Edward L. Hogshire, Judge

SIXTEENTH JUDICIAL CIRCUIT
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September 27, 2011

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Re: Lester v. Allied Concrete Company, et al.; File Nos. 08-150, 09-223

Dear Counsel:

Enclosed, for your information, please find a copy of an undated letter I received from Margaret E. Gardiner, a juror who served in the above-styled case.

With kind regards, I am

Very truly yours,

Edward L. Hogshire

ELH:py

Dear Judge Hogshire,

I served as a juror on the Isaiah Lester vs. Allied Concrete trial last year, at some cost to myself and my students. I was proud to be asked, to serve, and to feel like we, as a jury, did good work. I am writing this letter out of the greatest respect both to you and your office.

I have recently read your evaluation of our verdict and thought you should be informed of what happened in the jury room, since it bears little resemblance to your characterization. If our award was disproportionate, that was a result of our inexperience with wrongful death cases and confusion over what should be awarded as compensation for "kindly offices." It was not a result of bias or unfairness, nor were we in any way prejudiced by Mr. Murray's emotional orations. We all opined with disgust that both sides attempted to inject sympathy into the trial while simultaneously urging us not to base our verdict on emotion. To a person, we thought Mr. Murray's counterfeit tears were transparent and egregious. We nevertheless thought he was an effective advocate for his client.

The verdict was an easy matter. We all agreed that the driver bore responsibility for the accident, and we judged the attempts of the defense attorneys to minimize Mr. Lester's injuries by displaying his Facebook photographs to be irrelevant in the face of the testimony of psychiatrists. The duration of our deliberations was spent deciding on a dollar amount for the family members. Our first concern as a jury was to award an amount commensurate with community standards. We explicitly said we did not want to make the papers for handing out unreasonable sums of money. We rejected out of hand Mr. Murray's suggested sum of $25 million because it wasn't supported by evidence, but we felt frustrated that we had no instruction on how to decide on a figure. We added up the funeral costs, medical bills, and lost future wages (the only figure presented during the trial) for Jessica Lester that we had been provided. We also added Isaiah Lester's medical bills and psychiatric bills. We attempted to project future psychiatric costs for Mr. Lester by extrapolating from his previous bills and the actuarial data we had been provided for Jessica, reasoning that they were probably about the same age, and making adjustments for men's shorter life spans, the likelihood that health care costs will increase over time, and continued improvements in Mr. Lester's mental condition. Having taken the raw data as far as it could go, we then turned to the question of "kindly offices": what is a daughter worth to her parents versus what is a wife worth to her husband. On this point, the jurors who had been married argued that parents give up a financial interest in their children when they marry. We came to a consensus that Mr. Lester's loss of his choice of a life partner and mother of their potential children was greater than the loss of one of Mr. and Mrs. Scott's children. His loss is unique; the course of his life is irrevocably changed in a way that theirs will not be. Although the dollar amounts for respective "kindly offices" of daughter and wife seemed like a difficult issue, we quickly reached a consensus on the figures: one million for each of Jessica's parents, five million for her husband. There was a brief discussion on how much to round off the final figures. It was our intention to telegraph our process of deliberation (to our community, the media, the families, the attorneys, and the judge, in case of future appeals) by NOT rounding off to the nearest million, although some jurors argued that specifying to the nearest hundred dollars sounded petty.

9-21-11

If in your experience of community standards for compensation of wrongful death, you have found our award to Mr. Lester to be excessive, then I welcome your correction. As a jury, we would have benefitted from greater instruction in how to award damages. But I am disappointed that you have chosen to include in the public record a characterization of our decision as unreasonable, unfair, and motivated by bias, sympathy, passion, prejudice or anger. We live in your community; any one of the jurors could have told you how we reached our conclusions, if we had been asked. Instead, it appears that you have substituted your own interpretation of what was relevant at trial for ours ("his behavior in the tragic aftermath was characterized by extensive social activities and travelling, both in the United States and overseas"), and prioritized the length of a familial relationship over its social function ("compared to the award given to the decedent's parents, both of whom had a loving and long-lasting relationship with their daughter....[t]he disproportionality of Lester's award is... highlighted when seen in light of the fact that Lester had been married less than two years....") These seem to be honest disagreements over legal matters, not evidence of our bias as a jury.

The people who did ask us what we thought and felt and how we came to our decision were the defense attorney's firm. They interviewed several of us after the trial. I know it is their job to make whatever hay they can out of potential improprieties, but they knew that the jury considered ALL of the following "evidence" irrelevant: the Facebook photographs, Lester's college history of drinking and use of prescription drugs, Lester's travelling and socializing after the accident, Lester's drinking and drug use after the accident, Lester's church attendance, Jessica's church attendance, Jessica's home schooling, how pretty she was, Jessica's crying mother/father//brother/sister/boss/best friend/church official/ former patient, pictures of Jessica's confirmation, Sprouse's illiteracy, Sprouse's destitute family, Sprouse's disabled grandchild, etc. The only evidence that was relevant to our decision was 1) Sprouse's previous criminal conviction and admission of guilt, 2) the psychiatrists' diagnoses of Lester's PTSD, 3) the testimony of the economist who estimated Jessica Lester's lost future wages at a million dollars, 4) the medical and funeral bills we saw for the first time during jury deliberations, and 5) our own common sense about what it means to lose a grown daughter or a spouse. To the extent we were prejudiced by Mr. Murray's emotional outbursts, references to God, or quotations of pop song lyrics, we were prejudiced AGAINST the plaintiff's attorney whose antics were clearly over-the-top (and we ALL felt that way!) To the extent we were sympathetic toward anyone, it had to be toward Jessica's tearful parents and siblings, not her affectless husband. To the extent I was angry at the defense counsel, it was for his professional incompetence and inability to phrase a question, not his treatment of witnesses. But prejudice, sympathy, and anger played no part in our decision. The defense attorneys knew that, because they asked us. They did not believe we were tainted; they just do not want their clients to pay.

As a jury, we were vigilant about following instructions, not talking about the case mid-trial, and trying to reach the best decision we could with little guidance. If our award was excessive (and given the media coverage, it seems to have been), it wasn't based on emotion or prejudice. We all gave our time and best efforts to serve our community. It saddens me to see those efforts criticized in the public record based incorrect assumptions about our motivations.

Sincerely,

Margaret E. Gardner