

STATE OF MICHIGAN
COURT OF APPEALS

WILDWOOD HOME ASSOCIATION and
ROBERT E. YOUNG, JR.,

UNPUBLISHED
February 26, 2009

Plaintiffs-Appellees,

v

CHARLES WADOWSKI,

No. 283399
Oakland Circuit Court
LC No. 2006-079750-CH

Defendant-Appellant.

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's order granting summary disposition for plaintiff and denying summary disposition for defendant. Because the Declaration of Covenants and Restrictions ("Declaration") is unambiguous, the fence restrictions are enforceable as written, and we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant fenced in part of his backyard without seeking approval from plaintiff homeowners' association before doing so. Plaintiff Young is the president of the homeowners' association. According to plaintiffs, defendant's fence violated the Declaration that is binding on all homeowners in the Wildwood subdivision. At issue is the correct construction of the Declaration. Defendant also raises the theory of estoppel to prevent plaintiffs from requiring him to take down his fence. Defendant asserts the Declaration does not restrict backyard fences at all, while plaintiffs assert that no fences are allowed without association approval. Both parties brought motions for summary disposition, based on MCR 2.116(C)(10). The trial court agreed with plaintiffs that article 7(e) of the Declaration prohibits all fences, unless approved by the architectural control committee. The circuit court denied defendant's motion, granted plaintiffs' motion for summary disposition, and ordered defendant to remove the fence within 45 days of a final ruling from this Court, if the judgment is affirmed or the matter otherwise dismissed.

The relevant provisions of the Declaration are:

2. IMPROVEMENTS TO LOTS.

(a) Any and all dwellings, buildings, structures, swimming pools, fences, garden walls, decks, landscaping, patios, patio enclosures, outbuildings, dog runs, and similar other devices and/or structures (collectively, the "Improvements"), whether or not attached to any dwelling, to be constructed, erected, or maintained on any Lot shall (i) conform to the restrictions set forth in this Declaration and all applicable statutes, laws, ordinances, and regulations, including zoning laws, and (ii) be otherwise in harmony with the existing Improvements constructed on the Lots.

* * *

(c) Anything contained in this Declaration to the contrary notwithstanding, no Improvement shall be constructed, erected, or maintained on any of the Lots in the Subdivision, except in accordance with all of the following covenants and restrictions:

* * *

(vi) No fence, wall, or solid hedge may be erected, grown, or maintained in front of or along the front building line of any Lot. The side Lot line of each corner Lot, which faces a street, shall be deemed to be a second front building Lot line and shall be subject to the same restrictions as to the erection, growth, or maintenance of fences, walls, or hedges as is provided herein for front building lines.

(vii) No fence, wall, or solid hedge may be erected, grown, or maintained on or along the side lines of any Lot, between the front Lot line and the front building line.

* * *

7. GENERAL CONDITIONS

* * *

(e) No fence shall be erected or maintained within the Subdivision, except as provided in this Declaration.

* * *

11. ARCHITECTURAL CONTROL COMMITTEE.

(a) Grantor may, in its sole discretion, at any time prior to the date on which all of the Lots in the Subdivision have been sold and conveyed by Grantor to third parties, assign, transfer, and delegate to an architectural control committee (the "Architectural Control Committee") all of Grantor's rights to approve or refuse to approve the plans, specifications, drawings, elevations, or other matters with respect to the construction or location of any dwelling or Improvement on any Lot in the Subdivision. Thereafter, the Architectural Control Committee shall

exercise all of the authority and discretion granted to Grantor in Paragraph 2 hereof relative to approving or disapproving such matters, and Grantor shall have no further responsibilities with respect to such matters

We review de novo a trial court's decision on a motion for summary disposition brought under MCR 2.116(C)(10). *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). We must review the record in the same manner as must the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). Similarly, the interpretation of restrictive covenants is a question of law that we review de novo. *Johnson Family LP v White Pine Wireless, LLC*, 281 Mich App 364, ___ ; ___ NW2d ___ (2008); see also *Terrien v Zwit*, 467 Mich 56, 60-61; 648 NW2d 602 (2002). Where the restrictions are unambiguous, they must be enforced as written. *Hill v Rabinowitch*, 210 Mich 220, 224; 177 NW 719 (1920). Ambiguous restrictions are strictly construed against the would-be enforcer and doubts are resolved in favor of the free use of property. *Stuart v Chawney*, 454 Mich 200, 210; 560 NW2d 336 (1997).

In this case, the trial court properly found that the Declaration unambiguously places restrictions on backyard fences. Paragraphs 2(c)(vi) and 2(c)(vii) prohibit only front- and side-yard fences, walls, and hedges outright, but under paragraph 2(a) *all* fences are required to “(i) conform to the restrictions set forth in this Declaration and all applicable statutes, laws, ordinances, and regulations, including zoning laws, and (ii) be otherwise in harmony with the existing Improvements constructed on the Lots.” Even though there are no other restrictions expressed in the Declaration regarding backyard fences, they clearly must still conform to zoning and other laws and be “in harmony” with the rest of the subdivision. The parties do not dispute that approving plans for improvements is within the authority of the architectural control committee. Because the Declaration does impose restrictions on all fences, and not just front- and side-yard fences, defendant's argument that the document is silent regarding backyard fences must fail. *Contra proferentem* does not apply because the Declaration is unambiguous. *Twichel v MIC Gen Ins Corp*, 469 Mich 524; 535 n 6; 676 NW2d 616 (2004).

Defendant's estoppel argument also fails. Defendant cannot be held to justifiably rely on the Declaration when that document is not silent about backyard fences but rather requires “all” fences to meet certain requirements. See *Van v Zahorik*, 460 Mich 320, 335; 597 NW2d 15 (1999).

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering