IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

APOLLO SHORES COMMUNITY AND MAINTENANCE, INC. v. LARRY ALFRED LYNN, ET AL.

Direct Appeal from the Chancery Court for Rhea County
No. 9104 Jeffrey F. Stewart, Chancellor

No. E-1999-00946-COA-R3-CV - Decided June 21, 2000

This appeal arises from a dispute over restrictive covenants prohibiting house trailers from a subdivision in Rhea County, Tennessee. The subdivision homeowners' association brought suit to enjoin the Defendants from affixing a double-wide mobile home to their property in the subdivision. The Trial Court granted a temporary restraining order directing the Defendants to cease operations in affixing the mobile home to a foundation and completing installation of the home. Following trial, the Chancellor found that the housing unit at issue was a house trailer under the restrictive covenant and, thereby, prohibited. The Chancellor ordered that the housing unit be removed from the property, and permanently enjoined the Defendants from bringing that housing unit, or any similar structure, back to the subdivision. On this appeal, the Defendants argue that the housing unit is not a house trailer under the restrictive covenant, and, in the alternative, that the homeowners' association, through waiver or estoppel, surrendered its right to the remedy awarded by the Chancellor. For the reasons set forth in this Opinion, the judgment of the Trial Court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed and Remanded.

SWINEY, J., delivered the opinion of the court, in which FRANKS and SUSANO, JJ., joined.

Carol Ann Baron, Dayton, Tennessee, for the appellants, Larry Alfred Lynn and Joy Carol Lynn.

Rebecca L. Hicks, Dayton, Tennessee, for the appellee, Apollo Shores Community and Maintenance, Inc.

OPINION

Background

In April and May of 1998, Larry Alfred Lynn and Joy Carol Lynn, Defendants/Appellants ("Defendants") purchased four adjoining lots in the Apollo Shores subdivision in Rhea County, Tennessee. One of the restrictive covenants in the general plan of the subdivision recorded in 1958 reads, "[t]he placing of house trailers, regardless of size and facilities

shall be prohibited on any lot in Apollo Shores." In September 1998, Defendants purchased a manufactured housing unit, of a type commonly referred to as a "double-wide mobile home," and had the housing unit transported to one of their Apollo Shores lots, where a foundation and utility connections had been prepared to affix the housing unit to the property as their principal residence. Members of the board of directors of Plaintiff/Appellee Apollo Shores Community and Maintenance, Inc. ("Plaintiff"), the homeowners' association for the subdivision, had contact with Defendants around the time the housing unit was delivered to the property. Although there was some dispute about the number and content of these contacts, Defendants were informed that Plaintiff took the position that the housing unit was subject to the restrictive covenant banning house trailers, and must be removed from the subdivision. Defendants refused and continued with operations to affix the housing unit to their property.

On September 24, 1998, Plaintiff filed suit in the Rhea County Chancery Court, seeking a temporary restraining order halting installation of the housing unit, and a permanent injunction against Defendants attaching the double-wide mobile home to their property. With certain modifications, the restraining order was granted. A hearing was held in which the Chancellor received exhibits and heard testimony of witnesses. By Memorandum Opinion filed November 18, 1998 and Final Decree filed January 19, 1999, the Trial Court found the housing unit at issue to be prohibited by the restrictive covenant banning house trailers, ordered Defendants to remove the housing unit from Apollo Shores, and issued a permanent injunction against Defendants bringing that, or any similar, structure back to Apollo Shores. The Chancellor subsequently overruled Defendants' motion for new trial, and Defendants brought this appeal.

Discussion

The two issues presented for review are allegations of error by the Trial Court in holding that Defendants' housing unit was a "trailer" within the meaning of the subdivision's restrictive covenants, and in denying Defendants' arguments that Plaintiff's lawsuit is barred by either waiver or estoppel. Our standard of review of this non-jury case is *de novo*, with a presumption of correctness as to the Trial Court's findings of fact balanced against the preponderance of evidence in the record, with great weight accorded the Trial Court's findings of credibility of witnesses. *Quarles v. Shoemaker*, 978 S.W.2d 551, 552-553 (Tenn. Ct. App. 1998). The Trial Court's conclusions of law are subject to *de novo* review. *Campbell v. Florida Steel Corp.*, 919 S.W. 2d 26, 35 (Tenn. 1996).

As to the first issue, whether Defendants' double-wide mobile home is a "house trailer" under the above-quoted restrictive covenant, Defendants argue under two statutes, T.C.A. §§ 67-5-802 and 55-4-409. These statutes are not on point with this appeal. T.C.A. § 67-5-802 concerns classification of mobile homes for purposes of property tax assessment, and T.C.A. § 55-4-409 concerns assessment of mobile homes as real property or an improvement on land as a basis for exemption from the title registration and licensing requirements. First, this is not a property tax case. Second, in trying to rely upon T.C.A. § 55-4-409(a) to argue that the legislature intends for "mobile homes used as permanent dwellings" to be distinguished "from mobile homes that remain mobile," Defendants put the cart before the horse. It is undisputed that the mobile home in question was, and

is, subject to the title registration requirements discussed in T.C.A. § 55-4-409. Because this controversy concerns the right of Defendants to affix the mobile home to the land in Apollo Shores, application of T.C.A. § 55-4-409(a) is neither ripe nor on point to the applicability of the restrictive covenant.

