

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ELNORA LOGAN,

Plaintiff,

vs.

BTD MERLE HAY MALL, LLC, a Limited Liability Company, MERLE HAY MALL LIMITED PARTNERSHIP, MERLE HAY ANCHORS, LLC, an Iowa Limited Liability Company, MERLE HAY INVESTORS, LLC, a Delaware Limited Liability Company, and MERLE HAY MALL,

Defendants.

NO. LA CL149531

STATEMENT OF THE CASE AND INSTRUCTIONS TO THE JURY

Judge Celene Gogerty

STATEMENT OF THE CASE

This is a civil case. This is an action by Plaintiff Elnora Logan seeking damages that she claims were caused by a fall that occurred on January 26, 2019, at the Merle Hay Mall in Polk County, Iowa. Plaintiff Elnora Logan alleges that she slipped on ice when she took a step into the entryway to the mall. The Plaintiff alleges that the Merle Hay Mall was negligent in failing to exercise reasonable care in the maintenance of the property and that the Mall's negligence was the cause of her injuries. Defendant Merle Hay Mall has denied it was negligent, denies that it was a cause of the Plaintiff's injuries, and has alleged that Plaintiff was fault, and that her fault should bar her recovery.

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.

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

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. 3

Whenever a party must prove something, they must do so by a 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. 5

During the trial, the Court has ruled upon objections to evidence which have, from time to time, been made by counsel, and this Court has done so according to the rules of evidence. Such rulings made by the Court are the responsibility of the Court solely, and in your consideration of the case you will give no significance or weight whatever to such rulings, and you will consider only such evidence as has been received before you, and which has not been stricken by the Court.

Third Party Defendant Hawkeye VanGinkel Lawn & Snow, Inc. has been excused from being a party on this case. You are not to speculate as to why they have been excused. You are instructed to make no inference or consider any claims against Hawkeye VanGinkel Lawn & Snow, Inc. in determining your verdict.

You are also instructed that the jury should disregard any evidence of injuries to the Plaintiff's head or eye when considering whether the Plaintiff suffered any damage as instructed in Instruction No. 16.

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INSTRUCTION NO. 6

During this trial, you will hear the word “interrogatory.” 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 answered here in court.

INSTRUCTION NO. 7

You have heard evidence claiming a witness made statements before this trial while not under oath which were inconsistent with what the witness said in this trial. Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness. Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

INSTRUCTION NO. 8

You have heard evidence claiming Plaintiff made statements before this trial while under oath. If you find such a statement was made, you may regard the statement as evidence in this case the same as if Plaintiff had made it under oath during the trial. If you find such a statement was made and was inconsistent with Plaintiff's testimony during the trial you may also use the statement as a basis for disregarding all or any part of Plaintiff's testimony during the trial but you are not required to do so. You should not disregard Plaintiff's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 9

You have heard evidence claiming a witness has a reputation / character trait for not telling the truth. You may use that evidence only to help you decide whether to believe the witness and how much weight to give their testimony.

INSTRUCTION NO. 10

Plaintiff has admitted that she was convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give their testimony.

INSTRUCTION NO. 11

The fact that a party is a company or corporation should not affect your decision. All person 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.

INSTRUCTION NO. 12

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.

"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. 13

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

INSTRUCTION NO. 14

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 Elnora Logan and Defendant Merle Hay and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each party's fault contributed to the damages.

INSTRUCTION NO. 15

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

INSTRUCTION NO. 16

On Plaintiff's claim against Defendant Merle Hay Mall, the Plaintiff must prove all of the following propositions against Merle Hay Mall:

1. Merle Hay Mall 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 Elnora Logan's position .
2. The Defendant Merle Hay Mall knew or in the exercise of reasonable care should have known:
 - a. Plaintiff Elnora Logan would not discover the condition, or
 - b. Plaintiff Elnora Logan would not realize the condition presented an unreasonable risk of injury, or
 - c. Plaintiff Elnora Logan would not protect herself from the condition.
3. The Defendant Merle Hay Mall was negligent in the following:
 - a. Failing to exercise reasonable care in the maintenance of the entryway to the Mall; or
 - b. Failing to exercise reasonable care in the maintenance of the sidewalk in front of the mall.
4. The negligence of Defendant Merle Hay Mall was a cause of Plaintiff Elnora Logan's damage to her back.
5. The nature and extent of damage.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff is not entitled to damages from Defendant Merle Hay Mall. If the plaintiff has proven all of these propositions, then you will consider the defense of comparative fault as explained in Instruction No. 23.

