

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000763-MR

STONECREEK NEIGHBORHOOD ASSOCIATION, INC.,
AND WILLIAM MICHAEL DUNNIGAN, INDIVIDUALLY

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 99-CI-02525

HENRY B. STEWART AND DELLA M. STEWART,
HIS WIFE; SAADAT RAMADAN AND ROWAYDA
RAMADAN, HUSBAND AND WIFE;
LIONELL M. MILLER AND KELLI C. MILLER,
HIS WIFE; RAY CRONK AND JEAN CRONK,
HIS WIFE; CHARLES D. PRYSE AND CHRISTINE
PRYSE, HUSBAND AND WIFE; GREGORY CHAMPE
AND TERESA CHAMPE, HUSBAND AND WIFE; BILLY
R. WALLS, SR., AND GLENDA S. WALLS, HIS WIFE

APPELLEES

OPINION
AFFIRMING IN PART AND
VACATING IN PART AND REMANDING

** ** * * * * *

BEFORE: BAKER, BARBER AND JOHNSON, JUDGES.

BAKER, JUDGE. Stonecreek Neighborhood Association, Inc., and
William Michael Dunnigan, Individually, bring this appeal from a
March 14, 2002, summary judgment of the Fayette Circuit Court.

We affirm in part, vacate in part, and remand.

On July 16, 1999, appellant filed a complaint against appellees in the Fayette Circuit Court. Therein, it was alleged that appellees were in violation of paragraph two of the Stone Creek Estates Subdivision Restrictions¹ (the restrictive covenant) by maintaining a structure or outbuilding upon their property. Thereafter, appellees filed a third-party complaint naming seventy-four property owners of Stone Creek Subdivision and alleging that, if appellees were in violation, then the third-party defendants -- other property owners who had allegedly erected structures on their respective properties -- were also in violation of the restrictive covenant. Eventually, the court dismissed twenty-seven of the seventy-four third-party defendants. On March 14, 2002, the circuit court entered summary judgment in favor of appellees. This appeal follows.

Appellants contend the circuit court erred by entering summary judgment. We must agree. Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Ky. R. Civ. P. (CR) 56.

In its summary judgment, the circuit court, in pertinent part, concluded:

¹ Paragraph two of the Stone Creek Estates Subdivision Restrictions states: "ADDITIONAL STRUCTURE AND OUTBUILDINGS. No structure of a temporary or permanent character, no trailer, basement, tent, shack, barn or other outbuilding shall be erected on any lot at any time either temporarily or permanently."

The Court finds that the description of the deed restriction is ambiguous, vague, overbroad and fails to put the residents of the neighborhood on notice as to the exactness of the restriction. The Court is very unclear why the description could not be used to prevent swing sets, birdbaths or nearly any other item from being placed on one's property. The inadequate description coupled with the helter skelter way the Plaintiffs have chosen to enforce the covenant compel this Court to side with the Defendants.

The Court notes that many of the buildings and structures complained about have existed for a significant length of time and some were even in place when the home was purchased. It seems to the Court that equity urges one to come forward with a complaint regarding a covenant violation within a reasonable time such violation is noticed. In this case, the evidence suggests that many of the Defendants have had the structures in question for a while, or at least, in the Court's opinion, long enough for the Plaintiffs to have come forward sooner. It appears the Plaintiffs have acquiesced to the usage of most any type of structure, both existing or future.

The Court has further problems with some residents being named as Defendants while others were not. It appears that, for whatever reason, Plaintiffs attempted to enforce the covenant in an arbitrary manner. . . . This Court is compelled to not enforce the covenant for the reasons stated above and holds for the Defendants in the name of equity, judicial economy and neighborhood unification.

Circuit Court Order at 1-2.

