In the Missouri Court of Appeals
Eastern District

DIVISION FIVE

SHERYL GENTRY, Appellant, v. CRAIG J. CONCANNON, Respondent.	)))))))))	ED113791 Filed: July 21, 2026

Appeal from the Circuit Court of Franklin County
The Honorable Craig E. Hellmann, Judge

Introduction

Plaintiff Sheryl Gentry ("Gentry"), the guardian of the person and conservator of the estate of Mark Crader ("Crader"), filed a first amended petition alleging one count of negligence against defendant Craig J. Concannon ("Concannon"). Gentry alleged Concannon committed legal malpractice in failing to timely file a lawsuit against the Franklin County Sheriff's Department ("Department") and several of its employees pursuant to title 42 U.S.C. section 1983 for deliberate indifference to Crader's serious medical needs while incarcerated at the Franklin County Sheriff's Department Jail.

Concannon filed a motion for summary judgment arguing that Concannon can have no liability because the alleged section 1983 lawsuit would not have been successful against the Department or its employees as a matter of law. The circuit court entered judgment granting Concannon's motion for summary judgment, and Gentry now appeals.

On appeal, Gentry raises three points contending that the circuit court erred in entering judgment in Concannon's favor. The circuit court did not err in entering summary judgment in Concannon's favor because the summary judgment record demonstrates there are no genuine issues of material fact and that Concannon is entitled to judgment as a matter of law. This Court affirms the circuit court's judgment.

Factual and Procedural Background

This factual background consists of the properly supported uncontroverted material facts from the summary judgment record, which this Court views in the light most favorable to Gentry, who is entitled to all reasonable inferences therefrom.[1] *Green v. Fotoohighiam*, 606 S.W.3d 113, 115-17 (Mo. banc 2020).

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[1] We note the statement of facts within Gentry's appellate brief does not comply with Rule 84.04(c). "Pursuant to Rule 84.04(c), the appellant's brief must contain 'a fair and concise statement of the facts relevant to the questions presented for determination without argument.'" *Bracely-Mosley v. Hunter Engineering Company*, 662 S.W.3d 806, 810-811 (Mo. App. E.D. 2023) (internal citation omitted). A statement of facts violates Rule 84.04(c) if it "fails to identify the material facts established by a motion for summary judgment, or properly denied by the opposing party's response[.]" *Id.* at 811 (internal citation omitted).

Gentry's statement of facts in her brief fails to identify *any* material facts established by Concannon's motion for summary judgment. Instead, Gentry's statement of facts refers broadly to Concannon's motion and statement of uncontroverted material facts with no reference to any specifically numbered paragraph set forth therein. Also, Gentry refers generally to her responses to the motion for summary judgment, again, with no references

On April 18, 2009, Crader was driving along Missouri Interstate 44 when he became involved in a high-speed vehicular pursuit with the Missouri State Highway Patrol that stretched from St. Louis County into Franklin County, Missouri. The vehicular pursuit ended around mile marker 248 of Missouri Interstate 44 when Crader's vehicle drifted into the median of the interstate and got tangled up in cables. While Crader's vehicle was stuck in the median, Crader refused to exit his vehicle and was pepper sprayed, tazed, and forcibly removed from his vehicle by the officers present. After officers restrained Crader and placed him on the shoulder of the highway, first responders noted that Crader was alert, coherent, and able to answer questions without hesitation. Missouri State Highway Patrol transported Crader from the scene to the St. Clair City Police Department and then to the Franklin County Sheriff's Department Jail in Union, Missouri.

When Crader first arrived at the jail, Crader's mother, Gentry, spoke with Deputy Stacey Carty and informed Deputy S. Carty that Crader ingested an unknown quantity of Percocet, Xanax, and Oxycontin pills before he was brought to the jail.[2] After learning this, Deputy S. Carty went to Crader's cell and noticed that he had his head down and his breathing was labored.

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to precise facts. Gentry "bore the initial duty to recite, fairly and concisely, the relevant facts. [Her] failure to do so is sufficient to merit dismissal." *Id.* at 811 (citing Rule 84.04(a)(3), (c)). Even so, this Court may review non-complaint briefs *ex gratia* and elects to do so here. The briefing deficiencies do not leave this Court without suitable facts for *ex gratia* review nor make this Court an advocate for either party. *See id.* at 811 (internal citations omitted).

