

STATE OF INDIANA)
) SS:
COUNTY OF CLARK)

IN THE CLARK CIRCUIT COURT

CAUSE NO. 10C04-1303-CT-038

ESTATE OF JACOB HILL, by and through)
the Personal Representative, KAYLA HILL)

Plaintiffs,)

v.)

JAMES CLAUDE WOODIEL, M.D.,)

Defendant.)

COURT'S FINAL JURY INSTRUCTIONS

FINAL INSTRUCTION NO. 1

As I said in my preliminary instructions, judges and jurors perform different tasks. I instructed you on the law at the start of this trial, and I will now further instruct you on the law. You will decide the facts of this case. Then you will decide the outcome of this case by applying all of my instructions to those facts.

FINAL INSTRUCTION NO. 2

Consider all of my preliminary and final instructions together. Do not single out any individual sentence, point or instruction and ignore the others.

FINAL INSTRUCTION NO. 3

You alone are the judges of the evidence, including the credibility of witnesses. Credibility means believability. A credible witness is a witness whose testimony you believe.

In considering the testimony of any witness, you may take into account his or her ability and opportunity to observe what he or she has testified about; the manner and conduct of the witness while testifying; any interest, bias, or prejudice the witness may have; any relationship the witness may have with other witnesses or interested parties; and the reasonableness of the witness's testimony considered in the light of all the evidence you have heard.

Assume that each witness has testified truthfully. If you find conflicts in the evidence, reconcile those conflicts, if you can, based on the assumption that each witness has testified truthfully.

Do not disregard the testimony of any witness without a reason and without careful consideration. If you find conflicting testimony that you cannot reconcile, decide what testimony you believe and what testimony you disbelieve.

In deciding what or whom you believe, you should use your own knowledge, experience, and common sense gained from day-to-day living.

FINAL INSTRUCTION NO. 4

Generally, a witness may not express an opinion. However, a witness may be permitted to express an opinion because of his or her knowledge, skill, experience, training, or education.

Judge opinion testimony in the same manner that you judge other testimony. In deciding how much weight to give opinion testimony, you may also take into consideration:

- (1) the witness's skill, experience, knowledge, and familiarity with the facts of this case;
- (2) the reliability of the information supporting the witness's opinions; and
- (3) the reasons for the opinions.

FINAL INSTRUCTION NO. 5

Parties may attack the credibility of a witness by showing that the witness made a statement or behaved in a manner inconsistent with the witness's testimony.

You may consider the fact that the witness spoke or acted inconsistently with his testimony in this case only to determine the weight you will give to that witness's testimony given during this trial.

However, if a witness testified inconsistently under oath either in this case or in any other case or court proceeding, you may also consider the content of the witness's prior inconsistent statement as evidence in this case.

FINAL INSTRUCTION NO. 10

The Plaintiffs claim that Dr. Woodiel was negligent.

To recover on this claim, Plaintiffs must prove by the greater weight of the evidence that:

1. Dr. Woodiel failed to act by not strongly insisting that Jacob Hill go to the hospital and/or by failing to explain the life-threatening consequences of refusing to go to the hospital; and
2. Dr. Woodiel's failure to act was negligent; and
3. Dr. Woodiel's failure to act was the responsible cause of Jacob Hill's death; and
4. Plaintiffs suffered damages as a result of the death.

Dr. Woodiel denies the Plaintiffs' claims. Dr. Woodiel is not required to disprove the Plaintiffs' claims.

A defendant may also defend himself by claiming certain specific "defenses." In this case Dr. Woodiel claims that Jacob Hill's death from sepsis was caused by the actions or inactions at a subsequent hospital, which was an intervening cause. To prove this defense, Dr. Woodiel must prove by the greater weight of the evidence that:

1. Dr. Woodiel had no control over Norton Hospital;
2. Jacob Hill's death from sepsis was due to the inactions at Norton Hospital;
3. Such inactions were unforeseeable; and
4. Norton was in a better position than Dr. Woodiel to prevent Jacob's death.

FINAL INSTRUCTION NO. 7

Evidence is of the greater weight of the evidence if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

FINAL INSTRUCTION NO. 8

In providing health care to a patient, a physician who is a family practice physician must use the degree of care and skill that a reasonably careful, skillful, and prudent family practice physician would use under the same or similar circumstances.