There were three fundamental bases upon which the circuit court premised its entry of summary judgment: 1) that the deed restrictions were ambiguous, vague, overbroad, and

failed to put the residents on notice "as to the exactness of the restriction"; 2) that the enforcement of the restrictive covenant was arbitrary; and 3) that the doctrine of laches bars enforcement of the restrictive covenant. We shall address these bases seriatim.

Upon the first basis, we are of the opinion that it is the obligation of the circuit court to interpret and construe a restrictive covenant. The court is not at liberty to refuse to interpret and enforce a restrictive covenant simply because it may be poorly drafted or otherwise ambiguous. When interpreting and construing an ambiguous restrictive covenant, the court should rely upon well-founded rules of construction. See Cochran v. Long, Ky. 295 S.W.2d 503 (1956)(holding that a restrictive covenant should be strictly construed); Parrish v. Newbury, Ky. 279 S.W.2d 229 (1955)(holding that the general scheme of development is an important consideration when discerning the meaning of a restrictive covenant).

The quagmire in which the circuit court found itself stems, at least in part, from the language in the restrictive covenant which prohibits, among other things, any ". . . structure of a temporary or permanent character." The term "structure" is commonly defined as "something constructed or built." Webster's Third New International Dictionary 2267 (1961). Therefore, if literally applied and enforced, such a

covenant would clearly prohibit property owners from making any improvements whatsoever to their lots - to include landscaping, lawn furniture, pools, and, as the circuit court correctly noted, birdbaths and swing sets. We doubt that such a broad application was intended or contemplated by the drafter of the restrictive covenant. Nevertheless, it is for the circuit court to determine the meaning of the restrictive covenant.

In sum, we hold that the circuit court erred when it determined that it need not interpret and enforce the restrictive covenant, even one that it found to be "ambiguous, vague, and overbroad." On remand, the circuit court must interpret and construe the restrictive covenant. In so doing, the court should utilize the well-established rules of interpretation and construction applied to restrictive covenants with particular consideration given to the general scheme of development in Stone Creek subdivision.

Upon the second basis, we do not believe that the arbitrary enforcement of a restrictive covenant will necessarily render that covenant unenforceable. We do note that arbitrary enforcement may lead to a fundamental change in the subdivision which may, in turn, defeat the purpose of the covenant -- thus leading to its annulment. See Parrish 279 S.W.2d 229. Arbitrary enforcement, alone, however, will not render a covenant unenforceable.

Hence, we remand to the circuit court so that it may make findings as to whether there has been such a fundamental change in the neighborhood by the construction of other additional "structures" as to have rendered the restrictive covenant a nullity.

Upon the third basis, we conclude that the circuit court misapplied the equitable doctrine of laches. The circuit court found that the structures had been in place "for a while, or, . . . long enough for the [appellants] to have come forward sooner." In Chapman v Bradshaw, Ky. 536 S.W.2d 447, 449 (1976), the Court held that "[m]ere delay in bringing suit is not a basis for invoking the doctrine." Instead, the doctrine of laches will only bar enforcement of a restrictive covenant where the delay in enforcement works a disadvantage to the alleged violators. Id. Here, the circuit court failed to make a finding upon whether the delay was disadvantageous to appellees. Upon remand, the circuit court should revisit the doctrine of laches and, specifically, consider whether appellees were disadvantaged by the delay.

Appellants further assert that the circuit court erred by allowing the filing of a third party complaint under CR 14.01. Considering the circumstances of this case, we cannot say the circuit court abused its discretion by permitting the filing of the third party complaint. See Nally v Boop, Ky. 428

S.W.2d 607 (1968). Appellants have failed to demonstrate that the third party complaint would unduly complicate the case or would otherwise prejudice them. See Jackson & Church Div., York-Shipley, Inc. v Miller, Ky. 414 S.W.2d 893 (1967). As such, we perceive no error.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed in part, vacated in part and this cause is remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

LINDA B. SULLIVAN
LEXINGTON, KY

BRIEF FOR APPELLEE:

JAMES D. ELAM
LEXINGTON, KY