

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

FILED
CLERK DISTRICT COURT

2020 APR -3 PM 4:01

LINN COUNTY, IOWA

LAW NO. LACV097415

JAMES BARCZ, Individually and as Executor of the
Estate of JAN BARCZ; JAMES BARCZ, as Executor
of the Estate of JAN BARCZ on behalf of TIMOTHY
BARCZ and SCOTT BARCZ,

Plaintiffs,

vs.

MATTHEW KIDWELL, M.D.; LINN COUNTY
ANESTHESIOLOGISTS, P.C.; and MERCY
HOSPITAL, CEDAR RAPIDS, IOWA,

Defendants.

JURY INSTRUCTIONS AND
VERDICT FORM

INSTRUCTION NO. 1

STATEMENT OF THE CASE

Members of the Jury:

This is a medical negligence case. Plaintiffs are James Barcz, as Executor of the Estate of Jan Barcz, and James Barcz on his own behalf and on behalf of Timothy Barcz and Scott Barcz. Plaintiffs have sued Dr. Matthew Kidwell and his employer, Linn County Anesthesiologists, and Mercy Hospital, Cedar Rapids, Iowa.

Plaintiffs allege that Dr. Kidwell and Mercy Hospital were negligent in the care and treatment of Jan Barcz, causing damages. Dr. Kidwell and Mercy Hospital deny they were negligent and further deny their actions caused Plaintiffs' damages.

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

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.

INSTRUCTION NO. 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.

INSTRUCTION NO. 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 (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. 5

Decide the facts from the evidence. Consider the evidence using your observations, reasoning, common sense, and experience. It is your duty to determine the credibility of witnesses, to resolve any conflicts in the evidence, and to draw reasonable inferences from the evidence. In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witness's 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. Whether a witness has made inconsistent statements.
3. The witness's appearance, conduct, age, intelligence, memory and knowledge of the facts.
4. The witness's interest in the trial, their motive, candor, bias and prejudice.

Try to reconcile any conflicts in the evidence; but if you cannot, accept any evidence you find believable and give it the weight you believe it deserves.

INSTRUCTION NO. 6

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. 7

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.

INSTRUCTION NO. 8

The fact that a defendant 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.

INSTRUCTION NO. 9

In these instructions, I will be using the term “fault.” Fault means one or more acts or omissions towards another, which constitutes negligence.

INSTRUCTION NO. 10

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 Dr. Kidwell and Mercy Hospital, and the extent of the casual relation between their conduct and the damages claimed. You should then determine what percentage, if any, each Defendant's fault contributed to the damages.

Dr. Kidwell and Linn County Anesthesiologists, P.C. are to be treated as a single party for the purpose of these instructions and determining Dr. Kidwell's percentage of fault, if any.

INSTRUCTION NO. 11

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

INSTRUCTION NO. 12

Physicians who hold themselves out as specialists must use the degree of skill, care and learning ordinarily possessed and exercised by specialists in similar circumstances, not merely the average skill and care of a general practitioner.

A violation of this duty is negligence.

Nurses must use the degree of skill, care, and learning ordinarily possessed and exercised by other nurses in similar circumstances.

A violation of this duty is negligence.

A hospital must use the degree of skill, care and learning ordinarily possessed and exercised by other hospitals in similar circumstances.

A violation of this duty is negligence.

INSTRUCTION NO. 13

You are to determine the standard of care (the degree of skill, care and learning required of physicians and nurses), any failure to meet the standard of care, and causation only from the opinions of the physicians and nurses who have testified as to these subjects.

INSTRUCTION NO. 14

The mere fact that a party has suffered injury does not mean another party was negligent or at fault.

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

Plaintiffs claim that Dr. Kidwell was negligent.

In order to prevail on this claim, Plaintiffs must prove all of the following propositions:

1. The standard of care, i.e., the degree of skill, care and learning ordinarily possessed and exercised by physicians similar to Dr. Kidwell under circumstances similar to those presented in this case;
2. Dr. Kidwell was negligent by failing to meet the standard of care by failing to order a sleep/room air test prior to discharging Jan Barcz;
3. Dr. Kidwell's negligence, if any, was a cause of Plaintiffs' damages; and
4. The amount of damage.