A family practice physician who fails to exercise that reasonable care and skill commits medical negligence.

Medical negligence may consist of:

(1) doing something a family practice physician should not have done under the circumstances; or

(2) not doing something a family practice physician should have done under the circumstances.

FINAL INSTRUCTION NO. 9

Physicians are allowed broad discretion in selecting treatment methods, and are not limited to those most generally used.

When more than one accepted method of treatment is available, the physician must use sound judgment in choosing which method to use.

If a physician uses sound judgment in selecting from a variety of accepted treatments, and uses reasonable care and skill in treating a patient, then the physician is not responsible if the treatment does not succeed.

The fact that other methods existed or that another physician would have used a different treatment does not establish medical negligence.

FINAL INSTRUCTION NO. 10

It is for the jury to determine, based only upon a consideration of all expert testimony given in the case, what the applicable standard of medical care was for the treatment of Jacob, and whether or not Dr. Woodiel complied with the applicable standard of care.

FINAL INSTRUCTION NO. 11

In determining whether Dr. Woodiel met the standard of care in the care and treatment provided to Jacob Hill, your determination is to be based upon the circumstances shown by the evidence to have existed at the time and place Dr. Woodiel provided care to Jacob Hill. This determination should not be based upon hindsight.

FINAL INSTRUCTION NO. 12

In deciding whether James Claude Woodiel, M.D. used reasonable care and skill in treating Jacob Hill, you must consider only the expert testimony of healthcare providers who are members of Dr. Woodiel's profession.

FINAL INSTRUCTION NO. 13

Dr. Woodiel claims that Jacob Hill's death from sepsis was caused by the actions or inactions of a subsequent hospital that was in a better position than Dr. Woodiel to prevent Jacob's death, and that the actions or inactions of such hospital were not foreseeable, then those actions or inactions may constitute an intervening cause of Jacob's death.

If you find that Jacob Hill's death from sepsis was caused by the actions or inactions at a subsequent hospital and that such hospital was in a better position than Dr. Woodiel to prevent Jacob Hill's death and such actions or inactions were not foreseeable, then you may find Dr. Woodiel was not the responsible cause of Jacob's death, and the Plaintiffs cannot recover damages, even if Dr. Woodiel was also negligent.

FINAL INSTRUCTION NO. 14

A person's conduct is legally responsible for causing a death if

1. the death would not have occurred without the conduct, and
2. the death was a natural, probable, and foreseeable result of the conduct.

This is called a "responsible cause."

There can be more than one responsible cause for a death.

FINAL INSTRUCTION NO. 15

Sometimes an unrelated event breaks the connection between a defendant's negligent action and the injury a plaintiff claims to have suffered. If this event was not reasonably foreseeable, it is called an "intervening cause."

When an intervening cause breaks the connection between a defendant's negligence act and the plaintiff's injury, a defendant's negligent act is no longer a "responsible cause" of that plaintiff's injury.

FINAL INSTRUCTION NO. 16

If Dr. Woodiel should have realized his conduct might cause Jacob's death in substantially the manner in which his death was ultimately brought about, Dr. Woodiel's conduct was the responsible cause of Jacob's death.

If you believe that other healthcare providers were negligent after Dr. Woodiel, that in and of itself may not constitute an intervening cause. Rather, to constitute an intervening cause sufficient to preclude or prevent a finding against Dr. Woodiel, the intervening conduct must be an independent act which interrupts the natural consequence of the events leading to Jacob's death.

Dr. Woodiel may be held responsible for Jacob's death if Jacob's death was a natural, probable, and foreseeable consequence of Dr. Woodiel's negligence.

FINAL INSTRUCTION NO. 17

Indiana law required that Kayla Hill and the Estate of Jacob Hill present their claim against James Woodiel, M.D. to a medical review panel before bringing it to you.

A medical review panel is made up of three health care providers. Do not assume that any member of the review panel is associated with, or an advocate for, any party.

The medical review panel's opinion does not resolve the issues you must decide and you may give it the weight you think appropriate.

FINAL INSTRUCTION NO. 18

A patient-physician relationship is one in which the patient trusts the physician because the patient lacks the knowledge, skill, and experience of the physician in those subjects which are vitally important to the patient.

