OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

LAKE WAUWANOKA, INC.,	)	No. ED90864
	)	
Respondent,	)	Appeal from the Circuit Court of
	)	Jefferson County
v.	)	Cause No. 06JE-CC00453
	)	Honorable Mark T. Stoll
JOHN ANTON, et al.,	)	
	)	
Appellants.	)	Filed: January 27, 2009

Nine lot owners appeal the trial court's judgment ordering them to pay in equity their share of a special assessment passed by Lake Wauwanoka subdivision ("the Subdivision"). Appellants assert collateral estoppel as a defense, relying on a 1967 judgment in which the trial court held the Subdivision could not impose an additional assessment. Appellants argue alternatively that they should not have to pay because the assessment was not approved by a majority of lot owners and the Subdivision did not show it was for an emergency project.

AFFIRMED.

Division Five Holds: Collateral estoppel must be plead under Rule 55.08 in order to be preserved. Appellants did not plead this defense, nor did the Subdivision consent to it by introducing evidence of a prior case concerning the Subdivision on the issue of assessments, thus Appellants did not preserve this argument for appeal.

Our precedent states that it is fair and equitable to require a group of landowners in equity to pay their shares of a special assessment which is necessary for the preservation of the common property and has been paid voluntarily by a majority of lot owners, thus the trial court did not err in requiring Appellants to pay their shares of the special assessment at issue. Further, the Subdivision was not required to make a showing that the special assessment was being used to pay for an emergency project.

Opinion by: Kenneth M. Romines, J. Nannette A. Baker, C.J. and Glenn A. Norton, J. concur.

Attorney for Appellants: Kenneth J. Heinz

Attorneys for Respondent: Floyd T. Norrick, Brandon T. Moonier

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.