

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**DOROTHY J. SODERHOLM AND
BEVERLY A. SODERHOLM**

APPELLANTS,

**v.
DUANE L. NAUMAN AND MARTHA
ANN NAUMAN**

RESPONDENTS.

DOCKET NUMBER WD77626

DATE: April 21, 2015

Appeal From:

Holt County Circuit Court
The Honorable Roger M. Prokes, Judge

Appellate Judges:

Division Two: Lisa White Hardwick, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

Attorneys:

Robert E. Sundell, Maryville, MO, and Terry K. Barber, Pro Hac Vice, for appellants.

Keith J. Schieber, St. Joseph, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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BEVERLY A. SODERHOLM,**

APPELLANTS,

v.

**DUANE L. NAUMAN AND
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No. WD77626

Holt County

Before Division Two: Lisa White Hardwick, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

Dorothy J. Soderholm and Beverly A. Soderholm appeal a trial court judgment which concluded that Duane L. Nauman and Martha Ann Nauman acquired .6 acres of the Soderholms' property through adverse possession. The Soderholms assert that the trial court erred by (1) failing to consider their motion to reopen the evidence following remand from an earlier appeal; (2) refusing to permit admission of official aerial photos into evidence; (3) determining a boundary location for the adversely possessed tract without a further evidentiary hearing; (4) concluding that the Naumans established each element of adverse possession because the judgment was not supported by the evidence given a dispute about the boundary location; and (5) failing to conclude that the Naumans were estopped to assert adverse possession.

Affirmed.

Division Two holds:

The trial court did not abuse its discretion by failing to consider the Soderholms' motion to reopen the evidence. The trial court expressly heard, considered, and denied the Soderholms' motion to reopen the evidence when it concluded in its judgment that there was no need for additional testimony or evidence upon remand of the Naumans' adverse possession claim. The trial court also did not abuse its discretion by refusing to admit official aerial photographs of the property in question into the trial record. The trial court acted within its discretion when denying the Soderholms' request to reopen the trial record, so the admissibility of the photographs was immaterial since the trial court determined there was no need for additional evidence.

The trial court did not err in determining the boundary location for the adversely possessed tract without a further evidentiary hearing. The fact that all parties agreed to the boundary location between the Soderholms' and the Naumans' properties became the law of the case following an earlier appeal, and the trial court acted within its discretion in declining to reopen the trial record to consider additional evidence regarding the boundary line. The trial

court also did not err in determining that the Naumans established each element of adverse possession. The trial court made specific findings on whether the Naumans established each element of adverse possession and accepted as the law of the case that uncontested trial evidence established the boundary location between the properties.

The Soderholms did not preserve their final point on appeal because they failed to assert estoppel as an affirmative defense, as required by Rule 55.27(a), in their answer to the Naumans' counterclaim for adverse possession.

Opinion by Cynthia L. Martin, Judge

April 21, 2015

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