A patient has a right to rely upon his physician; and the diagnosis made by the physician.

FINAL INSTRUCTION NO. 19

The Estate of Jacob Hill has asked you to award money based on Jacob Hill's life expectancy.

According to the United States Life Tables, 2010, published by the National Vital Statistics System, the life expectancy of a male person 24 years of age is 53.4 years.

This is evidence you may consider in determining the amount of money to award, if any. Mortality tables are merely estimates of life expectancy. They are based on statistical averages of the remaining length of life of all persons in our country of a given age and sex.

In considering the life expectancy of Jacob Hill, you may evaluate all facts and circumstances that bear on the life expectancy of Jacob Hill, including the mortality table and his occupation, health history, state of health and habits.

FINAL INSTRUCTION NO. 20

If you decide from the greater weight of the evidence that James Woodiel, M.D. is liable, then you must decide the amount of money that will fairly compensate Kayla Hill for Jacob Hill's wrongful death.

In deciding the amount of money that will fairly compensate Kayla Hill, you may consider:

- (1) the loss of love, care, and affection that Kayla Hill could reasonably have expected to receive from the continued life of Jacob Hill;
- (2) Jacob Hill's age, health, and life expectancy immediately before the injury causing his death;
- (3) Jacob Hill's occupation and earning capacity, and probable future earnings reduced by his personal living expenses had he lived; and
- (4) the value of future support and services that Kayla Hill could reasonably have expected to receive from Jacob Hill.

Kayla Hill, because she has been appointed Personal Representative of the Estate of Jacob Hill, is also entitled to recover for the benefit of Jacob Hill's estate:

- (1) the value of necessary and reasonable funeral and burial expenses for Jacob Hill.

In awarding damages, you must consider only the time period from Jacob Hill's death until:

- (1) the end of Jacob Hill's life expectancy, had the death not occurred, or
- (2) the end of Kayla Hill's life expectancy,

whichever period you determine would have ended first.

FINAL INSTRUCTION NO. 21

You must not consider or speculate about whether any party has insurance coverage.

FINAL INSTRUCTION NO. 22

In arriving at your verdict, you must not consider the tax consequences, if any, of the money you may award.

FINAL INSTRUCTION NO. 23

Do not base your verdict on sympathy, bias, or prejudice.

FINAL INSTRUCTION NO. 24

To return a verdict, all of you must agree to it. In other words, it must be unanimous. Each of you must decide the case for yourself, but only after considering and discussing the evidence with each other. You should try to agree on a verdict, if you can do so without compromising your individual judgment. Do not hesitate to re-examine your own views and change your mind if you believe you are wrong. But do not give up your honest belief just because the other jurors may disagree, or just to end the deliberations.

FINAL INSTRUCTION NO. 25

When you return to the jury room, select one of your members as presiding juror to manage the deliberations.

No one will be allowed to hear your discussions and no recording will be made of what you say. The bailiff is available to assist you with personal needs, but cannot answer any questions about the case.

If you have any questions for me, you must put them in writing and give them to the bailiff, and I will respond as the law permits. You may be able to find answers to your questions by reviewing my written instructions and all the evidence.

If at any time you are not all together, or if you are outside the jury room, you must not talk about the case among yourselves or with anyone else.

I am giving you forms of possible verdicts. The presiding juror must sign and date the verdict(s) to which you all agree. Do not sign any verdict form for which there is not unanimous agreement.

When you have agreed upon (a) verdict(s), inform the bailiff. When the parties are present, the bailiff will bring you back to court. Bring all verdict forms, signed and unsigned, with you at that time. I will read the verdict aloud. Each of you may be asked if it is your verdict. Otherwise, you are under no obligation to discuss your verdict or deliberations with anyone.

FINAL INSTRUCTION NO. 26

Duty of Alternate Juror

Emma Haas and Kevin Kornell, you have been selected as the alternate jurors. Your duties are the same as those of the regular jurors, except you must not participate in the deliberations or voting of the jury – unless I direct you to do so.

The presiding juror of the jury shall prevent alternate jurors from deliberating or voting with the jury. The presiding juror shall promptly report any violations of this instruction to me.