

**OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

KAREN ELLIS and TODD ELLIS,	) No. ED100836
	)
Plaintiffs/Appellants,	) Appeal from the Circuit Court
	) of St. Louis County
v.	)
	) Hon. Colleen Dolan
KEVIN HEHNER,	)
	)
Defendant/Respondent.	) Filed: October 7, 2014

Karen Ellis and Todd Ellis (collectively Appellants) appeal from the trial court’s February 20, 2013 Order and Judgment in favor of Kevin Hehner (Respondent) on Count I (Declaratory Judgment and Permanent Injunction) of Appellants’ three-count petition, and in favor of Respondent on his Counterclaim for Declaratory Judgment and Injunctive Relief.

AFFIRMED.

Division Two Holds: 1. The trial court did not abuse its discretion in granting Respondent’s request for attorney’s fees in the amount of \$5,000 because of special circumstances. 2. There was ample probative evidence presented and referenced in the judgment to a legal description and survey of the boundary portion of the driveway. 3. The trial court did not fail to consider whether evidence of misuse of the easement by Respondent amounted to unclean hands. 4. The trial court did not err in dismissing with prejudice Counts II and III of Karen Ellis’s petition for failure to obey two court orders. 5. Respondent disclosed his expert witness to Appellants in sufficient time to avoid prejudice or unfair surprise. 6. Neither collateral estoppel nor cause of action splitting applied in this case.

Opinion by: Sherri B. Sullivan, P.J. Mary K. Hoff, J., and Philip M. Hess, J., concur.

Attorney for Appellants: John J. Pawloski

Attorneys for Respondent: Martin J. Buckley, Adrian P. Sulser, and Daniel J. Sullivan

<p><b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b></p>
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