

Final Version

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

SARAH DONOVAN and MATTHEW
DONOVAN, Individually and as
Personal Representatives of the
ESTATE OF KAILYN DONOVAN,
Plaintiffs,

v.

RHODE ISLAND HOSPITAL, INC. and
JONATHAN VALENTE, M.D.,
Defendants.

C.A. No. 16-128-JJM-PAS

JURY INSTRUCTIONS

I. GENERAL INSTRUCTIONS

Now that you have heard all the evidence and the arguments of counsel, it is my job to instruct you on the law that is applicable to this case.

I will send a written copy of my instructions into the jury room but please note that the law is as I give it to you from the bench. The written copy will merely be a guide to assist you.

A. PROVINCE OF THE COURT AND JURY

It is your duty as jurors to follow the law as I state it to you and to apply that law to the facts of the case, as you determine those facts to be from the evidence in this case. You are not to be concerned with the wisdom of any rule of law stated by me. You are not to single out one instruction alone as stating the law but you must consider the instructions as a whole.

Nothing I say in these instructions and nothing that I have said or done during the trial is to be taken as an indication that I have any opinion about the facts of the case. I do not. It is not my role to determine the facts; that is your role.

You must perform your duties as jurors without bias or prejudice to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties — and the law — expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. All parties are entitled to the same fair trial at your hands. All parties stand equal before the law and are to be dealt with as equals in a court of justice.

B. EVIDENCE IN THE CASE

The evidence from which you are able to decide what the facts are consists of: the sworn testimony of witnesses; the exhibits which have been received into evidence; and any admissions of a party presented to you.

In determining the facts in this case, you are to consider only the evidence that has been properly put before you. Evidence that the court admits in full is properly before you for your consideration; evidence that this Court has stricken or

refused to admit is not a proper subject for your deliberations and should not be given consideration by you. Admitted evidence will be available to you in the jury room for consideration during your deliberations.

It is the duty of counsel to protect the rights and interests of his client, and in the performance of that duty he freely can make objections to the admission of proffered evidence and should not, in any manner, be penalized for doing so.

The fact that the Court admitted evidence over objection should not influence you in determining the weight you should give such evidence. Nor should statements made by counsel, either for or against the admission of such evidence, influence your determination of the weight you will give the evidence, if admitted. In other words, you should determine the weight you will give such evidence on the basis of your own consideration of it and without regard to the ruling of the Court or the statements of counsel concerning the admissibility of such evidence.

C. NOT EVIDENCE

Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. What they have said in their opening statements and closing arguments, and at other times, may help you interpret the evidence, but it is not evidence. If the facts as you

remember them differ from the way the lawyers have stated them, your memory controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it.

3. Anything you may have seen or heard when the Court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.

D. CREDIBILITY OF WITNESSES

You are the sole judges of the credibility of the witnesses and the weight their testimony deserves. In deciding the facts of this case, you may have to decide which testimony to believe and which testimony not to believe. In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;

4. the witness' interest in the outcome of the case and any bias or prejudice the witness may have;
5. whether other evidence contradicted the witness' testimony; and
6. the reasonableness of the witness's testimony in light of all the evidence.

After making your own judgment, you may believe everything a witness says, or part of it, or none of it at all. Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

E. INFERENCES

In your consideration of this evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You are allowed to make reasonable inferences from the evidence. Let me give you an example of an inference. If your mailbox was empty when you left home this morning, and you find mail in it when you go home tonight, you may infer that the letter carrier delivered the mail. Now, obviously, you didn't see the letter carrier deliver the mail, but from the fact that it

was empty this morning and is filled tonight, you can properly infer that the letter carrier came in the interim and delivered the mail. Inferences are deductions or conclusions that reason and common sense lead you to draw from facts that have been established by the evidence in this case. Inferences, however, may not be based on speculation or conjecture. You are permitted to draw reasonable inferences that seem justified in light of your experience, and from facts that you find have been proven.

