RENDERED: MARCH 7, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000578-MR

LARRY K. COOK AND TAMMY G. COOK — APPELLANTS

v.

APPEAL FROM HART CIRCUIT COURT
HONORABLE CHARLES C. SIMMS, III, JUDGE
ACTION NO. 11-CI-00263

DELORIS M. HANSEL; JESSIE PUCKETT;
AND CHARLES JACKSON — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT, STUMBO AND THOMPSON, JUDGES.

STUMBO, JUDGE: Larry and Tammy Cook appeal from an order of the Hart Circuit Court which found that their manufactured home violated a restrictive covenant of the Valley View Estates Subdivision, located in Bonnieville, Kentucky, and required them to remove the manufactured home from a lot they purchased in said subdivision. We find no error and affirm.

All parties to this action own lots in the Valley View Estates Subdivision. Valley View was created by Garland C. Cottrell and each of the lots is subject to restrictive covenants which were filed in the Hart County Clerk's Office on June 17, 1995. Section C of the covenant, titled "Residence in accessory structure", states: "No trailer, mobile home, basement, tent, shack, garage, barn, or other outbuildings shall be erected in this subdivision at any time for the use as a residence either temporarily or permanently nor shall any structure of any temporary character be used as a residence."

In October of 2011, Appellants purchased lot 2A in Valley View. Shortly thereafter, a doublewide manufactured home was placed on the property. On October 24, 2011, the Appellees filed the underlying action requesting damages and injunctive relief. Appellees argued that Appellants violated Section C of the restrictive covenants by placing the manufactured home on their property. Their claim was that a manufactured home is the same as a trailer or mobile home. Both parties filed motions for summary judgment in early 2012. After more briefing and discovery, the trial court granted Appellees' motion for summary judgment.

The trial court found that the manufactured home violated the restriction prohibiting trailers and mobile homes. The court relied upon the following facts: that the manufactured home was delivered by Country Boys Mobile Home Movers; that the home was delivered on the back of a truck; that the home was delivered in two parts; and that the home has a certificate of registration which states that it is a "house trailer" and has a vehicle identification number.

The court also cited to the case of *McCollum v. City of Berea*, 53 S.W.3d 106, 108, n.1 (Ky. App. 2000), which specifically states that the terms mobile home and manufactured home are interchangeable. Appellants then filed a motion to alter, amend, or vacate, which was denied. This appeal followed.

Appellants' first argument on appeal is that a manufactured home is different from a trailer or mobile home. They cite to KRS 219.320(3) and KRS 227.550(7). Both define the term "manufactured home" and are almost identical.

> "Manufactured home" means a single-family residential dwelling constructed in accordance with the federal act, manufactured after June 15, 1976, and designed to be used as a single-family residential dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The manufactured home may also be used as a place of business, profession, or trade by the owner, the lessee, or the assigns of the owner or lessee and may comprise an integral unit or condominium structure. Buildings the construction of which is not preempted by the federal act are subject to building code requirements of KRS Chapter 198B.

KRS 227.550(7).

As the trial court stated in its order, these two statutes were enacted after the restrictive covenant was filed in 1995. The definition found in KRS 219.320(3) was enacted in 1998 and the definition found in KRS 227.550(7) was enacted in 1996. Furthermore, KRS 219.320 concerns mobile home parks and KRS 227.550 concerns mobile home fire prevention, neither of which is at issue here. These two statutes are not relevant for our purposes.

Appellants' second argument is that the restrictive covenant only applies to accessory buildings. An example of this argument would be that a trailer used for the benefit of a main residential building cannot be used as a residence. In this case, Appellants argue that their manufactured home is the main residence and not an accessory building.

> The fundamental rule in construing restrictive covenants is that the intention of the parties governs. Hence, "the construction [of covenants] may not be used to defeat the obvious intention of the parties though that intention be not precisely expressed." An important factor also to consider is the general scheme or plan of development and surrounding circumstances . . . "Kentucky has approached restrictive covenants from the viewpoint that they are to be regarded more as a protection to the property owner and the public rather than as a restriction on the use of property, and that the old-time doctrine of strict construction no longer applies."

Colliver v. Stonewall Equestrian Estates Ass'n, Inc., 139 S.W.3d 521, 522 -523 (Ky. App. 2003) (internal citations omitted). "Interpretation or construction of restrictive covenants is a question of law. Therefore, we review this matter de novo." *Id*. at 523. We believe, as did the trial court, that the restrictive covenant at issue is unambiguous and that Appellants' manufactured home violates the covenant.

Mr. Cottrell, the developer of Valley View, testified that the restrictive covenant at issue was intended to prevent this kind of home. Also, trailers and mobile homes are types of manufactured homes, the terms of which can be used interchangeably. *See McCollum*, *supra*. It is obvious that this restriction was

meant to prevent all types of manufactured homes. Finally, if we were to accept Appellants' interpretation, that the covenant only applies to accessory buildings being used in addition to a main residential dwelling, then any of the types of buildings described in the covenant could be used as a residence so long as there was no other main residential building. For example, a lot owner could build a garage on the property and call it a residence as long as no other residential building was also constructed. This would be an unreasonable and unintended interpretation.

For the foregoing reasons, we affirm the judgment of the Hart Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Larry Cook, *pro se*
Bonnieville, Kentucky

BRIEF FOR APPELLEES:

Justin Baird
Munfordville, Kentucky