

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

YVONNE DOWNS,

Plaintiff,

v.

RED RIVER HOSPITAL, LLC,

Defendant.

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Civil Action No. 7:13-cv-0129-O

JURY CHARGE

MEMBERS OF THE JURY:

You have heard the evidence in this case. I will now instruct you on the law that you must apply. It is your duty to follow the law as I give it to you. On the other hand, you the jury are the judges of the facts. Do not consider any statement that I have made in the course of trial or make in these instructions as an indication that I have any opinion about the facts of this case.

You have heard the closing arguments of the attorneys. Statements and arguments of the attorneys are not evidence and are not instructions on the law. They are intended only to assist the jury in understanding the evidence and the parties' contentions.

Answer each question from the facts as you find them. Do not decide who you think should win and then answer the questions accordingly. Your answers and your verdict must be unanimous.

A. *Burden of Proof*

You must answer all questions from a preponderance of the evidence, unless otherwise instructed. By this is meant the greater weight and degree of credible evidence before you. In other words, a preponderance of the evidence just means the amount of evidence that persuades you that a claim is more likely so than not so. In determining whether any fact has been proved by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

Clear and convincing evidence is defined as that evidence that produces in your mind a firm belief or conviction as to the matter at issue. This involves a greater degree of persuasion than is necessary to meet the preponderance of the evidence standard; however, proof to an absolute certainty is not required.

B. Witness Testimony

In determining the weight to give to the testimony of a witness, you should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact, or whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony the witness gave before you during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people may forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was an intentional falsehood or simply an innocent lapse of memory; and the significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

C. Evidence

While you should consider only the evidence in this case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

There are two types of evidence that you may consider in properly finding the truth as to the facts in the case. One is direct evidence—such as testimony of an eyewitness. The other is indirect or circumstantial evidence—the proof of a chain of circumstances that indicates the existence or nonexistence of certain other facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field—he is called an expert witness—is permitted

to state his opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it.

In deciding whether to accept or rely upon the opinion of an expert witness, you may consider any bias of the witness, including any bias you may infer from evidence that the expert witness has been or will be paid for reviewing the case and testifying, or from evidence that he testifies regularly as an expert witness and his income from such testimony represents a significant portion of his income.

The parties have stipulated that the following facts are true and correct:

- a. Plaintiff was an employee of a hospital, mental health facility, or treatment facility.
- b. Plaintiff began employment with RRH on October 1, 1997.
- c. Plaintiff was employed by RRH for approximately sixteen (16) years.
- d. On September 19, 2013, Plaintiff took leave which was approved by RRH.
- e. Rob Marsh was Plaintiff's direct supervisor at the time of her termination.
- f. On July 31, 2013, Plaintiff went on a business trip to Fort Sill with Rob Marsh and Angela Simmons.
- g. RRH is a wholly-owned subsidiary of Acadia Healthcare Corporation, Inc.
- h. Lee Mitchell is the former CFO of RRH.
- i. Ron Fincher is the Chief Operating Officer of Acadia Healthcare Corporation, Inc.
- j. Rob Marsh's direct supervisor was Jon O' Shaughnessy, a division president for Acadia Healthcare.
- k. Jerri Le Clair worked in Acadia's corporate office as the executive assistant to Jon O' Shaughnessy.
- l. Beverly Rikal is the executive assistant to Acadia's CEO, President, and Chief Development Officer.
- m. Plaintiff began employment with Secure Advantage Federal Credit Union ("Secure Advantage") on May 19, 2014.
- n. Plaintiff earns \$10.50/hour based on 25 hours per week at her employment with Secure Advantage.
- o. In 2012, Plaintiff received gross wages of \$84,899.98 during her employment with RRH according to her IRS W-2.
- p. In 2013, Plaintiff received gross wages of \$64,702.69 during her employment with RRH according to her IRS W-2.
- q. Rob Marsh held a meeting with Plaintiff on September 16, 2013.
- r. Orrilea Bolf is the director of risk management at RRH.
- s. At the time of Plaintiff's termination, Red River was licensed for 74 beds by the Texas Department of State Health Services.
- t. Rob Marsh terminated Plaintiff's employment on September 30, 2013.

- u. Plaintiff never reported a violation of law to a state regulatory agency or a law enforcement agency.