F. EVIDENCE – DIRECT AND CIRCUMSTANTIAL

There are two types of evidence from which you may properly find the facts of this case. One is direct evidence – such as the testimony of an eyewitness. The other is indirect or circumstantial evidence – that is, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence. You are simply required to find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

G. OPINION EVIDENCE: EXPERT WITNESS

While the rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions, an exception exists as to those persons whom we refer to as “expert witnesses”. These are witnesses who, by education and experience, have

become expert in some art, science, profession, or calling, and thus may state their opinions as to relevant and material matters in which they profess to be expert, and may also state their reasons for the opinion.

If testimony from an expert witness is to have any evidentiary value, it must speak in terms of “probabilities” rather than mere “possibilities.” Although absolute certainty is not required, the conclusions of an expert must be reached to a reasonable degree of certainty – that is, to a probability. In order for an expert’s opinion to be considered by you, it must have substantial probative value and not be based on speculation, conjecture, or surmise.

You should give each expert opinion such weight as you may think it deserves. If you conclude that the reasons given in support of the expert’s opinion are not sound, or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

H. BURDEN OF PROOF

The burden is on the Plaintiff in a civil action, such as this, to prove every essential element of its claims by a preponderance of the evidence. If the proof should fail to establish any essential element of the Plaintiffs’ claim by a preponderance of the evidence in this case, then you should find for the Defendants. The Defendants do not have any obligation to disprove that which the Plaintiffs assert or claim.

I. PREPONDERANCE OF THE EVIDENCE

To establish by "a preponderance of the evidence" means to prove that something is more probably true than not true. In other words, if you were looking at opposite ends of a scale, the Plaintiffs' evidence would have to make one end of the scale tip somewhat to its side. When I say in these instructions that a party has the burden of proof on any proposition, or use the expression "if you find," I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true. This rule does not, of course, require proof to an absolute certainty or even a near certainty.

II. CASE SPECIFIC INSTRUCTIONS

I am now going to instruct you on the specific law that applies to this case. The law will guide you as to the determinations you must make. You must accept the law that I give you, whether you agree with it or not.

A. NATURE OF THE PLAINTIFFS' CLAIMS

This is a civil case brought by Sarah Donovan and Matthew Donovan, individually and as personal representatives of the Estate of Kailyn Donovan. Plaintiffs allege that the Defendants in this case, Rhode Island Hospital, Inc. and Dr. Jonathan Valente, committed medical negligence against their daughter, Kailyn Donovan, and that negligence resulted in her death. The Defendants deny these allegations.

You will be asked to determine whether the Defendants are liable for any alleged negligence and if so, how much money to award in damages to the Plaintiffs, Sarah Donovan and Matthew Donovan, individually and as personal representatives of the Estate of Kailyn Donovan. The claim of negligence against each Defendant must be considered separately when applying the instructions of law that I provide to you.

B. NEGLIGENCE CLAIMS

In order to prove their negligence claim against either or both of the Defendants, the Plaintiffs must prove, by a preponderance of the evidence in the case, the following:

First, that either or both of the Defendants was negligent; and,

Second, that such negligence was a proximate cause of Kailyn Donovan's death, and damages sustained.

C. NEGLIGENCE DEFINED

Negligence is the doing of some act that a reasonably prudent person would not do, or the failure to do something that a reasonably prudent person should do. To prevail in a negligence action, the Plaintiffs must introduce competent evidence to establish that either or both of the Defendants breached a duty of care that they owed to the Plaintiffs and that the breach of that duty was a proximate cause of the harm or injury about which the Plaintiffs allege.

D. DUTY OF CARE: MEDICAL SERVICE PROVIDER

When a medical service provider agrees to provide medical treatment to a patient, he or she assumes a general duty of care to that patient to exercise professional skill in all aspects of the patient's treatment. The duty of care stems from the professional relationship between the medical service provider and the patient. When I refer to professional skill, I mean technical skill, professional judgment, and diligence commensurate with that degree of expertise expected of a reasonably competent medical service provider practicing in the same field.

Within the broad context of his or her general duty, the medical service provider also owes more specific duties to the patient. He or she must exercise professional skill in making a diagnosis and in determining what is the appropriate treatment given that diagnosis.

