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IN THE
COURT OF APPEALS OF INDIANA

FERN E. FIRESTONE, ET AL., JULIE A. HUBER,	)	
Plaintiffs,	)	
vs.	)	
AMERICAN PREMIER UNDERWRITERS,	)	
Defendant,[1]	)	
_____	)	No. 06A01-0611-CV-520
IVAN BROWN and MARY BROWN,	)	
Appellants – Plaintiffs,	)	
vs.	)	
RALPH JONES and SHANE JONES, ET AL.	)	
Appellees – Defendants.	)	

APPEAL FROM THE BOONE CIRCUIT COURT
The Honorable Steven David, Special Judge
Cause No. 06C01-9912-CP-379

October 18, 2007

[1] Fern E. Firestone, et al., Julie A. Huber, and American Premier Underwriters have not filed a brief. Pursuant to Indiana Appellate Rule 17(A), a party of record in the trial court is a party on appeal.

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Ivan and Mary Brown (the "Browns") appeal the trial court's dismissal of their amended complaint to quiet title and eject Ralph and Shane Jones (the "Joneses") from disputed land adjacent to an abandoned railroad right-of-way. The Browns contend that the trial court erred in holding that a class action settlement agreement relating to the disputed property precludes their claim.

We affirm.

In their amended complaint, the Browns claim that the Joneses repeatedly trespassed on a 0.42-acre tract of ground in Crawfordsville, Indiana. The tract is part of an abandoned railroad right-of-way that was the subject of a class action lawsuit (the "*Firestone* class action"), which was settled in 2001. The Settlement Agreement provided:

> This Agreement shall be the exclusive remedy for any and all Causes of Action of Class Members and for any claim arising out of the subject matter of this Agreement and the Lawsuit by any Class Member against APU, USRB and the other Released Parties. No Released Party shall be subject to liability or expense of any kind to any Class Member with respect to any Cause of Action, except as provided herein. Upon entry of the Final Order and Judgment by the Court approving this Agreement, each of the Class Members shall be forever barred from initiating, asserting, claiming or prosecuting any Causes of Action against any Released Party that was brought or could have been brought in the Lawsuit.

Appellant's App. at 190.

Disappointed with the class action settlement agreement, the Browns amended a complaint they had brought against the Joneses prior to their entry into the *Firestone* class action and restated their trespass claims.

In dismissing the Brown's amended complaint, the trial court found: (1) the Browns were members of the class and were bound by the terms of the settlement agreement, (2) the 0.42-acre tract was included in the land subject to the settlement agreement, (3) the Joneses were the assigns of the settling parties, and (4) the settlement agreement released all claims of class members against them related to the real estate. The Browns now appeal.

The Browns contend that their complaint states a cause of action separate from those issues reserved to and resolved in the *Firestone* class action, and that, although they were a part of the class, the Joneses were not. The Browns also claim they never received an opportunity to prove their claim against the Joneses.[2] The Joneses, conversely, claim the class action settlement agreement precludes the Browns' action.

> The principle of res judicata is divided into two distinct branches, claim preclusion and issue preclusion. Claim preclusion applies where a final judgment on the merits has been rendered which acts as a complete bar to a subsequent action on the same issue or claim between those parties and their privies [or assigns]. Issue preclusion bars subsequent relitigation of the same fact or issue where that fact or issue was necessarily adjudicated in a former suit and the same fact or issue is presented in a subsequent action.

Meyer v. Marine Builders, 797 N.E.2d 760, 770 (Ind. Ct. App. 2003) (citations omitted). In *Meyer*, neither form of preclusion was available to the appellant because the agreed entry did not address or resolve the claims related to the disputed property. *Id.* at 771.

Here, the Browns have failed to show that the trial court erred. It is undisputed that the 0.42-acre tract was located within the old railroad right-of-way. The settlement

[2] The Browns also claim they gained a fee interest in the property through adverse possession. This is the first time the Browns have raised this argument, and because they cannot raise an issue for the first time on appeal, the Browns have waived this argument. *See Hansford v. Maplewood Station Business Park*, 621 N.E.2d 347, 355 (Ind. Ct. App. 1993), *trans denied*.

agreement applied to all lands within the old railroad right-of-way. Although the Browns contend that the trial court erred in finding that the Joneses were the assigns of the settling parties in the class action, the Joneses were clearly the assigns of the assigns. The Browns were therefore within the coverage of the release in the settlement agreement. Most significantly, the Browns were parties to the class action itself. They attempted to opt out of it, but their request was denied.

Affirmed.

ROBB, J., and BARNES, J., concur.