

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FOUR

GARY F. PEASEL, Respondent	)	ED91014
	)	
v.	)	Appeal from the Circuit Court of
	)	Warren County
LEO H. DUNAKY and	)	
JOSEPHINE S. DUNAKY, Appellants.	)	FILED March 3, 2009

OPINION SUMMARY

Leo and Josephine Dunakey appeal the circuit court’s judgment extinguishing their roadway easement and quieting title by adverse possession in favor of Gary Peasel. The Dunakeys allege that the trial court erred in that: (1) Peasel’s use of the disputed property was not sufficiently adverse to the interests of the Dunakeys and other easement holders so as to extinguish the easement by adverse possession, and (2) the circuit court lacked jurisdiction because other easement holders were not joined as necessary parties as required by Rule 52.04(a).

REVERSED AND REMANDED.

Division Five Holds: (1) Mr. Peasel’s use of the northern portion of the easement strip - containing a fence line, berry patch, and signage, but no permanent improvements - was not sufficiently adverse to extinguish that part of the easement by adverse possession. The record does not demonstrate that Peasel attempted to wholly exclude the Dunakeys from using that portion before he brought the present action. (2) The other easement holders were not proven to be indispensable parties as contemplated by Rule 52.04(b), so their absence was not fatal to the circuit court’s jurisdiction. However, because they have an interest in the subject of this action, the circuit court is instructed to join them as parties on remand. (3) The Dunakeys’ counterclaim, the merits of which are not properly before this court, on remand is to be dismissed without prejudice.

Opinion by: Nannette A. Baker, C.J. Kathianne Knaup Crane, J. and Mary K. Hoff, J., concur.

Attorneys for Appellant: Blake Hill and Jeffrey Weisman

Attorney for Respondent: Phillip Gebhardt

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