

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001299-MR

WESTWOOD AND WESTWOOD EAST
HOMEOWNERS ASSOCIATION, INC.

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 01-CI-00420

ROBERT L. GILES and
DAWN A. GILES

APPELLEES

OPINION
VACATING AND REMANDING

** ** * * *

BEFORE: COMBS, GUIDUGLI, and SCHRODER, Judges.

COMBS, JUDGE. The appellant, Westwood and Westwood East Homeowners Association (The Association), appeals from an order of the Oldham Circuit Court granting summary judgment to Robert L. Giles and Dawn A. Giles and dismissing appellant's petition for a declaration of rights. Appellant had sought to enforce certain residential property restrictive covenants that would require the Gileses to remove a canopy structure erected on

their property. We vacate and remand for entry of judgment in favor of the Association.

This appeal involves an attempt by the Association to apply and enforce certain restrictive covenants with respect to a parcel of land owned by the Gileses in Westwood Subdivision in Oldham County. On May 18, 2001, Robert L. Giles applied to the Oldham County Planning and Zoning Commission for a building permit. On the permit application, Giles identified the proposed building project as a *Canopy*.[@] For purposes of the application, he characterized it as *Other structure*.[@] The permit was granted, and the canopy was soon erected on the property. Within days, the Association expressed concern about the erection of the canopy and its intended purpose. The Association immediately requested that the canopy be removed from the Gileses=property. The Gileses refused.

Unable to settle the dispute, the Association filed an action for a declaration of rights in July 2001, alleging the existence of an actual controversy concerning whether the structure violated the restrictive covenants of the Westwood Subdivision incorporated into the Gileses=deed and the subdivision plat. It sought an order requiring the Gileses to remove the offending structure from the property.

In March 2002, the Association filed a motion for summary judgment pursuant to Kentucky Rules of Civil Procedure (CR) 56. They argued that the structure erected on the Gileses= property violated the subdivision's restrictive covenants. The Gileses responded and filed a cross-motion for summary judgment. On May 15, 2002, the trial court granted the Gileses= motion and entered a summary judgment in their favor. This appeal followed.

The standard of review on appeal when a trial court grants a motion for summary judgment is whether the trial court correctly concluded that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Stewart v. University of Louisville, Ky. App., 65 S.W.3d 536 (2001); CR 56.03. The rules governing the construction of restrictive covenants generally are the same as those applicable to contracts. See Parrish v. Newburg, Ky., 279 S.W.2d 229 (1955). Interpretation or construction of a restrictive covenant is a question of law subject to *de novo* review since only questions of law as distinguished from matters of fact are involved.

The Association contends that the trial court erred in granting summary judgment in favor of the Gileses. It argues that the structure erected by the Gileses= for the purpose of

housing their boat clearly violates the pertinent restrictions.

These restrictions provide, in part, as follows:

7. No recreation vehicle or boats shall be parked closer to the street than the rear of the home and to the furthest rear corner of the house from street on a corner lot.

* * * * *

11. An outbuilding will be permitted on a site to properly house boats, cars, campers, lawn mowers, utility trailers, and recreation equipment. No inoperable or unlicensed vehicles will be permitted to be stored on any site unless stored inside of a building.

12. All outbuildings shall be neat and attractive in appearance and have exterior walls of brick, stone, clapboard, vertical siding, approved plywood, vinyl siding or aluminum. Other materials shall first meet approval of the developer.

The Association claims that the Gileses=canopy directly violates the restrictions since the covenants reasonably and carefully prescribe the only acceptable means of parking or housing a boat at the home site. The restrictions permit a boat to be parked only at the rear of the property. However, if the homeowner decides to house the boat, the restrictions require it to be stored inside a proper outbuilding having exterior walls. The parties agree that the canopy does not comply with provisions describing an acceptable outbuilding.

In general, restrictions on the use of realty should be strictly construed with all doubts to be resolved in favor of free use of the property. Vittitow v. Dodson, 302 Ky. 418, 194 S.W.2d 996 (1946). However, as the Association correctly observes, this rule of strict construction does not apply where the meaning of the restriction is clear and unambiguous. See Ashland-Boyd Co. City-County Health Dept. V. Riggs, Ky., 252 S.W.2d 922 (1952). A restrictive covenant should not be construed to defeat the plain and obvious purpose of the contractual instrument or obvious intention of the parties. Id.; 20 Am. Jur.2d Covenants, Conditions, and Restrictions ' 172 (1995). The fundamental rule in construing restrictive covenants is that the intention of the parties governs. All of the covenants in the documents containing the restrictions should be considered -- along with the general scheme or plan of development and surrounding circumstances. Glenmore Distilleries Co. v. Fiorella, 273 Ky. 549, 117 S.W.2d 173 (1938).

A review of the subdivisions's restrictive covenants clearly indicates an intent to assure residents of a uniform presentation of homes and to restrict the view of boats, lawnmowers, inoperable vehicles, lawnmowers, and similar equipment. The restrictions outline the acceptable means and manner of parking or storing various kinds of vehicles and

equipment in an effort to create an aesthetically harmonious and pleasing neighborhood. The restrictions carefully control the erection of structures that may permanently affect the appearance of the subdivision. Thus, the community is able to preserve the uniformity upon which its members agreed when each of them accepted the restrictions and promised to be bound by them.

The Gileses argue that erection of the canopy for boat storage does not violate the appearance of the subdivision any more than would a dining canopy or a canopy commonly used for receptions. However, that reasoning is unpersuasive since the restrictions specifically address the means by which vehicles and recreational equipment may be appropriately stored or parked. Moreover, the Gileses admit that their canopy is more or less permanent -- unlike the temporary nature of the canopies to which they analogized. We agree that their canopy directly undermines the plain and obvious purpose of the subdivision restrictions -- namely, to provide the subdivision's residents with a measure of control and assurance that the presentation of each of the lots would conform to the standards set out in the restrictive covenants. We hold that the trial court erred in failing to conclude that the erection of the canopy constituted a violation of the Westwood Subdivision's restrictive covenants.

For the foregoing reasons, we vacate the judgment of the Oldham Circuit Court and remand for entry of judgment in favor of the Association.

ALL CONCUR.

BRIEF FOR APPELLANT:

D. Randall Gibson
Augustus S. Herbert
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BRIEF AND ORAL ARGUMENT FOR APPELLEES:

Perry R. Arnold
Bedford, Kentucky

ORAL ARGUMENT FOR APPELLANT:

Augustus S. Herbert
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