

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

REYNOLD L. GREEN, TRACY M.)	No. ED98091
GREEN, DENNIS C. BECKER,)	
KATHY M. BECKER, PATRICK T.)	
LYNCH, and DEBORAH A. LYNCH,)	
)	
Respondents,)	Appeal from the Circuit Court
)	of Jefferson County
vs.)	
)	Honorable Troy A. Cardona
LAKE MONTOWESE ASSOCIATION)	
and RANDALL L. SMITH, Individually,)	
)	
Appellants.)	FILED: December 18, 2012

Lake Montowese Association (“Association”) appeals from the trial court’s judgment in favor of Reynold and Tracy Green, Dennis and Kathy Becker, and Patrick and Deborah Lynch (collectively “Homeowners”). Homeowners sought declaratory judgment that Association does not have the power to impose a special assessment against Homeowners for improvements to the subdivision’s water delivery system. The trial court held that Association’s special assessment was inequitable and null and void as applied to Homeowners, and awarded Homeowners attorney fees. On appeal, Association challenges the sufficiency of the evidence and the award of attorney fees.

AFFIRMED in part, and REVERSED in part.

Division IV holds: Sufficient evidence exists to support the trial court’s judgment that the special assessment was invalid as applied to Homeowners. The special assessment was levied to improve a water delivery system to which Association denied Homeowners access, causing Homeowners to dig private wells at significant cost. The inequity of forcing Homeowners to pay for an amenity to which they were affirmatively denied access is a sufficient basis to invalidate the special assessment as applied to Homeowners. However, we find no grounds for awarding Homeowners attorney fees because the record does not contain evidence that Association acted with an improper motivation.

Opinion by: Kurt S. Odenwald, J., Lawrence E. Mooney, P.J., and Patricia L. Cohen, J., Concur.

Attorney for Appellants: Robert K. Sweeney

Attorney for Respondent: Bianca L. Eden

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