Summary of SC98380, *The Empire District Electric Co., a Kansas Corporation, and Wester Generating Inc., a Kansas Corporation v. John Thomas Scorse, as trustee under that certain Trust Agreement dated November 17, 1976, and its unknown successors and assigns, and John Thomas Scorse, individually, and his unknown heirs and assigns*

Appeal from the Newton County circuit court, Judge Kevin Selby
Argued and submitted September 1, 2020; opinion issued April 20, 2021

Attorneys: Scorse was represented by Jonathan Sternberg of Jonathan Sternberg, Attorney, PC in Kansas City, (816) 292-7020. The utilities were represented by Todd A. Johnson of Ellis, Ellis, Hammons & Johnson P.C. of Springfield, (417) 866-5091.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals from a judgment entered against him in an action to quiet title (give clear title) to disputed property in southwestern Missouri. In a 6-0 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the circuit court's judgment. The man did not establish his use of the disputed property constituted actual and exclusive possession for purposes of proving adverse possession as a matter of law.

Facts: This case involves a title dispute over a tract of rocky, hilly land in Newton County. In 1999, The Empire District Electric Company and Westar Generating Inc. (collectively, the utilities) purchased land purportedly including the disputed property. John Scorse and his family, who own and farm land abutting the disputed property, believed they owned the disputed property until the utilities bulldozed a fence on the property in 2008. In 2015, the utilities petitioned the circuit court to quiet title to the disputed property. Scorse denied the utilities' claims and filed a counterclaim asserting ownership by adverse possession. Scorse stated he and his father believed the disputed property was included with the farms they purchased because they walked the disputed property before the purchase. The Scorse family also maintained fencing enclosing the disputed property and marked post and trees with purple paint to discourage trespass. Scorse's back yard is contiguous to the disputed property, and, since 1975, he and his family members have used the disputed property to explore caves, hunt, fish, irrigate and landscape. Scorse alleged no one objected to his family's use of the disputed property. The utilities presented evidence that other ranchers and individuals were permitted to move through and hunt on the disputed property. Following trial, the circuit court entered judgment quieting title to the disputed property in the utilities' favor and denying Scorse's counterclaim for adverse possession. Scorse appeals.

AFFIRMED.

Court en banc holds: (1) Once a circuit court enters an order deeming certain facts established for all purposes under Rule 74.04(d), that order is preclusive as to those facts. The circuit court may not choose to disbelieve these facts or deem them in controversy without notice to the parties, but it does not have to include in its final judgment all facts it finds as uncontroverted and established. Instead, it must include only the facts that are material to its conclusions of law.

(2) None of the facts the circuit court entered pursuant to Rule 74.04(d) conflict with those it entered in its final judgment. While the circuit court found, pursuant to Rule 74.04(d), that Scorse and his family painted various fence posts and trees on the disputed property with purple paint warning others not to trespass, the circuit court did not make any Rule 74.04(d) findings with respect to actual trespass signs. Accordingly, the circuit court was free to find Scorse's testimony regarding trespass signs was not credible because he failed to provide examples of the signs, did not show where these signs were located and did not explain whether the signs identified the Scorses as owners of the disputed property.

(3) Scorse was not entitled to judgment as a matter of law on his adverse possession claim. Occasional recreational uses, an unspecified number of purple-painted posts and trees, and the boundary fence were not sufficient to compel, as a matter of law, a finding that Scorse's possession of the disputed property was "actual" as required by Missouri law. Furthermore, Scorse's possession of the disputed property was not exclusive, as there was evidence ranchers were permitted to ride through the disputed property three to four times a year and others hunted on the disputed property.