

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000439-MR

BOB PUCKETT

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JEAN CHENAULT LOGUE, JUDGE
ACTION NO. 07-CI-00992

BATTLEFIELD ESTATES
HOMEOWNER'S
ASSOCIATION, INC.

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: ACREE, DIXON AND KELLER, JUDGES.

KELLER, JUDGE: Bob Puckett (Puckett) appeals from the order of the Madison Circuit Court granting partial summary judgment in favor of the Appellee, Battlefield Estates Homeowner's Association (the New Association). For the following reasons, we vacate and remand.

FACTUAL BACKGROUND

This dispute involves a townhome located in Battlefield Estates, a subdivision in Richmond, Kentucky, and Puckett's use of the townhome. Bob Hager Builders, Inc. (Hager) is the owner of the townhome, and Puckett leased the townhome from Hager. The New Association is the homeowner's association for the single-family homes and townhomes located in Battlefield Estates.

Battlefield Estates was developed by Fritz Builder & Developer, Inc. (Fritz Builder). Approximately 150 lots were platted as part of Battlefield Estates, which consisted of lots for single-family homes and townhomes. A homeowner's association, Battlefield Estates Townhomes Homeowner's Association, Inc. (the Old Association), was established for the townhomes. A separate homeowner's association, Battlefield Estates Homeowner's Association, Inc., was established for the single-family homes.

On August 2, 1999, the Battlefield Estates Phase I Townhome Lots Declaration of Easements, Covenants and Restrictions (the Declaration of Restrictions) was recorded in the Madison County Clerk's office. While there are a number of restrictions listed in the Declaration of Restrictions, the restrictions applicable to the instant case included the following: (1) any additions, including sunrooms, screen porches, or small additions, had to be approved by Fritz Builder in writing; (2) no temporary structures were permitted on any lot, except for a temporary tool shed or field office for a builder or Fritz Builder during construction; (3) a garage could not be used as a residence; (4) no trade or business

of any kind could be conducted on any lot; and (5) there could be no stockpiling of wood.

The Declaration of Restrictions applied only to the townhomes within Battlefield Estates, and provided in pertinent part the following:

32. **HOMEOWNER'S ASSOCIATION:** Battlefield Estates Townhomes Homeowner's Association, Inc. is a non-profit corporation organized under the laws of the Commonwealth of Kentucky. The owner of each lot subject to these restrictions within Battlefield Estates shall be a member of the Homeowner's Association. Membership in the Association is mandatory and by acceptance of a Deed for any lot, each owner agrees to accept and does thereby become a member of the Association. All members shall abide by the Association's bylaws, rules and regulations and shall pay the assessments levied by the Association when due and shall further comply with all decisions of the Association's Board of Directors.

.....

38. **ENFORCEMENT:** Should any unit owner or other person violate or attempt to violate any one or more of these restrictions then any other unit owner, the homeowner's association hereinafter established or the DEVELOPER may enforce these restrictions and covenants and abate any violation or attempted violation thereof or recover damages therefore by appropriate legal procedure

In 2002, a foreclosure action was instituted against Fritz Builder. The homeowners of Battlefield Estates discovered that both homeowner's associations were administratively dissolved by the Kentucky Secretary of State on November 1, 2002. In 2003, a combined meeting of the single-family home and the townhome owners was called. Every owner that was living in Battlefield Estates at

the time, approximately 22 families, attended the meeting. The owners agreed to incorporate as one homeowner's association rather than two separate associations, forming the New Association. Additionally, a temporary Board of Directors was elected. No minutes of this meeting were taken.

The Articles of Incorporation for the New Association were filed with the Secretary of State on July 14, 2003. On June 10, 2004, the members of the New Association adopted Bylaws of Battlefield Estates Homeowner's Association, Inc. (the Bylaws).

On June 3, 2004, by Master Commissioner Deed, approximately 100 lots of the 150 lots platted as part of Battlefield Estates were conveyed to Hager. On May 26, 2004, Hager purchased an additional eleven lots. In 2007, Hager started leasing townhomes. On April 24, 2007, Puckett entered into a lease agreement with Hager to lease a townhome in Battlefield Estates. Puckett conceded that he received a copy of the Declaration of Restrictions from Hager when he entered into the lease agreement.

On July 12, 2007, the New Association brought this action in the Madison Circuit Court against Puckett and Hager, claiming they violated the Declaration of Restrictions and the Association's Bylaws applicable to the townhome Puckett was leasing. Specifically, the Association asserted that Puckett was conducting a business on the premises and stockpiling wood; and that he had constructed an outbuilding on the property, added decking to the rear of the townhome, and converted the attached garage into an office.

On February 12, 2008, the New Association filed a motion for summary judgment. Puckett filed a response to that motion, and also filed a motion to dismiss arguing that the Association had no standing to bring the action against him. On March 18, 2008, the trial court denied the New Association's motion for summary judgment and Puckett's motion to dismiss. By an agreed order of partial dismissal signed by all parties and entered on August 22, 2008, the New Association's claims against Hager were dismissed without prejudice.

On September 22, 2008, the New Association renewed its motion for summary judgment. Puckett again filed a response to the summary judgment motion and filed a motion to dismiss arguing that the New Association lacked standing. On July 31, 2009, the trial court entered an order granting partial summary judgment in favor of the Association and denied Puckett's motion to dismiss. Specifically, the trial court concluded that Puckett violated the Declaration of Restrictions by constructing an outbuilding on the property; adding decking, concrete padding, and fencing to the rear of the townhome; and converting the attached garage into a space no longer capable of housing automobiles. Thus, the trial court granted the Association an injunction requiring Puckett to bring the property into compliance with the Declaration of Restrictions. However, the court concluded that there remained material issues of fact as to whether Puckett was operating a business from the residence and was stockpiling wood and denied summary judgment on those issues. The trial court also denied Puckett's motion to dismiss.

