

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2018 AUG -2 AM 11:28

UNITED STATES DISTRICT COURT

FOR THE

CLERK

BY apl DEPUTY CLERK

DISTRICT OF VERMONT

KAREN E. O'CONNELL,

Plaintiff,

v.

SPRINGFIELD HOSPITAL, INC., and

JOHN S. CIOCCHI, M.D.,

Defendants.

Case No. 5:16-cv-289

JURY CHARGE

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and to apply them to the facts as you determine them.

I. Part One – General Instructions

ROLE OF THE COURT

You must accept the law as I explain it to you. You should not single out any one instruction as alone stating the law. Instead, you should consider my instructions as a whole.

If any attorney has stated a legal principle which differs from my instructions, you must follow my instructions.

You should not be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law should be, it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you in these instructions.

ROLE OF THE JURY

As members of the jury, you are the sole and exclusive judges of the facts. You should make decisions about the facts based only upon the testimony you have heard in court and the exhibits which were admitted by the judge. You will receive copies of these exhibits in the jury room. If you find it to be necessary, you may return to the courtroom to have the testimony of any witness read back to you by the court reporter.

As jurors and judges of the facts in the case, you determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You determine the weight of the evidence. You are to perform this duty of finding the facts without bias towards any party.

You should reach your judgment impartially and fairly, without prejudice or sympathy, solely upon the evidence in the case and without regard to the consequences of your decision.

JURORS' EXPERIENCE OR SPECIALIZED KNOWLEDGE

Anything you have seen or heard outside the courtroom is not evidence and must be disregarded entirely. It would be a violation of your oath as jurors to consider anything outside the courtroom in your deliberations. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in light of the evidence. However, if any juror has specialized knowledge, expertise, or information with

regard to the facts and circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

ALL PERSONS EQUAL BEFORE THE LAW

This case should be considered and decided by you as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law and are to be treated as equals in a court of justice.

EVIDENCE

The evidence in this case consists of the sworn testimony of the witnesses, the exhibits admitted into evidence, and any stipulations submitted by the parties.

Some witnesses testified in the form of video depositions which were recorded by the attorneys before the trial. Testimony in this matter is permitted by the law, and you should not give such testimony any more or less weight than live testimony just because it was recorded before the trial.

EXPERT WITNESSES

Both sides have provided testimony from witnesses who qualified as experts. An expert witness is a person who has special knowledge, experience, training or education in his or her profession or area of study. Because of this expertise, an expert witness may offer his or her opinion about one or more of the issues in the case. In determining the weight to be given to these opinions, you should consider the qualifications, experience, possible bias, and credibility of each expert and the reasons given in support of his or her opinions.

CREDIBILITY OF WITNESSES

You have had the opportunity to observe all the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

IMPEACHMENT OF A WITNESS

A witness may be discredited or “impeached” by contradictory evidence, by a showing that the witness testified falsely concerning a matter, or by evidence that at some other time the witness said or did something inconsistent with the witness’s present testimony. It is your exclusive province to give the testimony of each witness such credibility or weight that you think it deserves.

OBJECTIONS

During the trial, I have ruled on objections made by the attorneys. These are legal issues for the court to resolve and are not for your concern or consideration. It is the duty and job of the attorneys to make objections and you should not hold that against either side.

ARGUMENTS

The opening statements and closing arguments of the attorneys and other statements which they made during the course of the trial are not evidence. You should consider the evidence from the witnesses and the exhibits in making your decisions about the facts in this case. The statements and arguments are the attorneys’ efforts to organize and describe the evidence for you. Both of the attorneys have given the case a good deal of thought and attention. I ask that you consider their arguments carefully. In the end, however, it is the evidence admitted at the trial which must govern your decision-making.

THE PARTIES

The parties to this case are:

1. Plaintiff Karen E. O'Connell
2. Defendants Springfield Hospital Inc. and John S. Ciocchi, M.D.

Springfield Hospital is a corporation. As a corporation, it is legally responsible for the actions of its employees while they are performing their work functions. Dr. Ciocchi was and remains such an employee. The parties agree that if you find that Dr. Ciocchi is liable and must pay damages to Ms. O'Connell—which is contested—then Springfield Hospital will also be held liable for his conduct and any resulting damage. For this reason, the only questions you will be asked to resolve concern the potential liability of Dr. Ciocchi and resulting damages. The court will resolve the issue of Springfield Hospital's liability after receiving your verdict.

Claims

Karen O'Connell claims that Dr. Ciocchi and Springfield Hospital are liable for physical injury and other damages which she suffered because they acted negligently in providing medical care to her. She alleges that Dr. Ciocchi was negligent in performing surgery without first taking measures to percutaneously drain her abscesses followed by additional antibiotic treatment or in failing to transfer her to a facility which performs percutaneous drainage because the procedure could not be performed at Springfield Hospital. She alleges that he was negligent in ordering a bowel preparation medication. She also alleges that Dr. Ciocchi failed to inform her that percutaneous drainage was an alternative to the surgery he performed and that she would have chosen percutaneous drainage if she had received that information from him.

These claims have specific elements which I will discuss in a moment. First, however, I want to discuss the burden of proof.

BURDEN OF PROOF

The plaintiff Karen O'Connell has the burden of proof by a preponderance of the evidence on each element of her two claims. A "preponderance of the evidence" means the more convincing evidence. It does not mean the most witnesses. If you conclude that the evidence is equally balanced, Ms. O'Connell cannot succeed on her claims. In order to meet her burden of proof, she must persuade you that on balance the evidence on the issue you are considering tips to some degree in her favor. As you consider each element of Ms. O'Connell's two claims, you must consider whether the evidence is sufficient to meet this standard of "more likely true than not."

