

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

THOMAS GREEN and)	
KAROLE GREEN,)	No. ED98887
)	
Appellants,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable Colleen Dolan
THE PLAZA IN CLAYTON)	
CONDOMINIUM ASSOCIATION,)	
)	
Respondent/Cross-Appellant,)	
)	
THF PLAZA CONDOMINIUM, LLC.,)	
et al.,)	
)	
Respondents.)	FILED: October 1, 2013

Thomas and Karole Green appeal from the trial court's judgment following a jury verdict in favor of their *res ipsa loquitur* negligence claim and against the Greens on their specific negligence claim. The jury found that the Greens' damages were caused by the Plaza in Clayton Condominium Association's ("the Association") general negligence. The Greens raise four points on appeal. First, they argue that the trial court erred in denying their motion for an evidentiary hearing on attorneys' fees because they were entitled to an evidentiary hearing under Rule 78.05 and case law. They also argue that an award of attorneys' fee is appropriate under Missouri's Uniform Condominium Act and the common law. Second, the Greens contend that the trial court erred in entering a directed verdict in favor of the THF Plaza Condominium, LLC, THF Carondelet Development, LLC, and THF Carondelet Investors, LLC, (collectively, "the THF Defendants") because having invoked the doctrine of *res ipsa loquitur*, the relevant point-in-time for determining control over the instrumentality at issue is the time the negligent act was committed, not the time the injury occurred. Third, the Greens argue that the trial court erred in taxing costs against them and in favor of the THF Defendants. In their final point, the Greens request an award of attorneys' fees for this appeal. The Association cross-appeals and argues that the trial court erred in denying its motion for a directed verdict on the Greens' *res ipsa loquitur* negligence claim.

AFFIRMED.

Division Three holds: The trial court did not abuse its discretion in denying the Greens' motion for an evidentiary hearing on attorneys' fees because the Greens did not present any authority to support their contention that they were entitled to an evidentiary hearing. The trial court's denial of attorneys' fees was not an abuse of discretion because the record before us provides no basis on which an award of attorneys' fees would have been appropriate. The trial court did not err in entering a directed verdict in favor of the THF Defendants on the Greens' *res*

ipsa loquitur negligence claim because the time at which control over the instrumentality is relevant is the time the injury occurred, and the THF Defendants were not in control of the condominium tower when the Greens were injured. The trial court did not err in taxing costs against the Greens and in favor of the THF Defendants because prevailing parties are entitled to recover costs, and the THF Defendants were the prevailing parties. The Greens are not entitled to an award of attorneys' fees for this appeal because they did not prevail on appeal, and there is no statutory authority upon which an award of attorneys' fees would be appropriate. The trial court's denial of the Association's motion for a directed verdict on the Greens' *res ipsa loquitur* negligence claim was not erroneous because the Greens presented substantial evidence at trial supporting every fact essential to finding liability under the doctrine of *res ipsa loquitur*. Accordingly, we affirm the trial court's judgment.

Opinion by: Kurt S. Odenwald, J., Mary K. Hoff, P.J., and Angela T. Quigless, J., Concur.

Attorney for Appellants: Gary M Siegel

Attorney for Respondent/Cross-Appellant – The Plaza in Clayton Condominium Association: Joseph R. Swift, T. Michael Ward, and Scott H. Morgan

Attorney for Respondents – THF Plaza Condominium, LLC, THF Carondelet Development and THF Carondelet Investors: David T. Ahlheim and Justin C. Wilson

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.