On August 12, 2009, Puckett filed a motion to file a third party complaint against Hager and a motion to alter, vacate or amend the order granting partial summary judgment. The trial court denied both motions in an order entered on January 15, 2010.¹ This appeal followed.

STANDARD OF REVIEW

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Kentucky Rule(s) of Civil Procedure (CR) 56.03. Summary judgment is properly granted “where the movant shows that the adverse party cannot prevail under any circumstances.” *Steelvest, Inc. v. Scansteel Serv. Ctr. Inc.*, 807 S.W.2d 476, 479 (Ky. 1991). When considering a motion for summary judgment, the trial court must view the record “in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Id.* at 480. “Interpretation or construction of restrictive covenants is a question of law. Therefore, we review this matter *de novo*.” *Colliver v. Stonewall Equestrian Estates Ass’n, Inc.*, 139 S.W.3d 521, 523 (Ky. App. 2003).

ANALYSIS

¹ This order was made final and appealable pursuant to Kentucky Rule(s) of Civil Procedure (CR) 54.02 in a subsequent order entered on March 4, 2010.

On appeal, Puckett first contends that the trial court incorrectly granted partial summary judgment and denied his motion to dismiss because the New Association did not have standing to bring this action against him. We agree.

In concluding that the New Association had standing, the trial court relied on *Colliver*, 139 S.W.3d 521. In *Colliver*, the developer of a residential development recorded restrictive covenants in the county clerk's office. The restrictive covenants provided that all plans for improvements on a lot had to be approved by the developer. Additionally, the restrictive covenants provided that the covenants and restrictions could be enforced by the homeowner's association created by the developer or any owner in the residential development. In 1976, the developer was dissolved. Between 2000 and 2001, the Collivers, a couple who owned property in the residential development, constructed a detached garage on their property even though their proposed construction plans had been rejected by the homeowner's association on several occasions. The homeowner's association filed suit seeking a permanent injunction requiring the Collivers to remove the structure. The trial court granted summary judgment in favor of the homeowner's association and ordered the garage to be removed. *Id.* at 522-23.

On appeal to this Court, the Collivers argued that the developer was the only entity with the approval authority over the proposed garage. Despite the dissolution of the developer, this Court concluded that the authority of the developer passed to the homeowner's association. Specifically, it concluded that "the developer clearly intended the covenants to run with the land as opposed to

being personal covenants.” Further, “the developer intended at some point for the Association to take over enforcement of the covenants,” because “[t]his was the sole purpose for the creation of the Association.” Accordingly, this Court concluded that the homeowner’s association had standing to enforce the restrictive covenants. *Id.* at 524-25.

As in *Colliver*, the developer in this case, Fritz Builder, was dissolved. However, unlike *Colliver*, the Old Association was also dissolved. Although paragraph 38 of the Declaration of Restrictions provided that the homeowner’s association established by the developer may enforce the restrictions and covenants, the homeowner’s association referred to in the Declaration of Restrictions was the Old Association. Thus, while paragraph 38 of the Declaration of Restrictions gives the Old Association, Fritz Builder, and any other unit owner the authority to enforce the Declaration of Restrictions, it does not give that same authority to the New Association.

The Bylaws of the New Association also do not give the New Association the authority to enforce the Declaration of Restrictions because the Bylaws do not adopt the Declaration of Restrictions. Article III, subsection (i) of the Bylaws provides that “The members of the Association and all property owners in the Subdivision are responsible for the enforcement of the Declaration of Restrictions.” However, “Declaration of Restrictions” is not defined in the Bylaws. Article IX, subsection (a) provides that “All townhomes shall be constructed according to the Declaration of Easements, Covenants, and

Restrictions for Battlefield Estates Townhome Lots, recorded 8-2-99 as document no. 227376, book 132, Pages 581 through 590, with the county clerk of Madison County, Kentucky.” Thus, while the Bylaws provide that the townhomes have to comply with the construction requirements provided in the Declaration of Restrictions, the Bylaws do not adopt any other covenant or restriction set forth in the Declaration of Restrictions.

Further, there is no evidence in the record that the members of the New Association adopted the Declaration of Restrictions. Article VIII, subsection (e) provides that the Secretary of the New Association “shall keep the minutes of all the meetings of the [New] Association and of the Board of Directors, which shall be an accurate and official record of all business transacted.” There are no minutes in the record reflecting the adoption of the Declaration of Restrictions. Accordingly, the New Association did not have standing to enforce the Declaration of Restrictions against Puckett.

We do note that there are certain restrictions listed within the Bylaws that are applicable to the instant case. Specifically, the Bylaws provide that no trade or business can be conducted on any lot, firewood cannot be stockpiled on a townhome lot, and there can be no construction of an outbuilding on any lot. Additionally, the Bylaws define the minimum required square footage for a garage, and also provide that any additions, such as patios, have to be approved by the architectural review committee of the New Association. However, there is no provision in the Bylaws that provides how and against whom these restrictions can

be enforced. Thus, we cannot say that the restrictions provided in the Bylaws are applicable to Puckett.

Based on the preceding, all other issues raised by Puckett, including the denial of his motion to file a third-party complaint against Hager, are moot. Therefore, we will not address them.

CONCLUSION

Because the New Association never adopted the Declaration of Restrictions and the Declaration of Restrictions did not provide for enforcement by the New Association, the New Association did not have standing to bring this action. Therefore, the order of the Madison Circuit Court is vacated, and the case is remanded with instructions to dismiss this action.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

Roger M. Oliver
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