

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**KYLIE SNELLEN, BY AND
THROUGH HER NEXT FRIEND,
KATHERYN SNELLEN**

APPELLANT,

**v.
CAPITAL REGION MEDICAL
CENTER**

RESPONDENT.

DOCKET NUMBER WD75787

DATE: October 15, 2013

Appeal From:

Boone County Circuit Court
The Honorable Kevin M.J. Crane, Judge

Appellate Judges:

Division Two: Thomas H. Newton, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Attorneys:

David M. Zevan, Kevin J. Davidson and Rachel L. Roman, St. Louis, MO, for appellant.

Susan Ford Robertson, Kansas City, MO and Edward C. Clausen, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Before Division Two: Thomas H. Newton, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Appellant Kylie Snellen was diagnosed with cerebral palsy. During her jury trial, she presented evidence that the cause of her condition was a lack of oxygen during labor and delivery. She contended that her doctor failed to recognize signs of fetal distress and inadequate oxygenation. Snellen asserts four points on appeal. First, she argues that the trial court erred in denying her request for a mistrial after her doctor testified that she had been investigated and vindicated of the alleged negligent acts by the Missouri State Board of Healing Arts. Second, Snellen argues that the trial court erred in allowing a defense expert to rely upon certain medical literature where that expert testified in a pre-trial deposition that he would not rely on that literature. Third, Snellen argues that the trial court erred in denying her request for a jury instruction to strike the testimony of one of the defense experts because that testimony would not assist the jury and was not based on a reasonable degree of medical certainty. Fourth, Snellen argues that the trial court plainly erred in its prejudicial comments and questions to counsel during voir dire and in specifically striking one potential juror.

AFFIRMED

Division Two Holds:

(1) The transcript, which we must accept as a verity, does not include the testimony that Appellant states occurred during trial. Although the transcript does indicate that defense counsel asked an improper question, the transcript also indicates that there was an immediate objection, which was sustained, and that the jury was instructed to disregard the question and any answer that may have been given.

(2) The trial court did not abuse its discretion in allowing a defense expert to testify about a document when Appellant was on notice that the expert might testify about the document. Further, given that our review is for abuse of discretion and that Appellant must establish prejudice, we note that Appellant asked that the entirety of the document in question be

admitted before this particular expert testified, that other experts relied on this document, and that Appellant did not establish that this expert's testimony materially changed or affected the merits of her action.

(3) The trial court did not plainly err in denying Appellant's motion to strike the testimony of a defense expert who had already been excused.

(4) Appellant presented no reviewable claim of error as to the trial court's comment during voir dire and excusal of a potential witness.

Opinion by Gary D. Witt, Judge

October 15, 2013

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