In this case, Dr. Ciocchi has raised an affirmative defense to the claim that he did not inform Ms. O'Connell about the alternative of percutaneous drainage because he contends that a reasonable person, fully informed, would have undergone the surgery anyway. On this defense, Dr. Ciocchi bears the burden of proof by a preponderance of the evidence.

ELEMENTS OF THE CLAIM OF MEDICAL NEGLIGENCE

In order to prove the claim of medical negligence, Ms. O'Connell must establish each of the following elements by a preponderance of the evidence:

A. Standard of Professional Care

Ms. O'Connell must prove the manner and type of medical treatment which a reasonably skillful, careful or prudent doctor would have provided under similar circumstances to her.

B. Breach of the standard of care

She must prove a breach of this standard of care. The question for you to decide is whether defendant Dr. Ciocchi failed to meet the standard of professional care which you determined was appropriate for Ms. O'Connell's case.

An unfortunate outcome for the patient such as serious injury is not necessarily evidence of a breach of the standard of care. Although a trial necessarily examines events with the benefit of hindsight, you must determine whether a breach of the standard of care occurred based upon the information available to the physician at the time the care was provided.

C. Causation

Ms. O'Connell must prove that negligence by the defendant physician was the cause of her injuries. This question has two components.

First, Ms. O'Connell must prove that "but for" such negligence, she would not have experienced the injuries she sustained following her surgery. In other words, she must prove that with a different course of care, she would not have experienced these injuries.

Second, you must decide whether any negligence by Dr. Ciocchi was too remote or unconnected to Ms. O'Connell's injuries to satisfy the requirement of causation. An injury may have several causes. Some of these causes are very direct and obvious. Others are more remote. The law does not require that the negligent act or acts be the sole cause of the injury. Several factors may combine to cause an injury. Ms. O'Connell is required to show that an act or acts of negligence by the defendant physician Dr. Ciocchi was a substantial factor in causing her injury.

ELEMENTS OF THE CLAIM OF LACK OF INFORMED CONSENT

Ms. O'Connell also claims that she was not adequately informed of the alternative of percutaneous drainage followed by a course of additional antibiotic treatment and that had she been informed of this alternative, she would not have given consent to the surgery.

In order to prove the claim of lack of informed consent, Ms. O'Connell must prove the following elements:

- (A) Dr. Ciocchi failed to inform her of the alternative of percutaneous drainage;

(B) A reasonable physician under similar circumstances would have disclosed the alternative of percutaneous drainage;

(C) Had Ms. O'Connell been informed of the alternative of percutaneous drainage, she would not have agreed to the surgery;

(D) The surgery caused harm to her.

A physician does not have to inform a patient of all conceivable alternatives to a surgery. The law requires that he or she inform a patient of those alternatives that a reasonable physician under similar circumstances would disclose.

With respect to element (D) – causation – you should apply the same method of determining causation which I outlined in the discussion of medical negligence.

Ms. O'Connell bears the burden of proof on all four elements of the claim of lack of informed consent. If she fails to prove any one (or more), then her informed consent claim fails. If she proves all four, you must also consider the affirmative defense raised by Dr. Ciocchi.

DEFENSE TO LACK OF INFORMED CONSENT

It is an affirmative defense to a claim of lack of informed consent that a reasonably prudent person in Ms. O'Connell's position would have undergone the surgery if she had been fully informed of the alternative of percutaneous drainage. If you find that a reasonable person in Ms. O'Connell's position would have agreed to the surgery after receiving full information, then her claim of lack of informed consent fails.

On this issue, Dr. Ciocchi has the burden of proof.

DAMAGES

I will talk now about the specific elements of damage allowed by law for injuries caused by medical negligence or lack of informed consent. You will reach this question only if you find that Dr. Ciocchi was negligent or failed to provide the information required for informed consent. The measure of damages under either theory of recovery is the same and should be awarded only once even if you find in favor of Ms. O'Connell on both legal theories. If you reach this issue, you will be asked to provide damage figures for each of two categories of loss. The elements of damage which you may consider include:

- (1) The reasonable value of medical expenses incurred as a consequence of the injuries;
- (2) Pain and suffering, mental anguish, and loss of enjoyment of life, past and future;
incurred as a consequence of the injuries.

Any award must be expressed in dollar terms. The parties have agreed that the reasonable value of Ms. O'Connell's medical expenses is \$400,000. There is no particular formula to calculate the correct amount of damages for pain and suffering and related losses. If you find that Dr. Ciocchi is liable, you should make sure that any amount awarded to Ms. O'Connell is fair, just and reasonable in light of the evidence you have heard.

FINAL INSTRUCTIONS

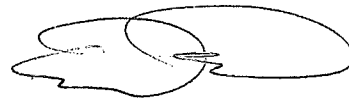
This completes my instructions to the jury. You will retire now to the jury room to deliberate in private about the issues in the case. I will provide a verdict form to guide you in your deliberations. You will also receive the exhibits which were admitted into evidence. I will also provide eight copies of these instructions.

I appoint _____ as your foreperson. Mr. Molaski shall be responsible for making sure that the deliberations occur in an orderly fashion and that every juror has an opportunity to participate.

Any verdict which you return must be unanimous. This means that you cannot answer a question on the verdict form unless and until all jurors agree on the answer.

If you need to communicate with me, please do so in writing. I will confer with the lawyers about your written question and send back a written response. Please advise the court officer after you reach a verdict but do not tell him or her or anyone else what the verdict is until you return to the courtroom at which time I will receive the verdict form directly from your foreperson. The foreperson should keep possession of the verdict form in an envelope provided for the purpose until you return to the courtroom.

Dated at Rutland, in the District of Vermont, this 1st day of August, 2018.



Geoffrey W. Crawford, U.S. District Judge