

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000097-MR

DON COLLIVER;
CAROLYN COLLIVER

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 00-CI-04179

STONEWALL EQUESTRIAN ESTATES ASSOCIATION, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, MINTON, AND TACKETT, JUDGES.

BARBER, JUDGE: This matter is before the court regarding a December 10, 2004 order by the Fayette Circuit Court. Said order required Appellants, Don Colliver and Carolyn Colliver (Collivers), to remove a detached garage, including the concrete slab, the foundation, and all of the other associated improvements from their property within sixty (60) days. This case has a lengthy history.

The Collivers bought property in the Stonewall Equestrian Estates subdivision in 1999.¹ They wanted to build a detached two-car garage on their lot. Appellee, Stonewall Equestrian Estates Association, Inc. (Stonewall), voted against the Collivers' proposed garage two times in late 1999. The Collivers made subsequent requests in 2000, but were again denied. Despite this, the Collivers began construction on the detached garage in November 2000.

In response, Stonewall filed a complaint in Fayette Circuit Court seeking a permanent injunction and other relief on November 20, 2000. Although litigation was pending, the Collivers continued construction on the garage, with the garage being completed in the summer of 2001 at a cost of nearly \$70,000.00.

The parties filed cross-motions for summary judgment after a short period of discovery. Following an inspection of the property and oral arguments, the circuit court² granted summary judgment to Stonewall on September 12, 2002 and ordered the garage be removed from the property immediately. The Collivers then appealed to the Court of Appeals.

The Court of Appeals issued an opinion affirming the circuit court on December 5, 2003. The Collivers then requested

¹ The facts in the next three paragraphs were taken from Colliver v. Stonewall Equestrian Estates Association, Inc., 139 S.W.3d 521, 522 (Ky.App. 2003).

² The order was issued by Judge John Adams.

discretionary review by the Supreme Court, but their request was ultimately denied on August 18, 2004.

Following the denial, Stonewall filed a motion in circuit court to enforce the September 12, 2002 judgment. On October 12, 2004, the circuit court³ issued an order compelling removal of the portion of the detached garage that was above the concrete slab and foundation; however, it reserved ruling on the remainder of the garage pending briefing by the parties. Following submission of briefs, the trial court, on October 26, 2004, ordered the Collivers to remove the detached garage above the slab and foundation leaving all related improvements, including the driveway, intact.⁴ Stonewall promptly filed a motion to alter, amend, or vacate the order allowing a portion of the garage to remain. The Collivers did comply with the October 26, 2004 order and removed the detached garage above the slab and foundation. However, on December 13, 2004, an order was entered vacating the October 26, 2004 order and found that the Collivers must remove the remaining concrete slab, the foundation, the retaining wall, and driveway on the right side of the house and restore the property to its original pre-

³ The order was issued by Judge Pamela Goodwine. Judge Adams had retired.

⁴ The October 26, 2004 order specifically stated that the judgment was primarily based on a conversation with Judge Adams.

construction condition.⁵ It is from this order which the Collivers now appeal.

The Collivers' primary argument is that the September 12, 2002 Opinion and Order did not require them to remove the concrete slab, the foundation, the retaining wall, and driveway on the right side of the house. The circuit court held as follows:

The Court is of the opinion, based upon all of the facts to this point, that the only appropriate remedy under the circumstances, where the [Collivers] took upon themselves to invest a number of dollars that they chose to invest knowing that there was a potential legal entanglement, dictates that the Court cannot, even in equity, grant them the relief that they are seeking in further proceedings. This Court is of the opinion and hereby ORDERS that the Collivers **remove the structure in its entirety**. There was a knowing and willful moving forward by the [Collivers], in spite of the fact that [Stonewall] had litigation pending, putting them on notice relative to the potential for this result. (Emphasis added.)

. . . .

For the foregoing reasons, [Stonewall's] Motion for Summary Judgment is sustained. The Motion of the [Collivers] for Summary Judgment is overruled. The Collivers will immediately begin removing the structure in question.

The Collivers argue that the term "structure in its entirety" could only mean the portion of the garage above the

⁵ In the order Judge Goodwine acknowledges that her conversation with Judge Adams should not have been determinative in the matter without support from the record.

slab and foundation. The Collivers further argue that it was inappropriate for the circuit court to look at other documents in the record to decipher the exact meaning of the term used in the September 12, 2002 order because it was an injunction.⁶ We disagree with both arguments.