[2] Given duplication of surnames, this Court will refer to those Department employees by their first initial and last name in an effort to avoid confusion.

Crader was then transported from the jail to St. John's Mercy Hospital in Washington, Missouri. There, Dr. Alec Richmond determined that Crader was "fit for confinement," and discharged Crader back to the Franklin County jail with a signed "Fit for Confinement" form and discharge instructions that included language to return promptly or contact a doctor if certain conditions developed or a worsening of symptoms occurred, including but not limited to: "You feel very drowsy, or if you have trouble waking up."

At approximately 8:10 p.m. that day when Crader returned to the jail from the hospital, he was coherent and alert and compliant with Deputy Jerry Carty's instructions. At that time, Deputy J. Carty knew that Crader had ingested an unknown amount of pills during the pursuit. Prison officials placed Crader on a "30-minute watch" due to his alleged ingestion of medicine and intoxication. Between 8:40 p.m. on April 18, 2009, and 2:13 a.m. on April 19, 2009, Deputy J. Carty or Deputy Sinclair observed Crader, who was noted to be sleeping, on at least twelve separate occasions.

At approximately 2:30 a.m. on April 19, Deputy Sinclair observed Crader sleeping on his back and snoring loudly. Deputy Todd Sinclair and Deputy J. Carty entered Crader's cell and woke Crader up by sitting him up straight, performing a sternal rub, using an ammonia inhalant, and shouting at him. After the deputies roused Crader, Crader responded to the deputies' commands and questions. During this 2:30 a.m. interaction, Crader asked when he could make a phone call and used the latrine under his own power.

Deputy J. Carty asked Crader, "Are you sure you didn't take any drugs earlier?" Crader responded, "No." Deputy J. Carty asked Crader to lay on his side, and Crader

said, “Yes, I’ll lay on my side.” Before exiting Crader’s cell, Deputy J. Carty used his flashlight to check Crader’s pupils and observed that his pupils were pinpointed and fixed, which Deputy J. Carty believed was a sign that Crader was under the influence of some substance.

After the deputies left Crader’s cell, Crader resumed laying on his side and sleeping. Between 2:30 a.m. and 5:00 a.m., Deputy Sinclair observed Crader sleeping and breathing normally on at least five occasions.

At approximately 5:15 a.m., Deputy Sinclair checked on Crader and noticed that Crader was laying on his back, his breathing was labored, he had a foam spittle coming out of his mouth, and he was non-responsive. Deputy Sinclair ordered dispatch to call for an ambulance. Prior to 5:15 a.m., Deputy Sinclair did not believe that Crader was unsafe.

Deputies Sinclair and J. Carty were the only two Department employees who interacted with Crader between 8:10 p.m. on April 18, 2009, and 5:15 a.m. on April 19, 2009. Captain David Boehm was the acting Lieutenant of the Department on April 18, but he was not present at the jail when Crader was transported back from the hospital on April 18.

At approximately 5:45 a.m. on April 19, 2009, the ambulance transported Crader from the jail to St. John’s Mercy Hospital. Crader suffered an anoxic brain injury.

Crader’s Medical Malpractice Lawsuit

In July 2009, Crader hired Concannon and Attorney Burt Shostak (“Shostak”) to represent Crader against “St. John’s Mercy Hospital and/or the Franklin County Sheriff’s Department” in connection with his anoxic brain injury.

On March 1, 2011, Concannon and Shostak filed a lawsuit in the 20th Judicial Circuit Court in Franklin County, Missouri for medical malpractice against St. John's Mercy Hospital and Dr. Alec Richmond on behalf of Crader.[3] During the course of the medical malpractice litigation, Concannon deposed numerous employees of the Department and attended the deposition of Crader's retained expert witness, Joseph Ross Yates, M.D. Neither Concannon nor Shostak filed a claim against the Department or its employees.

Gentry's Claims of Legal Malpractice

Now, Gentry alleges that Concannon negligently failed to timely file a section 1983 civil rights lawsuit on Crader's behalf against the Department and its employees, deputies Sinclair and J. Carty, Sergeant Gerling, Lieutenant Boehm, and Sheriff Gary Toelke, for their deliberate indifference to Crader's serious medical needs. Gentry alleges that but for Concannon's failure to file the section 1983 lawsuit, Crader could have successfully recovered damages against the Department for injuries that resulted from his drug overdose and anoxic brain injury.

