

KANSAS

MCDONALD VEON PA OBTAINS A

DEFENSE VERDICT

IN NURSING HOME NEGLIGENCE CASE



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Ted McDonald and Charlie Miller of McDonald Veon PA obtained a defense verdict in favor of an Olathe, Kansas skilled nursing facility following a 5 day jury trial in the District Court of Johnson County, Kansas October 20, 2023.

The Plaintiff, the daughter of the resident, alleged negligence on the part of the nursing facility in failing to prevent multiple falls, including falls in March and May 2019, which the Plaintiff alleged caused a traumatic brain injury and worsening of the resident's dementia. The Plaintiff alleged the nursing facility deviated from the standard of care in the assessment of fall risk and formulating a Care Plan with interventions to prevent falls, including skilled therapy and a supervised exercise program to increase resident strength, improve balance and reduce fall risk. The resident's family testified the resident was "treated horribly" by the nursing facility, recounting episodes where the resident's briefs were not timely changed and the resident's call light was not answered immediately by staff.

The defense of the case centered on some key themes: 1) the nursing facility met the standard of care in the ongoing assessment of fall risk and the use of reasonable interventions designed to reduce the risk of falls; 2) the resident and the resident's daughter pushed for the resident's independence and continued encouragement to get up and participate in activities of daily living; 3) no one was a fault for the falls (not the resident, the resident's family, or any of the resident's care providers) as the resident sustained falls under the daughters care before her admission the facility, the resident sustained falls at the Defendant nursing facility, and the resident sustained falls at the subsequent nursing facility; and 4) the falls did not cause the progressive dementia, rather the resident's progressive dementia caused the falls.

The defense was successful through cross examination of experts and evidentiary motions in complicating the plaintiff's ability to present full economic damages. The Plaintiff asked for almost \$1,000,000 in non-economic damages. After a 26 minute deliberation, the jury voted 12-0 in favor of Defendant finding no fault of the part of the nursing facility.

