

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

BRET MILLER and NATALIE MILLER,)	No. ED97251
Plaintiffs/Appellants,)	Appeal from the Circuit Court
v.)	of St. Charles County
CITY OF WENTZVILLE, MISSOURI,)	Honorable Nancy L. Schneider
Defendant/Respondent.)	Date: April 17, 2012

Plaintiffs, Bret Miller and Natalie Miller, appeal from the entry of summary judgment in favor of defendant, the City of Wentzville, Missouri, on their inverse condemnation claim to recover damages for cracks in their garage and house foundation, which they alleged had been caused by "street creep," the movement and expansion of the concrete street in the absence of adequate expansion joints.

REVERSED AND REMANDED.

Division Two Holds:

1. Inverse condemnation is the exclusive remedy when private property is taken or damaged without compensation by a nuisance operated by an entity that has the power of eminent domain. Nuisance is the unreasonable, unusual, or unnatural use of one's property so that it substantially impairs the right of another to peacefully enjoy his or her property.
2. The elements of an inverse condemnation action based on nuisance are (1) notice, (2) an unreasonable operation in spite of that notice, (3) injury, (4) damage, and (5) causation.
3. The summary judgment record does not contain uncontroverted facts showing that defendant was entitled to summary judgment as a matter of law.

Opinion by: Kathianne Knaup Crane, P.J.
Lawrence E. Mooney, J. and Kenneth M. Romines, J., concur.

Attorney for Appellants: Michael J. Rolwes

Attorneys for Respondent: W. Dudley McCarter, Edward V. Crites, and Brandon A. DeWitt

<p>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.</p>
