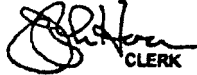


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
SEP - 4 2008

CLERK

LEMLEM S. KEBEDE,

Plaintiff,

-vs-

HAYLEY R. HILTON,

Defendant.

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CIV 06-1011

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Ladies and gentlemen of the jury, it is my duty now to explain the rules of law you must apply to this case.

You as jurors are the sole judges of the facts. But it is your duty to follow the law stated in these instructions, and to apply that law to the facts as you find them from the evidence before you. It would be a violation of your sworn duty to base your verdict upon any rules of law other than the ones given you in these instructions, regardless of your personal feelings as to what the law ought to be.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

INSTRUCTION NO. 2

You have been chosen and sworn as jurors to try the issues of fact presented in this case. You are to perform this duty without bias or prejudice, because the law does not permit jurors to be governed by sympathy or public opinion. The parties and the public expect that you will carefully and impartially consider all of the evidence and will follow the law as stated by the Court, in order to reach a just verdict, regardless of the consequences to any party.

INSTRUCTION NO. 3

I have mentioned the word “evidence.” The evidence in this case consists of the testimony of witnesses and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained any objection to a question or an exhibit, you must ignore the question or the exhibit and must not try to guess what the answer or information may have been.

3. Testimony and questions that I struck from the record, or told you to disregard, are not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, you were instructed that some evidence was received for a limited purpose only and you must follow those instructions.

INSTRUCTION NO. 4

There are two types of evidence from which you may find the truth as to the facts of a case--direct evidence and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the liability or non-liability of a party. The law makes no distinction between the weight to be given to either direct evidence or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case.

INSTRUCTION NO. 5

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 6

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of a greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

INSTRUCTION NO. 7

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim depends upon that fact. The party who has the burden of proving a fact must prove it by the greater convincing force of the evidence. To prove something by the greater convincing force of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable.

The greater convincing force of the evidence is not necessarily determined by the greater number of witnesses or number of exhibits a party has presented.

The burden of proof in this case is solely upon the plaintiff. The defendant does not have the burden to prove anything.

You have heard in criminal cases the term “proof beyond a reasonable doubt.” That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

INSTRUCTION NO. 8

For plaintiff to recover in this action the following elements must be proven by plaintiff by the greater convincing force of the evidence:

1. Wrongful conduct of the defendant;
2. Loss of affection or consortium of plaintiff' spouse;
3. The acts of the defendant were a proximate cause, as explained in Instruction No. 9, of the loss of affection or consortium; and
4. The nature and extent of damages suffered by the plaintiff as a result of the defendant's conduct.

INSTRUCTION NO. 9

When the expression “proximate cause” is used, it means an immediate cause of any injury, which, in natural or probable sequence, produces the injury complained of. Without the proximate cause, the injury would not occur. The proximate cause need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it causes the injury.

For proximate cause to exist, you must find that the harm suffered was a foreseeable consequence of the act complained of.

INSTRUCTION NO. 10

In order to recover on a claim for alienation of affections the plaintiff must prove by the greater convincing force of the evidence that defendant's wrongful conduct was intentional and done for the purpose of alienating the affection of plaintiff's spouse. However, actual intent to alienate the affections of the spouse of another need not necessarily be shown if defendant's conduct is inherently wrong and tends to, and does, have that effect. In other words, every person is presumed to intend the consequences of his or her own voluntary acts.

INSTRUCTION NO. 11

Consortium is a right growing out of the marital relationship. This term includes the right of a spouse such as plaintiff to enjoy the society, companionship, affections, and sexual relations with her spouse.

INSTRUCTION NO. 12

The plaintiff cannot recover for alienation of affections if you find that there was no affection to alienate at the time of the alleged wrongful acts.

INSTRUCTION NO. 13

If you find that the defendant is liable to the plaintiff, you must then determine the amount of money which will reasonably compensate plaintiff for damages caused by the wrongful conduct of the defendant, which damages may include the following:

1. The reasonable value of the loss of love and consortium of plaintiff's spouse.
2. The reasonable value of physical pain and mental suffering and distress suffered by plaintiff, and
3. The reasonable value of the lost services and support of plaintiff's spouse.

Whether any of the elements of damages have been proved by the evidence is for you to determine.

