

**MISSOURI COURT OF APPEALS, WESTERN DISTRICT  
SPECIAL DIVISION**

**Alok Ahuja, Presiding Judge  
Mark D. Pfeiffer, Judge  
W. Douglas Thomson, Judge**

**October 7, 2024  
Linn County Courthouse  
Linneus, Missouri**

**WD86760**

**Teri A. Deffenbaugh and Kelly R. Forck, Appellants,**

**v.**

**David Kelly Burre, Trustee of the David Kelly Burre Revocable Trust, Respondent.**

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Appellants Teri Deffenbaugh and Kelly Forck appeal from the judgment of the Circuit Court of Callaway County denying their claim for specific performance of a real estate contract they entered into with Respondent David Kelly Burre, Trustee of the David Kelly Revocable Trust. On July 10, 2016, Appellants and Respondent entered into a contract to purchase approximately 20 acres of land in Callaway County. As alleged by Appellants during a bench trial, after the parties contracted to purchase the land, Respondent failed to fulfil multiple contractual obligations. These obligations included having a survey completed with a description of the portion of Respondent's land to be sold, obtaining a commitment for title insurance, and providing a general warranty deed. Because of the deficiencies, the parties were unable to complete the sale on the agreed upon closing date. The Appellants agreed to extend the closing date. The parties met multiple times between 2017 and 2019 regarding the sale, but the parties failed to finalize the purchase. Appellants allege that, in 2019, they purchased property adjacent to the land to secure access to the property from an adjacent highway. The Appellants filed suit seeking specific performance of the real estate contract. Respondent filed a counter claim seeking attorney's fees. The circuit court found that the Appellants were not entitled to specific performance of the contract. The court further found that, based on the terms of the contract, Respondent was entitled to attorney's fees for the cost of the litigation. This appeal followed.

Appellants' points on appeal:

1. The trial court erred in determining that Respondent did not breach the contract because this was an erroneous application of the law, in that the contract required Respondent to provide a survey, title commitment, and warranty deed and convey

good title to the real estate to Appellants, and he failed to do so, which constituted a material breach of the contract.

2. The trial court erred in determining that Respondent did not have an obligation to provide a survey of the real estate to Appellants because this was an erroneous application of the law, in that the contract specifically states that Respondent is required to pay for a survey and the parties, including Respondent, admit that it was Respondent's obligation to provide the survey of the real estate.
3. The trial court erred in determining that the description of the real estate in the contract was too vague and indefinite for the court to order specific performance, because this was an erroneous application of the law, in that all of the parties confirmed that the real estate to be conveyed pursuant to the contract was identified and agreed to by the parties and the boundaries were marked by steel posts placed by the parties which sufficiently identified the real estate for the purpose of conveying it by contract.
4. The trial court erred in determining that the description of the real estate in the contract was too vague and indefinite for the court to order specific performance because there was no substantial evidence to support this finding, in that all of the parties confirmed that the property to be conveyed pursuant to the contract was agreed to and identified by the parties and marked by steel posts which sufficiently identified the property for the purpose of conveying it by contract.
5. The trial court erred in determining that the description of the real estate in the contract was too vague and indefinite for the court to order specific performance because this finding was against the weight of the evidence, in that all of the parties confirmed that the property to be conveyed pursuant to the contract was agreed to and identified by the parties and marked by steel posts which sufficiently identified the property for the purpose of conveying it by contract.
6. The trial court erred in finding that the Appellants failed to perform or tender performance to purchase the property shown on Exhibit 17, because the trial court erroneously applied the law, in that the uncontradicted evidence at trial was that Appellants were ready, willing and able to close on the purchase of the property described on Exhibit 17 as soon as Respondent provided the required survey but the parties could not close because Respondent never provided the survey required by the contract.
7. The trial court erred in determining that the Appellants did not satisfy a condition precedent to the contract by not obtaining an easement or clear title to the adjoining property referred to as the Johnson Property, because this was an erroneous application of the law, in that Appellants' did obtain clear title to the Johnson Property by purchasing said property.

8. The trial court erred in determining that the contract could not be enforced beyond the closing date stated in the contract because this was an erroneous application of the law, in that the statute of limitations for the enforcement of a written real estate contract is ten years and Appellants filed their lawsuit within that period of time.
9. The trial court erred in awarding attorney's fees to Respondent because this was an erroneous application of the law, in that Respondent was first to materially breach the contract and could not therefore claim its benefits.
10. The trial court erred in determining that Appellants were not entitled to specific performance of the contract because this finding was a misapplication of the law, in that the contract obligated Respondent to sell the real estate to Appellants, Respondent materially breached the contract by not selling the real estate to Appellants and the contract was definite, certain, complete, contained the essential terms, and may be enforced as written.
11. The trial court erred in not awarding attorney's fees to Appellants because this was an erroneous application of the law, in that Respondent first materially breached the contract by failing to provide a survey and closing on the sale of the real estate and Appellants should therefore be the prevailing party and awarded attorney fees pursuant to the contract.