A. Definitions

“Yvonne Downs” shall mean Plaintiff, Yvonne Downs.

“Red River” shall mean Defendant, Red River Hospital, LLC, Texas business entity number 801059584.

“Vice-Principal” means:

1. A corporate officer; or
2. A person who has authority to employ, direct, and discharge an employee of Red River; or
3. A person engaged in the performance of nondelegable or absolute duties of Red River; or
4. A person to whom Red River has confided the management of the whole or a department or division of the business of Red River.

B. Claim

In this case, the plaintiff must prove every essential part of her claim by a preponderance of the evidence. The elements of Plaintiff’s claim under Texas Health & Safety Code 161.134 are:

- (1) Plaintiff reported a violation of law;
- (2) The report was made to her supervisor or administrator
- (3) The report was made in good faith; and
- (4) As a result, Plaintiff was terminated, disciplined or otherwise discriminated against.

“Good faith” means that (1) Yvonne Downs believed the conduct she reported was a violation of law and (2) Yvonne Downs’ belief that a violation of law occurred was reasonable in light of her training and experience.

The burden of proof at all times remains on Yvonne Downs to prove by a preponderance of the evidence that Red River would not have terminated her employment when it did “but-for” her report of a violation of law.

Yvonne Downs does not need to prove that her report was the sole cause of her termination.

If Yvonne Downs was terminated before the 60th day after the date on which she made a report in good faith, then it is presumed that she was terminated for making the report. Red River may rebut this presumption if it proves by a preponderance of the evidence that Yvonne Downs was terminated for any reason other than for making a report.

Factors to consider in determining whether Red River terminated the employment of Yvonne Downs for reporting a violation of law include:

- knowledge of any report by the plaintiff of a legal violation by employees making the decision to terminate plaintiff's employment;
- a negative attitude towards reports of legal violations;
- termination or discrimination occurring soon after any report by the plaintiff of a legal violation;
- treatment in comparison to similarly situated employees; and
- whether the stated reason for plaintiff's termination is false.

Under the law, employers are entitled to make employment decisions for any reason, so long as the decision is not motivated by unlawful retaliation. You should not find that the employment decision is unlawful just because you may disagree with the defendant's stated reason or because you believe the decision was harsh or unreasonable, as long as defendant would have reached the same decision regardless of any report by the plaintiff of a legal violation.

If the proof fails to establish any essential part of the plaintiff's claim by a preponderance of the evidence, you should find for the defendant as to that claim.

If the plaintiff has proven her claim against the defendant by a preponderance of the evidence, you must determine the damages to which the plaintiff is entitled. It is your task first to decide whether the defendant is liable. I am instructing you on damages only so that you will have guidance in the event you decide that the defendant is liable and that the plaintiff is entitled to recover money from the defendant

If you find that the defendant is liable to the plaintiff, then you must determine an amount that is fair compensation for all of the plaintiff's damages. These damages are called compensatory damages. The purpose of compensatory damages is to make the plaintiff whole—that is, to compensate the plaintiff for the damage that the plaintiff has suffered. Compensatory damages are not limited to expenses that the plaintiff may have incurred because of her injury. If the plaintiff wins, she is entitled to compensatory damages for the physical injury, pain and suffering, mental anguish, shock and discomfort that she has suffered because of the defendant's conduct.

You may award compensatory damages only for injuries that the plaintiff proves were proximately caused by the defendant's allegedly wrongful conduct. The damages that you award must be fair compensation for all of the plaintiff's damages, no more and no less. Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendant. You should not award compensatory damages for speculative injuries, but only for those injuries which the plaintiff has actually suffered or that the plaintiff is reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that the plaintiff prove the amount of her losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.

You should consider the following elements of damage, to the extent you find them proved by a preponderance of the evidence:

A. Damages Accrued

If you find for the plaintiff, she is entitled to recover an amount that will fairly compensate her for any damages she has suffered to date.

B. Calculation of Future Damages

If you find that the plaintiff is reasonably certain to suffer damages in the future from her injuries, then you should award her the amount you believe would fairly compensate her for such future damages.

C. Reduction of Future Damages to Present Value

An award of future damages necessarily requires that payment be made now for a loss that plaintiff will not actually suffer until some future date. If you should find that the plaintiff is entitled to future damages, including future earnings, then you must determine the present worth in dollars of such future damages.

