

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RIDGEWOOD ASSOCIATES,  
  
Plaintiff-Appellee,

UNPUBLISHED  
August 20, 2002

v

No. 232281  
Montcalm Circuit Court  
LC No. 97-000606-CH

ROBERT P. MCKINNON and DIANNE  
MCKINNON,

Defendants-Third-Party Plaintiffs-  
Appellants,

and

WESTDALE NORTH BETTER HOMES AND  
GARDENS,

Third-Party Defendant.

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Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendants appeal as of right from the order granting plaintiff's motion for summary disposition in this action to enforce a restrictive covenant. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action asserting that defendants' day care operation was prohibited by restrictive covenants governing use of land in the subdivision. The relevant provisions are:

Each lot into which this property may be divided shall be used exclusively for the construction of one single-family residence (including a garage and other allowed ancillary structures). No building or structure intended for or modified to commercial, industrial, medical, custodial, religious, office or multiple family use shall be allowed or permitted.

\* \* \*

No residence will be used or occupied by other than a single family, its temporary guests and family servants, and no residence will be used for other than residential use.

Building and use restrictions in residential deeds are favored by public policy, but restrictive covenants are construed strictly against the grantors and those claiming the right to enforce them. *Beverly Island Ass'n v Zinger*, 113 Mich App 322, 325; 317 NW2d 611 (1982). All doubts are resolved in favor of the free use of property. *Id.*

The operation of a licensed day care home allowing no more than seven unrelated children is a residential use. *Id.*, p 331; MCL 722.111. However, our Supreme Court has found that nothing in our constitutions, statutes, or common law supports a finding that a covenant prohibiting family day care homes is contrary to the public policy of this state. *Terrien v Zwit*, \_\_\_ Mich \_\_\_; \_\_\_NW2d \_\_\_ (Docket No. 115924, dec'd 7/25/02), slip op, p 14. A day care provider who charges a fee for child care services may be involved in a commercial activity that may be barred by a restrictive covenant. *Id.*

*Terrien* declined to address the issue presented by *Beverly Island*, whether a family day care home is a residential use. *Terrien, supra*, slip op, p 7, n 6. Under *Beverly Island*, defendants' day care home is a residential use and is not barred by the residential restriction. The language in the restriction barring custodial use, construed strictly against the proponent of the restriction, is too vague to bar a day care home.

Unlike the covenant in *Terrien*, the restrictive covenant at issue does not directly bar commercial use. It bars buildings and structures intended for or modified to commercial use. Defendants presented an affidavit stating that no modifications were made to the four-bedroom single family home at issue. Again construing the covenant strictly against the proponent of the restriction, there is no showing that defendant violated the covenant. The parties to the covenant could reasonably seek to limit the type of structures allowed, rather than to bar commercial activities that do not conflict with the character of the structures.

Reversed.

/s/ Helene N. White

/s/ Janet T. Neff

/s/ Kathleen Jansen