

STATE OF MICHIGAN
COURT OF APPEALS

CECIL C. DILLON, a/k/a CECIL C. DILLION,

Plaintiff/Counterdefendant-
Appellant,

v

KENNETH MOON,

Defendant/Counterplaintiff/Third-
Party Plaintiff-Appellee,

and

BRUCE W. REYNOLDS and DOROTHY M.
REYNOLDS,

Third-Party
Defendants/Counterplaintiffs-
Appellants.

UNPUBLISHED
December 9, 2004

No. 249469
Kalkaska Circuit Court
LC No. 01-007463-CZ

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiff Cecil Dillon and third-party defendants, Bruce and Dorothy Reynolds, appeal by right the trial court's order denying their request to quiet title and enjoining them from constructing a permanent, single-family dwelling or any appurtenant structures on the property in question. We affirm.

In 1980, Consumers Power Company, as the owner of a large tract of land in Kalkaska County, executed and recorded a Declaration of Restrictions affecting several smaller parcels on the property. Paragraph two of the restrictions provides that

[n]ot more than one permanent single family residential structure with appurtenant buildings shall be constructed or placed on each parcel of land described in Exhibit A.

The Reynolds subsequently purchased one of the parcels on a land contract. Several years later, the Reynolds split their parcel and sold the northern portion to plaintiff. At the time, the Reynolds had a house under construction on their southern parcel, and the northern portion was undeveloped. Plaintiff thereafter commenced this action, seeking a declaratory judgment that the foregoing use restriction did not prohibit him from constructing a single-family residential home on his northern parcel. The trial court determined that while the Reynolds were not prohibited from splitting their original parcel, paragraph two of the use restrictions prohibited a structure from being built on the northern parcel purchased by plaintiff.

This Court reviews equitable actions, such as an action to quiet title, de novo. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004). However, the trial court's findings of fact in support of its decision are reviewed for clear error. *Eller v Metro Industrial Contracting, Inc*, 261 Mich App 569, 571; 683 NW2d 242 (2004).

Appellants argue that the use restrictions were not intended to limit the development of single-family residences, but only to restrict commercial and multi-family development. They argue that if Consumers Power had intended to limit the overall number of residences, it would have adopted lot-splitting restrictions.

Covenants are contracts, created with the intent to enhance the value of property. Therefore, a covenant is a valuable property right. *Terrien v Zwit*, 467 Mich 56, 71; 648 NW2d 602 (2002). “When interpreting restrictive covenants, therefore, when the intent of the parties is clearly ascertainable, courts must give effect to the instrument as a whole.” *Village of Hickory Pointe Homeowners Ass’n v Smyk*, 262 Mich App 512, 515-516; 686 NW2d 506 (2004).

“Restrictive covenants in deeds are construed strictly against grantors and those claiming the right to enforce them, and all doubts are resolved in favor of the free use of property.” *O’Connor v Resort Custom Builders, Inc*, 459 Mich 335, 341-342; 591 NW2d 216 (1999), quoting *Wood v Blancke*, 304 Mich 283, 287; 8 NW2d 67 (1943). Therefore, courts will not infer restrictions that are not expressly provided for in the controlling documents. *O’Connor*, *supra* at 341. Nonetheless, courts must normally enforce unwaived restrictions on which other owners of similarly burdened property have relied. *Id.* at 342-343.

Paragraph two of the use restrictions is clear in that it limits the number of residential structures that may be built on “each parcel of land described in Exhibit A.” Therefore, the covenant applies to the entire parcel originally acquired by the Reynolds, limiting that parcel to “one permanent single family residential structure.” This intent is also consistent with a reading of the Declaration of Restrictions as a whole. The Declaration of Restrictions expressly provides that its purpose is to “maintain[] the *present* natural beauty and open space character of said lands” (emphasis added). Allowing owners to split their parcels to add single-family residences on smaller parcels would be contrary to this purpose.

Appellants argue that the history of the subject property demonstrates that Consumers Power never intended to preclude the subsequent construction of single-family homes on subdivided parcels. In the 1960s, Consumers Power allowed property then leased by Bruce Reynolds' father to be subdivided into three separate leaseholds so that Reynolds, his father, and his brother, could each have a residence on his own leasehold. But, this occurred before

Consumers Power adopted and recorded the Declaration of Restrictions in 1980, and there was no evidence that similar restrictions existed before then.

We similarly reject appellants' argument that defendant waived enforcement of the use restriction in question because he or his predecessors did not object when Consumers Power allowed Reynolds' father to divide his leasehold into three separate leaseholds and place homes on each. Whether a restrictive covenant has been waived or may not be enforced due to laches is determined on the facts of each case. *O'Connor, supra* at 344. Here, appellants have not demonstrated that a property owner had any basis for challenging a property subdivision before the Declaration of Restrictions was adopted in 1980. Furthermore, there was no evidence that since 1980, any property owner had added a structure to a parcel that already had an existing single-family residence. Accordingly, there is no merit to appellants' claim that defendant either was guilty of laches or waived enforcement of the use restriction.

We affirm.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens