

102.84 NEGLIGENCE—INFLICTION OF SEVERE EMOTIONAL DISTRESS.¹

The (*state number*) issue reads:

"Did the plaintiff suffer severe emotional distress as a proximate result of the negligence of the defendant?"²

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, three things:

First, that the defendant was negligent.³ "Negligence" refers to a person's failure to follow a duty of conduct imposed by law. [Every person is under a duty to use ordinary care to protect [himself] [herself] and others from [injury] [damage]. Ordinary care means that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect [himself] [herself] and others from [injury] [damage]. A person's failure to use ordinary care is negligence.]

[Every person is (also) under a duty to follow standards of conduct enacted as laws for the safety of the public. A standard of conduct established by a safety statute must be followed.⁴ A person's failure to do so is negligence in and of itself.⁵]

Second, that the plaintiff suffered severe emotional distress. "Severe emotional distress" means [neurosis] [psychosis] [chronic depression] [phobia] [any type of severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so].⁶ (Mere temporary fright or anxiety, disappointment or regret is not severe emotional distress.)⁷

Third, that the defendant's negligence was a proximate cause of the plaintiff's severe emotional distress.

Proximate cause is a cause which in a natural and continuous sequence produces a person's severe emotional distress, and one which a

reasonable and prudent person could have foreseen would probably produce such severe emotional distress.

There may be more than one proximate cause of severe emotional distress. Therefore, the plaintiff need not prove that the defendant's negligence was the sole proximate cause of the plaintiff's severe emotional distress. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause.

*(Use where a plaintiff's severe emotional distress arises due to concern for another person:*⁸ The plaintiff may recover for severe emotional distress due to concern for another person if it was a reasonably foreseeable result of, and was in fact caused by, the defendant's negligence.⁹ You are to make this determination from all the evidence, including how close the plaintiff was to the negligent act when it occurred, the nature of the relationship between the plaintiff and the person for whose welfare the plaintiff was concerned, whether the plaintiff personally observed the negligent act, and any other factor supported by the evidence.)¹⁰

In this case, the plaintiff contends, and the defendant denies, that the defendant was negligent in one or more of the following respects:

Read all contentions of negligence supported by the evidence.

The plaintiff further contends, and the defendant denies, that the plaintiff suffered severe emotional distress in one or more of the following respects:

Read all contentions of severe emotional distress supported by the evidence.

The plaintiff further contends, and the defendant denies, that the defendant's negligence was a proximate cause of the plaintiff's severe emotional distress.

I instruct you that negligence is not to be presumed from the mere fact of severe emotional distress.

Give law as to each contention of negligence included above.

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant was negligent, that the plaintiff suffered severe emotional distress and that the defendant's negligence was a proximate cause of the plaintiff's severe emotional distress, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. For intentional or reckless infliction of emotional distress, see N.C.P.I.-Civil 800.60.

2. See *Sorrells v. M.Y.B. Hospitality Ventures*, 334 N.C. 669, 435 S.E.2d 320 (1993); *Gardner v. Gardner*, 334 N.C. 662, 435 S.E.2d 324 (1993); *Johnson v. Ruark Obstetrics and Gynecology Associates, P.A.*, 327 N.C. 283, 395 S.E.2d 85 (1990).

3. As of the date of this instruction, no North Carolina appellate court has addressed directly whether an intentional tort directed at some third person may constitute a negligent act as to the plaintiff.

4. *Aldridge v. Hasty*, 240 N.C. 353, 360, 82 S.E.2d 331, 338 (1954). "A public safety statute is one impos[ing] upon [the defendant] a specific duty for the protection of others." *Pope v. Bridge Broom, Inc.*, 240 N.C. App. 365, 382, 770 S.E.2d 702, 715 (2015) (citing *Stein v. Asheville City Bd. of Educ.*, 360 N.C. 321, 326, 626 S.E.2d 263, 266 (2006) (internal citations omitted)). Recommendations, guidance and options that do not impose a specific duty are insufficient to establish negligence *per se*. *Id.* at 717.

5. *Hinnant v. Holland*, 92 N.C. App. 142, 147, 374 S.E.2d 152, 155 (1988), appeal denied, 324 N.C. 335, 378 S.E.2d 792 (1989). If a safety statute provides to the contrary, the jury should be instructed that a violation of this statute does not constitute negligence in and of itself. See *Mintz v. Foster*, 35 N.C. App. 638, 641-42, 242 S.E.2d 181, 183-84 (1978).

6. *Johnson*, 327 N.C. at 304, 395 S.E.2d at 97. No physical impact, physical injury or physical manifestation of emotional distress need be proven. *Id.*

7. *Id.*

8. "An action for the negligent infliction of emotional distress may arise from a

concern for one's own welfare, or concern for another's." *Robblee v. Budd Servs., Inc.*, 136 N.C. App. 793, 795, 525 S.E.2d 847, 849, *disc. review denied*, 353 N.C. 676, 545 S.E.2d 228 (2000). Although the relationship between the plaintiff and the person for whom the plaintiff is concerned is but one of the *Johnson v. Ruark* foreseeability factors, to date, North Carolina jurisprudence regarding "bystander claims" has recognized the cause of action only in cases involving close familial relationships. See *Riddle v. Buncombe Cty. Bd. of Educ.*, ___ N.C. App. ___, ___, 805 S.E.2d 757, 761-62 (2017) (dismissal of bystander claim based upon friendship appropriate in the absence of "unusually close relationship" or demonstrable connection between friendship and "peculiar susceptibility") and the cases cited therein.

9. *Johnson*, 327 N.C. at 304-05, 395 S.E.2d at 97-98.

10. *Id.* at 305, 395 S.E.2d at 98.