IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 16, 2023 Session

WILLIAM BURKETT, ET AL. v. JULIA CRIS STEVENS

Appeal from the Circuit Court for Grainger County
No. 10055-II Carter Scott Moore, Judge

No. E2022-01186-COA-R3-CV

This appeal concerns the enforcement of a restrictive covenant. A number of property owners ("Plaintiffs") in the German Creek Cabin Site Subdivision sued fellow property owner Julia Cris Stevens ("Defendant") in the Circuit Court for Grainger County ("the Trial Court") seeking declaratory and injunctive relief. Plaintiffs sought to prevent Defendant from completing a 400 square foot structure on her lot as it would constitute a second dwelling on the original lot in contravention of a restrictive covenant. The Trial Court ruled in Plaintiffs' favor, ordering Defendant to remove the structure and granting permanent injunctive relief. Defendant appeals. She argues, among other things, that it is inequitable to require her to remove the structure. She also contends that it is not a dwelling. Discerning no reversible error, we affirm the judgment of the Trial Court.

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

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which W. NEAL MCBRAYER and KRISTI M. DAVIS, JJ., joined.

Brian T. Mansfield, Sevierville, Tennessee, for the appellant, Julia Cris Stevens.

D. Scott Hurley and Ryan N. Shamblin, Knoxville, Tennessee, for the appellees, Kathy Austin, Gail Burkett, William Burkett, Dona Byron, Carolyn Carpenter, Steve Carpenter, James Dawson, Rebecca Dawson, Teresa Graniozny, John Hilton, Martha Hilton, Frank B. Little, Jr., Jennifer Little, Kelci B. Smith, Parker James Smith, Karen Stewart, Sim Stewart, Ashley Taylor, Jeffrey C. Taylor, Teddy White, and Deborah White.

OPINION

Background

In March 2021, Plaintiffs sued Defendant in the Trial Court seeking declaratory and injunctive relief.[1] Plaintiffs sought to prevent Defendant from completing a "dwelling" on her lot, Lot 40R1, as it would constitute a second dwelling on the original lot, Lot 40, in contravention of a restrictive covenant. The structure is around 400 square feet in area with a single room and a small bathroom. It has gone by various descriptions in this case, including "cottage" and "cabana." The name given to it is immaterial. German Creek, the subdivision in which the structure is located, was established by the Tennessee Valley Authority ("TVA") near Cherokee Lake in 1949. TVA placed restrictions in the deeds for lot purchasers in the subdivision. The restriction at issue allows only one dwelling per original lot.

In the early years of German Creek, Defendant's parents bought the original Lot 40. In 1996, Defendant and her sister acquired Lot 40. Defendant lives in Knoxville. She has never lived as a resident in German Creek. In 2009, a cabin which then stood on Lot 40 burned down. Following a 2018 partition lawsuit between Defendant and her sister, Defendant acquired title to what was designated Lot 40R1, while her sister acquired title to Lot 40R. Defendant's sister conveyed her lot to Herbert Mayes ("Mayes"). Mayes, in turn, conveyed his lot to Billy Joe Carlyle and Marcia A. Carlyle ("the Carlyles"). The parties dispute who began first, but Defendant started work on her cottage and the Carlyles began building a residence. The Carlyles finished their residence before Defendant finished her structure. Defendant's structure was around 80-85% complete by the time of this lawsuit. In February 2021, Plaintiffs' attorney wrote to Defendant advising her that she was in violation of a restrictive covenant and asking that she halt construction immediately. Defendant continued with construction anyway.

The deed of conveyance from TVA to Defendant's and the Carlyles' predecessor in title states, as relevant:

> The Grantee, for himself, his heirs, successors, and assigns further covenants and agrees to and with all other purchasers of lots in the German Creek Cabin Site Subdivision that the following shall constitute real covenants which shall attach to and run with the above described land and

[1] Plaintiffs later withdrew their request for declaratory relief.