An injunction order is to be construed with reference to the nature of the proceeding and the purpose sought to be achieved as shown by the pleadings and the relief prayed for. Wormald v. Macy, 349 S.W.2d 199, 201 (Ky. 1961). It was proper for the circuit court to examine the record to determine the appropriate meaning of a phrase used in the September 12, 2002 order. We agree with the circuit court that it is quite clear from the record what was meant by "structure in its entirety." In addition to the items the circuit court relied upon, we believe the following items to be determinative:

1. Stonewall's November 20, 2000 Complaint

WHEREFORE, [Stonewall] prays for a Judgment against the [Collivers] both jointly and severally and for a permanent

⁶ Judge Goodwine stated in her order that she used the following in determining the meaning of "structure in its entirety":

1. November 27, 1999 letter from the Collivers to Stonewall. (Attached as Exhibit 6 to Stonewall's Memorandum In Support of Its Renewed Motion for Summary Judgment.)

2. Based on the record, all parties, as well as Judge Adams referred to the entire project simply as the "detached garage."

3. During oral arguments on August 8, 2002, Stonewall's counsel argued that the property "should be restored to its pre-construction condition."

Injunction . . . that in the event the [Collivers] proceed with the construction of the garage notwithstanding the filing of this action contesting their right to build such a structure and such garage is completed, that this Court Order the [Collivers] to **remove said garage and restore their property to its original condition all at their cost and expense.** (Emphasis added.)

2. Stonewall's September 18, 2001 Motion for Summary Judgment

As described in the Memorandum, [Stonewall] seeks an Order requiring the [Collivers] to **remove at their own expense a large detached garage and related improvements** which the [Collivers] constructed in violation of the restrictive covenants applicable to their property. (Emphasis added.)

3. Stonewall's September 18, 2001 Memorandum in Support of Motion for Summary Judgment (Conclusion)

. . . [Stonewall] respectfully requests that this Court . . . enter a summary judgment in its favor declaring that the Collivers' Detached Structure violates the Declaration and further directing that the **Detached Structure and all related improvements be removed** at the Collivers' expense. (Emphasis added.)

4. Stonewall's June 12, 2002 Memorandum in Support of Renewed Motion⁷ for Summary Judgment (Conclusion)

. . . [Stonewall] respectfully requests . . . this Court enter a summary judgment in its favor declaring that the Collivers' Detached Garage violates the

⁷ The circuit court issued an order June 4, 2002 allowing the parties to brief all pending summary judgment motions by June 28, 2002 and that oral arguments on said summary judgment motions would be had following an inspection of the property.

Covenants, directing that the **Detached Garage and all related improvements be removed** at the Collivers' expense . . .
(Emphasis added.)

5. Stonewall's June 25, 2002 Reply
Memorandum in Support of Motion for Summary
Judgment (Conclusion)

As a result of the willfulness of the Collivers' violation of the Covenants, the **Detached Garage immediately should be torn down at the Collivers' own expense, and their lot restored to its pre-construction condition.** (Emphasis added.)

As stated earlier, the September 12, 2002 Opinion and Order specifically sustained Stonewall's summary judgment motion without exception. We believe the record makes it clear that Stonewall was requesting from the very beginning a removal of the Collivers' detached garage including related improvements so that their lot would be restored to its pre-construction condition. Therefore, we agree with the circuit court that "structure in its entirety" as used in the September 12, 2002 Opinion and Order meant the entire detached garage, including the concrete slab, the foundation, the retaining wall, and the driveway on the right side of the house leading to the garage.

The Collivers also argue that the evidence in the record clearly showed that Stonewall had never enforced any deed restrictions other than those related to detached garages. This issue was resolved in the prior appeal in Stonewall's favor and

shall not be reconsidered. See Colliver v. Stonewall Equestrian Estates Association, Inc., 139 S.W.3d 521, 525 (Ky.App. 2003).

Based on the foregoing, we agree with the circuit court's December 13, 2004 order requiring the Collivers' removal of the detached garage, the concrete slab, the foundation, the retaining wall, and driveway on the right side of the house and restore the property located at 798 Cindy Blair Way to its original pre-construction condition. Therefore, we affirm the Fayette Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Richard V. Murphy
Lexington, Kentucky

BRIEF FOR APPELLEE:

Jeff A. Woods
LaToi D. Mayo
Lexington, Kentucky