



In the Missouri Court of Appeals
Eastern District
DIVISION ONE

IN THEIR REPRESENTATIVE)	No. ED91057
CAPACITY AS TRUSTEES FOR THE)	
INDIAN SPRINGS OWNERS)	Appeal from the Circuit Court
ASSOCIATION,)	of St. Charles County
)	0711-CV03081
Appellant,)	
)	Honorable Matthew E.P. Thornhill
vs.)	
)	
TODD and DEANNA GREEVES,)	Filed: February 10, 2009
)	
Respondents.)	

OPINION SUMMARY

The Indian Springs Owners Association ("the Association"), an unincorporated property owners association for the Indian Springs Subdivision,¹ appeals from the judgment dismissing its petition against Todd and Deanna Greeves ("Homeowners") on the grounds that the Association did not have standing. The Association's two-count petition alleged that Homeowners violated the Indian Springs Subdivision's Indenture and Covenants and Restrictions ("the Indenture") by erecting a shed on their property without seeking or obtaining the Subdivision Trustees' approval. In Count I, the Association sought an injunction against Homeowners that would require them to remove the shed and submit their plan to erect a shed to the Trustees for review. In Count II, the Association requested an award of attorney's fees. The trial court found that the Association did not have standing because its representative parties, the Trustees, were in violation of the Indenture due to their failure to hold trustee elections in 2005, 2006, and 2007.

REVERSED AND REMANDED.

¹ The Association designated the Subdivision Trustees as its representative parties in this action under Missouri Supreme Court Rule 52.10 (2008). See *Lake Arrowhead Property Owners Association v. Bagwell*, 100 S.W.3d 840, 843 (Mo. App. W.D. 2003) (stating that an unincorporated property owners association may sue another party by designating certain members, such as trustees, as representative parties in an action under Rule 52.10).

Division One holds: The trial court erred in dismissing the Association's petition because: (1) the trial court mischaracterized Homeowners' argument as raising the Association's standing to sue rather than its capacity or authority to sue; (2) Homeowners waived their claim that the Association did not have capacity or authority to sue by failing to raise it in a motion or responsive pleading in accordance with Missouri Supreme Court Rules 55.13 and 55.27(g)(1)(E) (2008); and (3) the Association had standing to sue Homeowners. On remand, the trial court shall: (1) hold a new trial to determine if Homeowners are in violation of the Indenture and if the Association is entitled to an injunction; and (2) award attorney's fees and costs to the prevailing party in accordance with the Indenture's terms, which provide that the prevailing party in an action to restrain or enjoin a violation of the Indenture "shall recover attorney's fees and court costs."

Opinion by: Glenn A. Norton, J. Kurt S. Odenwald, P.J. and Patricia L. Cohen, J., concur

Attorneys for Appellant: Martin L. Daesch, Katherine M. Massa

Respondents Acting Pro Se: Todd E. Greeves, Deanna L. Greeves

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.