If a medical service provider as an aid to diagnosis, does not avail himself or herself of a particular test or does not conduct a particular examination or does not consult certain records or consult with a specialist, that omission can be considered by you as evidence of negligence, if, in light of the evidence as a whole, you believe that other medical service providers in the exercise of the appropriate degree of care would have ordered the particular test or consulted records or consulted with others in the same or similar circumstances.

In this case, the Plaintiffs allege that the Defendants failed to properly diagnose and treat Kailyn Donovan's medical condition; that is, that the Defendants failed to exercise the required professional skill in determining the particular condition from which Kailyn Donovan was suffering and to properly treat that condition, and the failure or failures proximately caused Kailyn Donovan's death.

A medical service provider is not expected to guarantee a correct result and/or successful treatment. The fact that a person has suffered a bad result, in and of itself is not evidence of negligent treatment. However, a medical service provider is expected to use professional skill in attempting to arrive at a correct diagnosis and in attempting to develop and implement a plan that provides proper medical management of the patient's condition. Whether the medical service provider has exercised the requisite level of professional skill in doing so must be measured against the recognized standard of care for reasonably competent medical service providers practicing in the same field acting in the same or similar circumstances.

E. STANDARD OF CARE

The law requires that a medical service provider, whether it be a doctor or hospital, exercise the same degree of professional judgment, diligence and technical skill that is to be expected of a reasonably competent medical practitioner in the same class to which he or she belongs. In other words, a medical service provider's

conduct must be consistent with that of a reasonably competent medical service provider practicing in the same field and acting in the same or similar circumstances given the state of scientific knowledge at the time of the diagnosis and treatment. We call this the recognized standard of care. The recognized standard of care may vary with the circumstances.

It is for you, the jury, to determine from the evidence presented at trial what the recognized standard of care was for each medical service provider at the time in question. Once you have determined from the trial evidence what was the recognized standard of care against which the provider is to be measured, you must then consider whether such provider's conduct fell short of that standard.

In this case, the Plaintiffs allege that Dr. Valente was negligent and that such negligence was a proximate cause of Kailyn Donovan's death. You must evaluate Dr. Valente's conduct in light of what you find to be the degree of care and skill that was expected of a reasonably competent physician, acting in the same or similar circumstances in November of 2013.

The Plaintiffs also alleges that Rhode Island Hospital was negligent and that such negligence was a proximate cause of Kailyn Donovan's death. To the extent that a hospital provides care through its agents, servants, and/or employees, such as its physicians, nurses, and doctors, you must evaluate Rhode Island Hospital's conduct in light of what you find to be the degree of care and skill that was expected

of a reasonably competent hospital acting in the same or similar circumstances in November of 2013.

If you find that Dr. Valente and/or Rhode Island Hospital, through its agents, servants, and/or employees, failed to act in conformity with what you find to be the recognized standard of care and you find that any of the Defendants' negligence was a proximate cause of Kailyn Donovan's death, then your verdict must be for the Plaintiffs. If you find, however, that Dr. Valente's and/or Rhode Island Hospital's conduct conformed with what you find to be the recognized standard of care then you must find that that Defendant was not negligent and your verdict must be for that Defendant.

F. RESPONDEAT SUPERIOR

Generally, one person is not legally responsible for the conduct of another except under certain circumstances. Only where a special relationship exists between the two, such as an employer/employee relationship, will one be responsible for the conduct of the other. In this case, it is undisputed that Dr. Valente was an employee of the Defendant Rhode Island Hospital. If you find that Kailyn Donovan's death was proximately caused by Dr. Valente's negligence in his care and treatment of her, or the negligence of any other agent, servant, and/or employee of Rhode Island Hospital, then the hospital is legally responsible for that negligence.

G. PROXIMATE CAUSE

In addition to proving that either or both of the Defendants breached the recognized standard of care, the Plaintiffs must also prove by a preponderance of the evidence that the breach was a proximate cause of the injury or death sustained. Thus, in this case, the Plaintiffs must prove that Kailyn Donovan's injuries and death were proximately caused by the alleged negligent acts and/or omissions of any or all of the Defendants.

