

IN THE IOWA DISTRICT COURT FOR POLK COUNTY**DANIEL SPENCER NICHOLS and GINA
MARIE NICHOLS,****Plaintiffs,****v.****MARY RUTH STONE, BRIAN DELOSS
STONE,****Defendants.****CASE NO. LACL148267****FINAL JURY INSTRUCTIONS**

2023 AUG 04 01:49 PM
CLERK OF DISTRICT COURT

JURY INSTRUCTION 1

Members of the Jury:

In this case, the plaintiff, Daniel Nichols, claims that he sustained new injuries and a temporary aggravation of prior injuries in a motor vehicle collision which occurred on July 11, 2018 near the intersection of University Avenue and 48th Street in Des Moines, involving him and the defendant, Ruth Stone. The parties dispute who was at fault for this accident. The plaintiff, Gina Nichols, claims loss of spousal consortium as a result of Mr. Nichols' injuries. Defendants dispute the nature, cause, and extent of the injuries Mr. Nichols claims, as well as the amount of damages sought by Plaintiffs.

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

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 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.

JURY INSTRUCTION 4

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, including during jury selection, opening and closing statements and the presentation of evidence.
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 5

Certain deposition testimony has been 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 6

During this trial, you have heard the word “interrogatories”. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing.

Consider interrogatories and the answers to them as if the questions had been asked and answered here 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

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 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 9

You have heard evidence claiming the plaintiff, Daniel Nichols, and the defendant, Ruth Stone, made a statement or statements before this trial either while under oath or while not under oath.

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

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

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

JURY INSTRUCTION 10

The parties stipulate that the defendant, Brian Stone, is the owner of the vehicle driven by Ruth Stone. Brian Stone, as owner, is legally responsible for any negligence of Ruth Stone while driving the vehicle, and the two should be considered one party for the purposes of this case.

JURY INSTRUCTION 11

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 12

"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 13

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

JURY INSTRUCTION 14

Whenever any road has been divided into three or more clearly marked lanes for traffic, a vehicle shall be driven as nearly as possible entirely within a single lane and shall not be moved from the lane until the driver has seen that the movement can be made with safety.

A violation of this law is negligence.

JURY INSTRUCTION 15

A driver shall not turn a vehicle from a direct course on a road unless the movement can be made with reasonable safety.

A violation of this law is negligence.

JURY INSTRUCTION 16

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 17

"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.

A violation of this duty is negligence.

JURY INSTRUCTION 18

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

JURY INSTRUCTION 19

The plaintiff, Daniel Nichols, claims the defendant, Ruth Stone, was at fault in one or more of the following particular(s): by not driving within a single lane of traffic; by turning her vehicle from a direct course on the road when not reasonably safe; by not having her vehicle under control; and/or by failing to keep a proper lookout. These grounds of fault have been explained to you in other instructions.

The plaintiff must prove all of the following propositions:

1. The defendant was at fault. In order to prove fault, the plaintiff must prove that the defendant:
 - a. Did not drive within a single lane of traffic; and/or
 - b. Turned her vehicle from a direct course on the road when not reasonably safe; and/or
 - c. Failed to have her vehicle under control; and/or
 - d. Failed to keep a proper lookout.
2. The defendant's fault was a cause of the plaintiff's damage.
3. 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, you will consider the defense of legal excuse as explained in Instruction Nos. 20 through 21.

JURY INSTRUCTION 20

The defendant, Ruth Stone, claims that if you find that she violated a law or duty in the operation of her vehicle, she had a legal excuse for doing so because she was avoiding an imminent collision with the driver of another vehicle, and therefore is not negligent. "Legal excuse" means that someone seeks to avoid the consequences of her conduct by justifying acts which would otherwise be considered negligent. The burden is upon defendants to establish as a legal excuse:

1. Anything that would make complying with the law impossible.
2. Anything over which the driver has no control which places her vehicle in a position contrary to the law.
3. Failure to obey the law when the driver is confronted with sudden emergency not of her own making.
4. An excuse or exception provided by the law.

If you find that the defendant, Ruth Stone, violated a law or duty as submitted to you in other instructions, and that she has established a legal excuse for doing so under any one of the four definitions set forth above, then you should find that Ms. Stone is not negligent for violating the particular law or duty involved.

