

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

**CARL SPATH AND PAM SPATH,
APPELLANTS.**

v.

**GARY L. NORRIS, ET AL.,
RESPONDENT,**

WD68904

DATE: MARCH 17, 2009

Appeal From:
LINN COUNTY CIRCUIT COURT
THE HONORABLE GARY E. RAVENS, JUDGE

Appellate Judges:
Division Two: SMART, P.J., HARDWICK and WELSH, JJ.

Attorneys:
MICHELLE LYNN WEBB BURNS, OVERLAND PARK, KS. **for appellants.**

ROBERT E. COWHERD, CHILLICOTHE, MO. and JEFFREY SCOTT NICHOLS,
KANSAS CITY MO., **for respondents.**

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

CARL SPATH AND PAM SPATH,
APPELLANT

v.

GARY L. NORRIS,
RESPONDENT,

WD68904

Lynn County

Before Division Two Judges: SMART, P.J., HARDWICK and WELSH, JJ.

Carl and Pam Spath appeal from the circuit court's dismissal of their Petition for Damages, against Gary Norris and Jerry and Rhonda Lindsay, on grounds of *res judicata* and collateral estoppel.

REVERSED AND REMANDED.

Division Two holds: The circuit court erred in applying the doctrine of *res judicata* because this action was filed against different parties and alleged different facts and legal theories than a prior lawsuit involving similar damage claims. There is also no basis for collateral estoppel because the issues in this lawsuit are not identical to those raised in the prior lawsuit. The judgment is reversed and the cause remanded for further proceedings.

Opinion by: Lisa White Hardwick, Judge

March 17, 2009

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