The only other authority cited by Defendants on this issue is a declaratory judgment of the Rhea County Circuit Court from 1988, *Keener v. Apollo Shores Community and Maintenance, Inc*., No. 15,102. The Chancellor discussed the *Keener* case in his memorandum opinion on appeal. Without comment on the judgment contained therein, we note that an opinion of a Circuit Court is neither controlling nor precedent in this Court. The *Keener* case does, however, apply to Defendants' other issue concerning waiver and/or estoppel and will be addressed.

Plaintiff does articulate a relevant argument on appeal, and cites authority on point with the issue of a double-wide mobile home as a "house trailer" under restrictive covenants similar to the one recorded in the Apollo Shores general plan. In an unpublished opinion of this Court, *Neas v. Kerns*, No. 03A01-9812-CH-00386, 1999 WL 233413 (Tenn. Ct. App. E.S., filed April 15, 1999), this Court analyzed the applicability of a similar restrictive covenant to a double-wide mobile home. In *Neas v. Kerns*, arguments similar to those proffered by Defendants were analyzed under existing published case law.

> Generally speaking, restrictions on the free use of real property are not favored and will be strictly construed. *Hicks v. Cox*, 978 S.W.2d 544, 548 (Tenn.App.1998); *Beacon Hills*, 911 S.W.2d at 739. However, the overriding consideration is the intent of the parties. *Hicks*, 978 S.W.2d at 548; *Beacon Hills*, 911 S.W.2d at 739.
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> In *Beacon Hills*, we addressed a situation similar to that in the instant case. The subject restriction in Beacon Hills prohibited, among other things, the use of any "structure of a temporary character [or] trailer" as a residence. We described the manufactured home in question as follows:
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> > The structure here consisted of two units. Each unit was pulled by a tractor-truck over the public highways to defendants' lot in Beacon Hills Subdivision. Concrete footers were poured or proposed to be poured at the site for the foundation. The two units were to be attached together and secured to the foundation. The assembled structure was constructed on four I-beams running the length of the units. The space between the foundation or footing and the structure was to be enclosed. The only difference between the case under consideration and *Albert v. Earwig*, 731 S.W.2d 63 (Tenn.App.1987) is that, here, the appellant proposed to add a garage, porch and use brick on a large portion of the exterior of the structure.
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> > Following installation, the wheels, axles and tongues were to be removed from each of the units. As in Albert, the wheels, axles and

> tongues could be reattached to the units, which could then be separated and towed away from defendants' lot in the same manner as they had been brought to defendants' property. A certificate of origin for a vehicle was issued by the manufacturer and a vehicle identification number was assigned to it.

Id. at 738. After considering the statutory definitions of a "manufactured home" and a "mobile home or house trailer," we found that the structure in question fell within both definitions. *Id.* at 737. We then held as follows:

> The court [in *Albert v. Earwig*] noted that the manner of construction between a "modular home" and a "mobile home" was a difference without a distinction. We agree that the same reasoning can be applied to a "manufactured home" and a "mobile home."

Id. at 738. We also found that the terms "mobile home" and "trailer" had been used interchangeably during the relevant time period. *Id.* at 739. Thus, we held that the trial court had properly enjoined the appellant from placing the proposed structure in the subdivision. *Id.*

Likewise, we reached a similar conclusion in the case of *Albert v. Earwig*, 731 S.W.2d 63 (Tenn.App.1987). As indicated in the *Beacon Hills* opinion, which relies heavily on *Albert*, the structures at issue in the two cases were substantially similar. *Beacon Hills*, 911 S.W.2d at 738. In *Albert*, we noted, among other things, that "[t]he majority of courts ... have held that removing the wheels or running gear of a mobile home and placing it on a permanent foundation does not convert the home into a permanent structure." *Id.* at 67. We then found the structure in question to be a mobile home, despite the fact that it was a "double-wide" and was constructed of materials different from those found in many mobile homes. *Id.* at 68. Noting that the structure was readily "capable of being separated and transported to and reassembled at another lot," we held that the trial court had properly ordered its removal from the subdivision. *Id.*

Upon review of the record in the instant case, we are of the opinion that the structure which Kerns proposes to place on her lot in Town and Country Estates is substantially the same as the structures in *Beacon Hills* and *Albert.* The evidence does not preponderate against the trial court's findings regarding the pertinent characteristics of Kerns' proposed home. Rule 13(d), T.R.A.P. The home's distinguishing features--its off-site construction, its construction on a steel I-beam frame, its transportation by road in two sections to the lot, the assignment of a vehicle identification or serial number to each section, and the fact that it can be relocated easily following reattachment of the wheels and axles--are substantially similar to the features exhibited by the structures in *Beacon Hills* and *Albert.* Thus, the principles set forth in those cases are controlling here.

