

NO. 07-CI-10400

JEFFERSON CIRCUIT COURT
DIVISION TEN (10)
JUDGE IRV MAZE

TONIA FREEMAN

PLAINTIFF

v.

BECKER LAW OFFICE, PLC, *et al.*

DEFENDANTS

* * * * *

JURY INSTRUCTIONS

* * * * *

The Court hereby issues the following instructions to the jury for the above-styled case. Please review each Instruction carefully and complete the appropriate Verdict Form(s) as required by these Instructions.

IRV MAZE, JUDGE
JEFFERSON CIRCUIT COURT

DATE

INSTRUCTION NO.1

Before beginning your deliberations, select one of your number as the Foreperson. The deputy will deliver the exhibits to the jury room for your consideration and review. A deputy will be posted outside your door so no one can interfere with your deliberations.

Nine or more of you must agree to reach a verdict on any issue you are to decide. If all twelve of you agree on verdict, only the Foreperson need sign the verdict. If at least nine, but less than twelve, agree on a verdict, all of you agreeing must sign.

Each juror must decide this case in his or her own mind, but only after impartial consideration of all the evidence with all of the other jurors. If you award damages, the amount awarded can not be determined by agreeing in advance to accept an average of what each juror individually would award, although such a number may be calculated as a point of discussion.

If you feel the necessity to make further inquiry with the Court, the foreperson will need to hand the deputy a note advising the Court of the question. I will then consult with the attorneys and address your inquiry to the extent possible.

INSTRUCTION NO. 2

As was explained to you prior to voir dire, this is a legal malpractice case being tried in two separate phases. During this first phase, you must determine whether the Plaintiff, Tonia Freeman, would have probably been successful if she had initiated a civil action against Marine Toys for Tots Foundation, Inc. for the injuries she sustained on October 14, 2004 at Fort Knox Building 48. The evidence you have heard until this point has only focused on this underlying claim. If, and only if, you are satisfied from the evidence that the Plaintiff, Tonia Freeman, would have probably been successful if she had initiated a civil action against Marine Toys for Tots Foundation, Inc. will you hear the second phase of the trial.

INSTRUCTION NO. 3

DEFINITIONS

“Known” means knowledge of the existence of the condition and appreciation of the danger it involves.

“Obvious” means both the condition and the risk are apparent to and would be recognized by a reasonable person, in a position similar to the Plaintiff, exercising ordinary perception, intelligence, and judgment.

“Open and obvious doctrine.” A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.

“Ordinary care” means such care as the jury would expect an ordinarily prudent person to exercise under similar circumstances.

“Possession.” A possessor of land is:

- (a) a person who is in occupation of the land with intent to control it, or
- (b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or
- (c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b).

“Successful.” A plaintiff is successful in bringing a claim if the jury returns a verdict awarding judgment for the plaintiff. A plaintiff is unsuccessful in bringing a claim if the jury returns a verdict in full for the defendant.

INSTRUCTION NO. 4

State whether you are satisfied from the evidence that Marine Toys for Tots Foundation, Inc. was in possession of Fort Knox Building 48 on October 14, 2004.

YES _____

NO _____

If you have answered "NO" to Instruction No. 4, you have found that Marine Toys for Tots Foundation, Inc. is not liable for the injuries sustained by the Plaintiff, Tonia Freeman. Please proceed to Instruction No. 10. If you have answered "YES" to Instruction No. 4, please proceed to Instruction No. 5.

INSTRUCTION NO. 5

You will only complete this Instruction if you have answered "YES" to Instruction No. 4.

State whether you are satisfied from the evidence as follows (if you are not so satisfied, answer NO):

(1) That the danger of the condition of the steps leading into Fort Knox Building 48 was not known to the Plaintiff, Tonia Freeman, nor obvious to her on October 14, 2004.

YES (i.e. condition of the steps was not known or obvious) _____

NO (i.e. condition of the steps was not known and/or obvious) _____

If you have answered "YES" to question (1), please disregard the remainder of this instruction and proceed to Instruction No. 6. If you have answered "NO" to question (1), please answer question (2) below.

(2) That in the exercise of ordinary care, Marine Toys for Tots Foundation, Inc. should have anticipated that the Plaintiff, Tonia Freeman, would not discover the condition of the steps leading into Fort Knox Building 48 and have her foot pierced by a piece of wood causing her bodily injury on October 14, 2004.

YES _____

NO _____

If you have answered "NO" to question (2), you have found that Marine Toys for Tots Foundation, Inc. is not liable for the injuries sustained by the Plaintiff, Tonia

Freeman. Please sign the signature lines below and proceed to Instruction No. 10. If you have answered "YES" to question (2), please proceed to question (3).