Concannon moved for summary judgment on the basis that Concannon can have no liability because the alleged section 1983 lawsuit would not have been successful against the Department or its employees as a matter of law. In support of the motion for summary judgment, Concannon filed a memorandum of law and a statement of

[3] The medical malpractice lawsuit was captioned *Mark G. Crader v. St. John's Mercy Health System et al*., 11AB-CC00066. The circuit court dismissed this case without prejudice on June 18, 2018.

uncontroverted material facts setting forth in fifty-one separately numbered paragraphs facts to which there was no dispute and including as attached exhibits deposition transcripts of Department employees and expert witnesses,[4] Crader's "Fit for Confinement" hospital form and discharge instructions, and Gentry's first amended petition.

In response to Concannon's motion for summary judgment package, Gentry submitted three pleadings: (1) a motion to strike thirty-four of Concannon's material facts; (2) a response to Concannon's statement of uncontroverted material facts; and (3) a memorandum of law in opposition.

In Gentry's motion to strike, Gentry moved the circuit court to strike thirty-four of the fifty-one paragraphs of Concannon's statement of material facts and the supporting exhibits forming the bases for the facts. Gentry argued that Exhibits A, B, C, D, E, and J – deposition transcripts of Department employees and Crader's retained expert witness obtained during the course of the 2011 medical malpractice lawsuit – are hearsay and inadmissible as substantive evidence in this legal malpractice case. Gentry argued that Concannon should be required to depose the witnesses in the legal malpractice case in order to rely upon their testimony in support of the motion for summary judgment.

In Gentry's response to Concannon's statement of uncontroverted material facts, Gentry responded to each of Concannon's numbered paragraphs in one of five ways:

(1) admitting to certain facts outright;

[4] Some of these depositions were obtained during the course of the medical malpractice lawsuit from 2011 and others during the course of this legal malpractice lawsuit.

(2) objecting to certain facts as "immaterial and irrelevant;"

(3) admitting "that the language contained in" Concannon's numbered paragraphs "appears" or "is found in" the cited exhibit "without waiving the objections set forth in [the] Motion to Strike;"

(4) admitting that the cited exhibit "is a true and accurate copy of" the cited record "which is admissible as a business record supported by affidavit attached" to Gentry's response; and

(5) admitting to certain "allegations" in the paragraph without waiving "his objection to the admission of" the cited exhibit "as substantive evidence as set forth in" Gentry's motion to strike.

Gentry did not set forth additional material facts to create a genuine issue.

In Gentry's four-page memorandum of law in opposition to the motion for summary judgment, Gentry reiterated the argument that the vast majority of the material facts raised by Concannon in his motion for summary judgment are based on inadmissible hearsay and argued that medical records, including the "Fit for Confinement" form and discharge paperwork, was sufficient to submit the legal malpractice claim to the jury.

Concannon filed a response in opposition to Gentry's motion to strike and a joint reply memorandum of law in support of the motion for summary judgment and motion to deem admitted facts to which Gentry failed to respond properly under Rule 74.04.

The circuit court granted Concannon's motion for summary judgment in a one-line judgment stating, "Defendant's Motion for Summary Judgment is GRANTED."

This appeal follows.

Discussion

Gentry raises three points on appeal. In Point One, Gentry argues that the circuit court erred in entering summary judgment in Concannon's favor because Concannon's statement of uncontroverted material facts was supported by hearsay in the form of deposition testimony from another case.[5] In Point Two, Gentry argues that the circuit court erred in entering summary judgment on the issue of lack of medical causation testimony because Crader's injuries are not of a complicated nature requiring medical expert testimony. In Point Three, Gentry argues that the trial court erred in granting summary judgment on the issue of lack of expert legal testimony regarding causation because a legal malpractice case alleging an attorney's failure to timely file a cause of action does not require legal expert testimony.

This Court denies Point One because the summary judgment record demonstrates there are no genuine issues of material fact and Concannon is entitled to judgment as a

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[5] Gentry's first point states:

> The trial court erred in failing to rule on Plaintiff's motion to strike certain paragraphs and exhibits from the defendant's statement of uncontroverted facts and in granting summary judgment based on those paragraphs and exhibits because the allegations contained therein were inadmissible in that they relied on testimony from depositions taken in another case.

