

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**EVERETT PETERS, CINDY PETERS AND RACHEL KUNZ HALL,
APPELLANT-RESPONDENTS,**

v.

CONTIGROUP, ET AL., RESPONDENT-APPELLANTS.

DOCKET NUMBER WD69614
(consolidated with WD69647)

DATE: July 7, 2009

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE JAY A. DAUGHERTY, JUDGE

Appellate Judges:
Division Three: James M. Smart, Jr., P.J., Joseph M. Ellis and James E. Welsh, JJ.

Attorneys:
Charles F. Speer, Kansas City, MO, and
Richard Middleton, Savannah, GA, **for appellant.**

Jean Paul Bradshaw, Kansas City, MO, and
Duncan Getchell, Jr., Richmond, VA, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

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Before Division Three Judges: James M. Smart, Jr., P.J., Joseph M. Ellis and James E. Welsh, JJ.

In 2002, Everett and Cindy Peters filed a lawsuit against ContiGroup Companies, Premium Standard Farms, and PSF Group Holdings, claiming that odors and contaminated wastewater from the defendants' hog farm operations were creating a nuisance. Their claims dated back only to May 1999. Cindy Peters' daughter, Rachel Hall, was a plaintiff in a separate nuisance lawsuit against the same defendants. That lawsuit included claims that pre-dated May 1999. The trial court eventually joined the Peters' claims with those of Rachel Hall. The court granted the defendants' motion for partial summary judgment on Rachel Hall's pre-May 1999 claims on the basis that they had been litigated by Mr. and Mrs. Peters in an earlier nuisance lawsuit. The case proceeded to trial on the rest of the plaintiffs' claims. The court denied the defendants' motions for directed verdict. The jury found in favor of the defendants. Mr. and Mrs. Peters and Ms. Hall appeal. The defendants cross-appeal.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Division Three holds: The trial court erred in granting summary judgment on Rachel Hall's pre-May 1999 claims. She was not a party in the earlier lawsuit and was not awarded any damages, nor did her family members recover any damages on her behalf. Ms. Hall, as an occupant of the Peters' residence, possessed her own separate cause of action for nuisance for the direct personal injuries she sustained prior to May 1999 even though she was a child at the time. Now that she is of the age of majority, she has a right to a trial on those claims.

The defendants' use of a demonstrative slide in opening statement did not misstate the law or mislead the jury and did not result in prejudice that warranted reversal. The plaintiffs' only objection to the slide in *closing argument* was made off the record and, thus, was not preserved. There was no plain error because the court properly instructed the jury on the law.

The trial court did not abuse its discretion in precluding questions to a defense witness about his own unrelated property dispute, because it concerned a collateral matter and was irrelevant to this case. The plaintiffs were not prejudiced by exclusion of the evidence.

The summary judgment as to Rachel Hall's pre-May 1999 claims is reversed and remanded with directions to conduct a trial on those claims. The judgment is affirmed in all other respects. This outcome renders it unnecessary to address the defendants' cross-appeal. The plaintiffs' motion to dismiss the cross-appeal is moot and is thus denied.

Opinion by: James M. Smart, Jr., Judge

July 7, 2009

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