

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

RYAN J. FISCHER,

Appellant,

v.

FIRST AMERICAN TITLE INSURANCE COMPANY,

Respondent.

DOCKET NUMBER WD74633

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: September 18, 2012

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Edith L. Messina, Judge

JUDGES

Division Two: Ellis, P.J., and Ahuja and Pfeiffer, JJ.

CONCURRING.

ATTORNEYS

Vincent F. O'Flaherty and Courtney E. Noll
Kansas City, MO

Attorneys for Appellant,

William L. Sauerwein and Grant J. Mabie
St. Louis, MO

Attorneys for Respondent.



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

RYAN J. FISCHER,

Appellant,

v.

**FIRST AMERICAN TITLE INSURANCE
COMPANY,**

Respondent.

**OPINION FILED:
September 18, 2012**

WD74633

Jackson County

Before Division Two Judges:

Joseph M. Ellis, Presiding Judge, and Alok Ahuja and
Mark D. Pfeiffer, Judges

A jury found in favor of Ryan J. Fischer on his claims against First American Title Insurance Co. (“First American”) for breach of the contractual terms of a title insurance policy and on his derivative claim for vexatious refusal to pay or defend. First American filed a motion for a judgment notwithstanding the verdict (“JNOV”), which was granted by the Circuit Court of Jackson County, Missouri (“trial court”). Fischer appeals, claiming that the trial court erred in granting First American’s motion for JNOV because Fischer had established that a neighbor’s claims of adverse possession and boundary by acquiescence against him in an underlying lawsuit fell under the terms of the title insurance policy that he held with First American, and because there was a question of fact as to whether the underlying claim of boundary by acquiescence, which does not include possession among its elements, fell within the parties in possession exception to the policy. Fischer also claims that the trial court’s grant of JNOV was in error because he made a submissible case that First American’s refusal to pay or defend him was without reasonable cause or excuse.

AFFIRMED.

Division Two holds:

In this case, both underlying claims against Fischer by his neighbor alleged that she had acquired her interest in the disputed portion of Fischer’s property (“disputed parcel”) via adverse

possession either by way of an acquiescence over time by the previous owner of the disputed parcel or by open and hostile adverse possession of the disputed parcel. Under either theory, the neighbor claimed to “possess” the disputed parcel by way of an ownership theory that would, by definition, not be recorded in the public records, which is precisely the type of claim to which the parties in possession exclusion applies. Because both underlying claims fell within the parties in possession exclusion in the title policy, First American had no duty to defend Fischer in the underlying lawsuit. Thus, its refusal to pay or defend could not be considered vexatious.

Opinion by: Mark D. Pfeiffer, Judge

September 18, 2012

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