deliberation 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 NO. 10

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 NO. 11

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.

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

JURY INSTRUCTION NO. 12

If you find Stephanie Harvey is entitled to recover damages, you shall consider the following items:

1. Past Medical Expenses: The reasonable cost of necessary hospital charges, doctor charges, prescriptions, or other medical services from the date of injury to the present time.

In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions or other medical services, you may consider the amount charged, the amount actually paid or any other evidence of what is reasonable and proper for such medical expense.

2. Loss of Time – Earnings: The reasonable value of the lost wages from the date of the injury to the present time.

3. Loss of Full Body – Past: Loss of function of the body from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner.

4. Loss of Full Body – Future: The present value of future loss of function of the body.

5. Physical and Mental Pain and Suffering - Past: 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 is not limited to, mental anguish or loss of enjoyment of life.

6. Physical and Mental Pain and Suffering – Future: 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 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.

JURY INSTRUCTION NO. 13

If you find Stephanie Harvey was injured by another act after this incident, she cannot recover for any later injury or aggravation of injury not caused by this incident.

JURY INSTRUCTION NO. 14

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 Stephanie Harvey for future losses.

JURY INSTRUCTION NO. 15

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 and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

JURY INSTRUCTION NO. 16

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 NO. 17

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 Stephanie Harvey and Chad Rennie 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 NO. 18

After you have compared the conduct of all parties, if you find Plaintiff Stephanie Harvey was at fault and Stephanie Harvey's fault was more than 50% of the total fault, Stephanie Harvey cannot recover damages.

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

JURY INSTRUCTION NO. 19

Stephanie Harvey claims Chad Rennie was at fault in one or more of the following particulars:

- a. In failing to maintain control of his vehicle;
- b. In failing to yield the right of way;
- c. In driving at an unsafe speed; and
- d. In failing to maintain a proper lookout.

These grounds of fault have been explained to you in other instructions.

Stephanie Harvey must prove all of the following propositions:

- 1. Chad Rennie was at fault.
- 2. Chad Rennie's fault was a cause of Stephanie Harvey's damage.
- 3. The amount of damage.

If Stephanie Harvey has failed to prove any of these propositions, she is not entitled to damages. If Stephanie Harvey has proved all of these propositions, you will consider the defense of comparative fault as explained in Instructions No. 20 and No. 21.

JURY INSTRUCTION NO. 20

Chad Rennie claims Stephanie Harvey was at fault in one or more of the following particulars:

- a. In failing to recognize a known or obvious condition;
- b. In failing to exercise reasonable care for her own safety;
- c. In failing to exercise ordinary care under the circumstances;
- d. In failing to keep a proper lookout,
- e. In traveling at a speed which was excessive for the then and there existing circumstances;
- f. In failing to maintain control of her vehicle;
- g. In failing to yield the right of way; and
- h. In voluntarily leaving a place of safety.

These grounds of fault have been explained to you in other instructions.

Chad Rennie must prove all of the following propositions:

- 1. Stephanie Harvey was at fault.
- 2. Stephanie Harvey's fault was a cause of Stephanie Harvey's damage.

If Chad Rennie has failed to prove any of these propositions, he has not proved his defense. If Chad Rennie has proved both of these propositions, then you will assign a percentage of fault against Stephanie Harvey and include Stephanie Harvey's fault in the total percentage of fault found by you answering the special verdicts.

JURY INSTRUCTION NO. 21

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 injury, then they are under a duty to take such action.

In this case Chad Rennie claims that Stephanie Harvey unreasonably failed to take action to avoid an injury because:

- a. She failed to recognize a known or obvious condition;
- b. She voluntarily left a place of safety; and
- c. She exited her vehicle and moved about the scene of the accident without the proper footwear or assistance or taking other measures to prevent her from falling, taking into account the road and weather conditions.

JURY INSTRUCTION NO. 22

Any person driving a vehicle on a highway shall drive at a careful speed not greater than nor less than is reasonable and proper, having due regard for the traffic, surface and width of the highway and of any other existing conditions.

A violation of this law is negligence.

JURY INSTRUCTION NO. 23

A driver must have his or her vehicle under control. It is under control when the driver can guide and direct its movement, control its speed and stop it reasonably fast.

A violation of this duty is negligence.