If you award damages for loss of future earnings, you must consider two particular factors:

1. You should reduce any award by the amount of the expenses that the plaintiff would have incurred in making those earnings.

2. If you make an award for future loss of earnings, you must reduce it to present value by considering the interest that the plaintiff could earn on the amount of the award if she made a relatively risk-free investment. The reason why you must make this reduction is because an award of an amount representing future loss of earnings is more valuable to the plaintiff if she receives it today than if she received it in the future, when she would otherwise have earned it. It is more valuable because the plaintiff can earn interest on it for the period of time between the date of the award and the date she would have earned the money. Thus you should adjust the amount of any

award for future loss of earnings by the amount of interest that the plaintiff can earn on that amount in the future.

However, you must not make any adjustment to present value for any damages you may award for future mental anguish.

D. Mitigation of Damages

A person who claims damages resulting from the wrongful act of another has a duty under the law to use reasonable diligence to mitigate—to avoid or minimize those damages.

If you find the defendant is liable and the plaintiff has suffered damages, the plaintiff may not recover for any item of damage which she could have avoided through reasonable effort. If you find by a preponderance of the evidence the plaintiff unreasonably failed to take advantage of an opportunity to lessen his damages, you should deny her recovery for those damages which she would have avoided had she taken advantage of the opportunity.

You are the sole judge of whether the plaintiff acted reasonably in avoiding or minimizing his damages.

An injured plaintiff may not sit idly by when presented with an opportunity to reduce her damages. However, she is not required to exercise unreasonable efforts or incur unreasonable expenses in mitigating the damages. The defendant has the burden of proving the damages which the plaintiff could have mitigated. In deciding whether to reduce the plaintiff's damages because of her failure to mitigate, you must weigh all the evidence in light of the particular circumstances of the case, using sound discretion in deciding whether the defendant has satisfied her burden of proving that the plaintiff's conduct was not reasonable.

You should not interpret the fact that I have given instructions about the plaintiff's damages as an indication in any way that I believe that the plaintiff should, or should not, win this case.

If you find that the defendant is liable for the plaintiff's injuries, you must award the plaintiff the compensatory damages that she has proven. You also may award exemplary damages, if the plaintiff has proved that the defendant acted with malice or willfulness or with callous and reckless indifference to the safety or rights of others. One acts willfully or with reckless indifference to the rights of others when he acts in disregard of a high and excessive degree of danger about which he knows or which would be apparent to a reasonable person in his condition.

For Question 5, you must apply a clear and convincing evidence standard. Clear and convincing evidence is evidence that produces in your mind a firm belief or conviction as to the matter at issue. This involves a greater degree of persuasion than is necessary to meet the preponderance of the evidence standard; however, proof to an absolute certainty is not required.

If you determine that the defendant's conduct was so shocking and offensive as to justify an award of exemplary damages, you may exercise your discretion to award those damages. In making any award of exemplary damages, you should consider that the purpose of exemplary damages is to punish a defendant for shocking conduct, and to deter the defendant and others from engaging in similar conduct in the future. The law does not require you to award exemplary damages, however, if you decide to award exemplary damages, you must use sound reason in setting the amount of the damages. The amount of an award of exemplary damages must not reflect bias, prejudice, or sympathy toward any party. It should be presumed a plaintiff has been made whole by compensatory damages, so exemplary damages should be awarded only if the defendant's misconduct, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. You may consider the financial resources of the defendant in fixing the amount of exemplary damages.

"Malice" means a specific intent by Red River to cause substantial injury or harm to Yvonne Downs.

"Gross negligence" means an act or omission by Rob Marsh:

1. which when viewed objectively from the standpoint of Rob Marsh at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
2. of which Rob Marsh has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

You are further instructed that Red River may be grossly negligent because of an act by Rob Marsh if, but only if:

1. Red River authorized the doing and the manner of the act, or
2. Rob Marsh was unfit and Red River was reckless in employing him, or
3. Rob Marsh was employed as a vice-principal and was acting in the scope of employment, or
4. Red River or a vice-principal of Red River ratified or approved the act.

When you retire to the jury room to deliberate on your verdict, you may take this charge with you as well as exhibits which the Court has admitted into evidence. Select your Foreperson and conduct your deliberations.

