

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

#### DIVISION FIVE

MARI BUSH,	)	No. ED99688
	)	
Plaintiff/Appellant,	)	Appeal from the Circuit Court of
	)	St. Charles County
vs.	)	
	)	Honorable Jon Cunningham
CITY OF COTTLEVILLE, ET AL.,	)	
	)	
Defendants/Respondents.	)	Filed: October 22, 2013

Plaintiff Mari S. Bush appeals the judgment of the Saint Charles County Circuit Court granting defendants City of Cottleville, Missouri, the Cottleville Board of Adjustment (“BOA”), and Joseph A. Aiello’s motion to dismiss for failure to state a claim upon which relief can be granted.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

DIVISION FIVE HOLDS: We deny City and BOA’s motion to dismiss for failure to comply with Rule 84.04. We affirm the trial court’s dismissal of Bush’s claims against City and BOA. We reverse the trial court’s dismissal of Bush’s section 89.491, RSMo (2000), and private nuisance claims against Aiello and remand this matter to the trial court for further proceedings consistent with this opinion.

Opinion by: Lisa S. Van Amburg, J.  
Robert M. Clayton, C. J., and Kurt Odenwald, J. concur.

Attorney for Appellant: Charissa Mayes

Attorney for Respondent: David Hamilton  
Scott Harper (Attorney for Joseph Aiello)  
Aaron Mandel (co-counsel)  
Wayne Schoeneberg (co-counsel)

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.  
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND  
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