

STATE OF MICHIGAN  
COURT OF APPEALS

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FREDERICK OWEN DEBOIS and SHIRLEY TINA  
DEBOIS,

UNPUBLISHED  
March 6, 1998

Plaintiffs-Counterdefendants-Appellees,

v

No. 200746  
Lake Circuit Court  
LC No. 95-003900-CH

JEAN MEDENDORP,

Defendant-Counterplaintiff-Appellant,

and

EUGENE H. MEDENDORP,

Defendant-Counterplaintiff.

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Before: McDonald, P.J., and Sawyer and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's January 6, 1997, judgment which required a mutual restraining order and no-contact order between the parties, and also interpreted a 1982 consent judgment relating to lake access, mooring of boats and use of an access easement on the parties' property. We reverse and remand.

I

First, defendant contends that the trial court erred in modifying the 1982 consent judgment without the assent of all parties to the agreement. As a general rule, a consent judgment may not be set aside without the consent of the parties to the judgment. *Nat'l Bank of Rochester v Meadowbrook Heights, Inc*, 80 Mich App 777, 784; 265 NW2d 43 (1978). The 1982 consent judgment established "restrictive covenants running with the land" intended to "provide notice to all present and future owners of the lots affected." The record did not reveal the identity of the owners of the lots listed in the 1982 judgment, and no lot owners other than the present parties are involved in this lawsuit. However,

although the parties to this lawsuit may not set aside the 1982 consent judgment, the restrictive covenants may be interpreted by the trial court to accomplish the purpose intended by the parties to the 1982 consent judgment. *Webb v Smith (After Remand)*, 204 Mich App 564, 570; 516 NW2d 124 (1994).

The general rule with regard to interpretation of restrictive covenants is that where no ambiguity is present, it is improper to enlarge or extend the meaning by judicial interpretation. *Id.*, 572. The clear language of the restrictive covenants in the 1982 consent judgment allows boat parking within the easement "only in an area from the shoreline to a point ten (10) feet inland." While it is true that plaintiffs have purchased a large boat which may be impossible to park in the ten-foot area, that fact has little bearing on the interpretation of the restrictions. *Id.* The trial court erred in enlarging the meaning of the restrictive covenant found in the 1982 order when it interpreted such order to allow plaintiffs to moor their boat in the water in front of lot seven within wading distance of the shoreline. The trial court also enlarged the meaning of the 1982 covenants when it required defendant to moor her boat within wading distance of the shoreline when parked in front of lot seven and allowed defendant to maintain only one boat on the shoreline in front of lot seven.

The section of the 1997 order entitled "Removal of Stakes and Prohibition Against Construction Along Shoreline" properly interprets paragraph 4(F) of the 1982 order. The 1982 order prohibited construction of any kind either in the water or on the water's edge, such as docks or rafts. The removal of stakes in the water can reasonably be interpreted to fall within the prohibition of construction in the water. The section entitled "Plaintiffs' Use of Access Easement" in the 1997 order also properly interprets the prohibition of recreational activities on the easement.

Because the trial court improperly enlarged, by judicial interpretation, the meaning of the restrictive covenants where there was no ambiguity present, the January 6, 1997, judgment is reversed and this case is remanded to the trial court for further proceedings.

## II

Finally, defendant contends that because plaintiffs failed to request in their pleadings that the trial court amend or modify the 1982 consent judgment, the trial court erred in admitting such evidence and modifying the judgment.

MCR 2.111(B) governs the general rules of pleading and states the following requirements for filing a complaint:

(1) A statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend; and

(2) A demand for judgment for the relief that the pleader seeks.

The purpose of the complaint is to give notice of the nature of the claim sufficient to permit the opposite party to take a responsive position. *Simonson v Michigan Life Ins Co*, 37 Mich App 79, 83; 194 NW2d 446 (1971). "The exploratory processes of discovery, pretrial conference, and summary judgment, combined with liberal amendments to pleadings, are designed to carry the burden of framing the particular issues to be tried." *Id.*

In this case, plaintiffs' pleadings were sufficient to allow presentation of evidence regarding interpretation of the consent judgment. Although the trial court erred in enlarging the meaning of the restrictive covenant found in the 1982 order, defendant had notice that the 1982 order was at issue and subject to interpretation by the trial court. In their complaint, plaintiffs referred to the 1982 consent judgment and attached it to their complaint. Plaintiffs then alleged that defendants had impeded their rights to use the easement described in the 1982 order. Plaintiffs specifically complained that defendants placed steel posts in the water, preventing plaintiffs from mooring their boat in front of lot seven; that defendants had blocked the footpath with posts; and that defendants had blocked the designated parking area with logs.

Plaintiffs' right to moor their boat in front of lot seven, their right to gain access to the easement on lot seven by means of a footpath, and their right to park automobiles on lot seven were all addressed in the 1982 consent judgment which was attached to plaintiffs' complaint. Therefore, defendant had notice that the 1982 order was at issue in plaintiffs' complaint such that defendant had the opportunity to take a responsive position. The trial court did not err in interpreting the 1982 consent judgment which was directly placed in issue by plaintiffs' complaint.

Reversed and remanded. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Joel P. Hoekstra