

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

JANE ROBERTS, as Guardian
for WANDA Y. JOHNSON

PLAINTIFF

v.

CIVIL ACTION NO. 3:93CV-544-S

GALEN OF VIRGINIA, INC.,
d/b/a UNIVERSITY OF LOUISVILLE HOSPITAL,
Formerly d/b/a HUMANA HOSPITAL-UNIVERSITY
OF LOUISVILLE

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.

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.

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.

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 rules of evidence permit a witness who by education and experience has become expert in any art, science, or profession to state an opinion as to a matter in which he or she is versed and which is material to the case, and the witness may also state the reasons for such an opinion. You should consider such expert opinion and give it such weight as you, in the application of your common sense, may think it deserves. If you should conclude that the reasons given by the expert witness in support of the opinion are not sound, or that the expert's opinion is outweighed by other credible evidence in the case, or by the opinion of some other expert, then you may reject the opinion of such expert in whole or in part.

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.

Wanda Johnson has asserted two claims against Galen of Virginia, Inc., which we will refer to as “Galen” during the remainder of these instructions. She contends that Galen violated the Emergency Medical Treatment and Active Labor Act (referred to in these instructions as “EMTALA”) which states that:

If an individual at a hospital has an emergency medical condition which has not been stabilized, the hospital may not transfer that individual.

She also contends that Galen’s social work staff at Humana Hospital-University of Louisville was negligent in its care of Wanda Johnson.

These instructions will assist you in considering each of these claims. You must evaluate the evidence with respect to each of these claims independently. You may find in favor of Wanda Johnson on one, both, or neither of these claims.

EMTALA

In order to recover on her claim against Galen based on EMTALA, the plaintiff must prove from the evidence that it is more likely true than not true that:

1. On July 24, 1992, Wanda Johnson had an emergency medical condition at the time of her transfer from Humana Hospital-University of Louisville; and
2. The physician responsible for her transfer had actual knowledge of that condition; and
3. The condition was not stabilized at the time of her transfer; and
4. She suffered personal harm as a direct result of being transferred before such emergency medical condition was stabilized.

If you are satisfied from the evidence that the plaintiff has so proven, then you will find for the plaintiff, Johnson on this claim. If you are not so satisfied, you will find for the defendant, Galen.

The term “emergency medical condition” means:

A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

- (i) placing the health of the individual in serious jeopardy,
- (ii) serious impairment to bodily functions, or
- (iii) serious dysfunction of any bodily organ or part.

The term “stabilized” means, with respect to an emergency medical condition described above, that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from the hospital.

The term “transfer” means the movement (including discharge) of an individual outside a hospital’s facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital.

You will fill out and sign Verdict Form A and then proceed to the next instruction.

NEGLIGENCE

It was the duty of the social work staff at Humana Hospital-University of Louisville to exercise toward Wanda Johnson that degree of care and skill which is expected of reasonably competent social workers acting under circumstances like or similar to those about which you have heard evidence in this case.

If you believe from the evidence that the social work staff failed to comply with its duty and that such failure was a substantial factor in causing Wanda Johnson injury, then you will find for the plaintiff, Johnson. Otherwise, you will find for the defendant, Galen.

You will fill out and sign Verdict Form B.

If you have found for the defendants on both Verdict Forms A and B, you will end your deliberations and return to the courtroom.

If you have found for the plaintiff on either Verdict Form A or B, or both of them, you will proceed to the remaining instructions.

If you have found for the plaintiff on either Verdict Form A or B, or both of them, you will find from the evidence what sum or sums of money will fairly and reasonably compensate Wanda Johnson for such damages you believe she sustained by reason of the wrongful conduct of the hospital in this case, including:

1. Necessary and reasonable medical expenses incurred by Wanda Y. Johnson, not to exceed \$388,679.93; and
2. Mental and physical pain and suffering Wanda Johnson endured, not to exceed \$9,611,320.07, the amount claimed.

You will fill out and sign Verdict Form C and proceed to the next instruction.

If you have found for the plaintiff on either Verdict Form A or B, or both of them, and if you are further satisfied from the evidence that in its wrongful conduct Galen acted in reckless disregard for the life, health, or safety of Wanda Johnson, you may award punitive damages not to exceed \$10 million, the amount claimed.

You will fill out and sign Verdict Form D, end your deliberations, and return to the courtroom.

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.