

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CAROL REID-WHAYNE

PLAINTIFF

v.

CIVIL ACTION NO. 3:91CV-254-S

CONTEL CELLULAR OF LOUISVILLE, INC.

DEFENDANT

JURY INSTRUCTIONS

Ladies and Gentlemen:

Now that you have heard all of the evidence, and the argument of the attorneys, it is my duty to give you instructions as to the law applicable in this case.

It is your duty as jurors to follow the law as stated in the instructions, and to apply that law to the facts you find from the evidence.

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

You are not to be concerned with the wisdom of any rule of law stated by the court. You must apply the law given in these instructions whether you agree with it or not.

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record. It is your own interpretation and recollection of the evidence that controls.

You are permitted to draw reasonable inferences, deductions, and conclusions from the testimony and exhibits which you feel are justified in the light of your own common sense.

In saying that you must consider all the evidence, I do not mean to suggest that you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness, and the weight to be given to the testimony of each witness.

In determining the credibility of any witness, you may properly consider the demeanor of the witness while testifying, frankness or lack of it, and his or her interest in the outcome of the case, if any. When knowledge of a specialized subject matter may be helpful to the jury, a person having training or experience in the field—one who is called an expert witness—is permitted to state an opinion. Merely because an expert witness has expressed an opinion, however, does not mean that you must accept that opinion. The same as with any other witness, it is up to you to decide whether to rely upon it.

The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You should be guided in your deliberations by the quality and credibility of the evidence you have heard.

This case should be considered and decided by you as an action between persons of equal standing in the community, holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as an individual. All persons, including corporations, stand equal before the law.

There is no claim in this case that the defendant, Contel Cellular of Louisville, Inc., is in any way responsible for the occurrence of the plaintiff's cancer or the subsequent surgical intervention and other treatment rendered in connection with it. With respect to the occasions about which you have heard evidence, I instruct you that McCaw Cellular Communications, Inc. had a perfect legal right to sell its operations in Kentucky to Contel and that Contel had a perfect legal right to purchase those operations from McCaw. Further, Contel had the legal right to decline to hire or retain any former McCaw employee for any reason it saw fit, or for no reason, with one exception directly relevant to the claims in this case. That is, Contel, under the law, could not refuse to hire or retain a former McCaw employee such as the plaintiff because of a substantial physical disability.

The Kentucky Equal Opportunity Act provides that it is unlawful for an employer to refuse to hire any individual with a disability because of the person's physical disability unless the disability restricts that individual's ability to engage in the particular job for which he or she is eligible.

In order for the plaintiff, Carol Reid-Whayne, to recover on her claim of disability discrimination against the defendant, Contel Cellular of Louisville, Inc., she has the burden of proving the following elements are more likely true than not true:

1. That she was, in 1989 and to and including January, 1990, a person with a physical disability;
2. That the physical disability was substantial to her;
3. That the physical disability was demonstrable by medically accepted clinical or laboratory diagnostic techniques; and
4. That the physical disability was a substantial motivating factor in the defendant's decision not to hire the plaintiff and but for which Contel would have hired her.

“Substantial” means being of considerable degree, amount, or extent.

“Demonstrable by medically accepted clinical or laboratory diagnostic techniques” means provable by medical evidence that a substantial physical disability existed at the time in question.

If you find from the evidence that the plaintiff has proved each of these elements, then your verdict will be for the plaintiff on Verdict Form No. 1. If you find that the plaintiff has not proved any one or more of these elements, then your verdict will be for the defendant on Verdict Form No.

1.

If you have found for the plaintiff, you will proceed to the next instruction. If you have found for the defendant, you will end your deliberations and return to the courtroom.

If you have found for the plaintiff on Verdict Form No. 1, you will award her such sum or sums of money as will fairly and reasonably compensate Carol Reid-Whayne for such damages you believe she sustained directly by reason of the defendant's conduct, which may include:

1. Furniture storage, not to exceed \$475.00;
2. Long distance phone calls, not to exceed \$2,000.00;
3. Air fare to visit family, not to exceed \$1,700.00;
4. Double housing cost for family, not to exceed \$10,500.00;
5. Psychologist expenses, not to exceed \$400.00.

You may also award the plaintiff additional damages for emotional distress, humiliation, and/or embarrassment if you believe she sustained any such injuries directly by reason of the defendant's conduct.

In determining the amount of any damages you may award, you should be guided by dispassionate common sense, and you must base your award on the facts that you find were proved in this case. You may not award damages based on sympathy, speculation, or guesswork. On the other hand, the law does not require that the plaintiff prove the amount of her losses with mathematical precision, but only with as much definiteness and accuracy as circumstances permit.

The plaintiff had a responsibility to take reasonable steps to keep her damages to a minimum. You may take this into account in your determination of damages.

You will record your verdict on these matters on Verdict Form No. 2.

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. 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. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine 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 your fellow jurors, or for the mere purpose of returning a verdict.

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 speak for you here in court.

Forms of verdict have been prepared for your convenience.

You will take these forms 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 forms which set forth the verdict upon which you unanimously agree with respect to each issue in this case; you will then return with your verdict to the courtroom.