> In view of its aforementioned characteristics, it is clear that the home at issue in the instant case falls within the type of structures that the applicable subdivision restrictions were intended to prohibit. As explained above, Kerns' proposed home is not distinguishable from other structures previously found to be mobile homes or trailers. *See Beacon Hills*, 911 S.W.2d at 737-39; *Albert*, 731 S.W.2d at 64-65. Accordingly, we hold that the trial court correctly determined that the structure in question is prohibited by the subdivision restrictions applicable to Town and Country Estates. The trial court therefore properly enjoined Kerns from placing the manufactured home on her property.
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> *Neas v. Kerns* at 1-3.

The wording of the restrictive covenant in *Neas v. Kerns*, "[n]o mobile home or trailer shall be used as living quarters on any lots or tracts of said property," is substantially similar to the wording of the restrictive covenant at issue. The discussion of the interchange of the terms "mobile home" and "trailer" as quoted from *Neas v. Kerns*, applies equally to the interchange of Defendants' term "manufactured housing"with "house trailer" in the Apollo Shores restriction. Disregarding such semantics and applying the law, we agree with Plaintiff that the double-wide mobile home of Defendants is a "house trailer" as restricted under the Apollo Shores covenant. The judgment of the Trial Court that Defendants' housing unit is prohibited by the restrictive covenants cited by Plaintiff is affirmed.

Defendants' argument on waiver is based upon the presence in Apollo Shores of housing units similar to that of Defendants. Defendants' assertions as to estoppel relate to statements attributed to various individuals by Defendants. Defendants rely upon *Hicks v. Cox*, 978 S.W.2d 544 (Tenn. Ct. App. 1998), and cases cited therein, for the proposition that Plaintiff is barred from bringing this lawsuit. In *Hicks v. Cox*, this Court discussed that the right to enforce a restrictive covenant may be forfeited by waiver or estoppel. *Id*. at 549-550.

> Waiver generally is defined as a voluntary or intentional relinquishment of a known right. . . . Estoppel, on the other hand . . . 'arises from the conduct or silence of a party and is sometimes referred to as equitable estoppel. . . . When a man has been misled by the untruth propounded by another, *and acted to his detriment in reliance upon the misrepresentation*, the misleading party will be estopped to show that the true facts are contrary to those he first propounded.'"
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> *Id.* at 550 (emphasis supplied in quoted material).

That other mobile homes are present in Apollo Shores does not establish waiver by Plaintiff.

> It has been held by this Court that a subdivision owner retains the right to object to violations of restrictions on an adjacent lot, despite that same owner's failure to object to previous violations of similar restrictions on lots in other parts of the subdivision. *Jones v. Englund*, 870 S.W.2d 525, 528 (Tenn.App.1993). This Court

recently relied upon the following language from an earlier decision in affirming the issuance of an injunction against the installation of a manufactured home:

> When one buys a lot in a subdivision with restrictions and builds a home for his family, and has a right to rely on the same restrictions applying to other lots, he cannot be held estopped as to a lot next to him because he did not object to a violation of the restrictions on another street.

Hicks v. Cox, 978 S.W.2d at 550 (quoting *Fields v. Moore*, No. 03A01-9401-CH-00013, 1994 WL 287563 (Tenn. Ct. App. E.S., filed June 30, 1994).

Defendants' discussion of the Rhea County Circuit Court decision in *Keener v. Apollo Shores Community and Maintenance, Inc.* serves to defeat their own argument as to waiver. The *Keener* case shows that, as recently as 1988, Plaintiff sought to enforce the restrictive covenant at issue to prevent mobile homes from being brought into Apollo Shores.

As to estoppel, Defendants assert that Marvin Wayne Lynn, one of the members of Plaintiff's board of directors referenced above, made representations relied upon by Defendants in buying the double-wide mobile home and bringing it to their Apollo Shores property. This issue was addressed in the testimony of the witnesses at trial, in examination and cross-examination, and apparently resolved by the Chancellor based upon his determination of the credibility of the witnesses. The Chancellor resolved the conflicting testimony presented at trial in favor of Plaintiff. Our review of the transcript of the proceedings, where fifteen witnesses testified, does not support Defendants' assertion of error in the Chancellor's determinations of credibility of the witnesses which appear to underlie the judgment of the Trial Court as to this issue. The judgment of the Trial Court is affirmed as to Defendants' issue of waiver and/or estoppel.

Conclusion

The judgment of the Chancery Court of Rhea County is affirmed, and this cause remanded for such further proceedings as may be required, if any, consistent with this Opinion, and for collection of the costs below. Costs of this appeal are assessed to the Appellants, Larry Alfred Lynn and Joy Carol Lynn.