UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

NICOLE STAFFORD, Plaintiff, vs. JEFFREY VAN BEEK, Defendant.	4:20-CV-04147-KES **FINAL INSTRUCTIONS TO THE JURY**

TABLE OF CONTENTS

FINAL INSTRUCTIONS

FINAL INSTRUCTION NO. 1 – INTRODUCTION 2
FINAL INSTRUCTION NO. 2 – IMPEACHMENT 3
FINAL INSTRUCTION NO. 3 – BURDEN OF PROOF 4
FINAL INSTRUCTION NO. 4 – NEGLIGENCE 5
FINAL INSTRUCTION NO. 5 – ASSUMPTION OF RISK 7
FINAL INSTRUCTION NO. 6 – CONTRIBUTORY NEGLIGENCE 8
FINAL INSTRUCTION NO. 7 – DEFENSES COMPARED 10
FINAL INSTRUCTION NO. 8 – DAMAGES 11
FINAL INSTRUCTION NO. 9 – MORTALITY TABLE 13
FINAL INSTRUCTION NO. 10 – DUTIES DURING DELIBERATIONS 14

VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 – IMPEACHMENT

In Preliminary Instruction No. 3, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached" and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight, if any, you think it deserves. If you believe that any witness testifying in this case has knowingly sworn falsely to any material matter in this case, then you may reject all of the testimony of the witness.

FINAL INSTRUCTION NO. 3 – BURDEN OF PROOF

In civil actions, the party who has the burden of proving an issue must prove that issue by the greater convincing force of the evidence.

Greater convincing force means that after weighing the evidence on both sides there is enough evidence to convince you that something is more likely true than not true. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue has the greater convincing force, then your finding upon the issue must be against the party who has the burden of proving it.

The plaintiff has the burden of proving these issues:

1. *That Van Beek was negligent;*
2. *That Van Beek's negligence was the legal cause of injury to Stafford; and*
3. *The amount, if any, of Stafford's damages that were legally caused by Van Beek's conduct.*

The defendant has the burden of proving these issues:

1. *That Stafford assumed the risk of injury; and*
2. *That Stafford was contributorily negligent more than slight.*

In determining whether or not an issue has been proved by the greater convincing force, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

FINAL INSTRUCTION NO. 4 – NEGLIGENCE

Plaintiff, Nicole Stafford, alleges that defendant, Jeffrey Van Beek, is liable because Van Beek was negligent in the operation of his ranch cow-calf operations, causing serious and permanent injuries to Stafford. To show negligence, Stafford must prove by the greater convincing force of the evidence the following two elements:

***First,* Van Beek was negligent;**

Negligence is the failure to use reasonable care. It is the doing of something that a reasonable person would not do, or the failure to do something that a reasonable person would do, under facts similar to those shown by the evidence. The law does not say how a reasonable person would act under facts similar to those shown by evidence. That is for you to decide.

The term "reasonable person" refers to a person exercising those qualities of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own interests and the interests of others.

An employer has a non-delegable duty to furnish an employee with a reasonably safe place to work. This includes the duty of establishing proper methods of work, adequate training and supervision of the work, and reasonably safe equipment with which to perform the work.

An owner or possessor of a domestic animal is liable for injuries caused by the animal if the owner or possessor, as a reasonably prudent person,

1. should have foreseen the event that caused the injury, and
2. negligently failed to prevent the injury.

Whether the event should have been foreseen depends on the total circumstances, including the kind and character of the particular animal, the circumstances in which it was placed, and the purposes for which it was employed or kept.

> Liability is subject to the defenses of contributory negligence and assumption of the risk.

***And second*, Van Beek's negligence was a legal cause of injury to Stafford.**

> The term "legal cause" means an immediate cause which, in the natural or probable sequence, produces the injury complained of. For legal cause to exist, the harm suffered must be a foreseeable consequence of the act complained of. In other words, liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to an injury. The defendant's conduct must have such an effect in producing the harm as to lead reasonable people to regard it as a cause of the plaintiff's injury.
>
> A legal cause is a cause that produces a result in a natural and probable sequence, and without which the result would not have occurred.
>
> A legal cause does not need to be the only cause of a result, nor the last or nearest cause. A legal cause may act in combination with other causes to produce a result.

If you find that Stafford has not proved both of the above elements by the greater convincing force of evidence, enter your verdict for Van Beek on the verdict form. If you find that Stafford has proved both of the above elements by the grater convincing force of the evidence, proceed to Final Jury Instruction Number 5.

FINAL INSTRUCTION NO. 5 – ASSUMPTION OF RISK

If a person assumes the risk of injury or damage, the person is not entitled to any recovery. Van Beek asserts that even if he was negligent, he is not liable for any injury suffered by Stafford because Stafford assumed the risk of injury through her conduct. To establish an assumption of the risk defense, Van Beek must show by the greater convincing force of the evidence the following three elements:

***First*, Stafford had actual or constructive knowledge of the existence of the specific risk involved;**

***Second*, Stafford appreciated the risk's character;**

***And third*, Stafford voluntarily accepted the risk, having had the time, knowledge, and experience to make an intelligent choice.**

A plaintiff does not assume a risk of harm unless she voluntarily accepts the risk. The plaintiff's acceptance of a risk is not voluntary if the defendant's tortious conduct has left her no reasonable alternative course of conduct in order to (a) avert harm to herself or another, or (b) exercise or protect a right or privilege of which the defendant has no right to deprive her.

