

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

ALI AZIZ, BY AND THROUGH HIS)	No. ED101003
NATURAL MOTHER AND NEXT FRIEND,)	
ANNETTE BROWN,)	
)	
Respondents,)	Appeal from the Circuit Court
)	of the City of St. Louis
vs.)	1122-CC00629
)	
JACK IN THE BOX, EASTERN DIVISION,)	Honorable Thomas C. Grady
LP, A LIMITED PARTNERSHIP, AND)	
JACK IN THE BOX, INC.,)	
A CORPORATION,)	
)	
Appellants.)	Filed: September 1, 2015

Jack in the Box, Eastern Division, LP, and Jack in the Box, Inc. (collectively “Defendant”)¹ appeals the trial court’s denial of its motion for judgment notwithstanding the verdict following a jury verdict in favor Ali Aziz, by and through his natural mother and next friend Annette Brown (“Plaintiff”) on Plaintiff’s claim for premises liability, stemming from an assault that occurred on Defendant’s property. Defendant also appeals the trial court’s denial of its motion for a new trial for failure to admit impeachment evidence against an expert witness.

AFFIRMED.

Division Four holds:

- (1) The trial court did not err in denying Defendant’s motion for judgment notwithstanding the verdict, because Defendant owed Plaintiff a duty of care to protect him from the criminal acts of third persons under the “special facts and circumstances” exception, based on the totality of the circumstances. The assailants behaved in a way indicating danger while on Defendant’s premises, and Defendant had sufficient time to react to prevent the injury to Plaintiff.
- (2) The trial court did not err in denying Defendant’s motion for judgment notwithstanding the verdict, because Plaintiff was an invitee at the time of the attack in that he was on Defendant’s property as a potential customer.
- (3) The trial court did not err in denying Defendant’s motion for judgment notwithstanding the verdict, because Plaintiff presented substantial evidence to support the verdict-directing instruction. To the extent that Defendant’s argument

¹ Jack in the Box, Eastern Division, LP is a wholly owned subsidiary of Jack in the Box, Inc. We refer to them in the singular as they do in their own brief.

may be characterized as asserting a lack of substantial evidence of each required element to support submission of Plaintiff's premises liability claim, this argument must fail.

- (4) The trial court did not abuse its discretion in denying Defendant's motion for a new trial after refusing to permit Defendant to impeach Plaintiff's treating physician's testimony with evidence of the physician's subsequent health care fraud conviction, because Defendant cannot demonstrate the exclusion materially affected the outcome of the trial or the damage award.

Opinion by: Robert M. Clayton III, J.
Patricia L. Cohen, P.J. and Roy L. Richter, J., concur.

Attorney for Appellant: Susan F. Robertson, J. Zachary Bickel

Attorneys for Respondent: John D. Anderson, Andrew Scott Martin, Lisa A. Pake

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.