

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

AUBREY RUTHERFORD and MARY	)	No. ED101476
RUTHERFORD, Husband and Wife,	)	
Respondents/Cross-Appellants,	)	Appeal from the Circuit Court
	)	of Cape Girardeau County
vs.	)	
	)	Hon. William L. Syler
JACK DAVIS and SHIRLEY DAVIS,	)	
Husband and Wife, Appellants.	)	Filed: March 17, 2015

This appeal arises from a property dispute between Jack and Shirley Davis and Aubrey and Mary Rutherford. The Davises appeal the judgment entered after a bench trial finding that they had not acquired a prescriptive easement over a portion of the Rutherfords' land. The Rutherfords cross-appeal the denial of their request for attorney fees.

JUDGMENT IS AFFIRMED, AND CROSS-APPEAL IS DISMISSED.

Division Three holds:

The Davises failed to prove by clear and convincing evidence that they had used the disputed area uninterrupted for ten years, as is required to obtain a prescriptive easement.

The Rutherfords' original notice of cross-appeal was untimely, and they did not respond to this Court's show cause order, did not take the steps suggested by this Court in another order and did not seek leave to file a notice of appeal out of time under Rule 81.07. Therefore, the appeal must be dismissed.

Opinion by: Robert G. Dowd, Jr., J  
Kurt S. Odenwald, P.J. and Gary M. Gaertner, Jr., J., concur.

Attorneys for Appellant: Wendell L. Hoskins, II, Mary K. Walker

Attorney for Respondent: Albert C. Lowes

**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.**