If you find that all three of the above elements have been proven by the greater convincing force of the evidence, then enter your verdict for Van Beek on the verdict form. If you find that Van Beek has not proved all three of the above elements by the greater convincing force of the evidence, proceed to Final Jury Instruction Number 6.

FINAL INSTRUCTION NO. 6 – CONTRIBUTORY NEGLIGENCE

Contributory negligence is negligence on the part of the plaintiff which, when combined with the negligence of the defendant, contributes as a legal cause in bringing about the injury to the plaintiff. Van Beek asserts that even if he was negligent, he is not liable for any injury suffered by Stafford because Stafford was contributorily negligent. A plaintiff who is contributorily negligent may still recover damages if that contributory negligence is slight, or less than slight, when compared with the negligence of the defendant. To prove a contributory negligence defense, Van Beek must show by the greater convincing force of the evidence the following three elements:

***First*, Stafford was negligent;**

Negligence is the failure to use reasonable care. It is the doing of something that a reasonable person would not do, or the failure to do something that a reasonable person would do, under facts similar to those shown by the evidence. The law does not say how a reasonable person would act under facts similar to those shown by evidence. That is for you to decide.

The term "reasonable person" refers to a person exercising those qualities of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own interests and the interests of others.

***Second*, Stafford's negligence was a legal cause of her injury;**

The term "legal cause" was explained in Final Jury Instruction Number 4.

***And third*, Stafford's negligence was more than "slight."**

The term "slight" means small when compared with the negligence of the defendant.

In determining whether Stafford's negligence was more than "slight," you must make a direct comparison between the conduct of Stafford and Van Beek.

If you find that Stafford was contributorily negligent, that Stafford's contributory negligence was slight, or less than slight, when compared with the negligence of Van Beek, then you must reduce Stafford's damages in proportion with the amount of her contributory negligence.

If you find that all three of the above elements have been proven by the greater convincing force of the evidence, then enter your verdict for Van Beek on the verdict form. If you find that Van Beek has not proved all three of the above elements by the greater convincing force of the evidence, enter a verdict in favor of Stafford on the verdict form. If you enter a verdict in favor of Stafford, you must determine the amount of damage to which she is entitled as instructed in Final Jury Instruction Number 8.

FINAL INSTRUCTION NO. 7 – DEFENSES COMPARED

While the same conduct on the part of the plaintiff may amount to both assumption of the risk and contributory negligence, the two defenses are distinct. Assumption of the risk involves a voluntary or deliberate decision to encounter a known danger whereas contributory negligence frequently involves the inadvertent failure to notice danger. In addition, contributory negligence must be a legal cause of the injury to be a defense, while assumption of the risk need not cause the injury to bar recovery.

FINAL INSTRUCTION NO. 8 – DAMAGES

If you decide for Stafford on the question of liability you must then determine the amount of money that will reasonably and fairly compensate Stafford for any of the following elements of loss or harm suffered in person proven by the evidence to have been legally caused by Van Beek's conduct, taking into consideration the nature, extent, and duration of the injury, whether that loss or harm could have been anticipated or not, namely:

1. Stafford's disability;
2. Stafford's past pain and suffering;
3. The value of necessary medical care, treatment, and services received by Stafford;
4. Stafford's past emotional distress and loss of capacity of the enjoyment of life;
5. Stafford's permanent scarring;
6. Stafford's pain and suffering reasonably certain to occur in the future;
7. Stafford's past humiliation, anxiety, and anger;
8. Stafford's humiliation, anxiety, and anger reasonably certain to occur in the future, and
9. Stafford's emotional distress and loss of capacity of the enjoyment of life reasonably certain to be experienced in the future.

Whether any of these elements of damages has been proven by the evidence is for you to determine. Your verdict must be based on evidence and not on speculation, guesswork, or conjecture. Damages are considered

speculative only when the existence of damage is uncertain, not when the amount is uncertain. Once the existence of damages has been established, uncertainty as to the measure or extent of the damages does not bar recovery.

If you find that Stafford was contributorily negligent as discussed in Final Jury Instruction Number 6, and that Stafford's contributory negligence was slight, or less than slight, when compared with the negligence of Van Beek, then you must reduce Stafford's damages in proportion with the amount of her contributory negligence.

FINAL INSTRUCTION NO. 9 – MORTALITY TABLE

According to the mortality table, the life expectancy of a 22-year-old female is 81 years of age, or 59 more years.

The court takes judicial notice of this fact, which is now evidence for you to consider.

You should note the restricted significance of this evidence. Life expectancy shown by the mortality table is merely an estimate of the probable average length of life of all persons of a given age in the United States. It is an estimate because it is based on a limited record of experience. Because it reflects averages, the table applies only to one who has the same health and exposure to danger as the average person that age. Therefore, in connection with mortality table evidence, you should also consider other evidence bearing on life expectancy. For example, you should consider the occupation, health, habits, and activities of the person whose life expectancy is in question.

FINAL INSTRUCTION NO. 10 – DUTIES DURING DELIBERATIONS

In conducting deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not advocates. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. **Remember that you should not tell anyone—including me—how your votes stand numerically.**

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous.

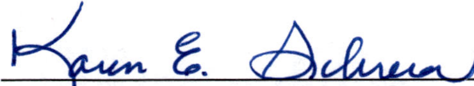
Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated July 20, 2022.

BY THE COURT:



KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE