

# OPINION SUMMARY

## MISSOURI COURT OF APPEALS EASTERN DISTRICT

### DIVISION ONE

AMBER M. MCCLAIN, f/k/a	)	No. ED93184
AMBER M. BURKE, and	)	
ROY A. DILLON,	)	
	)	
Respondents,	)	Appeal from the Circuit Court
	)	of Lincoln County
vs.	)	
	)	
GARY MICHAEL HARTLEY,	)	Honorable Amy Johanna Kinker
	)	
Appellant.	)	FILED: August 31, 2010

Gary Hartley ("Seller") appeals the trial court's decision to award damages to Amber McClain and Roy Dillon (collectively, "Buyers").

### REVERSED AND REMANDED

Division One Holds: The trial court based its judgment on a theory that was not raised in the pleadings. Further, the judgment was not supported by substantial evidence. Therefore we reverse and remand for a new trial.

Opinion by: Roy L. Richter, Chief Judge  
Kenneth M. Romines, J., and James R. Hartenbach, Sp. J., concur.

Attorneys for Appellant: William W. Cheeseman, Noelle I. Cheeseman, Mark A. Kragel

Attorneys for Respondent: Dwayne A. Johnson

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