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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

JUL 25 2018
JUL 25, 2018
Judge Thomas M. Durkin
United States District Court

CARRIE M. WARREN,

Plaintiff,

v.

KENDALL COUNTY SHERIFF'S OFFICE;
RICHARD RANDALL; SCOTT KOSTER; and
SABRINA JENNINGS,

Defendants.

No. 15 C 496

Honorable Thomas M. Durkin

FINAL JURY INSTRUCTIONS

July 25, 2018

FUNCTIONS OF THE COURT AND THE JURY

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. 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 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.

EVIDENCE

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

A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony.

WHAT IS NOT EVIDENCE

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 strike 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.

DEMONSTRATIVE EXHIBITS

Certain demonstrative exhibits have been shown to you. Those are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts. They will not be given to you to take back to the jury room when you deliberate.

NO INFERENCE FROM JUDGE'S QUESTIONS

During this trial, I asked some witnesses questions 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.

DEPOSITION TESTIMONY

During trial, certain testimony was presented to you by the reading of a deposition. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded.

Deposition testimony is entitled to the same consideration and is to be judged, insofar as possible, in the same way as if the witness had been present to testify.

EVIDENCE OF RULES AND REGULATIONS

You have heard evidence about whether Defendants' conduct complied with or violated certain rules and regulations. You may consider this evidence in your deliberations. But remember that the issue is whether Defendants discriminated against Carrie Warren, not whether a rule or regulation might have been complied with or violated.

LAWYER INTERVIEWING WITNESS

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

NOTE-TAKING

Any notes you took during this trial are only aids to your memory. The notes are not evidence. If you did not take 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 the testimony. You will not have the opportunity to review any portions of the transcript during your deliberations.

WEIGHING THE EVIDENCE

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.

DEFINITION OF "DIRECT" AND "CIRCUMSTANTIAL" EVIDENCE

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.

CONSIDERATION OF ALL EVIDENCE

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

ABSENCE OF EVIDENCE

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.

TESTIMONY OF WITNESSES

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, 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;
- the witness's age; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

NUMBER OF WITNESSES

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

ALL LITIGANTS EQUAL BEFORE THE LAW

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

BURDEN OF PROOF

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.

REASONABLENESS OF DEFENDANT'S ACTION

In deciding Carrie Warren's claims of discrimination, you should not concern yourselves with whether defendants Kendall County Sheriff's Office's, Richard Randall's, Scott Koster's, and Sabrina Jennings's actions in terminating Carrie Warren were wise, reasonable, or fair. Rather, your concern is only whether Carrie Warren has proved that defendants terminated her in part because she is a woman, and whether Defendants have proved that they would have fired her even if she was a man.

MULTIPLE DEFENDANTS

You must give separate consideration to each claim and each party in this case. Although there are four Defendants—namely, the Kendall County Sheriff's Office; Richard Randall; Scott Koster; and Sabrina Jennings—it does not necessarily follow that if one is liable, any of the other defendants is also liable.

DISCRIMINATION CLAIMS

Carrie Warren claims that she was fired because she is a woman, and that her termination violated federal civil rights law. She claims that the Kendall County Sheriff's Office, Richard Randall, Scott Koster, and/or Sabrina Jennings are liable for her termination. You should individually consider and determine whether any of these four defendants terminated Carrie Warren in violation of federal civil rights law.

Carrie Warren has made discrimination claims under two different federal statutes: (1) Title VII of the Civil Rights Act of 1964 against the Kendall County Sheriff's Office; and (2) Section 1983, enacted as part of the Civil Rights Act of 1871, against the Kendall County Sheriff's Office, Richard Randall, Scott Koster, and Sabrina Jennings.

DISCRIMINATION UNDER TITLE VII
AGAINST
KENDALL COUNTY SHERIFF'S OFFICE

Carrie Warren claims that she was fired by the Kendall County Sheriff's Office because she is a woman. To succeed on this claim under Title VII, Carrie Warren must prove by a preponderance of the evidence that her gender was a motivating factor in the Kendall County Sheriff's Office's decision to fire her. A motivating factor is something that contributed to the Kendall County Sheriff's Office's decision.

If Carrie Warren proves that her gender contributed to the Kendall County Sheriff's Office's decision to fire her, then the Kendall County Sheriff's Office must prove by a preponderance of the evidence that it would have fired Carrie Warren even if she was a man.

If the Kendall County Sheriff's Office satisfies this burden you must enter a verdict for Carrie Warren, but not award her damages on this claim. If the Kendall County Sheriff's Office fails to satisfy this burden, you may award damages to Carrie Warren.

If Carrie Warren does not prove that her gender contributed to the Kendall County Sheriff's Office's decision to fire her, then the Court will enter judgment for the Kendall County Sheriff's Office, and you may not award her damages on this claim.

DISCRIMINATION UNDER SECTION 1983
AGAINST
RICHARD RANDALL, SCOTT KOSTER, AND SABRINA JENNINGS

Carrie Warren claims that she was fired by Richard Randall, Scott Koster, and Sabrina Jennings because she is a woman. To succeed on this claim under Section 1983, Carrie Warren must prove by a preponderance of the evidence that her gender was a motivating factor in the decision(s) of Richard Randall, Scott Koster, and/or Sabrina Jennings to fire her or to recommend firing her. A motivating factor is something that contributed to the decision(s) of Richard Randall, Scott Koster, and/or Sabrina Jennings.

