



**In the Missouri Court of Appeals
Eastern District
NORTHERN DIVISION**

HAROLD and ELSIE TURNBULL,)	
)	No. ED90310
Respondents,)	
)	Appeal from the Circuit
v)	Court of Lincoln County
)	06L6-CC00016
CAR WASH SPECIALTIES, LLC,)	
)	Honorable T. Bennett Burkemper, Jr.
Appellant.)	
)	Filed: December 9, 2008

OPINION SUMMARY

Car Wash Specialties, LLC appeals from the judgment of the trial court finding in favor of Harold and Elsie Turnbull on their declaratory judgment action, and in favor of the Turnbulls on Car Wash Specialties' counterclaim for breach of contract.¹

REVERSED AND REMANDED.

Division One Holds:

- (1) The trial court erred when it failed to submit to the jury the factual issues to be determined in the declaratory judgment action.

¹ Third-party defendant Missouri Highway and Transportation Commission (the "Commission") was initially named as a Respondent in this appeal; however, counsel for Car Wash Specialties filed a motion for dismissal of the Commission in our Court, which was granted. Therefore, Car Wash Specialties' third point relied on, which argues that the trial court erred in granting summary judgment in favor of the Commission and in dismissing the Commission from the suit, is deemed abandoned.

- (2) The trial court erred in directing a verdict in favor of the Turnbells on Car Wash Specialties' breach of contract counterclaim.

Opinion by: Glenn A. Norton, J. Nannette A. Baker, C.J. and Clifford H. Ahrens, J., concur