> shall be binding upon anyone who may hereafter come into ownership thereof, whether by purchase, devise, descent, or succession:
>
> For the benefit of all purchasers of lots in the German Creek Cabin Site Subdivision, which embraces the land described above, as shown by map of record in map book 1, page 40, in the Register's Office of Grainger County, Tennessee, and in order to foster the development and protect the value of all of said land for private residence purposes, the grantee (1) will use the land herein conveyed, described as lot 40 of said subdivision, for private residence purposes only; . . . (3) will not construct or maintain or cause or suffer to be constructed or maintained on lot 40 any building other than a single dwelling . . . with necessary and appurtenant outbuildings . . . .

(All capital letters in original; lower-cased for ease of read).

In April 2021, the Trial Court heard a request by Plaintiffs for a temporary injunction. The Trial Court entered a temporary injunction, which prohibited Defendant from further construction pending a court order. In May 2021, Defendant filed an answer and counterclaim. Defendant also filed a motion to dissolve the temporary injunction, which was heard in November 2021. The Trial Court denied Defendant's motion but allowed her to install guttering on the structure. In May 2022, this matter was tried.

In August 2022, the Trial Court entered its final judgment in which it ruled in favor of Plaintiffs. In its order, the Trial Court stated, as relevant:

> 1. The deed restrictions contained in Defendant's chain of title are valid, binding, enforceable, and run with the land;
> 2. The Defendant, her officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them are permanently enjoined and restrained from constructing any structures on the property;
> 3. The Defendant is further ordered to remove the existing structure ("cottage") from the property;
> 4. In the event that the Defendant does not file an appeal of this decision, she shall remove the cottage structure from her property within ninety (90) days after the time for filing an appeal has run;
> 5. In the event that the Defendant files a timely appeal, enforcement of the mandatory injunction regarding removal is stayed and she shall not have to remove the cottage structure from her property until the appeal is determined by the Court of Appeals.
> 6. In the event that the Court of Appeals affirms the decision of this Court regarding the removal of the existing structure, Defendant shall remove the

cottage structure from her property within ninety (90) days after the mandate from the Court of Appeals, unless it rules otherwise.

7. The Counterclaim against Sim and Karen Stewart is hereby voluntarily dismissed with prejudice.

The Trial Court also attached a transcript of its oral ruling to its final order in which it explained its decision in more detail. In its oral ruling, the Trial Court stated, in part:

> THE COURT: All right. This has been one of the least favorite things I've ever heard in my life. I'll go ahead and break the ice. I'm finding for the plaintiffs. I'm going to require the cottage to be removed. Here are the grounds on which I'm putting my ruling down. The TVA language says for private residence purposes only. A single dwelling with necessary and appurtenant outbuildings. The, the precedent of Benton and Jones shows that that means what's been said several times here today concerning the one structure over the two -- once a lot gets subdivided, it can still just have one residence, if you will. And then if you go on down further into the language of the, of the pertinent language in our situation with, with necessary and appurtenant outbuildings, I can't in good conscience call her shed a necessary and appurtenant outbuilding of the Carlyle home. So that's how I've reached this gruesome conclusion in my opinion.
>
> I know it does -- you probably care less right now, but I've probably felt more sympathy for you than I have felt for any person I have had in front of me. And I'm not sure that I'm right. I'm just trying to make it the best way I can out of the law than out of sympathy, so that's why I'm going to also -- I want to -- I don't want anything removed until after the time for appeal is run, in the event that you and your counsel decide to take this up. Is there anything I haven't covered?
>
> MR. MANSFIELD [Defendant's counsel]: Just some clarification. So you're, you're ordering that the defendant is to remove the structure from the property.
>
> THE COURT: Yes.
>
> MR. MANSFIELD: And I presume within that then she would not be able to build any kind of structure --
>
> THE COURT: None at all. That's why I'm having such a struggle with this.
>
> MR. MANSFIELD: And so you said --
>
> THE COURT: Yes. Not at all, not -- can't build a thing.
>
> MR. MANSFIELD: Yeah. Can't build a thing. Okay. And then you're not ordering it been done immediately --
>
> THE COURT: No.

MR. MANSFIELD: -- you're waiting until post judgment or appeal time's run before that would be enforced.

