

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**Z.R., A MINOR, BY AND THROUGH HER MOTHER AND NEXT FRIEND, T.R.
AND BY AND THROUGH HER FATHER AND NEXT FRIEND, R.R.,
RESPONDENTS,
v.
KANSAS CITY PEDIATRICS, LLC, AND SCOTT DATTEL, M.D.,
APPELLANTS.**

DOCKET NUMBER WD85751

DATE: OCTOBER 31, 2023

Appeal From:

The Circuit Court of Jackson County, Missouri
The Honorable John Torrence, Judge

Appellate Judges:

Division One: Edward R. Ardini, Jr., Presiding Judge, Anthony Rex Gabbert, Judge, and
Thomas N. Chapman, Judge

Attorneys:

Robert D. Kingsland, Kansas City, MO, for Respondents

John R. Hicks, Leawood, KS, for Appellants

MISSOURI APPELLATE COURT OPINION SUMMARY

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Jackson County

Before Division One Judges: Edward R. Ardini, Jr., Presiding Judge, Anthony Rex Gabbert, Judge and Thomas N. Chapman, Judge

Z.R. was born in November 2015. She was examined by Scott Dattel, M.D., and physician's assistants at Kansas City Pediatrics, LLC, multiple times until her last visit with Dr. Dattel in August 2017. The following year, Z.R. was evaluated by a different doctor who suspected Z.R. had hip dysplasia. An X-ray showed that both of Z.R.'s hips were dislocated, confirming a diagnosis of bilateral hip dysplasia.

Z.R. initiated this medical malpractice action against Dr. Dattel and Kansas City Pediatrics ("Defendants"), asserting they negligently failed to evaluate and treat her bilateral hip dysplasia when she was an infant. During discovery, Z.R. deposed Defendants' causation expert, an orthopedic surgeon who specialized in pediatric orthopedics.

After a six-day trial, a jury found in favor of Defendants. Z.R. filed a motion for new trial, asserting that Defendants' expert witness testified to a new opinion at trial that contradicted his earlier deposition testimony, and this change in testimony was not disclosed to Z.R. prior to trial. The trial court agreed, and granted Z.R.'s motion for new trial, finding the undisclosed testimony resulted in substantial prejudice to Z.R. Defendants appealed.

AFFIRMED.

Division One holds:

The trial court did not abuse its discretion in finding that Defendants' causation expert testified to a new opinion at trial that contradicted his deposition testimony, resulting in prejudice to Z.R. that warranted a new trial.

Opinion by: Edward R. Ardini, Jr., Judge

Dated: October 31, 2023

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