**Nature of case:** This case involves an appeal from a judgment in favor of the trustees of a subdivision in St. Louis County. Plaintiffs are residents of a subdivision in St. Louis County. Defendants are the duly elected trustees of the subdivision. The dispute arises from Plaintiffs’ objection to Defendants’ erection of fences and gates over a portion of the subdivision known as Wellesley Avenue.

**Facts:** The original plat of the subdivision lays out four private ways, including Wellesley Avenue. As to the private ways, the Plat states that they are “not dedicated to public use, but are reserved for use as private ways for the owners of the several lots abutting thereon.” Plaintiffs are not owners of lots abutting Wellesley Avenue. The developer also recorded a subdivision indenture that provided various clauses regarding the use of the “private streets.” In 1993, a declaratory judgment was sought by the residents of the subdivision to have the court determine how the indenture may be amended. The court ordered that the indenture could only be amended if the trustees obtained the written consent of 60% of the owners of record of all lots in the subdivision.

Wellesley Avenue was never constructed as a private way. The area is overgrown with trees and other plants, and is covered by driveways and retaining walls of the abutting landowners. Defendants erected gates and fences to prevent non-resident use of that area. Plaintiffs filed a petition against the Defendants seeking a judgment declaring Defendants have no authority to maintain fences and gates in this area, damages for breach of their fiduciary duties, and a permanent injunction ordering removal of the fences and gates from the area. In 2004, after suit was filed, a vote of over 60% of the residents amended the Declaration to authorize and ratify the Defendants’ acts in erecting the fences and gates.

**Trial Court Results:** The trial court entered its judgment in favor of the Defendants, holding that any easement over Wellesley Avenue is limited to the abutting lot owners and further, it was extinguished by the failure of Wellesley to be constructed as a street. The trial court also ordered Plaintiffs to pay Defendants’ attorney’s fees because they had pursued this lawsuit “without any legal basis, especially after the enactment of the 2004 amendment.”

**Grounds for Appeal:**
(1) Plaintiffs argue the trial court erred in not finding that they had property rights to free and unobstructed use of the private streets created by the Plat and Indenture because the plain language of these documents creates such property rights.
(2) Plaintiffs contend the trial court erred in finding that their property rights could be changed without their consent because the 1993 judgment cannot change the covenant in the Declaration and the Plaintiffs did not consent to the 2004 Amendment.
(3) Plaintiff also argue the trial court erred in awarding attorneys’ fees to Defendants because the allegations of Plaintiffs’ petition assert valid legal arguments for their position and no special circumstances justify the award of attorneys’ fees.

**Response to Appeal:**
(1) Defendants argue that the trial court did not err because the Plat and Indenture did not grant Plaintiffs any easement to use Wellesley Avenue and Defendants properly exercised their authority as trustees to protect subdivision residents from crime.
(2) Defendants also argue that the 2004 Amendment specifically ratified the Defendants’ actions in erecting the fences.
(3) Finally, the Defendants argue that the trial court did not err in awarding them attorneys’ fees because the Plaintiffs persisted with this suit even after the 2004 Amendment and have threatened Defendants with repeated litigation.