THE COURT: Yeah. I guess we need to have clarity on that. What is the appeal time? Thirty days?

MR. HURLEY [Plaintiffs' counsel]: Thirty days from the entry of the order.

MR. MANSFIELD: From the entry of the order.

THE COURT: Thirty days from the entry of the order and then have it removed within -- in the event that no appeal is lodged, 90 days after the time for filing an appeal has run, unless an appeal has been taken, and then no building removal until the appeal is determined by the Court of Appeals.

Defendant timely appealed to this Court.

Discussion

We restate and consolidate Defendant's issues on appeal as follows: 1) whether the Trial Court erred in holding that the deed restrictions contained in Defendant's chain of title prohibit the structure on her lot and that it must be removed; 2) whether Plaintiffs' claim is barred by the doctrine of waiver; and 3) whether the Trial Court erred in granting mandatory and permanent injunctive relief.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon Cnty. Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001). "The interpretation of a deed is a question of law." *Hughes v. New Life Dev. Corp.*, 387 S.W.3d 453, 466 (Tenn. 2012) (citations omitted). In *Jones v. Haynes*, we stated as follows concerning restrictive covenants:

> Tennessee has long-standing rules regarding restrictive covenants. Under Tennessee law restrictive covenants are valid but are disfavored because they act as an impediment to the free use and enjoyment of land. "Therefore, restrictive covenants are to be strictly construed and will not be extended by implication and any ambiguity in the restriction will be resolved against the restriction." *Waller v. Thomas*, 545 S.W.2d 745 (Tenn. App. 1976).

Jones v. Haynes, No. 03A01-9707-CH-00241, 1998 WL 331311, at *2 (Tenn. Ct. App. June 24, 1998), *no appl. perm. appeal filed*. "[A] restrictive covenant will be given a fair

and reasonable meaning according to the intent of the parties, which may be determined with reference both to the language of the covenant and to the circumstances surrounding its making." *Parks v. Richardson*, 567 S.W.2d 465, 467-68 (Tenn. Ct. App. 1977) (citations omitted).

We first address whether the Trial Court erred in holding that the deed restrictions contained in Defendant's chain of title prohibit the structure on her lot and that it must be removed. Two cases from the Tennessee Court of Appeals are particularly instructive on this issue. In *Benton v. Bush*, 644 S.W.2d 690 (Tenn. Ct. App. 1982), the plaintiffs sued defendants for violating restrictive covenants which permitted only one single-family dwelling on each lot. *Id.* at 691. The chancellor found that the applicable restrictive covenants prohibited the construction of more than one single-family dwelling on original Lot 26 and entered a mandatory injunction requiring removal of the portion of the house being constructed. *Id*. Harrison Point Subdivision, the subdivision at issue in *Benton*, was created by TVA in the early 1950's. *Id.* The deeds read, as pertinent:

> For the benefit of all purchasers of lots in the Harrison Point Subdivision . . . and in order to foster the development and protect the value of said land for private residence purposes, the Grantee
>
> > (1) will use the land herein conveyed described as Lot 26, Tract XCR–11:26 of said subdivision for private residence only; . . .
> > (3) will not construct or maintain or cause or suffer to be constructed or maintained on Lot 26, Tract XCR–11:26, any building other than a single-family dwelling costing not less than $5,000.00.

Id. The defendants, the Bushes, acquired Lot 26 and built a house on it. *Id*. The Bushes subdivided their lot and conveyed the smaller tract to their daughter, who began building a house. *Id*. On appeal, we affirmed the chancellor, stating in part:

> Notwithstanding the law's unfavorable regard toward restrictive covenants and its strict construction of them, such restrictions, like other contracts, will be enforced according to the clearly expressed intention of the parties. *Carr v. Trivett*, 24 Tenn. App. 308, 143 S.W.2d 900 (1940).
>
> Appellants argue strenuously that since the restrictions contain no language prohibiting resubdividing, their actions are not in violation of the covenants. Appellants rely heavily on the Supreme Court case of *Turnley v. Garfinkel*, 211 Tenn. 125, 362 S.W.2d 921 (1962). In the *Turnley* case, the restrictive covenants contained the following language: "Not more than one

dwelling shall be built on any lot and maintained thereon at any one time." The Court in the *Turnley* case held:

> Since the covenants in this case contain no express restriction against a resubdivision of any of the lots, they cannot be extended by implication to prevent complainants' re-subdivision of their lot. Nor can such restriction be implied from the conveyance of these lots with reference to this recorded plat showing the dimensions of the lots.

