OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

SOUTHERN DIVISION

STATE OF MISSOURI, ex rel. ATTORNEY GENERAL ERIC S. SCHMITT,	)	No. ED107970
Respondent,	)	
	)	Appeal from the Circuit Court of Madison County
vs.	)	Cause No. 18MD-CC00147
GARY HENSON, ET AL.,	)	Honorable Wendy Wexler Horn
Appellants.	)	Filed: April 14, 2020

Gary and Rebecca Henson (collectively, "the Hensons") and Offsets Recreation, LLC ("Offsets Recreation") (collectively, "Appellants") appeal the trial court's judgment permanently enjoining Appellants from operating the commercial swimming and diving facility on the Hensons' property ("the Offsets") and/or charging admission to such facility until Appellants meet certain conditions to make operation of the Offsets safer for guests. The State filed its petition requesting a permanent injunction and its motion for preliminary injunction against Appellants on the grounds that Appellants' operation of the Offsets was a public nuisance, and after a bench trial, the trial court concluded that Appellants' operation of the Offsets constituted a public nuisance because it interfered with the "common community right of public safety."

Appellants raise four points on appeal. In their first point, Appellants argue that the trial court erred in concluding that Appellants' operation of the Offsets was a public nuisance because "Missouri does not recognize a cause of action for a public nuisance where the alleged activities are solely on private property and where the public has no right to enter and which enterprise does not interfer[e] with a right common to the general public." In their second and third points, Appellants assert that the trial court erred by enjoining the Hensons because there was no evidence presented before the trial court demonstrating that either owns or operates the Offsets. And in their fourth point, Appellants contend that the trial court erred in concluding that their operation of the Offsets constituted a public nuisance because "the evidence does not support a public nuisance because nine deaths over thirty-two years is not a public nuisance."

AFFIRMED.

Southern Division Holds: The trial court did not err in concluding that Appellants' operation of the Offsets, as found by the trial court, constituted a public nuisance. In sum, the evidence presented constitutes substantial evidence supporting the trial court's conclusion that Appellants' operation of the Offsets was a public nuisance because said operation interferes with the common community right of public safety. The common right to safety, health, and life of the

members of the public who have visited the Offsets has been interfered with at least nine times over the past three decades. Appellants' failure to warn of inherently dangerous conditions and to adequately attempt to prevent or prepare for injury caused by those dangerous conditions continues to create increased risk of serious physical injury or death to those members of the public who are guests of the Offsets at Appellants' invitation. Nor did the trial court err in enjoining the Hensons in this case. The trial court's injunction against Appellants, including the Hensons, was necessary to ensure abatement of the public nuisance before the Hensons could use their property or allow their property to be used as a commercial swimming and diving facility.

Opinion by: Colleen Dolan, C.J.

Robert G. Dowd, Jr., J., and Lisa P. Page, J., concur.

Attorney for Appellant: Clinton B. Roberts

Attorneys for Respondent: Jeremiah J. Morgan and Brandon E. Gibson

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.