

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ROBERT F. PRZYBYLSKI AND BONNIE D PRZYBYLSKI,

APPELLANTS,

v.

SIMON BARBOSA AND LOUISE MAHLANDT,

RESPONDENT;

ANDREW COUNTY, MISSOURI,

RESPONDENT.

**DOCKET NUMBER WD69632
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: APRIL 28, 2009

Appeal From:
ANDREW COUNTY CIRCUIT COURT
THE HONORABLE RANDALL R JACKSON, JUDGE

Appellate Judges:
DIVISION ONE: ALOK AHUJA, Presiding Judge, HAROLD L. LOWENSTEIN,
Judge, and THOMAS H. NEWTON, Chief Judge

Attorneys:
Philip A. Klawuhn, Esq., Kansas City, MO 64111; Steven L. Stevenson,
Esq., Savannah, MO 64485; Attorney, **for appellants.**
Keith Ferguson, Esq., St. Joseph, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

ROBERT F. PRZYBYLSKI AND BONNIE D PRZYBYLSKI,

APPELLANTS,

v.

SIMON BARBOSA AND LOUISE MAHLANDT,

RESPONDENT;

ANDREW COUNTY, MISSOURI,

RESPONDENT

WD69632

Andrew County

Before Division One Judges: ALOK AHUJA, Presiding Judge, HAROLD L. LOWENSTEIN, Judge. and THOMAS H. NEWTON, Chief Judge

Robert F. Przybylski and Bonnie D. Przybylski filed a petition seeking a declaration that they acquired title by adverse possession to a disputed parcel of land and, additionally, requested a judgment for ejectment and damages. The disputed parcel was voluntarily conveyed by dedication to Andrew County in 1978 for the purpose of establishing a public road. The Przybylskis contend that a public road was later established in 1978 pursuant to an order of the county court under section 228.080, RSMo 1969, and subsequently abandoned by the county because the disputed parcel was never physically developed into or used as a public road for five years thereafter, pursuant to the five year non-user provision of section 228.190. The Przybylskis contend that they adversely possessed the land for ten years after the public road was abandoned and acquired title as a result.

Simon Barbosa and Louise Mahlandt filed a motion to dismiss for failure to state a claim upon which relief can be granted. The trial court granted Barbosa's and Mahlandt's motion, and the Przybylskis appeal.

AFFIRMED.

Division One holds:

The trial court properly ruled that the Przybylskis failed to aver facts that would entitle them to relief. The facts demonstrate that a public road was never established. A public road may be established in three ways: under section 228.190, by prescription, or by implied or common law dedication. The Przybylskis claim the disputed parcel was established as a road under section 228.190, because of the 1978 county court order establishing the disputed parcel as a public road. However, the 1978 county court order is not, by itself, sufficient to establish a public road under section 228.190. The abandonment provision of section 228.190 applies only to established public roads, not lands voluntarily conveyed by dedication to a county and held in trust for the purpose of establishing a road. *Winschel v. County of St. Louis*, 352 S.W.2d 652, 654 (Mo. 1961). Because the facts averred do not support a finding that the disputed parcel was established as a public road, the abandonment provision of section 228.190 is not applicable, and the Przybylskis fail to state a claim upon which relief can be granted. The trial court's judgment is affirmed.

Opinion by: Harold L. Lowenstein, Judge

April 28, 2009

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.