MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY

MATTHEW J. BUSCHER,	)	No. ED108699
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of Osage County
v.	)	
	)	Honorable Robert D. Schollmeyer
MIKE C. BUSCHER AND LORI BUSCHER,	)	
	)	
Respondents.	)	FILED: March 16, 2021

Matthew Buscher ("Appellant") appeals from the trial court's judgment denying him an easement by implication and instead granting him a more limited easement by necessity across the property of Mike C. Buscher and Lori Buscher (collectively, "Respondents"). Appellant raises two points on appeal. Point One argues the trial court erred as a matter of law in finding that the unpleaded claim for an easement by necessity was tried by consent of the parties. Specifically, Appellant contends that the evidence adduced to prove the easement by necessity was equally relevant to proving the easement by implication, and therefore application of the trial-by-consent rule was inappropriate. Point Two asserts the trial court erred in rejecting his claim for an easement by implication because the record contains sufficient evidence satisfying all the elements for an easement by implication. Respondents raised the alternative proposal of an easement by necessity at trial and adduced evidence supporting the grant of such easement. Appellant did not object to the introduction of such evidence at trial.

REVERSED AND REMANDED.

DIVISION THREE HOLDS: Because the evidence relating to the unpleaded easement by necessity was relevant to the pleaded issue of reasonable necessity in Appellant's claim for an easement by implication, easement by necessity was not impliedly tried by consent of the parties under Rule 55.33, and the trial court erred as a matter of law in granting the easement by necessity. Because the overwhelming weight of the evidence at trial satisfied the essential elements for an easement by implication, it was against the weight of the evidence for the trial court to deny Appellant's claim for an easement by implication.

Opinion by: Kurt S. Odenwald, J.
Angela T. Quigless, P.J., and James M. Dowd, J., concur.

Attorney for Appellant: Dougglas A. Stultz
Attorneys for Respondents: Schoen M. Grayson and Lisa J. Dawson
Attorney for Third Party Defendants Mark & Linda Buscher: Dougglas A. Stultz

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.