We find the language of the restrictive covenant in this case to be vastly different from the language of the covenant in the *Turnley* case. The *Turnley* restrictive covenant applied to any lot rather than to a specific lot. In the instant case, the restriction refers to "Lot 26, Tract XCR–11:26" (which number indicates the plat and lot number on record in the Register of Deeds Office of Hamilton County). We believe the language in the restrictions in this case means one single-family dwelling on Lot 26.

Further, the preamble on the restrictions in the present case clearly indicate the developer placed the restrictions on the individual lots for the benefit of all purchasers of lots in Harrison Point Subdivision. One of the purposes of imposing restrictive covenants on property is to promote a general plan or scheme for uniform development. Restrictions to protect the beauty of the neighborhood, value of the property, and uniformity are covenants running with the land binding those who purchase lots within the subdivision and are enforceable by the owner of any of the lots so protected by the restrictive covenants. *Turnley v. Garfinkel, supra*.

From the overall language of the restrictions it appears that it was the intent of the developer to assure each lot owner a large amount of privacy and to afford each lot with frontage on or access to Lake Chickamauga. Harrison Point Subdivision is unique in that it is surrounded on three sides by Lake Chickamauga and no doubt the developer wanted to keep the rural atmosphere. Also, we think from the restrictions it was the developer's intention that only a limited number of homes would ever be built in Harrison Point Subdivision.

Benton, 644 S.W.2d at 691-92.

In *Jones v. Englund*, 870 S.W.2d 525 (Tenn. Ct. App. 1993), William and Susan Englund bought original Lot 21 in the North Soddy Creek Cabin Site Area, a subdivision

on Lake Chickamauga created by TVA in the late 1940's. *Id*. at 526. The Englunds bought the lot by three separate deeds from the same owner, as the property had been re-subdivided. *Id*. Each deed contained language similar to the following: "[the Grantee] (1) will use the land herein conveyed, described as Lot 21, Tract XCR–109:21 of said subdivision, for private residence purposes only; . . . (3) will not construct or maintain or cause or suffer to be constructed or maintained on Lot 21, Tract XCR–109:21 any building other than a single family dwelling costing not less than $750.00. . . ." *Id*. (internal quotation marks omitted). The Englunds lived in a home on the largest parcel of Lot 21; they tried to sell the other two parcels as homesites. *Id*. Neighbors objected to the sales and sued the Englunds. *Id*. The trial court found: "(1) The restrictions in the subdivision were enforceable; (2) The restrictions prohibited a resubdivision of the lots in the subdivision but, because the Plaintiffs had delayed filing suit, the Defendants had incurred expenses they otherwise would not have incurred and equity would be served if the Defendants were allowed to sell 21–A and 21–B as one lot." *Id.* The trial court also held that "an additional residence could be built on Lots 21–A and 21–B if combined." *Id*.