An injury or death is proximately caused by an act, or a failure to act, whenever it appears that the act or omission played a substantial part in bringing about or causing the injury or death, and that the injury or death was either a direct result of or a reasonably probable consequence of the act or omission. The Plaintiffs must prove that the injury or death would not have occurred but for each or both of the Defendants' acts, and the Defendants' acts must be shown to have been a direct, rather than a remote, cause of the injury or death.

I do not mean to suggest, however that there may be only one proximate cause for a given injury or death. Indeed, many factors and things or the conduct of two or more persons may operate at the same time, either independently or together, to cause injury or death. In such a case, each may be considered as a proximate cause of the result.

A finding of proximate cause cannot be based on conjecture or speculation. Proximate cause must be proven as to each Defendant that you find to be negligent. If you find that a Defendant was negligent but that that particular Defendant's negligence was not a proximate cause of the Plaintiff's injuries and/or death, then your verdict will be for that Defendant.

H. DAMAGES

I will now turn to the question of damages. In so doing, the Court does not intend to indicate that it is of the opinion that any Defendant is liable or that the Plaintiffs are owed damages. If you find that Dr. Valente and the Rhode Island Hospital are not liable, you will not consider the question of damages.

Plaintiffs Sarah Donovan and Matthew Donovan bring this action both individually and on behalf of their daughter Kailyn Donovan's Estate. The Plaintiffs allege that they have individually sustained damages and that the Estate has sustained damages as a proximate result of the Defendants' negligence and Kailyn Donovan's death. Just as they have the burden of proving liability by a preponderance of the evidence, the Plaintiffs must prove damages by a preponderance of the evidence.

Damages are defined in the law as that amount of money that will compensate an injured party for the harm or loss sustained. These damages are called compensatory damages. The rationale behind compensatory damages is to

restore a person to the position he or she was in prior to the harm or the loss. Compensatory damages, then, is the amount of money that will replace, as near as possible, the loss or harm proximately caused by the Defendant's negligence.

The damages you award must not be oppressive or unconscionable, and you may assess only such damages as will fairly and reasonably compensate the Plaintiffs insofar as the same may be computed in money. You must confine your deliberations to the evidence, and you must not indulge in guesswork, speculation or conjecture.

I will now discuss the type of damages sought by Plaintiffs in this case.

I. COMPENSATORY DAMAGES: PAIN AND SUFFERING

The Plaintiffs seek to be compensated for the conscious pain and suffering that Kailyn Donovan endured as a result of the negligence alleged.

Pain means physical pain, the kind resulting from a physical impact or injury. It includes what we ordinarily think of as physical pain as well as discomfort, stiffness, and restriction of bodily motion that is caused by the pain or discomfort brought about by moving. Pain must be conscious pain, that is, something that Kailyn Donovan was aware of. The law does not allow a jury to award damages for pain to a person while that person was unconscious.

Suffering, on the other hand, can be equated with what we sometimes call the mental anguish that arises from physical pain or injury to the body.

An award for pain and suffering must be fair and reasonable. It must be grounded in the evidence and not based upon speculation or conjecture. Your award for pain and suffering should be based on the evidence that has been presented to show just how much pain and suffering Kailyn Donovan endured as a result of the Defendants' negligence.

There is no particular formula by which to compute damages for pain and suffering. There are no objective guidelines by which you can measure the money equivalent of this injury; the only real measuring stick, if it can be so described, is your collective and enlightened conscience. You alone are the sole judges of what, if anything, should be awarded for pain and suffering.

J. LOSS OF SOCIETY AND COMPANIONSHIP

The Plaintiffs, Sarah Donovan and Matthew Donovan each have made a claim for loss of Kailyn Donovan's society and companionship. This claim of Sarah Donovan and Matthew Donovan is a separate and distinct claim that belongs to them alone. It is not part of the claim by Kailyn Donovan's Estate.