INSTRUCTION NO. 17

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 had 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. 18

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

INSTRUCTION NO. 19

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.

INSTRUCTION NO. 20

A condition is "known" if one is aware of or 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, in the position of a visitor, exercising ordinary perception, intelligence, and judgment.

INSTRUCTION NO. 21

“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 own movements in relation to things seen or that could have been seen in the exercise of ordinary care.

INSTRUCTION NO. 22

The owner of land next to a sidewalk must remove, within a reasonable amount of time, any snow and ice that has naturally accumulated on the sidewalk. The owner must exercise ordinary care in removing the snow and ice. The plaintiff must prove that the owner knew about the natural accumulation of snow and ice, or that it existed long enough for the owner to have discovered and removed it in the exercise of ordinary care. A violation of this law is negligence.

INSTRUCTION NO. 23

The defendants claim the plaintiff was at fault in one or more of the following particulars:

- A. Failure to maintain a proper lookout;
- B. Failure to exercise reasonable care for her own safety;
- C. Failure to exercise reasonable care when the plaintiff knew of a known and obvious condition.

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

The defendant must prove both of the following propositions:

1. The plaintiff was at fault. In order to prove fault, the defendant must prove either the plaintiff failed to maintain a proper lookout or failed to exercise reasonable care for her own safety.
2. The plaintiff's fault was a cause of the plaintiff's damages.

If the defendant has failed to prove either of these propositions, they have not proven their defense. If they have proven both of these propositions then you will assign a percentage of fault against the plaintiff and include the plaintiff's fault in the total percentage of fault found by you in answering the special verdicts.

INSTRUCTION NO. 24

After you have compared the conduct of all parties, if you find the Plaintiff Elnora Logan was at fault and her fault was more than 50% of the total fault, the Plaintiff 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 the Plaintiff's fault, and order the Defendant Merle Hay Mall to contribute to the payment of damages awarded on the basis of the percentage of fault you insert in your answers to the questions at the end of these instructions. If you assign to Defendant Merle Hay Mall less than 50% of the total fault, the Merle Hay Mall will only be liable to the extent of the percentage of fault assigned by you.

INSTRUCTION NO. 25

If you find the Plaintiff Elnora Logan entitled to recover damages, you shall consider the following items of damage:

- a) Past physical and mental pain and suffering
- b) Past loss of full mind and body; and
- c) Past lost wages.

Past physical and mental pain and suffering is 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, unpleasant feelings, bodily distress and uneasiness, bodily suffering, or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

Past loss of full mind and body is loss of function of the mind and body from the date of injury to the present time. Loss of mind and body is the inability of a particular part of the mind and body to function in a normal manner.

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

The amount you assess for physical and mental pain and suffering in the past and/or loss of function of the mind and body in the past 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. 26

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

INSTRUCTION NO. 27

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

INSTRUCTION NO. 28

The fact that I have instructed you on the proper measure of damages should not be considered as an indication of any view of mine as to which party is entitled to your verdict in this case. Instructions as to measure of damages are given only for your guidance.

INSTRUCTION NO. 29

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 damages.

INSTRUCTION NO. 30

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. He/She has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put him/her on the spot by asking him/her any questions. You should direct your questions to the Court and not to the court attendant.

INSTRUCTION NO. 31

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. 32

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. 33

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform including but not limited to Facebook, LinkedIn, YouTube, Twitter, TikTok, Instagram, Snapchat, and any other social media applications you may use.

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 or application-based maps or programs, or any other application, program, or device to search for or 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.

INSTRUCTION NO. 34

I am giving you one 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 foreman or forewoman.

After deliberating for six hours from 10:39 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 must be signed by all seven jurors who agree.

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


JUDGE FOR THE
DISTRICT COURT
4/15/2026 @ 10:39

CLERK DISTRICT COURT

2026 APR 15 PM 2:39