On appeal, this Court held, *inter alia*, that the re-subdivision of Lot 21 into Lots 21, 21–A, and 21–B was not a violation of the restrictive covenants per se. *Jones*, 870 S.W.2d at 527. However, we found that the restrictions precluded the construction of more than one dwelling on original Lot 21. *Id*. Regarding an issue raised by the Englunds that the restrictions should not be enforced because no action was taken by the plaintiffs to enjoin other non-conforming uses in the subdivision, we found that "Mr. Myers, who testified for the Plaintiffs, is the owner of Lot 23 . . . located one lot from the Englunds property. The most significant non-conforming uses in the subdivision occur on Lot 28 . . . located on a different street, and on Lot 12 . . . located at the opposite end of the subdivision. . . ." *Id*. at 527-28. Thus, we held that Myers retained the right to object to covenant violations on Lot 21. *Id*. at 528. This Court found further that "evidence showing the number of dwellings in the subdivision had increased, the amount of boat traffic on the lake had increased and more and more of the property owners were living in the subdivision year-round rather than on a seasonal basis" "[did] not represent the kind of material change that would justify a suspension of the restrictions in the deeds." *Id*. Finally, this Court found that the plaintiffs had not "slept on their rights" because the Englunds did not violate the restrictive covenants simply by buying or selling parcels—rather, "[t]he violation of the restrictions would have occurred only had the Englunds or someone else begun the construction of another residence on one of these lots." *Id*. We said that any expenditures the Englunds made on grading the lots for sale or constructing a sea wall were made "at their own peril." *Id*. at 529. This Court modified the trial court's decree to provide that the Englunds could sell Lots 21–A and 21–B—either separately or together—but that so long as the residence remained on Lot 21, no other residence could be built on either Lot 21–A or 21–B, or a combination of the two. *Id*. at 530.

Citing *Benton* and *Jones* as on point and controlling, Plaintiffs state in their brief that "Defendant's constructing or maintaining of her structure, whether she calls it a cottage, a cabana or a fishing cabin, on Lot 40R1 when there is already an existing (completed) home on Lot 40R is a violation of the 'single dwelling' restriction." For her part, Defendant says in her reply brief that *Benton* and *Jones* are inapposite because they "dealt with the issue of *multiple dwellings/residences* being constructed on an original, single lot. Those decisions *did not* address improvements or structures of *another nature* on a subdivided lot." Defendant contends that her building is not a dwelling.

One basic definition of "dwelling" is "a shelter (such as a house) in which people live." *Merriam-Webster.com Dictionary*, https://www.merriam-webster.com/dictionary /dwelling (last visited August 22, 2023). Defendant is adamant that she does not intend to live in the cottage. However, Defendant's interpretation requires us to accept her subjective intention not to live in the cottage. Defendant's subjective intention cannot control. After all, Defendant could sell the cottage to someone else who did intend to live there. At trial, Defendant testified that she might sometimes sleep in the cottage, noting the difficult overnight drive back to Knoxville. She also stated: "I'm not out to make money. I'm up there to live and enjoy some years after I retire. Or even right now on the weekends. I have not -- I just want to enjoy my place to recreate around the lake." Regardless, the pertinent questions concern what the structure is and whether it is prohibited.[2]

Defendant describes the approximately 400 square foot structure as "a place for shelter, to relax, to use the bathroom; it will have a sink, a refrigerator, perhaps a cooktop and microwave." It is, in essence, a small house. A small house is still a house, and we find that Defendant's structure constitutes a dwelling by any other name, whatever Defendant's intent. While the Trial Court was unclear as to whether it found the structure to be a dwelling, we conclude that it is. Therefore, consistent with the precedent of *Benton* and *Jones*, Defendant's structure is a second dwelling on an original lot and thus is prohibited by the applicable restriction. What is more, even if Defendant is correct that her cottage is not a dwelling, it still would be prohibited. The deed allows only a single

[2] At oral argument, Defendant mentioned *Shields Mountain Property Owners Ass'n, Inc. v. Teffeteller*, No. E2005-00871-COA-R3-CV, 2006 WL 408050 (Tenn. Ct. App. Feb. 22, 2006), *no appl. perm. appeal filed*, a case in which we addressed whether a restrictive covenant providing that "[a]ll lots shall be used for residential purposes exclusively" barred the landowners from renting their property short-term. *Id*. at *1, 3. We stated: "While we agree that the length of the stay by itself is not dispositive of whether a use is residential, we do not agree that Defendants' renters are using the property for a residential purpose. While they may well eat, sleep, relax, and bathe while there, they do not reside there." *Id*. at *4. The appeal at bar is of a very different factual scenario. The restrictive covenant at issue prohibits all but certain structures on an original lot. The issue is not whether Defendant's cottage is for residential or commercial use, as such, but whether the very structure itself is prohibited.

dwelling on an original lot "with necessary and appurtenant outbuildings." Defendant's cottage cannot reasonably be described as a necessary and appurtenant outbuilding; there is nothing for it to be necessary and appurtenant to. In short, the deed prohibits Defendant's structure whether it is a dwelling or something else. The Trial Court did not err by ordering her to remove it.