The law permits a parent to make a claim against an individual who has been negligent and whose negligence has been the proximate cause of injuries or death to a minor child. If the injury sustained by the injured minor proximately caused the parent to suffer a loss of society and companionship of the injured minor, then the parent suffering that loss is entitled to be compensated. If you find that

Kailyn Donovan's injury or death were a proximate cause of the Defendants' negligence, then you must consider the claim of Plaintiffs Sarah Donovan and Matthew Donovan for loss of society and companionship. You may not consider their claim for loss of society and companionship unless you first find a Defendant liable for Kailyn Donovan's injuries or death.

In arriving at the amount of damages, if any, which you will award for loss of society and companionship, you should consider what is fair compensation for the loss of the ordinary services and society, comfort, and companionship, both physical and emotional, that children provide to their parents. For these damages to be calculated, Plaintiffs must provide evidence of the loss of society and companionship that they have experienced as a result of Kailyn's death. Consider the evidence as it relates to the nature and extent of Plaintiffs Sarah Donovan and Matthew Donovan's loss of society and companionship, if any, and make your award based on your consideration of that evidence.

Once you have determined the damages for each of these elements, you should add them together and list the total amount of damages on the verdict form (where indicated).

III. FINAL PROCEDURAL INSTRUCTIONS

Ladies and gentlemen, in a moment I will dismiss you so that you may

commence your deliberations. However, before I do that, I need to give you some instructions about the procedures you must use in the course of your deliberations.

As I said at the beginning of my instructions, you must not allow prejudice, sympathy, or compassion to influence you in the course of your deliberations. That does not mean that you should approach this case in an intellectual vacuum. You are not required to put aside your experiences and observations in the ordinary, everyday affairs of life. Indeed, your experiences and observations in the ordinary, everyday affairs of life are essential to your exercise of reasonably sound judgment and discretion in the course of your deliberations; and it is your right and duty to consider the evidence in light of such experience and observations. But you must not allow prejudice, sympathy, or compassion to cloud your examination of the evidence or influence your determination of the facts.

During your deliberations, you must not communicate with or provide any information to anyone outside of the jury room by any means about this case. You may not use any electronic device or media, such as a cell phone, a tablet, or a computer. You may not communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. You can only discuss the case in the jury room with your fellow jurors during deliberations.

Now, in order for you to return a final verdict, your decision must be unanimous. That means that you cannot return a verdict unless and until all seven of you are in agreement as to the verdict.

Therefore, in the course of your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your conviction simply because a majority holds to the contrary view, but in pursuing your deliberations you should keep your minds reasonably open to conviction with respect to the point in dispute so that you will not be precluded or prevented from achieving a unanimous verdict by mere stubbornness. It is your right to maintain your conviction. Each vote of each juror is as important as the vote of any other juror, and you need not give up your sincerely held conviction simply because a majority holds to the contrary.

I am designating juror #1, _____, as the Foreperson of this jury.

_____ it will be your responsibility to organize the group and facilitate organized and healthy deliberations. The Foreperson's opinion, voice, or vote, however, is no more meaningful than any other juror.

When you are in the jury room, you will be provided with the evidence that has been admitted in this case. It may take us a few minutes to gather it up, but as soon as we do, it will be brought to the jury room.

I have instructed you on the law that governs your deliberations. As I mentioned earlier, I will send into the jury room a written copy of my instructions. You are reminded, however, that the law is as I have given it to you from the bench; and the written copy is merely a guide to assist you.

You will also be given a verdict form. When you have reached a verdict, the Foreperson will fill out that form and sign it. Once the verdict form is complete, you will inform the Court Security Officer.

[REVIEW OF VERDICT FORM]

If, in the course of your deliberations, you deem it necessary to be further instructed or assisted by the Court in any way, the Foreperson should reduce such request or question to writing, sign it, and give it to the Court Security Officer in whose charge you will now be placed. The Court Security Officer will then bring such written request to me and I, in consultation with the attorneys, will determine an appropriate response. Other than this method, please do not attempt to communicate privately or in any other way with the Court or with anyone outside the jury room.

Security Officer Patrick Trainor, will you please come forward to be sworn in?