TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-18-00201-CV

**Michael W. Vann and Fancy Free Vann,
trustees of the Vann Family Irrevocable Trust, Appellants**

v.

Homeowners Association for Woodland Park of Georgetown, Inc., Appellee

**FROM THE COUNTY COURT AT LAW NO. 4 OF WILLIAMSON COUNTY
NO. 16-1427-CC2-4, HONORABLE JOHN McMASTER, JUDGE PRESIDING**

M E M O R A N D U M O P I N I O N

Michael W. Vann and Fancy Free Vann, trustees of the Vann Family Irrevocable Trust (the Vanns[1]), appeal from the trial court's final summary judgment in favor of the Homeowners Association for Woodland Park of Georgetown, Inc. (the HOA), dismissing the Vanns' suit with prejudice and awarding the HOA attorney's fees and post-judgment interest. In four appellate issues, the Vanns contend, in essence, that the trial court erred in granting summary judgment in favor of the HOA and in denying the Vanns' motion for summary judgment because the HOA did not have authority over the Vanns' property. Because we agree with the Vanns that the HOA does not have authority over their property, we will reverse the trial court's final judgment, render the

[1] For the sake of simplicity, this opinion will use the term "Vanns" when discussing actions taken by Michael Vann, Fancy Vann, or the Vanns as trustees of the Vann Family Irrevocable Trust.

declarations that the Vanns requested, and remand this cause to the trial court for a reconsideration of attorney's fees.

BACKGROUND

The following facts are undisputed on appeal. The Vanns own property in Section 3A of the Woodland Park subdivision of Georgetown. While the Vanns keep their trash in sanitary containers, they do not store their trash containers out of view. The HOA sent correspondence to the Vanns informing them that their trash containers must be stored out of view.

In March 2016, the Vanns filed suit against the HOA in a justice court in Williamson County. They sought a declaration that their deed restrictions do not require them to store their trash containers out of view. The justice court granted the HOA's motion for summary disposition and rendered judgment dismissing the Vanns' claims with prejudice. The Vanns appealed to the county court at law (the trial court). In their live pleading, the Vanns seek declarations and attorney's fees under the Uniform Declaratory Judgments Act (UDJA). The Vanns and the HOA filed cross motions for summary judgment. The trial court granted the HOA's motion for summary judgment, denied the Vanns' motion, and rendered judgment in favor of the HOA. This appeal followed.

STANDARD OF REVIEW

"Summary judgment is proper if the movant establishes that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law." *Soledad v. Texas Farm Bureau Mut. Ins. Co.*, 506 S.W.3d 600, 602 (Tex. App.—Austin 2016, pet. denied); *see* Tex. R. Civ. P. 166a(c). We review a trial court's ruling on motions for summary judgment de novo. *Southwestern Bell Tel., L.P. v. Emmett*, 459 S.W.3d 578, 583 (Tex. 2015). When the parties file

competing motions for summary judgment on overlapping issues and the trial court grants one party's motion and denies the other, we consider all of the summary-judgment evidence and issues presented, and, if the trial court erred, we render the judgment the trial court should have rendered. *See Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005); *Soledad*, 506 S.W.3d at 602. Each side must carry its own burden both as the movant and the nonmovant. *See NTS Commc'ns, Inc. v. Hegar*, No. 03-16-00771-CV, 2018 WL 2728065, at *3 (Tex. App.—Austin June 7, 2018, no pet. h.) (mem. op.); *Adkisson v. Paxton*, 459 S.W.3d 761, 776 (Tex. App.—Austin 2015, no pet.).

In addition, this case requires us to interpret deed restrictions as well as the HOA's articles of incorporation and bylaws. "We review a trial court's interpretation of restrictive covenants *de novo*." *C.A.U.S.E. v. Village Green Homeowners Ass'n, Inc.*, 531 S.W.3d 268, 274 (Tex. App.—San Antonio 2017, no pet.). "When interpreting restrictive covenants, we apply general rules of contract construction." *Boatner v. Reitz*, No. 03-16-00817-CV, 2017 WL 3902614, at *3 (Tex. App.—Austin Aug. 22, 2017, no pet.) (mem. op.) (citing *Pilarcik v. Emmons*, 966 S.W.2d 474, 478 (Tex. 1998)); *see C.A.U.S.E.*, 531 S.W.3d at 274 ("A declaration containing restrictive covenants in a subdivision defines the rights and obligations of property ownership, and the mutual and reciprocal obligation undertaken by all purchasers in a subdivision creates an inherent property interest possessed by each purchaser.") (cleaned up); *Baywood Estates Prop. Owners Ass'n, Inc. v. Caolo*, 392 S.W.3d 776, 782 (Tex. App.—Tyler 2012, no pet.) ("A restrictive covenant is a contractual agreement between the seller and the purchaser of real property."). "As when interpreting any contract, our primary duty in construing a restrictive covenant is to ascertain the parties' intent." *Lakeside*

