

**Missouri Court of Appeals, Western District
Division Two**

**Janet Sutton, Presiding Judge
Alok Ahuja, Judge
Mark D. Pfeiffer, Judge**

**March 18, 2025
University of Missouri School of Law
Columbia, Missouri**

WD86778

In the Matter of the Care and Treatment of Thomas Waters, Jr., a/k/a Thomas J. Waters, a/k/a Thomas J. Waters, Jr., a/k/a Thomas James Waters, a/k/a Thomas James Waters, Jr., Appellant,

v.

State of Missouri, Respondent.

Appellant Thomas Waters appeals his commitment to the Missouri Department of Mental Health as a sexually violent predator following a jury trial in the Circuit Court of Jackson County. Between 1972 and 1992, Waters committed a number of violent sexual acts against multiple victims including adult women, and male and female children. Following his 1992 conviction, Waters was sentenced to 30 years' imprisonment. In 2021, while Waters was still incarcerated, the State moved to have him committed to the Missouri Department of Mental Health as a sexually violent predator. Following a jury trial, the court entered a judgment ordering commitment. This appeal followed.

Appellant's points on appeal:

1. The trial court abused its discretion by sustaining the State's objection and prohibiting the defense's voir dire inquiry about Mr. Waters' diagnosis of sexual sadism because this ruling denied Mr. Waters his rights to due process and a fair, impartial jury, as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, § 10 and 18(a) of the Missouri Constitution, in that Mr. Waters' diagnoses are critical facts tending to expose bias among prospective jurors.
2. The trial court abused its discretion by sustaining the State's objection and prohibiting the defense's voir dire inquiry about both male and female victims because this ruling denied Mr. Waters his rights to due process and a fair, impartial jury, as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, § 10 and 18(a) of the Missouri Constitution,

in that sexual orientation is a critical fact tending to expose bias among prospective jurors.

3. The trial court abused its discretion by prohibiting defense counsel from making an adequate record about the prohibited voir dire questions because this ruling denied Mr. Waters his rights to due process, a fair and impartial jury, and the assistance of counsel, as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, § 10 and 18(a) of the Missouri Constitution, in that this Court cannot review claims of error in the absence of a record.
4. The trial court plainly erred in failing to sua sponte declare a mistrial after Venireperson No. 3 chastised defense counsel and the trial court expressed agreement in front of the entire panel because this denied Mr. Waters' rights to due process and a fair, impartial jury, as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, § 10 and 18(a) of the Missouri Constitution, in that the venireperson's comments and the trial court's reaction biased the entire panel against the defense. The comments constituted a manifest injustice because no curative action could remove the bias caused by the chastisement of defense counsel.
5. Mr. Waters received ineffective assistance of counsel at trial because his trial counsel failed to object and move for a mistrial after Venireperson No. 3 chastised defense counsel and the trial court expressed agreement in front of the entire panel. A reasonably competent attorney in similar circumstances would have moved for a mistrial because no other curative action would remove the bias caused by the chastisement. The error violated Mr. Waters' rights to a meaningful hearing, effective assistance of counsel, due process, and a fair trial, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §§10 and 18(a) of the Missouri Constitution. Had counsel moved for a mistrial following the chastisement, there is a reasonable probability that a mistrial would have been granted and that Mr. Waters would not have been found to be a sexually violent predator because the chastisement caused the venire to be biased against the defense.

WD87371

**Carrie L. Gruhn and Izeck K. McCown, by next friend Carrie L. Gruhn,
Appellants,**

v.

Joshua R. Elam, Respondent.

Appellants Carrie Gruhn and Carrie Gruhn, as next friend for I.K.M., appeal from the judgment of the Circuit Court of Cooper County granting Respondent Joshua Elam's

motion to dismiss. The facts as alleged in the petition were that on May 1, 2020, J.S. was driving an ATV in which Elam and Victim were passengers. Victim was allegedly seated on Elam's lap while he held Victim by the waist. The ATV went off an embankment and crashed. Victim died in the crash. Victim's mother, Gruhn, brought a petition for wrongful death on behalf of herself and as next friend for one of Victim's minor children, I.K.M. The petition claimed that Elam was rendering Victim services by encouraging her to ride the ATV but failed to provide her with a seatbelt or adequately protect her. Elam filed a motion to dismiss contending that he owed no legal duty to Victim. The circuit court granted Elam's motion. This appeal followed.

