

**OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

|   |   |                               |
|---|---|-------------------------------|
| ESTATE OF ZELMA M. TALLEY,                | ) | No. ED100198                  |
| Deceased, by her Personal Representative, | ) |                               |
| KENNETH F. PICKENS,                       | ) |                               |
|   | ) | Appeal from the Circuit Court |
| Plaintiff/Appellant,                      | ) | of Warren County              |
|   | ) |                               |
| v.  | ) |                               |
|   | ) | Honorable Wesley C. Dalton    |
| AMERICAN LEGION POST 122,                 | ) |                               |
|   | ) |                               |
| Defendant/Respondent.                     | ) | Filed: May 20, 2014           |

The Estate of Zelma M. Talley (the Estate) appeals from the circuit court’s judgment granting the Amended Motion to Dismiss of American Legion Post 122 (the Post) and dismissing the Estate’s claims against it. On appeal, the Estate argues the court erred in granting the Post’s motion on the basis of res judicata, the statute of limitations, or any other basis raised in the motion and the dismissal of its claim based on res judicata denied the Estate its right to a jury trial.

REVERSED and REMANDED.

Division Two Holds: The circuit court erred in dismissing the Estate’s claims against the Post based on res judicata because there was no identity of issues and the claims were neither heard nor decided by the probate court in the prior proceeding. The Post failed to properly plead the affirmative defense of statute of limitations and, even if properly pled, the Post did not clearly establish that on the face of the Estate’s petition and without exception the Estate’s cause of action was barred.

Opinion by: Sherri B. Sullivan, J. Lawrence E. Mooney, P.J., and Robert G. Dowd, Jr., J., concur.

Attorney for Appellant: Lee R. Elliott  
Attorney for Respondent: Stephen A. Martin

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| <b>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.</b> |
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