Defendant argues that this is a harsh result and could not have been TVA's intention. It may well be a harsh result and a harsh restriction, but TVA's rationale behind the restriction is clear. It is apparent that TVA wanted to preserve the quiet and rural character of the subdivision, without too much density. Filling the subdivision with multiple dwellings within the same original lots would no doubt alter the subdivision's character. It is not our role to weigh the wisdom of this approach. The deed is crystal clear and enforceable.

Defendant argues that even if the test is who built a dwelling on the original lot first, she started clearing her property before the Carlyles started building on their property. Plaintiffs argue in response that the proof shows that the Carlyles' predecessor, Mayes, began clearing his lot before Defendant began clearing hers. The dispute is unnecessary. A lot owner could clear her lot and then let it sit for years or start and then slow walk construction over many years. That is not dispositive. The Carlyles indisputably finished their residence first. Thus, there was a dwelling on original Lot 40. Under the restriction, Defendant could not build a second one. We affirm the Trial Court's determination that the deed restrictions contained in Defendant's chain of title prohibit the structure on her lot and that it must be removed.

We next address whether Plaintiffs' claim is barred by the doctrine of waiver. Defendant argues that German Creek is already riddled with nonconformities and violations of restrictive covenants, so it is unjust for Plaintiffs to target her violation. Defendant cites the testimony of Tamara Arbogast ("Arbogast"), which was given in another matter but deemed part of the record in this case by stipulation of the parties. According to Defendant, Arbogast's testimony and supporting exhibits show "the erection of what appear to be separate residences, trailers and other structures on those subdivided lots." Defendant argues further that her structure is not harming anyone and it is inequitable to make her remove it. With respect to when restrictions are abandoned, this Court has stated:

> [I]n order for community violation to constitute an abandonment, it must be so general as to frustrate the object of the scheme with the result that enforcement of the restriction involved would seriously impair the value of the burdened lot without substantially benefiting the adjoining lots. Accordingly, sporadic and distant violations do not in themselves furnish

> adequate evidence of abandonment, although they may be considered in connection with outside changes.

Scandlyn v. McDill Columbus Corp., 895 S.W.2d 342, 349 (Tenn. Ct. App. 1994) (citation omitted). The right to enforce a restrictive covenant can be forfeited due to acquiescence via waiver or estoppel:

> This is so, for instance, where, by failing to act, one leads another to believe that he is not going to insist upon the covenant, and such other person is damaged thereby, or whereby landowners in a tract or subdivision fail to object to general and continuous violations of restrictions. If the party entitled to the benefit of the covenants in any way by inaction lulls suspicion of his demands to the harm of the other or if there has been actual or passive acquiescence in the performance of the act complained of, then equity will ordinarily refuse aid.

Id. (quoting 20 Am.Jur.2d *Covenants, Conditions*, *Etc.* § 273 (1965)).

Plaintiffs correctly point out that Defendant has failed to identify with specificity which parts of Arbogast's testimony support her contention that enforcement of the restriction at issue has been waived. We have reviewed Arbogast's voluminous testimony, and it is not very illuminating to the issues before us. In addition, there is nothing to show that the alleged violations, if they are violations, are so material and widespread as to establish that the restrictive covenants have been abandoned or that enforcement by Plaintiffs is waived. Regarding Defendant's argument that it is inequitable to make her remove her cottage, we find that the equities of the case do not favor Defendant's position. Defendant pressed on with construction despite the risk that the restrictive covenants would be enforced against her. We find that the doctrine of waiver does not bar Plaintiffs' claim against Defendant.