If you find that Carrie Warren proves this by a preponderance of the evidence, then you must decide whether Richard Randall, Scott Koster, and/or Sabrina Jennings have proved by a preponderance of the evidence that they would have fired Carrie Warren or recommended firing her even if she was a man.

If Richard Randall, Scott Koster, and/or Sabrina Jennings satisfy this burden you must enter a verdict for Richard Randall, Scott Koster, and/or Sabrina Jennings. If Richard Randall, Scott Koster, and/or Sabrina Jennings fail to satisfy this burden, you must enter a verdict for Carrie Warren, and you may award her damages.

You must separately consider whether the parties have met their respective burdens with respect to each of Richard Randall, Scott Koster, and Sabrina Jennings individually.

DISCRIMINATION UNDER SECTION 1983
AGAINST
KENDALL COUNTY SHERIFF'S OFFICE

Carrie Warren claims that she was fired by the Kendall County Sheriff's Office because she is a woman. To succeed on her Section 1983 Discrimination claim against the Kendall County Sheriff's Office, Carrie Warren must prove by a preponderance of the evidence that her gender was a motivating factor in the decision of an employee of the Kendall County Sheriff's Office to fire her and Richard Randall approved of that decision. A motivating factor is something that contributed to the Kendall County Sheriff's Office's decision.

If you find that Carrie Warren has proved this by a preponderance of the evidence, then you must decide whether the Kendall County Sheriff's Office has proved by a preponderance of the evidence that it would have fired Carrie Warren even if she was a man.

If the Kendall County Sheriff's Office satisfies this burden you must enter a verdict for the Kendall County Sheriff's Office. If the Kendall County Sheriff's Office fails to satisfy this burden, you must enter a verdict for Carrie Warren, and you may award her damages.

INDIVIDUALS WHO ARE SIMILARLY SITUATED

Carrie Warren has identified male employees whom she argues were similarly situated to her yet received more lenient discipline. For Carrie Warren to prove that a male co-worker is similarly situated to her, she must show that he is directly comparable to her in all material respects. However, he need not be identical to Carrie Warren in every conceivable way. Generally, similarly situated male co-workers will have dealt with the same supervisor(s), will have been subject to the same standards, and will have engaged in similar conduct without differentiating or mitigating circumstances that would distinguish their conduct or their employer's treatment of them. In the end, you must decide whether there are enough common factors to allow for a meaningful comparison.

PERSONAL INVOLVEMENT

Carrie Warren must prove by a preponderance of the evidence that Richard Randall, Scott Koster, and/or Sabrina Jennings were personally involved in the conduct that Carrie Warren complains about. You may not hold them liable for what other employees did or did not do.

WHETHER TO CONSIDER DAMAGES

If you find that Carrie Warren has met her burden of proof against any of the defendants, and that same defendant or defendants failed to meet their burden of proof, then you must determine what amount of damages, if any Carrie Warren is entitled to recover. Carrie Warren must prove her damages by a preponderance of the evidence.

If you find that Carrie Warren fails to meet her burden of proof against any of the defendants, then you will not consider the question of damages.

COMPENSATORY DAMAGES

You may award compensatory damages only for injuries that Carrie Warren proves by a preponderance of the evidence were caused by Defendants' wrongful conduct.

Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

In calculating damages, you should not consider the issue of lost wages and benefits. The court will calculate and determine any damages for past or future lost wages and benefits.

You should consider the mental and emotional pain and suffering that Carrie Warren has experienced and is reasonably certain to experience in the future, in calculating compensatory damages.

No evidence of the dollar value of mental and emotional pain and suffering 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 Carrie Warren for the injury she has sustained.

Carrie Warren is not entitled to recover damages for stress or emotional problems caused by or related to the filing of, or her involvement in, this lawsuit.

PUNITIVE DAMAGES

You may, but are not required to, assess punitive damages against Richard Randall, Scott Koster, and/or Sabrina Jennings. The purposes of punitive damages are to punish one or more of these defendants for their conduct and to serve as an example or warning to these defendants and others not to engage in similar conduct in the future.

Carrie Warren must prove by a preponderance of the evidence that punitive damages should be assessed against any of these particular defendants. You may assess punitive damages only if you find that the conduct of one or more of these defendants was malicious or in reckless disregard of Carrie Warren's rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of causing injury. An action is in reckless disregard of Carrie Warren's rights if taken with knowledge that it may violate the law.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward either/any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of any of the particular defendant's conduct;
- the impact of the particular defendant's conduct on Carrie Warren;
- the relationship between Carrie Warren and the particular defendant;

- the likelihood that the particular defendant would repeat the conduct if an award of punitive damages is not made; and
- the relationship of any award of punitive damages to the amount of actual harm that Carrie Warren suffered.

SELECTION OF PRESIDING JUROR; USE OF VERDICT FORM

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.

A form of verdict has been prepared for you. Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill it in and date it, and all of you will sign it.

COMMUNICATION WITH COURT

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 or she is unwilling to do so, by some other juror. The writing should be given to the court security officer, 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.

FINAL INSTRUCTION

The verdict must represent the considered judgment of each juror. Your verdict, 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.