If Plaintiffs have failed to prove any of these propositions, you cannot assign any percentage of fault to Dr. Kidwell. If Plaintiffs have proved all these propositions, then you will assign a percentage of fault to Dr. Kidwell.

INSTRUCTION NO. 17

Plaintiffs claim that Mercy Hospital was negligent.

In order to prevail on this claim, Plaintiffs must prove all of the following propositions:

1. The standard of care, i.e., the degree of skill, care and learning ordinarily possessed and exercised by hospitals similar to Mercy Hospital under circumstances similar to those presented in this case or/and the standard of care, i.e., the degree of skill, care and learning ordinarily possessed and exercised by nurses similar to the nurses at Mercy Hospital under circumstances similar to those presented in this case;
2. Mercy Hospital institutionally and/or through its nursing staff were negligent by failing to meet the standard of care in one or more of the following particulars:
 - (a) By not having a policy requiring a sleep/room air test prior to discharging postoperative patients with obstructive sleep apnea; or
 - (b) By not sufficiently training their nurses on the policy requiring a sleep/room air test prior to discharging postoperative patients with obstructive sleep apnea; or
 - (c) By improperly monitoring, stabilizing, and discharging Jan Barcz from Mercy Hospital.
3. Mercy Hospital's negligence, if any, was a cause of Plaintiffs' damages; and
4. The amount of damage.

If Plaintiffs have failed to prove any of these propositions, you cannot assign any percentage of fault to Mercy Hospital. If Plaintiffs have proved all of these propositions, then you will assign a percentage of fault to Mercy Hospital.

INSTRUCTION NO. 18

If you find Plaintiff James Barcz, as Executor of the Estate, is entitled to recover, it is your duty to determine the amount. In doing so you shall consider the following items in determining an amount which will fully compensate the Estate of Jan Barcz for the damages incurred:

Loss of function of the mind and body from the date of injury to the date of death.

The amount you assess for present value of loss of function of 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 the defendant(s) 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 special verdicts.

INSTRUCTION NO. 19

If you find that Plaintiff James Barcz is entitled to recover damages, you shall consider the following item:

Loss of spousal consortium is the present value of the services which Jan Barcz would have performed for her spouse, but for her death.

"Spousal consortium" is the fellowship of a husband and wife and the right of each to the benefits of company, cooperation, affection, 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 financial support from the injured spouse, nor mental anguish caused by the spouse's death.

Damages for spousal consortium are limited in time to the shorter of James Barcz or Jan Barcz's normal life expectancy.

INSTRUCTION NO. 20

If you find that Plaintiff is entitled to recover damages, you shall consider the following item:

Loss of parental consortium for Timothy Barcz and Scott Barcz which is the present value of the services which Jan Barcz would have performed for Timothy and Scott Barcz, but for her death.

“Parental Consortium” is the relationship between parent and child and the right of each to the benefits of companionship, comfort, guidance, affection and aid of the other in every parental-child relationship, general usefulness, industry and attention within the family. It does not include the loss of financial support from an injured parent, nor mental anguish caused by Jan Barcz’s death.

Timothy and Scott Barcz are not entitled to damages for loss of consortium unless Jan Barcz’s death has caused a significant disruption or diminution of the parent-child relationship.

Damages for loss of consortium for Timothy and Scott Barcz are limited in time to the shorter of the normal life expectancy of Jan Barcz or each child.

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 Jan Barcz at the time of her death is 19.36 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Jan Barcz's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 23

In arriving at an item of damage or a percentage of fault, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or percentage, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

INSTRUCTION NO. 24

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. 25

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.

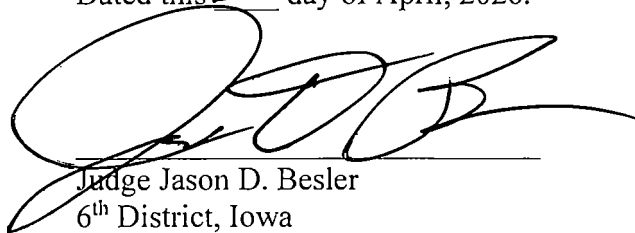
INSTRUCTION NO. 26

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 12:30 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 and interrogatories must be signed by all seven jurors who agree.

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

Dated this 2nd day of April, 2026.



Judge Jason D. Besler
6th District, Iowa