JURY INSTRUCTION NO. 24

A driver operating a vehicle must have it under control and shall reduce its speed to a reasonable and proper rate when approaching and traveling through a crossing or intersection of highways.

A violation of this law is negligence.

JURY INSTRUCTION NO. 25

Road conditions may be such that speed should be less than the legal limit. Traffic laws call for the minimum of care and not the maximum. A driver should not operate a vehicle up to the legal speed limit of 25 miles per hour if the circumstances are such that ordinary care requires a lesser speed.

A violation of this law is negligence.

JURY INSTRUCTION NO. 26

When two vehicles enter an intersection at approximately the same time so that if both proceed without regard to the other a collision is reasonably to be expected, the vehicle on the left shall yield the right-of-way to the vehicle on the right.

A violation of this law is negligence.

JURY INSTRUCTION NO. 27

Possession of directional right-of-way is not an absolute right but is rather a relative one and is qualified by statute requiring a person operating the motor vehicle to have it under control and reduce its speed to a reasonable and proper rate when approaching and traversing an intersection.

JURY INSTRUCTION NO. 28

Both drivers had a right to use the road, but each had to respect the rights of the other. Each driver could assume the other would obey the law until they knew, or in the exercise of ordinary care, should have known the other driver was not going to obey the law.

JURY INSTRUCTION NO. 29

“Proper lookout” is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of the operation of the driver's vehicle in relation to what the driver saw or should have seen.

A violation of this duty is negligence.

JURY INSTRUCTION NO. 30

“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.

JURY INSTRUCTION NO. 31

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

JURY INSTRUCTION NO. 32

You must decide whether the claimed harm to Stephanie Harvey is within the scope of Chad Rennie's liability. Stephanie Harvey's claimed harm is within the scope of Chad Rennie's liability if that harm arises from the same general types of danger that Chad Rennie should have taken reasonable steps to avoid.

Consider whether repetition of Chad Rennie's conduct makes it more likely harm of the type Stephanie Harvey claims to have suffered would happen to another. If not, the harm is not within the scope of liability.

JURY INSTRUCTION NO. 33

Chad Rennie claims the sole proximate cause of Stephanie Harvey's damages was a condition not under the control of any party. Sole proximate cause means the only proximate cause. Chad Rennie must prove both of the following propositions:

1. The condition not under the control of any party occurred.
2. The condition not under the control of any party was the only proximate cause of Stephanie Harvey's damage.

If Chad Rennie has failed to prove either of these propositions, he has failed to prove the defense of sole proximate cause. If Chad Rennie has proved both of these propositions, he has proved the defense of sole proximate cause and you must find the fault of Chad Rennie, if any, was not a proximate cause of Stephanie Harvey's damages when you answer the special verdicts.

JURY INSTRUCTION NO. 34

Chad Rennie claims the conduct of a third person or other active force was the proximate cause of Stephanie Harvey's damages.

In order to establish this defense, Chad Rennie must prove all of the following propositions:

1. The conduct of a third person or other active force caused Stephanie Harvey's damages and occurred after the conduct of Chad Rennie which you have found to constitute negligence.

2. The conduct of Chad Rennie did not create or substantially increase the risk that Stephanie Harvey would sustain damage through the conduct of a third person or other active force.

3. The conduct of a third person or other active force was not reasonably foreseeable to someone in Chad Rennie's position.

If Chad Rennie has proven all of these propositions, then Stephanie Harvey cannot recover damages.

JURY INSTRUCTION NO. 35

“Proper lookout” is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of one's movements in relation to things seen or that could have been seen in the exercise of ordinary care.

JURY INSTRUCTION NO. 36

A defendant is not liable for injuries or damages caused by a condition that is known or obvious to a person in the plaintiff's position unless the defendant should anticipate the harm despite such knowledge or obviousness.

JURY INSTRUCTION NO. 37

A condition is “known” if one is aware of conscious of its existence and of the risk of harm it presents.

A condition is “obvious” when both the condition and risk of harm are apparent to and would be recognized by a reasonable person, exercising ordinary perception, intelligence, and judgment.

JURY INSTRUCTION NO. 38

I am giving you one (1) verdict form. 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 foreperson.

After deliberating for six hours from 2:20 o'clock p.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 appropriately signed it, tell the Court Attendant.

DATED this 28th day of August, 2019.


ANGELA L. DOYLE
District Court Judge