INSTRUCTION NO. 14

Whether any damages have been proved by the evidence is for you to determine. Your verdict must be based on evidence and not upon speculation, guesswork, or conjecture. In determining the amount of damages, if any, you may estimate the amount as a matter of just and reasonable inference without resorting to speculation or guesswork.

INSTRUCTION NO. 15

In addition to any actual damages that you may decide to award to the plaintiff, you may also, in your discretion, award exemplary or punitive damages if you find that the plaintiff suffered injury to person through malice, intentional misconduct, or wilful and wanton misconduct of the defendant. The plaintiff has the burden of proof on the issue of punitive damages.

The purpose of awarding exemplary or punitive damages is to set an example to potential wrongdoers and to punish the wrongdoer in a particular case.

Malice, as used in this instruction, is not simply the doing of an unlawful or injurious act; it implies that the act complained of was conceived in the spirit of mischief or of criminal indifference to civil obligations. Malice may be inferred from the surrounding facts and circumstances.

Actual malice is a positive state of mind, evidenced by the positive desire and intention to injure another, actuated by hatred or ill will toward that person. Presumed, or legal, malice is malice which the law infers from or imputes to certain acts. Legal malice may be imputed to an act if the person acts willfully or wantonly to the injury of the other in reckless disregard of the other's rights. Hatred or ill will is not always necessary.

Conduct is intentional when a person acts or fails to act, for the purpose of causing injury or knowing that injury is substantially certain to occur.

Knowledge or intent may be inferred from the person's conduct and the surrounding circumstances.

Willful and wanton misconduct is more than negligent conduct but less than intentional conduct. Conduct is willful and wanton when a person acts or fails to act in reckless disregard of another's rights when the person knows, or should have known, that injury is likely to occur.

If you find that exemplary or punitive damages should be awarded, you must next determine the amount. In fixing the amount of exemplary or punitive damages, you should consider the following factors:

1. The intent of the defendant.

In considering the defendant's intent, you should examine the degree of reprehensibility of the defendant's misconduct, including, but not limited to, the following factors:

- a. Whether the harm caused was physical as opposed to economic;
- b. Whether the tortious conduct evinced an indifference to, or reckless disregard of, the health or safety of others;
- c. Whether the target of the conduct was vulnerable financially;
- d. Whether the conduct involved repeated actions or was an isolated incident; and
- e. Whether the harm was the result of intentional malice, trickery or deceit, or mere accident.

2. The amount allowed in actual damages.

In considering this factor, you should consider;

- a. Whether the plaintiff has been completely compensated for the economic harm caused by the defendant;
- b. The relationship between the harm suffered by the plaintiff and the punitive damages award;
- c. The possible harm to other victims that might result if similar future behavior were not deterred.

The amount of exemplary or punitive damages must bear a reasonable relationship to the actual damages.

3. The nature and enormity of the wrong,

4. The financial condition of the defendant, and

5. All of the circumstances concerning the defendant's actions, including any mitigating circumstances which may operate to reduce, but not defeat, the exemplary or punitive damage award.

INSTRUCTION NO. 16

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

A verdict form has been prepared for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form to state the verdict upon which you unanimously agree, and then return with your verdict form to the courtroom.

INSTRUCTION NO. 17

The verdict must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges--judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 18

If you have questions, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury.

You will note from the oath about to be taken by the marshal that the marshal and all other persons are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on any question on the verdict form until after you have reached a unanimous verdict.

INSTRUCTION NO. 19

It is proper to add a final caution.

Nothing that I have said in these instructions -- and nothing that I have said or done during the trial -- has been said or done to suggest to you what I think your verdict should be.

What the verdict shall be is your exclusive duty and responsibility.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

LEMLEM S. KEBEDE,	*	CIV 06-1011
	*	
Plaintiff,	*	
	*	
-vs-	*	VERDICT
	*	
HAYLEY R. HILTON,	*	
	*	
Defendant.	*	
	*	

We, the jury, duly impaneled in the above-entitled action, and sworn to try the issues therein, find in favor of:

_____ Plaintiff Lemlem S. Kebede _____ Defendant Hayley R. Hilton

If, and only if, you have found in favor of the plaintiff, what is the amount of actual damages, if any, suffered by the plaintiff which damages were legally caused by the defendant?

\$ _____

If, and only if, you have found that the plaintiff is entitled to actual damages, what is the amount of exemplary or punitive damages, if any, the plaintiff is entitled to?

\$ _____

Dated this _____ day of September, 2008.

Foreperson