This point is multifarious as it raises separate claims of error. A multifarious point relied on preserves nothing for review. *Macke v. Patton*, 591 S.W.3d 865, 869 (Mo. banc 2019) (internal citation omitted). Yet, Gentry's argument on this point is sufficiently understandable, and as reiterated by Gentry in her reply brief and by counsel at oral argument, the issue is whether the circuit court erred in granting summary judgment based on inadmissible hearsay testimony. This Court exercises its discretion to address the merits of the alleged claim *ex gratia*. *Id.* at 870.

matter of law. Therefore, the circuit court did not err in entering summary judgment in Concannon's favor. This Court denies Points Two and Three as moot. Accordingly, this Court affirms the circuit court's judgment.

Standard of Review

This Court's review of a trial court's decision granting summary judgment is *de novo*. *Green*, 606 S.W.3d at 115. In reviewing the decision to grant summary judgment, this Court applies the same criteria as the circuit court in determining whether summary judgment was proper. *Id.*

> Summary judgment is only proper if the moving party establishes that there is no genuine issue as to the material facts and that the movant is entitled to judgment as a matter of law. The facts contained in affidavits or otherwise in support of a party's motion are accepted as true unless contradicted by the non-moving party's response to the summary judgment motion. Only genuine disputes as to material facts preclude summary judgment. A material fact in the context of summary judgment is one from which the right to judgment flows.

Id. (internal citations and quotations omitted).

The summary judgment record is reviewed in the light most favorable to the party against whom summary judgment was entered, and that party is entitled to the benefit of all reasonable inferences from the record. *Id.* at 116. (internal citation omitted). "However, facts contained in affidavits or otherwise in support of the party's motion are accepted as true **unless contradicted by the non-moving party's response** to the summary judgment motion." *Id.* (internal citation omitted) (emphasis added). "In addition, the non-movant must support denials with specific references to discovery, exhibits, or affidavits demonstrating a genuine factual issue for trial." *Id.* (internal

citation omitted). A response that does not comply with Rule 74.04(c)(2) with respect to any numbered paragraph in movant's statement of facts is deemed an admission of the truth of that specifically numbered paragraph. *Id.* (internal citation omitted).

A defending party is entitled to summary judgment if the party demonstrates one of the following: (1) facts that negate *any one* of the elements of the claimant's cause of action; (2) claimant, after a reasonable period of discovery, has not and will not be able to produce sufficient evidence to permit the trier of fact to find the existence of *any one* of the claimant's elements; or (3) there is no genuine dispute as to the existence of *each* of the facts needed to support the movant's properly pleaded affirmative defense. *ITT Commercial Finance v. Mid-America Marine Supply Corporation*, 854 S.W.2d 371, 381 (Mo. banc 1993) (emphasis in original). "Regardless of which of these three means is employed by the 'defending party,' each establishes a right to judgment as a matter of law. Where the facts underlying this right to judgment are beyond dispute, summary judgment is proper." *Id.*

Summary judgment is not an extreme or drastic remedy. *Wilkinson v. Farmers Holding Companies*, 732 S.W.3d 93, 96 (Mo. 2026). This Court will affirm the trial court's grant of summary judgment if it is correct as a matter of law on any grounds. *Shiffman v. Kansas City Royals Baseball Club, LLC*, 687 S.W.3d 443, 459 (Mo. App. W.D. 2024).

Analysis

Rule 74.04 Record on Appeal

This Court's review of summary judgment is limited to the undisputed material facts established in the process set forth in Rule 74.04(c), and this Court looks exclusively to Rule 74.04 to determine whether there is any genuine issue of material fact precluding summary judgment. *Bracely-Mosley v. Hunter Engineering Company*, 662 S.W.3d 806, 810 (Mo. App. E.D. 2023).

Rule 74.04(c)(1) requires the movant to "state with particularity in separately numbered paragraphs each material fact as to which movant claims there is no genuine issue."

> To accomplish this showing, the movant must attach to the motion for summary judgment a statement of uncontroverted material facts that "state[s] with particularity in separately numbered paragraphs each material fact as to which movant claims there is no genuine issue, with specific references to the pleadings, discovery, exhibits or affidavits that demonstrate the lack of a genuine issue as to such facts."

Green, 606 S.W.3d at 116 (quoting Rule 74.04(c)(1)).

