

Summary of SC95064, *Avery Contracting LLC v. Richard Niehaus, Lisa J. Niehaus, Alicia Niehaus, Creekstone Homeowners Association and Missouri Highways and Transportation Commission*

Appeal from the Jefferson County circuit court, Judge Nathan B. Stewart
Argued and submitted January 13, 2016; opinion issued June 28, 2016

Attorneys: Avery was represented by Philip K. Gebhardt of Gebhardt Real Estate and Legal Services LLC in DeSoto, (636) 586-4545. The Niehauses and homeowners association were represented by Jeffrey B. Hunt and Jess W. Ullom of Doster Ullom & Boyle LLC in Chesterfield, (636) 532-0042. The commission was represented by John W. Koenig Jr., Bryce Gamblin and Richard L. Tiemeyer of the commission's office in Chesterfield, (314) 453-1852.

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 contracting company appeals a judgment dismissing its petition for a private way of necessity over properties owned by a family, a homeowners association and a state commission. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the judgment. The company's claim is barred by the relevant statutes authorizing private ways of necessity.

Facts: Avery Contracting LLC purchased certain property, located adjacent to Route M, in 2013. It alleges that, in 1995, a trust owned the property and that, in 1996, the circuit court entered an order of condemnation awarding the state highways and transportation commission a portion of the property and prohibiting or limiting the rights of access of anyone abutting the property. Avery filed a petition against members of the Niehaus family and the Creekstone Homeowners Association (collectively, the Creekstone parties) and the commission to establish a private access road pursuant to section 228.342, RSMo, alleging that, because of the condemnation, there was no recorded means of ingress or egress from the property to a public road and that it needed a private road as a way of strict necessity. Specifically, Avery petitioned the circuit court to establish a private road running across land in the Creekstone subdivision and ending at the intersection of another road and property owned by the commission. Avery also requested a judgment requiring the commission to provide limited access to Route M. The Creekstone parties and the commission filed motions to dismiss Avery's petition.

AFFIRMED.

Court en banc holds: (1) The circuit court properly dismissed the petition against the Creekstone parties. The availability of a private roadway of necessity under section 228.342, RSMo, is limited by section 228.341, RSMo, which provides that no right of necessity shall be deemed to apply to any road created by or included in any recorded plat referenced in a declaration creating a homeowners association.

(2) The circuit court also properly dismissed the petition against the commission. Avery cites no case holding that statutes like section 228.342 authorize private ways of necessity across public lands. The scope of section 228.342 extends only to providing a limited right to take private property for private use. It does not expressly authorize the establishment or widening of a private road over public lands and, therefore, does not authorize private ways of necessity over public land.