Foreperson (if unanimous)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(3) That by reason of the steps leading into Fort Knox Building 48, Fort Knox Building 48 was not in a reasonably safe condition for use by the Plaintiff, Tonia Freeman, on October 14, 2004.

YES (not reasonably safe) _____

NO (reasonably safe) _____

If you have answered "NO" to question (3), you have found that Marine Toys for Tots Foundation, Inc. is not liable for the injuries sustained by the Plaintiff, Tonia

Freeman. Please sign the signature lines below and proceed to Instruction No. 10. If you have answered "YES" to question (3), please proceed to question (4).

Foreperson (if unanimous)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(4) That Marine Toys for Tots Foundation, Inc. failed to provide such reasonable precautions against the injury sustained by the Plaintiff, Tonia Freeman, as an ordinarily prudent person engaged in possessing such a building would have provided under similar circumstances on October 14, 2004.

YES (failed to provide safeguards) _____

NO (provided safeguards) _____

If you have answered "NO" to question (4), you have found that Marine Toys for Tots Foundation, Inc. is not liable for the injuries sustained by the Plaintiff, Tonia Freeman. Please sign the signature lines below and proceed to Instruction No. 10. If you have answered "YES" to question (4), please proceed to question (5).

Foreperson (if unanimous)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(5) That such failure to provide reasonable precautions on the part of Marine Toys for Tots Foundation, Inc. was a substantial factor in causing the injuries of the Plaintiff, Tonia Freeman, on October 14, 2004.

YES (substantial factor) _____

NO (not a substantial factor) _____

If you have answered "NO" to question (4), you have found that Marine Toys for Tots Foundation, Inc. is not liable for the injuries sustained by the Plaintiff, Tonia Freeman. Please sign the signature lines below and proceed to Instruction No. 10. If you have answered "YES" to question (5), please proceed to Instruction No. 6.

Foreperson (if unanimous)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

INSTRUCTION NO. 6

You will only complete this Instruction if you answered “YES” to question (1) in Instruction No. 5 or if you answered “YES” to questions (2), (3), (4), and (5) in Instruction No. 5.

It was the duty of Marine Toys for Tots Foundation, Inc. to exercise ordinary care to maintain and keep Fort Knox Building 48 and its premises in a reasonably safe condition for the use of its invitees, including the Plaintiff, Tonia Freeman. Are you satisfied from the evidence that Marine Toys for Tots Foundation, Inc. failed to satisfy its duty and that such failure was a substantial factor in causing the injuries sustained by the Plaintiff, Tonia Freeman?

YES _____

NO _____

If you have answered “NO” to Instruction No. 6, you have found that Marine Toys for Tots Foundation, Inc. is not liable for the injuries sustained by the Plaintiff, Tonia Freeman. Please proceed to Instruction No. 10. If you have answered “YES” to Instruction No. 6, please proceed to Instruction No. 7.

INSTRUCTION NO. 7

You will only complete this Instruction if you have answered “YES” to Instruction No. 6.

It was the duty of the Plaintiff, Tonia Freeman, on October 14, 2004, to exercise ordinary care for her own safety and protection. Are you satisfied from the evidence that the Plaintiff, Tonia Freeman, failed to comply with this duty and that such failure on her own part was a substantial factor in causing her foot to be pierced by a piece of wood?

YES _____

NO _____

If you have answered “NO” to Instruction No. 7, you have found for the Plaintiff, Tonia Freeman. If you have answered “YES” to Instruction No. 7, you have found both the Plaintiff, Tonia Freeman, and Marine Toys for Tots Foundation, Inc. liable for her injuries. Please proceed to Instruction No. 8.

INSTRUCTION NO. 8

You will only complete this Instruction if you have answered "YES" to Instruction No. 5 and Instruction No. 6 and were therefore required to answer Instruction No. 7.

Having found under Instruction No. 7 for the Plaintiff, Tonia Freeman, either in full or in part, you must now determine from the evidence the sum or sums of money you are satisfied from the evidence will fairly and reasonably compensate her for her damages, if any, you believe she sustained directly by reason of her injury on October 14, 2004 regardless of any apportionment of fault. If you are further satisfied from the evidence that the Plaintiff, Tonia Freeman, failed to exercise ordinary care in treating or obtaining proper treatment for her injuries, you will exclude from the amount of the award so much of her damages as you believe from the evidence would have been avoided by the exercise of such care.