Moreover:

> Facts come into a summary judgment record *only* via Rule 74.04(c)'s numbered-paragraphs-and-responses framework. Courts determine and review summary judgment *based on that Rule 74.04(c) record, <u>not</u>* the whole trial court record. Affidavits, exhibits, discovery, etc. generally play only a secondary role, and then only as cited to support Rule 74.04(c) numbered paragraphs or responses, *since parties cannot cite or rely on facts outside the Rule 74.04(c) record.* [S]ummary judgment rarely if ever lies, or can withstand appeal, unless it flows as a matter of law from appropriate Rule 74.04(c) numbered paragraphs and responses *alone.*

Id. at 117-18 (internal citations and quotations omitted) (emphasis in original).

The non-movant must then file a response, setting forth "each statement of fact in its original paragraph number and immediately thereunder admit or deny each of movant's factual statements." Rule 74.04(c)(2). "[T]he non-movant is required to file a response either admitting or denying the movant's material facts." *Green*, 606 S.W.3d at 117. Specifically, Rule 74.04 requires:

> The response shall set forth each statement of fact in its original paragraph number and immediately thereunder admit or deny each of movant's factual statements. A denial may not rest upon the mere allegations or denials of the party's pleading. Rather, the response shall support each denial with specific references to the discovery, exhibits or affidavits that demonstrate specific facts showing that there is a genuine issue for trial. Attached to the response shall be a copy of all discovery, exhibits or affidavits on which the response relies. ***A response that does not comply with this Rule 74.04(c)(2) with respect to any numbered paragraph in movant's statement is an admission of the truth of that numbered paragraph.***

Id. at 117 (quoting Rule 74.04(c)(2)) (emphasis in original).

A denial of any one of movant's statements of fact must be supported with specific references to discovery, exhibits, or affidavits demonstrating specific facts showing there is a genuine issue for trial. If the non-movant does not properly deny a statement of fact, that fact is deemed admitted. *Bracely-Mosley*, 662 S.W.3d at 810. If the non-movant files a statement of additional material facts, the process repeats itself, but with the non-movant stating material facts, supported in the same manner, to which the movant must respond. *Id. See also* Rule 74.04(c)(2)-(3).

Hence, appellate review of summary judgment is limited solely to the facts established by the statement of uncontroverted material facts and responses thereto submitted under the numbered-paragraph-and-response framework set out in Rule

74.04(c). *Hershey v. Curators of University of Missouri*, 719 S.W.3d 915, 921 (Mo. App. E.D. 2025) (internal citation omitted). The "relevant portions of the record" in a summary judgment appeal are the documents containing the Rule 74.04(c) numbered paragraphs and responses: namely, the movant's statement of uncontroverted material facts and the non-movant's response, the non-movant's additional statement of uncontroverted material facts and the movant's reply, and the movant's supplemental statement of uncontroverted material facts and the non-movant's sur-reply. *Id.* Concannon moved for summary judgment and filed a statement of uncontroverted material facts stating with particularity in fifty-one separately numbered paragraphs each material fact which Concannon claims there is no genuine dispute. Each separately numbered paragraph contains "specific references" to pleadings, discovery, or exhibits that Concannon claims demonstrates the lack of a genuine issue as to the facts. *See* Rule 74.04(c)(1). Under the rule, the facts set forth in each of Concannon's numbered paragraphs "are accepted as true unless contradicted" by Gentry's response to the motion for summary judgment. *See Green*, 606 S.W.3d at 115 (internal quotation omitted).

Rule 74.04(c) requires Gentry to file a response setting forth "each statement of fact in its original paragraph number and immediately thereunder admit or deny each of [Concannon]'s factual statements." In short, Gentry's response must either admit or deny the material facts, and any denial must be supported with specific references to discovery, exhibits, or affidavits demonstrating specific facts showing there is a genuine issue for trial. *Green*, 606 S.W.3d at 117. A response that does not comply with Rule 74.04(c)(2) with respect to any numbered paragraph in Concannon's statement of facts "**is an**

admission of the truth of that numbered paragraph." *Id.* at 117 (quoting Rule 74.04(c)(2)) (emphasis in original).

