

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FIVE

STEVEN BAETJE and VERONICA)	No. ED90649
BAETJE, Plaintiffs,)	Appeal from the Circuit Court
v.)	of Ste. Genevieve County
RICHARD EISENBEIS and)	No. 05SG-CC00197
KATHY EISENBEIS, Respondents,)	
and)	Honorable Robin Edward Fulton
WENDELL R. LANGENECKERT)	
DEBORAH A. LANGENECKERT,)	
Appellants.)	FILED: March 17, 2009

OPINION SUMMARY

Wendell and Deborah Langeneckert, the appellants, appeal from a judgment of the Circuit Court of the Ste. Genevieve County entered after a bench trial, awarding Richard and Kathy Eisenbeis, the respondents, an implied easement across the Langeneckerts' property.

On appeal, the Langeneckerts argue that the Eisenbeises failed to present sufficient evidence to support a finding of an implied easement by pre-existing use. Further, they claim that the trial court erred in awarding an implied easement by necessity because the Eisenbeises failed to present sufficient evidence of necessity. Finally, they also allege that the Eisenbeises failed to prove strict necessity as required for a private road pursuant to Section 228.342 RSMo (2007).

REVERSED

DIVISION FIVE HOLDS: The trial court's judgment was not supported by substantial evidence because the Eisenbeises failed to present any evidence of the property at the time of the conveyance in 1988. Moreover, the Eisenbeises had a substitute means of ingress and egress, and therefore were not entitled to an easement by necessity. The Eisenbeises also failed to meet their burden of proof regarding strict necessity and were not entitled to a private road pursuant to Section 228.342.

Opinion by: Nannette A. Baker, C.J. Patricia L. Cohen, J., and Kenneth M. Romines, J., concur.

Attorneys for Appellants: James Marks II

Attorney for Respondents: Robert Huelskamp

Attorney for Plaintiffs: Timothy Inman

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