

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

#### DIVISION FIVE

KENNETH KIRCHOFF,	)	No. ED98439
	)	
Respondent,	)	
	)	Appeal from the Circuit Court
vs.	)	of Lincoln County
	)	
MARY HUTCHISON AND	)	Honorable David Craig Mobley
BETHSHEBA E. NOLAN,	)	
	)	
Appellants.	)	Filed: June 25, 2013

The Mary Kirchoff Revocable Trust, Mary M. Hutchison, individually and as trustee and personal representative of the Mary Kirchoff Estate, and Bethsheba E. Nolan, individually and as trustee and personal representative of the Mary Kirchoff Estate, appeal the judgment of the trial court in favor of Kenneth Kirchoff on his claims of undue influence, rescission, and for a constructive trust.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

Division Five Holds: The trial court's judgment, finding undue influence, was not against the weight of the evidence. However, the trial court erred in calculating prejudgment interest. The trial court's award of damages for loss of use of property was also erroneous.

Opinion by: Robert M. Clayton III, J.  
Gary M. Gaertner, Jr., C.J., and Zel M. Fischer, Sp. J., concur.

Attorney for Appellant: Jane Ellen Tomich

Attorneys for Respondent: N. Gregory Beachem

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