Gentry responded to Concannon's motion for summary judgment by filing three pleadings: (1) a motion to strike thirty-four of Concannon's material facts based on the objection that the depositions to which the facts referred were inadmissible hearsay; (2) a response to Concannon's statement of uncontroverted material facts wherein Gentry admitted to certain facts or admitted to the substance of certain facts subject to an objection; and (3) a memorandum of law in opposition arguing that Concannon did not establish any material facts based on the objection to the admissibility of the depositions referenced.

Gentry's Objection to Use of Depositions as Permissible Reference under Rule 74.04

"[P]arties may bring defects in the affidavits or other supporting materials to the … court's attention by motion to strike or objection." *Cross v. Drury Inns, Incorporated*, 32 S.W.3d 632, 636 (Mo. App. E.D. 2000). In her motion to strike, Gentry takes aim at the admissibility of depositions that Concannon references as exhibits in support of certain factual allegations set forth in his statement of uncontroverted material facts. Gentry argues that Concannon failed to properly establish any material facts supporting summary judgment because the supporting depositions are from another case; therefore, the depositions are hearsay and categorically inadmissible as substantive evidence in this subsequent legal malpractice case. In response, Concannon asserts that because Gentry's lawsuit is a legal malpractice case arising from the same set of facts as the underlying case in which the depositions were taken, the testimony is admissible to assess the "case-

within-a-case." In other words, Concannon argues that since the same issues must be resolved, testimony offered in the underlying case is admissible to enable recreation of what happened.

The focus of this Court's inquiry is whether the depositions are a permissible reference under Rule 74.04, not whether the depositions will ultimately be admissible at trial. Even if inadmissible as evidence at trial, deposition testimony, like sworn statements in an affidavit, "nonetheless may suffice as proof supporting factual allegations in a motion" for summary judgment. *See Shiffman*, 687 S.W.3d at 455.

Gentry's argument "demonstrates a fundamental misunderstanding of what constitutes hearsay in the summary judgment context and what suffices as a permissible" reference under Rule 74.04. *Shiffman*, 687 S.W.3d at 455. Gentry "ignores the difference between proof of factual assertions at the summary judgment stage and the admission of testimony to prove a factual assertion at trial." *Id.* The summary judgment standard specifically permits courts to consider "discovery" and "exhibits" in ruling on motions for summary judgment under the expectation that the substance of its contents reflect the evidence that will be presented at trial. *Id.* at 456.

The deposition testimony at issue here is a permissible reference upon which a material fact can be based under Rule 74.04. The Department's employees, several of whom Gentry claims should have been made defendants in a section 1983 claim, testified under oath, subject to cross-examination, about their personal involvement in responding to the initial high-speed vehicular pursuit, processing Crader's booking at the jail, or observing Crader overnight. The testimony sets forth the evidence of what happened on

the date of the incident, and, specifically, the treatment of Crader and his medical needs by the Department's employees. Regardless of whether Concannon filed a section 1983 claim against the Department or its employees, the facts and circumstances surrounding the April 19 incident are the focal points of the testimony elicited. Additionally, the testimony of Crader's retained medical expert witness provides evidence that Crader suffered an anoxic brain injury.

These depositions are sworn statements attached as exhibits to Concannon's statement of uncontroverted material facts. It is the substance of the testimony in the depositions that reflects what the evidence will be as presented at trial, not the form of the testimony to which Gentry objected. The depositions play a secondary role to the facts set forth within the separately numbered paragraphs in Concannon's statement of facts. *See Green*, 606 S.W.3d at 117-118. Consequently, the depositions are considerable "as supporting discovery documentation under Rule 74.04." *See Shiffman*, 687 S.W.3d at 456 (internal citation omitted). As a result, Gentry's objection to Concannon's reference to the depositions is ineffective to eliminate the thirty-four statements of fact that reference the depositions.

Gentry Fails to Establish A Genuine Issue of Material Fact

In her response to the statement of facts, Gentry does not deny any of the fifty-one statements of fact. Moreover, she outright admits eleven statements with no objection.

As discussed above, Gentry seeks to strike thirty-four of the statements by relying on the objection to the admissibility of the depositions to which the statements referred. Remarkably, Gentry admits the substance of these same thirty-four facts in the response,

albeit subject to the objection lodged in the motion to strike.[6] Thus, these thirty-four statements of fact are deemed admissions. Rule 74.04(c)(2).

