

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

AUTUMN RIDGE HOMEOWNERS ASSOCIATION, INC., APPELLANT,

v.

FRANK JOSEPH OCCHIPINTO, JR., ET AL., RESPONDENTS.

DOCKET NUMBER WD71122

DATE: June 8, 2010

Appeal From:
PLATTE COUNTY CIRCUIT COURT
THE HONORABLE GARY DEAN WITT, JUDGE

Appellate Judges:
Division One: Lisa White Hardwick, P.J., James M. Smart, Jr., and Alok Ahuja, JJ.

Attorneys:
Rod Hoffman, Kansas City, MO, **for appellant.**

Jeffrey S. Eastman, Gladstone, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

AUTUMN RIDGE HOMEOWNERS ASSOCIATION, INC., APPELLANT

v.

FRANK JOSEPH OCCHIPINTO, JR., ET AL., RESPONDENTS

WD71122

Platte County

Before Division One Judges: Lisa White Hardwick, P.J., James M. Smart, Jr., and Alok Ahuja, JJ.

The Autumn Ridge Homeowners' Association, Inc., sued Frank and Carmeline Occhipinto for past-due homeowners' dues. The Association failed to prove at trial that the Occhipintos' property was encumbered by the Association's "Declaration of Covenants and Restrictions." The trial court ruled in favor of the Occhipintos. It also found that the Occhipintos' property is situated "beyond the authority and jurisdiction of [the Association] and its Declarations ... and is thus not encumbered by the same," and that "[a]ny assessment of fees, dues, costs or other obligations ... against the [Occhipintos' property] is void and of no effect." The Association filed a motion to amend, seeking to strike those two findings as outside the pleadings and unsupported by the evidence. Following a hearing, the trial court overruled the motion. The Association appeals the court's denial of its motion to amend.

DISMISSED.

Division One holds: The Association's sole claim on appeal is that the trial court erred in including findings that are "gratuitous only" and in refusing to amend the judgment to remove those findings. Because incidental language in a judgment cannot be separately appealed, and because a claim that certain findings should be stricken as mere "surplusage" presents no issue for appellate review, the matter is moot and must be dismissed. The Association's concern that the court's comments will have a preclusive effect and permanently exclude the property from the Association's jurisdiction is unfounded. Neither party affirmatively proved anything about declarations and covenants that affect the property in question; the Association's claims simply failed for lack of proof. The appeal is dismissed.

Opinion by: James M. Smart, Jr., Judge

June 8, 2010

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