**WD85680**

**State of Missouri, Respondent,**

**v.**

**Nancy J. Royal, Appellant.**

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Appellant Nancy Royal appeals the judgment of the Circuit Court of Livingston County convicting her of one count of involuntary manslaughter, two counts of abuse or neglect, and two counts of endangering the welfare of a minor. Appellant and her husband had six children, four of those children, ages 21, 18, 11, and 9, still lived in their home. Appellant had previously, or was actively, homeschooling her children. The charges related to the care of her youngest children, J.R. age 11 and V.R. age 9, and were brought following the death of J.R. As alleged at trial, Appellant testified that the entire family became ill with a flu like illness in February 2019. The family did not regularly seek outside medical care for their children, and Appellant treated everyone's illness with over the counter medications. Appellant testified that she believed everyone was getting better but, that three days before his death, J.R. started showing signs of still being sick. He struggled to keep food down. However, according to Appellant, the evening before his death, J.R. was able to play video games, go to the bathroom, and get ready for bed

without assistance. Appellant and her husband agreed that if J.R. was not well the next day, they would take him to the doctor. There was some testimony from the other children that, immediately before his death, J.R. was not able to feel his arms and legs, was vomiting and defecating at the same time, and seemed disoriented and confused. On February 9, sometime after J.R. had gone to bed, Appellant checked on him and found him unresponsive. J.R. was transported to the hospital where he was declared dead. The responding officer obtained a search warrant for the home and testified that he found animal feces on the floor, the smell of ammonia in the air, rotting food in the kitchen, and piles of trash in multiple rooms. At trial, multiple physicians testified. The jury heard testimony that J.R. was chronically malnourished and may have had sepsis. The doctors testified that J.R. likely had Type 1 diabetes brought on by the flu. This caused diabetic ketoacidosis. The physicians did not agree as to the exact cause of J.R.'s death. Appellant was charged with involuntary manslaughter for J.R.'s death as well as his abuse and neglect for his chronic starvation and failure to provide him with healthcare. The charges as related to V.R. were that Appellant knowingly caused V.R. mental injury by failing to educate her. At the time of her brother's death, V.R. was unable to function at a normal range of performance. For example, V.R. was unable to write her own name, recite her ABCs, recall her birthday, brush her hair, or bathe unassisted. Appellant was also charged with endangering the welfare of a child as to both J.R. and V.R. due to the state of their home and her failure to bathe J.R. and V.R. Following a jury trial, Appellant was found guilty of involuntary manslaughter, two counts of abuse or neglect, and two counts of endangering the welfare of a child. This appeal followed.

Appellant's points on appeal:

1. The trial court erred in overruling Appellant's motion for judgment of acquittal and sentencing her upon her conviction for Count II for neglect of a child resulting in death, because this violated her right to due process of law guaranteed by the Fourteenth Amendment of the United States Constitution, and Article I, section 10 of the Missouri Constitution, in that there was insufficient evidence to show Appellant's knowing failure to provide routine medical care generally and medical care in the three days before J.R.'s death caused the physical injury that resulted in J.R.'s death.
2. The trial court erred in overruling Appellant's motion for judgment of acquittal and sentencing her upon her conviction for Count III for abuse of a child, because this violated her right to due process of law guaranteed by the Fourteenth Amendment of the United States Constitution, and Article I, section 10 of the Missouri Constitution, in that the failure to educate one's child can never constitute "abuse" especially under these facts although it may be a different crime.

3. The trial court plainly erred in punishing Appellant for both involuntary manslaughter and Abuse and Neglect resulting in death for Counts I and II, because this violated her right to due process of law guaranteed by the Fourteenth Amendment of the United States Constitution, and Article I, section 10 of the Missouri Constitution, in that section 556.041(3), RSMo, prohibits multiple convictions for multiple different offenses if “[t]he offenses differ only in that one is defined to prohibit a designated kind of conduct generally [i.e. involuntary manslaughter] and the other to prohibit a specific instance of such conduct [i.e. child neglect resulting in death].”

**WD86868**

**Derek Fuemmeler, et al., Appellants,**

**v.**

**Mike and Mark Farms, LLC, et al., Respondents.**

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Appellants Derek Fuemmeler and Steven Cleeton appeal from the entry of summary judgment by the Circuit Court of Boone County in favor of Respondents Mike and Mark Farms, LLC, Michael Tregnago, Marc Tregnago, and Heather Tregnago. Appellants are farmers who leased two different farms from the Respondents. The leases entered into described the properties by their common names, the Browning Farm and Higdon Farm respectively. Both lease terms were for five years. The lease for Browning Farm began in January 2021, and the lease for the Higdon Farm began in April 2022. On August 1, 2022, the Appellants were notified by certain Respondents that the leases were being terminated. The notice stated that the leases were in violation of Missouri’s statute of frauds because they failed to adequately describe the properties included in each lease. As such, the leases would be treated as year-to-year leases, and the notice instructed the Appellants to vacate the farms by February 28, 2023. Appellants brought action against the Respondents for breach of the lease agreement. The circuit court entered summary judgment in favor of the Respondents finding that the leases did not comply with the statute of frauds. This appeal followed.

Appellants’ points on appeal:

1. The trial court erred in granting summary judgment in favor of Respondents because Respondents were not entitled to judgment as a matter of law in that the uncontroverted material facts establish that the leases identify the farms included in each lease with reasonable certainty such that the statute of frauds is satisfied.
2. The trial court erred in denying summary judgment in favor of Appellants because Appellants were entitled to judgment as a matter of law in that the uncontroverted material facts establish that the leases identify the farms included in each lease with reasonable certainty such that the statute of frauds is satisfied.

3. The trial court erred in granting summary judgment in favor of Respondents because Defendants were not entitled to judgment as a matter of law in that the testimony of Appellants' land surveyor created a genuine issue of material fact.
4. The trial court erred in granting summary judgment in favor of Respondents because Respondents were not entitled to judgment as a matter of law in that genuine issues of material fact exist regarding the partial performance exception to the statute of frauds.
5. The trial court erred in granting summary judgment in favor of Respondents because Respondents were not entitled to judgment as a matter of law in that genuine issues of material fact exist regarding the promissory estoppel exception to the statute of frauds.