

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

DONNIE VAUGHT, ET AL. v. ALAN JAKES, SR. and wife DEBORAH JAKES, ET AL.

**Chancery Court for Rutherford County
No. 04-9382 CV Donald P. Harris, Judge**

No. M2007-01858-COA-R3-CV - Filed July 29, 2009

ORDER

In response to an opinion by this Court, filed on May 26, 2009, Alan Jakes Sr. and the other defendants in this case have filed a timely Tenn. R. App. P. 39 Petition to Rehear. In our opinion, we reversed the Chancery Court's dismissal of the plaintiffs' trespass claim and granted the plaintiffs judgment on that claim. The defendants note that the opinion erroneously stated that the trial court dismissed the plaintiffs' complaint at the conclusion of all the proof. In fact, the defendants raised an oral motion for involuntary dismissal of the complaint at the conclusion of the plaintiffs' proof, and the trial court granted their motion.

The defendants further note that as a result of the trial court's dismissal of the complaint at that early stage of the proceedings, none of the defendants testified at trial, nor did they call any witnesses on their behalf. They accordingly argue that by reversing the judgment in their favor, we have deprived them of the opportunity to be heard in their own defense. We agree.

We accordingly withdraw our opinion of May 26, 2009, and replace it with a new opinion to be filed contemporaneously with this order. The new opinion vacates the trial court's dismissal of the plaintiffs' trespass claim and remands this case to the trial court for a new trial on that claim.

PER CURIAM