It is your sworn duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you are wrong. However, do not give up your honest beliefs solely because the others think differently, or merely to finish the case.

Remember that in a very real way you are the judges—judges of the facts. Your only interest is to seek the truth from the evidence in the case.

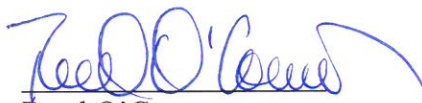
Do not let bias, prejudice or sympathy play any part in your deliberations. A corporation and all other persons are equal before the law and must be treated as equals in a court of justice.

If you recess during your deliberations, follow all of the instructions that the Court has given you about/on your conduct during the trial. After you have reached your unanimous verdict, your Foreperson is to fill in on the form your answers to the questions. Do not reveal your answers until such time as you are discharged, unless otherwise directed by me. You must never disclose to anyone, not even to me, your numerical division on any question.

If you want to communicate with me at any time, please give a written message or question to the court security officer, who will bring it to me. I will then respond as promptly as possible either in writing or by having you brought into the courtroom so that I can address you orally. I will always first disclose to the attorneys your question and my response before I answer your question.

After you have reached a verdict, you are not required to talk with anyone about the case unless the Court orders otherwise. You may now retire to the jury room to conduct your deliberations.

SIGNED this 17th day of December, 2014.



Reed O'Connor
United States District Judge

JURY QUESTIONS

QUESTION NO. 1

Do you find that Red River terminated the employment of Yvonne Downs for reporting a violation of law in good faith?

Answer "Yes" or "No."

ANSWER: YES

QUESTION NO. 2

If you answered "Yes" to Question No. 1, then answer the following question. Otherwise, do not answer the following question.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Yvonne Downs for her damages, if any, that resulted from the conduct found in Question No. 1?

Remember to consider Yvonne Down's efforts, if any, to mitigate her damages.

Consider the following elements of damages, if any, and none other. Answer separately in dollars and cents for damages, if any.

a. Lost earnings that were sustained in the past.

ANSWER: \$ 72,000

b. Lost earnings that, in reasonable probability, will be sustained in the future.

ANSWER: \$ 0

c. Mental anguish suffered in the past.

ANSWER: \$ 0

d. Mental anguish that, in reasonable probability, Yvonne Downs will suffer in the future.

ANSWER: \$ 0

QUESTION NO. 3

Answer the following question only if you answered "Yes" to Question No. 1. Otherwise, do not answer the following question.

Did Red River prove that Yvonne Downs engaged in misconduct for which Red River would have legitimately discharged her solely on that basis?

Answer "Yes" or "No."

ANSWER: YES

QUESTION NO. 4

If you answered "Yes" to Question 1, and "Yes" to Question 3, what sum of money, if any, if paid now in cash, would fairly and reasonably compensate Yvonne Downs for her damages, if any, that resulted from the conduct found in Question No. 1; however do not include any damages suffered past the date Red River discovered that Yvonne Downs engaged in the conduct you found in answer to Question 3.

Remember to consider Yvonne Down's efforts, if any, to mitigate her damages.

Consider the following elements of damages, if any, and none other. Answer separately in dollars and cents for damages, if any.

a. Lost earnings that were sustained in the past.

ANSWER: \$ 0

b. Lost earnings that, in reasonable probability, will be sustained in the future.

ANSWER: \$ 0

c. Mental anguish suffered in the past.

ANSWER: \$ 0

d. Mental anguish that, in reasonable probability, Yvonne Downs will suffer in the future.

ANSWER: \$ 0

QUESTION NO. 5

Answer the following question only if you answered "Yes" to Question No. 1. Otherwise, do not answer the following question.

Do you find by clear and convincing evidence that the harm, if any, to Yvonne Downs resulted from malice or gross negligence attributable to Red River?

Answer "Yes" or "No."

ANSWER: NO

QUESTION NO. 6

Answer the following question only if you answered "Yes" to Question No. 5. Otherwise, do not answer the following question.


What sum of money, if any, if paid now in cash, should be assessed against Red River and awarded to Yvonne Downs as exemplary damages, if any, for the conduct found in response to Question No. 5?

Answer in dollars and cents, if any.

ANSWER: \$ _____

The foregoing is the unanimous verdict of the jury.

Dated this 17th day of December, 2014.


Foreperson
MITCHELL MILLER