In her response, Gentry objects to several other facts raised by Concannon's statement of material facts as "immaterial and irrelevant." However, these responses fail to comply with Rule 74.04 because Gentry does not admit or deny the factual statement as mandated by Rule 74.04(c)(2). Gentry does not include in these responses any contradictory statement of fact with any specific references to the discovery, exhibits, or affidavits showing a genuine issue for trial. *See Shiffman*, 687 S.W.3d at 461-62. Gentry cannot "object" without asserting whether the fact statement is admitted or denied. *Id.* at 461. "A response that does not comply with Rule 74.04(c)(2) with respect to any numbered paragraph in a statement of facts 'is an admission of the truth of that numbered paragraph.'" *Id.* at 461 (internal citations omitted). Gentry's responses containing only an objection that the statement of fact is "immaterial and irrelevant" are noncompliant with Rule 74.04, and these statements are deemed admitted. Rule 74.04(c)(2).

In all, none of Gentry's responses made specific references to the discovery, exhibits or affidavits demonstrating a genuine issue of material fact for trial. Gentry

[6] Two of the statements of fact, including one that is included in the thirty-four statements to which Gentry objects, set forth facts related to Crader's "Fit for Confinement" form and discharge paperwork. Gentry admits the substance of these facts and the "true and accurate" nature of the records. Then, Gentry refers to medical records that she attaches to her response as a new exhibit, stating in her response that the medical records are admissible as business records. Gentry's response does not refute the statements of fact or affirmatively state a genuine issue of material fact sufficient to defeat summary judgment. *See Shiffman* at 462.

failed to rebut the factual assertions in the motion for summary judgment as required by Rule 74.04(c) and failed to raise even one issue of material fact in dispute.

In light of Gentry's non-compliant responses and her failure to contradict any of Concannon's statement of uncontroverted material facts with additional evidence, this Court deems Concannon's statements of uncontroverted material facts admitted. Rule 74.04(c)(2). *See Green*, 606 S.W.3d at 117 (internal citation omitted). Having deemed all of Concannon's facts admitted and accepted as true, Concannon is entitled to summary judgment if it is correct as a matter of law on any grounds. *Shiffman*, 687 S.W.3d at 459.

Concannon Is Entitled to Judgment as a Matter of Law

In presenting a claim for legal malpractice, Gentry must prove the following elements: (1) the existence of an attorney-client relationship; (2) the defendant acted negligently or in breach of contract; (3) the defendant's acts were the proximate cause of the plaintiff's damages; and (4) but for the defendant's conduct, the plaintiff would have succeeded in the prosecution of their underlying claim. *Juan v. Growe*, 547 S.W.3d 585, 591 (Mo. App. E.D. 2018). Elements three and four are sometimes articulated as "(3) proximate causation of the plaintiff's damages; [and] (4) damages to the plaintiff." *Selimanovic v. Finney*, 337 S.W.3d 30, 35 (Mo. App. E.D. 2011) (internal quotation omitted). Proof of causation includes both actual causation (or "but for" causation) and proximate causation. *Juan*, 547 S.W.3d at 591.

In legal malpractice cases, proximate causation requires proof that the injury was a reasonable and probable consequence of the attorney's negligence; actual causation requires proof that but for the attorney's negligence, the result would have been different.

Juan, 547 S.W.3d at 591-92. This causation analysis is also known as proving the "case within a case," or "trial within a trial." *Id.* at 592.

Thus, in order to prevail, Gentry must prove that Crader could have successfully recovered damages against the Department and its employees but for Concannon's failure to timely file a section 1983 civil rights lawsuit on Crader's behalf against the Department and its employees for their deliberate indifference to Crader's serious medical needs. If Crader's underlying claim against the Department and its employees fails as a matter of law, so must this legal malpractice claim, because there is no causal connection between Concannon's alleged negligence and Crader's damages. *See Pool v. Burlison*, 736 S.W.2d 485, 486 (Mo. App. E.D. 1987).

