

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION THREE

PATRICIA WILLITS, et al.,)	No. ED98674
)	
Appellants,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable Mary B. Schroeder
PEABODY COAL COMPANY, LLC, et al.,))	
)	
Respondents.)	FILED: April 9, 2013

Patricia Parrott Willits, William G. Parrott, Jr., and Donald Petrie (collectively, "Appellants") appeal from the trial court's judgment sustaining the Peabody Defendants' and Armstrong Defendants' Joint Motion to Dismiss and denying Appellants' Motion for Summary Judgment. Finding Appellants failed to assert their constitutional arguments at the first opportunity available, we need not consider Appellants' allegations of error absent a showing of plain error. Making no such showing, we thus decline to consider the merits of Appellants' appeal, and affirm the trial court's judgment.

AFFIRMED.

Division Three Holds: Appellants' judicial takings, due process and full faith and credit constitutional claims were not raised at the first opportunity available. Appellants had multiply opportunities to raise their constitutional claims during the pendency of Willits v. Peabody Coal Co., LLC, 332 S.W.3d 260 (Mo. App. E.D. 2010). Therefore, Appellants waived their right to now assert their constitutional claims in this lawsuit.

Opinion by: Roy L. Richter, P.J.
Robert G. Dowd, Jr., J., and Angela T. Quigless, J., concur.

Attorneys for Appellant: George A. Barton, Robert G. Harken, Jeffrey J. Lowe
Attorneys for Respondent State of Missouri: Chris Koster, Jeremiah J. Morgan,
Attorneys for Respondent Peabody Defendants: John S. Sandberg, Timothy C. Sansone

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IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
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