The third and final issue we address is whether the Trial Court erred in granting mandatory and permanent injunctive relief. Defendant argues that the Trial Court's findings as to injunctive relief are inadequate, especially as to any likely irreparable harm to Plaintiffs. She states further that there is no evidence that her structure is doing any harm to Plaintiffs, or ever will do any harm. Regarding injunctive relief, this Court has stated:

> A trial court's decision regarding whether to grant injunctive relief is reviewed under an abuse of discretion standard. *Bd. of Comm'rs of Roane County v. Parker*, 88 S.W.3d 916, 919 (Tenn. Ct. App. 2002). A trial court abuses its discretion when "its decision is not supported by the evidence,

> when it applies an incorrect legal standard, [or] when it reaches a decision which is against logic or reasoning that causes an injustice to the party complaining." *Owens v. Owens*, 241 S.W.3d 478, 496 (Tenn. Ct. App. 2007) (citing *Biscan v. Brown*, 160 S.W.3d 462, 468 (Tenn. 2005)).
>
> When determining whether to grant injunctive relief, the trial court should consider such factors as the adequacy of other remedies, the danger that the plaintiff will suffer irreparable harm without the injunction, the benefit to the plaintiff, the harm to the defendant, and the public interest. *See Zion Hill Baptist Church v. Taylor*, No. M2002-03105-COA-R3-CV, 2004 WL 239760, at *5 (Tenn. Ct. App. Feb. 9, 2004) (citing *Union Planters' Bank & Trust Co. v. Memphis Hotel Co.*, 124 Tenn. 649, 139 S.W. 715, 718-19 (1911); *Butts v. City of S. Fulton*, 565 S.W.2d 879, 882 (Tenn. Ct. App. 1977); *Henry County v. Summers*, 547 S.W.2d 247, 251 (Tenn. Ct. App. 1976); *Kaset v. Combs*, 58 Tenn. App. 559, 434 S.W.2d 838, 841 (1968); *Herbert v. W.G. Bush & Co.*, 42 Tenn. App. 1, 298 S.W.2d 747 (1956); 42 AM. JUR. 2D *Injunctions* § 14 (2000); ROBERT BANKS, JR. & JUNE F. ENTMAN, TENNESSEE CIVIL PROCEDURE § 4-3(b) (2d ed. 1999)). "A court's equitable power to grant injunctions should be used sparingly, especially when the activity enjoined is not illegal, when the injunction is not requested, and when it is broader than necessary to achieve its purposes." *Kersey v. Wilson*, No. M2005-02106-COA-R3-CV, 2006 WL 3952899, at *8 (Tenn. Ct. App. Dec. 29, 2006) (citing *Earls v. Earls*, 42 S.W.3d 877 (Tenn. Ct. App. 2000); *Terry v. Terry*, No. M1999-01630-COA-R3-CV, 2000 WL 863135 (Tenn. Ct. App. June 29, 2000)).

Vintage Health Res., Inc. v. Guiangan, 309 S.W.3d 448, 466-67 (Tenn. Ct. App. 2009).

While Defendant says that her structure is not doing any harm, we have found, as did the Trial Court, that her structure violates the restrictive covenants. The harm in this instance lay in Defendant's violation of the restriction. The Trial Court's order that Defendant remove her structure and not build any others is commensurate with the nature of the violation. Given the restrictive language in the deed, there is no conceivable structure Defendant could build on her lot. Defendant may not build a second dwelling on the original lot, and she may not have a structure appurtenant to a dwelling when she has no dwelling on her lot to begin with. Elsewhere in her brief, Defendant asserts that the Trial Court's ruling "amounts to a forfeiture of her lot as anything other than permanently unimproved land." Respectfully, however, that the lot is heavily restricted for purposes of building does not mean that the restriction is invalid. Defendant knew, or should have known, of the restriction all along. She nevertheless chose to take the risk and build anyway. We find that the Trial Court's decision to grant mandatory and permanent

injunctive relief was not unsupported by the evidence; did not result from the application of an incorrect legal standard; and was not against logic or reasoning causing an injustice to the party complaining. We find further that the Trial Court's findings were sufficient to support its conclusions. The Trial Court did not abuse its discretion on this issue. We affirm the judgment of the Trial Court in its entirety.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Julia Cris Stevens, and her surety, if any.

_____

D. MICHAEL SWINEY, CHIEF JUDGE