Summary of SC90133, *Orla Holman Cemetery, Inc., and Susan Rector v. The Robert W. Plaster Trust, Stephen R. Plaster, Trustee of the Robert W. Plaster Trust, and Village of Evergreen*

Appeal from the Camden County circuit court, Judge Carl D. Gum Jr.
Argued and submitted Oct. 28, 2009; opinion issued Feb. 23, 2010

Attorneys: The village was represented by David A. Fielder, Michael K. Cully and Lee J. Viorel of Lowther Johnson Attorneys at Law LLC in Springfield, (417) 866-7777, and the cemetery was represented by John C. Holstein and James E. Meadows of Polsinelli Shughart PC in Springfield, (417) 869-3353.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A village and a county-owned cemetery dispute the ownership of the only road accessing the cemetery and a grassy area in which visitors to the cemetery park. The trial court granted summary judgment to the cemetery as to both tracts of land. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri affirms the judgment in part, reverses it in part and remands (sends back) the case for further proceedings. As to the road, the judgment and injunction prohibiting the village from regulating traffic on it were proper. The county owns the road, which specifically was excluded both from a deed transferring certain land from a family to a trust and then annexing land from the trust into the village. As to the grassy area, summary judgment was not proper because genuine issues of material fact exist as to who owns the area and whether the cemetery has acquired any easement to it.

Facts: Laclede County-owned Orla Holman Cemetery encompasses more than one acre of land and has been used by members of the community for more than 100 years. The only public road that provides access to the cemetery is Row Crop Road, which the county built in the 1950s and has maintained ever since. Between the road and the cemetery is a grassy area where cemetery visitors park their cars. In 2002, Billy Massey deeded the land surrounding the cemetery to the Robert W. Plaster Trust, which owns almost all the land in the village. Stephen Plaster is trustee of both the trust and the village. The deed transferred "all [of the property] … except the one acre now used for the cemetery" and "any part thereof deeded, taken, or used for road or highway purposes." In 2003, the village of Evergreen annexed the land deeded to the trust. The village subsequently enacted an ordinance purporting to give the village the power to erect and maintain a barricade across Row Crop Road. The village built one gate across the road, and the county removed it after the city ignored a letter stating the road belongs to the county. Then the village built a second gate across the road and enacted a second ordinance that imposed penalties for tampering with the barricade in any way. When the cemetery and county complained, the village threatened to fence off the tract of land between the cemetery and the road where cemetery visitors had been parking for more than 10 years. The cemetery sued the village, seeking declaratory and injunctive relief. Both the cemetery and the village sought summary judgment. The trial court entered summary judgment for the cemetery and entered an injunction

prohibiting the village from regulating the public's access to the road or the parking area. The village appeals.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Court en banc holds: (1) As to Row Crop Road, the trial court properly entered summary judgment in the cemetery's favor and properly entered an injunction prohibiting the village from regulating the public's access to Row Crop Road; because the village at no time annexed the road, it has no authority to regulate it. Although section 80.090, RSMo 2000, permits a village to regulate streets in the town, and section 304.120, RSMo 2000, permits municipalities to make traffic regulations within the limits of the municipalities, neither statute permits a municipality to regulate roads that are not owned by the municipality. Here, Row Crop Road expressly was excepted from the deed that transferred the property around the cemetery from the Massey family to the Plaster Trust, which then annexed its land into the village. No party disputes the existence or language of either the deed or the annexation ordinance. As such, the road was not annexed and, therefore, still belongs to the county and is maintained by the county pursuant to section 49.650.1(1), RSMo Supp. 2003. Because the road belongs to the county, it is not within the boundaries of the village and, therefore, the village has no authority at all over it. Further, while section 229.030, RSMo, provides that public roads shall be cleared of obstructions that hinder or interfere with traffic, this statute does not permit the village to regulate the road because it does not own it. Accordingly, it has no police powers it may exercise with regard to the road and may not erect even an unlocked gate across the road, and the injunction prohibiting the village from regulating the road was not overly broad or otherwise improper.

(2) The trial court erred in granting the cemetery summary judgment as to the parking area because there are disputed issues of material fact concerning its ownership. The cemetery argues it has a prescriptive easement over the parking area, which requires it to show "adverse use" by demonstrating that the public acts in such a manner as to indicate a nonexclusive right to use the property. Here, however, there is a factual dispute as to whether the Massey family at any time gave permission to the public to use the parking area when the family owned the land. If so, then there may be a permissive, rather than prescriptive, easement. Because this is a genuine issue of material fact, the cemetery is not entitled to summary judgment on this issue. There is no statutory easement over the parking area under section 228.190, RSMo 2000, because this statute applies only to roads, not a grassy parking area. There also is no easement by necessity covering the parking area because the cemetery makes no claim that there ever was unity of ownership between the cemetery itself and the parking area. Even if the cemetery were able to demonstrate both unity of title and necessity, an easement of necessity only would permit the public – at most – to cross the parking area to get to the cemetery, not to park in the parking area.