

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

JOSEPH S. POTTER, Respondent, ) No. ED98757  
 ) Appeal from the Circuit Court of  
vs. ) St. Charles County  
 ) Honorable Nancy L. Schneider  
ALYSSA R. KLEY, Appellant. ) Filed: October 22, 2013

Alyssa Kley (Defendant) appeals the judgment in favor of Joseph Potter (Plaintiff) in his wrongful death action for the death of the couple's infant son. Defendant claims the trial court plainly erred in denying her motions for directed verdict and judgment notwithstanding the verdict because, during closing arguments, Plaintiff's counsel improperly: (1) commented on the collectability of the judgment; (2) personalized the facts of the case to the jury; and (3) lead the jury to consider grief and bereavement.

AFFIRMED.

Division Four Holds: Defendant did not object to Plaintiff's counsel's remarks at trial and thus did not preserve her claims of error. Because Defendant failed to provide this court with the record necessary to review her claim that Plaintiff's counsel improperly commented on the collectability of the judgment, we cannot say the trial court plainly erred in denying her relief on that basis. See, e.g., Mack v. Mack, 349 S.W.3d 475, 478 (Mo.App.S.D. 2011). To the extent the portion of the record provided reveals relevant material, we conclude that Plaintiff's counsel's remarks were a permissible response to a defense suggestion that the sole purpose of Plaintiff's suit was monetary gain. In addition, Plaintiff's counsel's remarks did not improperly imply that an insurance company was responsible for any judgment against Defendant. Counsel's comments did not constitute improper personalization. Defendant did not identify the allegedly objectionable references to grief and bereavement and therefore fails to preserve her challenge.

Opinion by: Patricia L. Cohen, J.  
Lisa S. Van Amburg, P.J., and Gary M. Gaertner, Jr., J., concur.

Attorney for Appellant: Frank A. Conard

Attorney for Respondent: Paul J. Passanante

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