

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

LEE CAROL JORDAN, et ux,

Appellant,

v.

FREDERICK J. PEET, JR., et al.,

Respondent.

DOCKET NUMBER WD75822

Date: September 24, 2013

Appeal from:
Miller County Circuit Court
The Honorable G. Stanley Moore, Judge

Appellate Judges:
Division Three: Lisa White Hardwick, Presiding Judge, Mark D. Pfeiffer and Cynthia L. Martin, Judges

Attorneys:
G. Michael Baker, Springfield, MO, for appellant.
Zachary W. Rennick, Washington, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

LEE CAROL JORDAN, et ux

Appellant,

v.

FREDERICK J. PEET, JR., et al.,

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WD75822

Miller County

Before Division Three: Lisa White Hardwick, Presiding Judge, Mark D. Pfeiffer and Cynthia L. Martin, Judges

Lee Carol Jordan and Grace A. Jordan appeal the circuit court's grant of summary judgment in favor of Frederick J. Peet, Jr., on their petition for damages for the wrongful death of their daughter. The Jordans contend the court erred in granting summary judgment because genuine issues of material fact remain as to whether Peet was negligent.

REVERSED AND REMANDED.

Division Three holds:

The circuit court erred in granting summary judgment in favor of Peet because genuine issues of material fact remain regarding whether he breached his duty of care. Peet's "uncontroverted facts" in his summary judgment motion are either immaterial to the issue of his negligence or are merely non-binding legal conclusions that cannot support the entry of summary judgment. Although the Jordans did not comply with Rule 74.04 in responding to Peet's motion, Peet was not entitled to summary judgment

because he failed to demonstrate the absence of a genuine issue of material fact and a right to judgment as a matter of law.

Opinion by: Lisa White Hardwick, Judge

September 24, 2013

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