

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION 3:98CV-663-H

MARY ANN TOBIN

PLAINTIFF

V.

JENNIFER TROUTMAN

DEFENDANT

JURY INSTRUCTIONS

Members of the Jury, now that you have heard all of the evidence and the argument of the attorneys, it is my duty to give you instructions on the law you are to apply to this case.

It is your duty as jurors to follow the law as stated in these instructions, and to apply that law to the facts you find from the evidence. Do not single out one instruction alone as stating the law, but rather consider the instructions as a whole. Nor should you 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. The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you. 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 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.

In this case it is the plaintiff's responsibility to persuade you that her claim is more likely true than not. If the plaintiff fails to persuade you on every essential element of her claim, then you should find for the defendant on that claim.

INSTRUCTION ONE

A citizen who believes that her constitutional rights have been violated by a federal employee may file suit in federal court seeking money damages. Ms. Tobin claims that the defendant intentionally violated her rights protected by the Fourth Amendment to the Constitution of the United States. More specifically, Ms. Tobin claims that Ms. Troutman, while acting “under color” of authority of the Internal Revenue Service, intentionally violated her constitutional right not to be subjected to an unreasonable entry of her home.

In order to find for plaintiff, you must find each of the following facts:

1. The defendant entered a bedroom in Ms. Tobin’s home on February 13, 1997, intentionally violating her Fourth Amendment rights;
2. In doing so the defendant acted “under color” of the authority of the United States. Both parties have stipulated this fact and, therefore, you must accept this fact as proven; and
3. The defendant’s act was the legal cause of the plaintiff’s damages.

A government agent ordinarily may not enter a person’s home without a valid search warrant. Ms. Troutman had no warrant to enter Ms. Tobin’s personal living spaces. Plaintiff makes no claim that Ms. Troutman’s entry to the conservatory/sun room was unlawful.

The question that you must answer is whether or not the defendant entered a bedroom in plaintiff’s home on February 13, 1997. If you decide that the answer to this question is “yes,” you must enter a verdict for the plaintiff. Do so by placing a checkmark beside “plaintiff” on Question One of the Verdict Form. Then proceed to Instructions Two and Three. If you decide that the answer to this question is “no,” you must enter a verdict for the defendant. Do so by

placing a checkmark beside “defendant” on Question One of the Verdict Form. You need not make any further inquiries.

INSTRUCTION TWO

If you decided in favor of plaintiff on Question One, you must determine the amount that is fair compensation for all of the plaintiff's damages. These damages are called compensatory damages. The purpose of compensatory damages is to make the plaintiff whole – that is, to compensate the plaintiff for the damage that she has suffered. In this case, the plaintiff is seeking compensatory damages for her mental anguish and distress.

You may award compensatory damages only for injuries that the plaintiff proves were proximately caused by the defendant's allegedly wrongful conduct. The damages that you award must be fair compensation for all of the plaintiff's damages, no more and no less. Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendant. You should not award compensatory damages for speculative injuries, but only for those injuries which the plaintiff has actually suffered or that the plaintiff is reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary 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 the circumstances permit.

First, to find that the plaintiff is entitled to damages for mental anguish and distress, there must be a specific discernable injury to the plaintiff's emotional state. The plaintiff's testimony, standing alone, can support an award of compensatory damages for emotional distress based on a constitutional violation. However, the testimony must establish that the plaintiff suffered

demonstrable emotional distress, which must be sufficiently articulated; neither conclusory statements that the plaintiff suffered emotional distress nor the mere fact that a constitutional violation occurred supports an award of compensatory damages. Therefore, you should award compensatory damages only for the mental anguish and distress that the plaintiff has proved by a preponderance of the evidence.

Second, you shall award damages only for those mental and emotional injuries which you find the plaintiff has proven to have been the direct result of conduct by the defendant in violation of the Constitution. That is, you may not simply award actual damages for any mental distress suffered by the plaintiff; you must award actual damages only for those mental and emotional injuries that are a direct result of actions by this defendant and that are a direct result of conduct by this defendant which violated the plaintiff's constitutional rights.

Please enter the amount of your verdict for compensatory damages, if any, on Question Two on the Verdict Form.

INSTRUCTION THREE

You also may award punitive damages, if the plaintiff has proven that the defendant acted with malice or willfulness or with callous indifference to plaintiff's rights.

If you determine that the defendant's conduct justifies an award of punitive damages based on the instruction above, you may exercise your discretion to award those damages. In making any award of punitive damages, you should consider that the purpose of punitive damages is to punish defendant for her conduct, and to deter the defendant and others from engaging in similar conduct in the future. The law does not require you to award punitive damages. However, if you decide to award punitive damages, you must use sound reason in setting the amount of the damages. The amount of an award of punitive damages must not reflect bias, prejudice, or sympathy towards any party. But, the amount can be as large as you believe necessary to fulfill the purposes of punitive damages. You may consider the financial resources of the defendant in fixing the amount of punitive damages.

Please enter the amount of your verdict for punitive damages, if any, on Question Three on the Verdict Form.

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 reach 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 the 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 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 verdict upon which you unanimously agree with respect to each issue in this case; you will then return with your verdict to the courtroom.

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VERDICT FORM

Question One:

Plaintiff: _____

Defendant: _____

Question Two:

Amount of Compensatory Damages: _____

Question Three:

Amount of Punitive Damages: _____

FOREPERSON

Date: _____