JURY INSTRUCTION 21

A sudden emergency is an unforeseen combination of circumstances that calls for immediate action or a sudden or unexpected occasion for action. A driver of a vehicle who, through no fault of her own, is placed in a sudden emergency, is not chargeable with negligence if the driver exercises that degree of care which a reasonably careful person would have exercised under the same or similar circumstances.

JURY INSTRUCTION 22

If you find the plaintiff, Daniel Nichols, is entitled to recover damages, you shall consider the following items:

1. Past Medical Expenses. The reasonable cost of necessary medical expenses from the date of injury to the present time.

In determining the reasonable cost of necessary medical expenses, 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. 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 it not limited to, mental anguish or loss of enjoyment of life.

3. Loss of Full Mind and Body - Past. 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.

4. Physical and Mental Pain and Suffering – Future. The present value of future physical and mental pain and suffering including loss of enjoyment of life.

The amount you assess for physical and mental pain and suffering and/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 23

If you find the plaintiff, Dan Nichols, had a neck injury and related symptoms before this incident and any such condition was aggravated by this incident causing further suffering and/or disability, then he is entitled to recover damages caused by the aggravation. He is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which he now has which were not caused by the defendant's actions.

JURY INSTRUCTION 24

If you find the plaintiff, Daniel Nichols, had a previous neck or back injury making him more susceptible to injury than a person in normal health, then the defendant is responsible for all injuries and damages which are experienced by Mr. Nichols which are caused by defendant's actions, even though the injuries claimed produce greater injury than those which might have been experienced by a normal person under the same circumstances.

JURY INSTRUCTION 25

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.

JURY INSTRUCTION 26

If you find the plaintiff, Daniel Nichols, is entitled to recover damages, you shall also consider the plaintiff, Gina Nichols' claim for damages for loss of spousal consortium.

"Spousal consortium" is the fellowship of a husband and wife and the right of each other to the intangible benefits of company, cooperation, affection and the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of monetary support from the injured spouse, nor mental anguish caused by the spouse's injury.

If you find that the plaintiff, Gina Nichols, is entitled to recover damages for loss of spousal consortium, you shall consider the following items:

1. The reasonable value of loss of spousal consortium which Mrs. Nichols would otherwise have received from the date of the injury to the present time.
2. The present value of loss of spousal consortium which Mrs. Nichols would otherwise have received in the future. Damages for loss of spousal consortium are limited in time to the shorter of the two spouses' normal life expectancy.

In determining the value for loss of spousal consortium you may consider:

1. The circumstances of Daniel Nichols' life.
2. Mr. and Mrs. Nichols' ages at the time of injury.
3. Daniel Nichols' health, strength, character and life expectancy.

4. Daniel Nichols' capabilities and efficiencies in performing the duties as a spouse.
5. Daniel Nichols' skills and abilities in providing instructions, guidance, advice and assistance.
6. Gina Nichols' needs.
7. All other facts and circumstances bearing on the issue.

The amount you assess for loss of spousal consortium 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 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. 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 verdict questions.

JURY INSTRUCTION 27

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Daniel Nichols is 20.64 years, and of people who are the same age as Gina Nichols is 30.01 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Mr. and Mrs. Nichols' health, habits, occupation, and lifestyle, when deciding issues of future damages.

JURY INSTRUCTION 28

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 29

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 30

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 31

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.

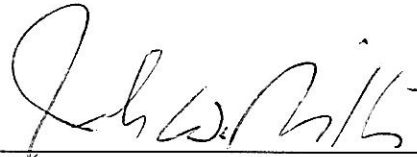
I cannot communicate with you until first discussing your question and the potential response with the lawyers, which will naturally take time before I can reply. Once the court's answer is received in the jury room, the jury foreperson shall read the court's response to the jury. You are to keep any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

JURY INSTRUCTION 32

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 questions must be signed by your foreman or forewoman.

After deliberating for six hours from 10:48 o'clock 9 . m. on August 2, 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 questions must be signed by all seven jurors who agree.

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



Joseph W. Seidlin, Judge

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August 2, 2023