(1) Medical Expenses (not to exceed \$250,000.00):

\$ _____

(2) Lost Wages (not to exceed \$626,120.00):

\$ _____

(3) Past and Future Pain and Suffering (not to exceed \$10,000,000.00):

\$ _____

TOTAL DAMAGES:

\$ _____

If you found for the Plaintiff, Tonia Freeman, in Instruction No. 7, please proceed to Instruction No. 10. If you found both the Plaintiff, Tonia Freeman, and Marine Toys for Tots Foundation, Inc. liable for her injuries under Instruction No. 7, please proceed to Instruction No. 9.

INSTRUCTION NO. 9

You will only complete this Instruction if you have answered "YES" to Instruction No. 7.

You will determine from the evidence and indicate in the following blank spaces what percentage of the total fault was attributable to each of the parties you find to have been at fault, as follows:

Tonia Freeman: _____%

Marine Toys for Tots Foundation, Inc. _____%

TOTAL: 100%

In determining the percentages of fault you shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the party's conduct and the damages claimed.

Please proceed to Instruction No. 10.

INSTRUCTION NO. 10

You will determine from the evidence whether, had Freeman brought her claim against Marine Toys for Tots Foundation, Inc., she would have probably been successful. You may not answer “YES” to this Instruction if you have found that Marine Toys for Tots Foundation, Inc. is not liable for the injuries sustained by the Plaintiff, Tonia Freeman, under Instruction No. 4, Instruction No. 5, or Instruction No. 6. Are you satisfied from the evidence that the Plaintiff, Tonia Freeman, would have probably been successful had she initiated a civil action against Marine Toys for Tots Foundation, Inc. for the injuries she sustained on October 14, 2004?

YES _____

NO _____

If you have answered “NO” to this instruction, you have found for the Defendants, Becker Law Office PLC, *et al.* Please complete Verdict Form A attached to these Instructions and inform the Sheriff you have reached a verdict.

If you have answered “YES” to this Instruction, and if you have found for the Plaintiff, Tonia Freeman, under Instruction No. 7, please complete Verdict Form B attached to these Instructions and inform the Sheriff that you have reached a verdict.

If you have answered “YES” to this Instruction, and if you have found both the Plaintiff, Tonia Freeman, and Marine Toys for Tots Foundation, Inc. liable for her injuries sustained on October 14, 2004 under Instruction No. 7, please complete Verdict Form C attached to these Instructions and inform the Sheriff that you have reached a verdict.

VERDICT FORM A

We, the Jury, have answered "NO" to Instruction No. 10, and therefore find for the Defendants, Becker Law Office, PLC, *et al.*

Foreperson (if unanimous)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If you completed this verdict form, please inform the Sheriff that you have reached a verdict.

VERDICT FORM B

We, the Jury, have answered "YES" to Instruction No. 10 and found for the Plaintiff, Tonia Freeman, in Instruction No. 7. As calculated in Instruction No. 8, we determine the amount of her damages from the lost claim against Marine Toys for Tots Foundation, Inc. to be as follows:

(1) Medical Expenses (not to exceed \$250,000.00):

\$ _____

(2) Lost Wages (not to exceed \$626,120.00):

\$ _____

(3) Past and Future Pain and Suffering (not to exceed \$10,000,000.00):

\$ _____

TOTAL DAMAGES:

\$ _____

NOTE: AMOUNTS SHOWN ON THIS VERDICT FORM MUST MATCH THOSE CALCULATED IN INSTRUCTION NO. 8.

Foreperson (if unanimous)

If you completed this verdict form, please inform the Sheriff that you have reached a verdict.

VERDICT FORM C

We, the Jury, have answered "YES" to Instruction No. 10. Further, we have found under Instruction No. 7 that both the Plaintiff, Tonia Freeman, and Marine Toys for Tots Foundation, Inc. were liable for her injuries sustained on October 14, 2004. As calculated in Instruction No. 9, we attribute fault as follows:

Tonia Freeman: _____ %

Marine Toys for Tots Foundation, Inc. _____ %

TOTAL: 100%

NOTE: PERCENTAGES SHOWN ON THIS VERDICT FORM MUST MATCH THOSE CALCULATED IN INSTRUCTION NO. 9.

As calculated in Instruction No. 8, we determine the amount of her damages from the lost claim against Marine Toys for Tots Foundation, Inc., regardless of the above attribution of fault, to be as follows:

(1) Medical Expenses (not to exceed \$250,000.00):

\$ _____

(2) Lost Wages (not to exceed \$626,120.00):

\$ _____

(3) Past and Future Pain and Suffering (not to exceed \$10,000,000.00):

\$ _____

TOTAL DAMAGES: \$ _____

NOTE: AMOUNTS SHOWN ON THIS VERDICT FORM MUST MATCH THOSE CALCULATED IN INSTRUCTION NO. 8.

Foreperson (if unanimous)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If you completed this verdict form, please inform the Sheriff that you have reached a verdict.