



In the Missouri Court of Appeals Eastern District

DIVISION TWO

STEPHEN AND CHERYL JACOBY,	)	No. ED107875
	)	
Respondents,	)	Appeal from the Circuit Court
	)	of St. Charles County
vs.	)	
	)	Honorable Ted House
THE HAMPTONS COMMUNITY	)	
ASSOCIATION, INC., ET AL.,	)	
	)	
Appellants.	)	FILED: June 9, 2020

The Hamptons Community Association, Inc. (“the HOA”) and HOA board members Anne Ritter, Chris Dickhans, and Randy McKinley (collectively “Appellants”) appeal from the trial court’s declaratory judgment in favor of Stephen and Cheryl Jacoby (“the Jacobys”) invalidating the HOA’s amended parking restrictions, invalidating fines imposed on the Jacobys, ordering that the Jacobys’ vote be counted in an HOA board member election, and awarding attorneys’ fees to the Jacobys. Appellants first argue that the trial court erred in invalidating the amended parking restrictions and corresponding fines because the restrictions were passed by a two-thirds vote as required by the HOA’s covenants and restrictions. In their second point on appeal, Appellants contend that the trial court abused its discretion in awarding attorneys’ fees to the Jacobys. For the first time on appeal, Appellants argue that amending the subdivision parking restrictions required only a two-thirds vote of property owners, regardless of whether the amendments created a new burden of ownership on property owners of the Hamptons Subdivision.

AFFIRMED IN PART AND REVERSED IN PART.

DIVISION TWO HOLDS: Because Appellants’ argument on appeal that only a two-thirds vote was required to amend the subdivision parking restrictions regardless of whether the restrictions created a new burden on ownership materially differs from their argument at the trial court that only a two-thirds vote was required because the restrictions did not create a new burden on ownership, Appellant’s argument is not preserved for appeal and we affirm in part. However, because there were no special circumstances justifying the award of attorneys’ fees we reverse in part.

Opinion by: Kurt S. Odenwald, Judge
Philip M. Hess, P.J., and Lisa P. Page, J., concur.

Attorney for Appellants: Lester C. Stuckmeyer, Jr.

Attorneys for Respondents: James D. Ribaud and Joshua G. Knight

**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.**