

# IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

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## COMPLETE TITLE OF CASE

JOAN JUNGMEYER, GLEN JUNGMEYER, DENNIS KILLDAY, LINDA KILLDAY,  
TIMOTHY KING, KIM RUIZ-TOMPKINS, ROBERT DUNSTAN, BILL KOEBEL, and  
VIRGIL CLARK,

Appellants,

v.

CITY OF ELDON, MISSOURI,

Respondent.

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**DOCKET NUMBER** WD77922

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** April 21, 2015

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## APPEAL FROM

The Circuit Court of Miller County, Missouri  
The Honorable Ralph H. Jaynes, Judge

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## JUDGES

Division III: Pfeiffer, P.J., and Witt and Gabbert, JJ.

CONCURRING.

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## ATTORNEYS

Audrey E. Smollen  
Jefferson City, MO

Attorney for Appellants,

Mark G. R. Warren and Todd E. Irelan  
Jefferson City, MO

Attorneys for Respondent.

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

**JOAN JUNGMEYER, GLEN** )  
**JUNGMEYER, DENNIS KILLDAY,** )  
**LINDA KILLDAY, TIMOTHY KING,** )  
**KIM RUIZ-TOMPKINS, ROBERT** )  
**DUNSTAN, BILL KOEBEL, and VIRGIL** )  
**CLARK,** )  
 )  
 ) **Appellants,** )  
 )  
 )  
**v.** )  
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 )  
**CITY OF ELDON, MISSOURI,** )  
 )  
 )  
**Respondent.** )

**OPINION FILED:**  
**April 21, 2015**

**WD77922**

**Miller County**

**Before Division III Judges:** Mark D. Pfeiffer, Presiding Judge, and Gary D. Witt and Anthony Rex Gabbert, Judges

This is an appeal from a judgment of the Circuit Court of Miller County, Missouri, granting summary judgment in favor of the defendant below, the City of Eldon, Missouri, and against plaintiffs Joan and Glen Jungmeyer, Dennis and Linda Killday, Timothy King, Kim Ruiz-Tompkins, Robert Dunstan, Bill Koebel, and Virgil Clark. On appeal, the plaintiffs below claim that the circuit court erred in: (1) ruling that their motion to strike the City's motion for summary judgment as being non-compliant with Rule 74.04 was not a proper response to the motion for summary judgment; (2) consequently deeming all of the City's allegations as true and granting the motion for summary judgment; and (3) denying their motion to file a substantive response to the motion for summary judgment out of time.

**REVERSED AND REMANDED.**

**Division III holds:**

A timely motion to strike an opposing party's motion for summary judgment because the motion for summary judgment is not compliant with Rule 74.04 can be a proper response to the

motion. The circuit court should have ruled on the motion to strike. It was error for the trial court to refuse to consider the motion to strike and grant the motion for summary judgment based upon its determination that the motion was unopposed. The case is reversed and remanded for the trial court's consideration of the motion to strike. If, upon remand, the trial court determines that the motion to strike should be denied, then the plaintiffs should be given a reasonable amount of time to respond substantively to the City's motion for summary judgment.

**Opinion by: Mark D. Pfeiffer, Presiding Judge**

April 21, 2015

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.