Appellants' points on appeal:

1. The trial court erred in granting Joshua R. Elam's motion to dismiss the petition for wrongful death of Carrie L. Gruhn and I.K.M. because the motion to dismiss was not timely filed within 30 days of service in that Rule 55.27 states every defense shall be asserted in a responsive pleading within the time allowed for responding which is 30 days according to Rule 55.25.
2. The trial court erred in granting Joshua R. Elam's motion to dismiss the petition for wrongful death of Carrie L. Gruhn and I.K.M. because the petition states a cause of action that Joshua R. Elam undertook to render services to the decedent in that Joshua R. Elam encouraged and allowed the decedent to ride on his lap without a seat belt while holding her by her waist, and she relied upon him to protect her from ejection and injury.

WD87008

Planned Parenthood Great Plains, Appellant,

v.

State of Missouri, ex rel. Attorney General Andrew Bailey, Respondent.

Appellant Planned Parenthood Great Plains appeals the judgment of the Circuit Court of Jackson County finding against Planned Parenthood on its petition to set aside a civil investigative demand issued by Respondent Missouri Attorney General. As alleged in the petition, on March 14, 2023, the Missouri Attorney General's Office served Planned Parenthood with a civil investigative demand ("CID") directing Planned Parenthood to produce certain information related to the treatment of transgendered minors. The Attorney General indicated that it was investigating the Washington University Pediatric Transgender Center at St. Louis Children's Hospital because the Attorney General believed that Washington University or others may have violated the Missouri Merchandising Practices Act ("MMPA"). Planned Parenthood filed a petition in circuit court seeking to set aside the CID. Planned Parenthood alleged that the investigation was solely related to Washington University and that there was no investigation into Planned Parenthood that would warrant the CID. The Attorney General filed an answer to the

petition as well as a counterclaim to enforce the CID. Both parties filed motions seeking judgment on the pleadings. The circuit court found in favor of the Attorney General and ordered Planned Parenthood to respond to the CID within 30 days, or as otherwise agreed by the parties. Planned Parenthood appealed the circuit court's judgment and the circuit court stayed its judgment pending the outcome of this appeal.

Appellant's points on appeal:

1. The trial court erred in granting judgment on the pleadings for the Missouri Attorney General, because the Civil Investigative Demand was not properly issued pursuant to the Missouri Merchandising Practices Act, in that medical goods and services do not meet the statutory definition of "merchandise" under the Missouri Merchandising Practices Act.
2. The trial court erred in granting judgment on the pleadings for the Missouri Attorney General, because the Civil Investigative Demand is preempted by the Missouri Division of Professional Registration for the Healing Arts and applicable regulations, in that the Missouri Division of Professional Registration for the Healing Arts is charged with providing oversight of health care providers.
3. The trial court erred in granting judgment on the pleadings for the Missouri Attorney General, because the Civil Investigative Demand violates Planned Parenthood Great Plains' constitutional rights of due process of law and to protection from unreasonable searches and seizures, in that the Civil Investigative Demand is not reasonable, does not seek information relevant to the Missouri Attorney General's inquiry, and is too broad and indefinite.
4. The trial court erred in granting judgment on the pleadings for the Missouri Attorney General, because the trial court based its decision on inaccurate findings about Planned Parenthood Great Plains' legal position, in that Planned Parenthood Great Plains at all times maintained that the Civil Investigative Demand failed to comply with the Missouri Merchandising Practices Act's statutory requirements.
5. The trial court erred in granting judgment on the pleadings for the Missouri Attorney General, because the trial court improperly applied the standard used for considering motions for judgment on the pleadings, in that the trial court did not treat Planned Parenthood Great Plains' well-pled facts as true and considered information outside of the operative pleadings.
6. The trial court erred in granting judgment on the pleadings for the Missouri Attorney General, because a Civil Investigative Demand shall not contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum, in that the Civil Investigative Demand at issue requires disclosure of protected patient information and would require Planned Parenthood Great Plains

to breach its duties to its patients and produce personal, confidential medical information.

7. The trial court erred in granting judgment on the pleadings for the Missouri Attorney General, because the trial court failed to consider Planned Parenthood Great Plains' alternative request to modify the Civil Investigative Demand, in that Planned Parenthood Great Plains' alternative request would have allowed the Missouri Attorney General to obtain documents pertinent to the subject of the investigation but at the same time protect Planned Parenthood Great Plains and its patients.