

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

DR. DAVID L. SWOOPE JR.,)
)
) Plaintiff,)
)
 vs.) Cause No. 2:10-cv-423
)
 GARY COMMUNITY SCHOOL)
 CORPORATION, DR. MYRTLE)
 CAMPBELL, DR. CORDIA MOORE,)
)
) Defendants.)

FINAL JURY INSTRUCTIONS

Dated: April 25, 2016

s/ Philip P. Simon _____
CHIEF JUDGE
UNITED STATES DISTRICT COURT

INSTRUCTION NO. 1

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

INSTRUCTION NO. 2

During this trial, I have asked questions of witnesses myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

INSTRUCTION NO. 3

In this case one of the defendants is a corporation. All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

INSTRUCTION NO. 4

The evidence consists of the testimony of the witnesses and the exhibits admitted in evidence.

INSTRUCTION NO. 5

Certain things are not to be considered as evidence. I will list them for you.

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

INSTRUCTION NO. 6

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about testimony.

INSTRUCTION NO. 7

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

INSTRUCTION NO. 8

Each party is entitled to have the case decided solely on the evidence that applies to that party. You must consider any evidence of discrimination or retaliation by Dr. Campbell only against Dr. Campbell, and you must consider any evidence of discrimination by Dr. Moore only against Dr. Moore. You may not hold either of them liable for what other employees did or did not do.

INSTRUCTION NO. 9

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

INSTRUCTION NO. 10

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago, and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

INSTRUCTION NO. 11

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including Dr. Swoope, Dr. Campbell, and Dr. Moore, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

INSTRUCTION NO. 12

You may consider statements given under oath by Dr. Swoope as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his or her testimony here in court.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statement or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

INSTRUCTION NO. 13

It is proper for a lawyer to meet with any witness in preparation for trial.

INSTRUCTION NO. 14

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

INSTRUCTION NO. 15

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

INSTRUCTION NO. 16

You must give separate consideration to each claim and each party in this case. Although there are three defendants, it does not follow that if one is liable, the others are liable.

INSTRUCTION NO. 17

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean:

When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

INSTRUCTION NO. 18

If you decide for a defendant on the question of liability, then you should not consider the question of damages against that defendant.

INSTRUCTION NO. 19

I have a duty to caution or warn a party who does something that I believe is not in keeping with the rules of evidence or procedure. You are not to draw any inference against the side whom I cautioned or warned during the trial.

INSTRUCTION NO. 20

Dr. Swoope asserts four claims.

First, Dr. Swoope claims that Gary Community School Corporation discriminated against him because of his gender by preventing him from completing his practicum.

Second, Dr. Swoope claims that Gary Community School Corporation terminated him because he complained about gender discrimination.

Third, Dr. Swoope claims that Dr. Campbell discriminated against him because of his gender by preventing Dr. Swoope from completing his practicum.

Fourth, Dr. Swoope claims that Dr. Moore discriminated against him because of his gender by preventing Dr. Swoope from completing his practicum.

Each of these claims requires Dr. Swoope to prove certain elements. I will now instruct you on each element of these claims.

INSTRUCTION NO. 21

Dr. Swoope claims that Gary Community School Corporation prevented him from completing his practicum because of his gender. To succeed on this claim, Dr. Swoope must prove by a preponderance of the evidence that Gary Community School Corporation took one of these actions because of his gender. To determine that Dr. Swoope was prevented from completing his practicum, you must decide that Gary Community School Corporation would not have taken these actions if Dr. Swoope had been female but everything else had been the same.

If you find that Dr. Swoope has proved this by a preponderance of the evidence, then you must find for Dr. Swoope. However, if you find that Dr. Swoope did not prove this by a preponderance of the evidence, then you must find for Gary Community School Corporation.

INSTRUCTION NO. 22

Dr. Swoope claims that he was terminated by Gary Community School Corporation because he previously complained about discrimination. To succeed on this claim of retaliation, Dr. Swoope must prove by a preponderance of the evidence that Gary Community School Corporation terminated him because he previously complained about gender discrimination. To determine that Dr. Swoope was terminated because he previously complained about discrimination, you must decide that Gary Community School Corporation would not have terminated Dr. Swoope if he had not complained about discrimination but everything else had been the same.

If you find that Dr. Swoope has proved this by a preponderance of the evidence, then you must find for Dr. Swoope. However, if you find that Dr. Swoope did not prove this by a preponderance of the evidence, then you must find for Gary Community School Corporation.

INSTRUCTION NO. 23

Dr. Swoope claims that Dr. Campbell prevented him from completing his practicum and terminated him because of his gender. To succeed on this claim, Dr. Swoope must prove by a preponderance of the evidence that Dr. Campbell took either of these actions because of his gender. To determine that Dr. Campbell took one of these actions because of Dr. Swoope's gender, you must decide that Dr. Campbell would not have taken the action if Dr. Swoope had been female but everything else had been the same.

If you find that Dr. Swoope has proved this by a preponderance of the evidence, then you must find for Dr. Swoope. However, if you find that Dr. Swoope did not prove this by a preponderance of the evidence, then you must find for Dr. Campbell.

INSTRUCTION NO. 24

Dr. Swoope claims that Dr. Moore prevented him from completing his practicum because of his gender. To succeed on this claim, Dr. Swoope must prove by a preponderance of the evidence that Dr. Moore took this action because of Dr. Swoope's gender. To determine that Dr. Moore acted because of his gender, you must decide that Dr. Moore would not have taken the action if Dr. Swoope had been female but everything else had been the same.

If you find that Dr. Swoope has proved this by a preponderance of the evidence, then you must find for Dr. Swoope. However, if you find that Dr. Swoope did not prove this by a preponderance of the evidence, then you must find for Dr. Moore.

INSTRUCTION NO. 25

In deciding Dr. Swoope's claims, you should not concern yourselves with whether the Defendants' actions were wise, reasonable, or fair. Rather, your concern is only whether Dr. Swoope has proved that he was discriminated against because of his gender and/or retaliated against because he previously complained about discrimination.

INSTRUCTION NO. 26

If you find that Dr. Swoope has proven any of his claims against any of the Defendants, then you must determine what amount of damages, if any, Dr. Swoope is entitled to recover. Dr. Swoope must prove his damages by a preponderance of the evidence.

If you find that Dr. Swoope has failed to prove any of his claims, then you will not consider the question of damages.

INSTRUCTION NO. 27

You may award compensatory damages only for injuries that Dr. Swoope has proved by a preponderance of the evidence were caused by the wrongful conduct of the Defendant(s). Your award must be based on evidence and not speculation or guesswork.

In calculating damages, you should not consider the issue of wages and benefits Dr. Swoope lost as a result of his termination. I will calculate and determine those damages.

You should consider only the mental/emotional pain and suffering that Dr. Swoope has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of mental/emotional pain and suffering has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate Dr. Swoope for the injury he has sustained.

INSTRUCTION NO. 28

Dr. Swoope may only receive one full compensation for his injuries. Double recovery for the same injury is not allowed. If you find that Dr. Swoope has proven more than one of his claims, Dr. Swoope is entitled to be compensated only for the injuries that he actually suffered from each claim. Thus, if Dr. Swoope has proven one or more of these claims, but the resulting injury was no greater than it would have been had only one of the claims been proven, you should award an amount of compensatory damages no greater than you would award if Dr. Swoope had proven only one of his claims.

INSTRUCTION NO. 29

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Verdict forms have been prepared for you.

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the forms, and all of you will sign it.

INSTRUCTION NO. 30

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

INSTRUCTION NO. 31

The verdicts must represent the considered judgment of each juror. Your verdicts, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.