Here, the constitutional violation which Concannon allegedly failed to raise is one of deliberate indifference to inmate health or safety under the Eighth Amendment to the United States Constitution.[7] The Cruel and Unusual Punishments Clause of the Eighth Amendment, as applied to the states by the Fourteenth Amendment, prohibits "deliberate indifference to serious medical needs of prisoners." U.S. CONST. amend. VIII; *Estelle v. Gamble*, 429 U.S. 97, 105 (1976). "In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle*, 429 U.S. at 106. "In a deprivation of medical care case, the

[7] Though alleged in the first amended petition, Gentry concedes there is no evidence of implementation or execution of any alleged unconstitutional county policy or a pattern of widespread unconstitutional conduct on the part of the Franklin County Sheriff's Department such that a section 1983 suit against the Department itself would have been successful.

inmate must show (1) an objectively serious medical need; and (2) the defendants actually knew of the medical need but were deliberately indifferent to it." *East v. Minnehaha City*, 986 F. 3d 816, 820 (8th Cir. 2021) (internal citation omitted).

The prisoner must show more than negligence, more even than gross negligence, and mere disagreement with treatment decisions does not rise to the level of a constitutional violation. *Alberson v. Norris*, 458 F.3d 762, 765 (8th Cir. 2006). This showing demands a mental state of more than gross negligence and is "akin to criminal recklessness." *Peterson v. Heinen*, 89 F.4th 628, 640 (8th Cir. 2023) (internal citations omitted). "The Constitution does not require an arresting police officer or prison official to seek medical attention for every arrestee or inmate who appears to be affected by drugs or alcohol." *Burnette v. Taylor*, 533 F.3d 1325, 1333 (11th Cir. 2008) (internal citations omitted).

Accepting the facts from the summary judgment record before us as true, Gentry does not establish a claim of deliberate indifference to serious medical need as a matter of law. Some of the Department's employees knew of the substantial risk of serious harm to Crader, and this is why the Department placed Crader on a "30-minute watch" due to his apparent intoxication. However, these facts fail to establish that the employees were deliberately indifferent to Crader's serious medical need.

On the contrary, the facts indicate the Department's employees were attentive to Crader's condition and took reasonable precautions and steps to provide medical treatment. By regarding the information they were given and taking affirmative action to respond to the situation as it developed, the employees did not behave with deliberate

indifference. *See Jones v. Faulkner County, Arkansas*, 131 F.4th 869, 875 (8th Cir. 2025) (internal citations omitted).

Moreover, based on the summary judgment record, it cannot be said that "the measures taken were so inadequate as to be deliberately indifferent to the risk." *Id*. (internal citations omitted). *See also Watkins v. City of Battle Creek*, 273 F.3d 682, 686 (6th Cir. 2001) (affirming judgment for defendant officers and jailers where plaintiff denied swallowing drugs but was observed drooling a pink foamy substance, constantly licking his lips, falling out of a chair, grabbing his stomach, and "appeared to be drunk or high"); *Estate of Hocker v. Walsh*, 22 F.3d 995, 1000 (10th Cir. 1994) (affirming judgment for defendant officers and jailers where they did not seek medical treatment for plaintiff who was "obviously…intoxicated or under the influence of drugs"); *Carpenter v. Gage*, 686 F.3d 644, 650-51 (8th Cir. 2012) (need for medical treatment not obvious despite officer being told plaintiff was suffering a stroke).

As a defending party, Concannon demonstrates undisputed facts that negate *essential* elements of Gentry's cause of action. *See ITT,* 854 S.W.2d at 381. Gentry fails to establish a constitutional violation because the Department's employees were not deliberately indifferent to Crader's medical needs. *See Jones*, 131 F.4th at 875. Because Gentry fails to establish a constitutional violation, Gentry also fails to establish that, but for Concannon's conduct in failing to file a section 1983 civil rights claim, Crader would have succeeded in the prosecution of a civil rights action against the Department and its employees. Therefore, Gentry's claim for legal malpractice must also fail as a matter of

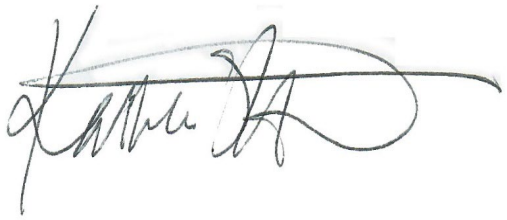
law, because Concannon's omission in not filing the civil rights claim did not cause Crader's damages. *See Pool*, 736 S.W.2d at 486.

As a result, Concannon is entitled to summary judgment as a matter of law.

Point One is denied. Points Two and Three are denied as moot.

Conclusion

This Court affirms the circuit court's judgment.



Kathleen S. Hamilton, Judge

John P. Torbitzky, Judge and
Renée Hardin-Tammons, Chief Judge concur.