Vill. Homeowners Ass'n, Inc. v. Belanger, 545 S.W.3d 15, 30 (Tex. App.—El Paso 2017, pet. denied). "We focus on the parties' objective, rather than subjective intent, as that intent is reflected in the written contract." *Id.* (citing *Lopez v. Munoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 861 (Tex. 2000)).

We must decide, as a matter of law, whether the deed restrictions are ambiguous. *See Lopez*, 22 S.W.3d at 861 ("Whether a contract is ambiguous is a question of law for the court to decide."). "Mere disagreement over the interpretation of a provision does not make it ambiguous." *C.A.U.S.E.*, 531 S.W.3d at 275. "If a restrictive covenant can be given a definite legal meaning, it is unambiguous and must be construed liberally to effectuate its purpose and intent." *Boatner*, 2017 WL 3902614, at *3; *see* Tex. Prop. Code § 202.003(a) ("A restrictive covenant shall be liberally construed to give effect to its purposes and intent.").

We also apply these rules of contract interpretation when examining articles of incorporation and bylaws. *See Episcopal Church v. Salazar*, 547 S.W.3d 353, 416 (Tex. App.—Fort Worth 2018, pet. filed); *see also Corcoran v. Atascocita Cmty. Improvement Ass'n, Inc.*, No. 14-12-00982-CV, 2013 WL 5888127, at *2 (Tex. App.—Houston [14th Dist.] Oct. 31, 2013, pet. denied) (mem. op.) ("We interpret restrictive covenants and corporate bylaws using the general rules of contract construction. We also apply general rules of contract construction, as expressed in Texas case law, to interpret a Texas corporation's articles of incorporation.") (cleaned up).

DISCUSSION

The Relevant Documents and Events

In their live pleading, the Vanns seek the following declarations:

> Plaintiff seeks a declaration that the deed restrictions do not require an owner to store trash bins out of view on non-trash days and that any HOA rules or actions to the contrary conflict with the superior authority of the deed restrictions and therefore cannot be enforced.
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> Plaintiff seeks a declaration that the defendant HOA entity has no power to adopt or enforce rules applicable to Plaintiff's property, nor authority over Plaintiff's property generally, nor standing to assert violations or claims of any kind against Plaintiff.

The central question of this case, therefore, is whether the HOA has authority over the Vanns' property.

To determine the HOA's powers and authority, we look to the restrictive covenants applicable to the Vanns' property, the HOA's articles of incorporation, and the HOA's bylaws. *See Belanger*, 545 S.W.3d at 21 ("The documents governing the duties and responsibilities of Lakeside are set forth in the applicable Declaration of Covenants, Conditions and Restrictions (as amended) . . . , Articles of Incorporation (as amended) . . . , and the Amended and Restated By-Laws . . . ."). We will examine these and other relevant documents and events in chronological order.

In 2002, the Woodland Park subdivision developer created and recorded deed restrictions applicable to Section 3A (the 3A Restrictions). The property that would later become the Vanns' was subject to the 3A Restrictions. Among other things, the 3A Restrictions included the following:

> No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Small amounts of such materials may be kept in sanitary containers. All incinerators or other equipment of the storage or disposal of such materials shall be kept in a clean and sanitary condition.
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> All lot owners shall become, by accepting their deed to a lot within the subdivision, and continue to be members of the Georgetown Woodland Park Homeowners'

> Association and agree to comply with its governing articles, the purposes of which are to provide various services and facilities for the use and benefit of the subdivision and all property owners, and all lot owners agree to accept such membership and to perform and be bound by the obligations, terms and conditions of membership in such Homeowners' Association in accordance with its duly provided charter, bylaws and resolutions, which shall include the long term maintenance of all commonly owned property, including, but not limited to, the entry features and water quality and drainage features for all lots.

The developer created and recorded a dedicatory instrument entitled "Woodland Park of Georgetown Master Declaration of Covenants, Conditions and Restrictions" (the Master Declaration) in 2005. The Master Declaration purported to apply to various sections of Woodland Park, including 3A. This document explained that its purpose was "to create and carry out a uniform plan for the improvements, development and sale" for the subject properties. The Master Declaration included the following relevant provisions concerning the subdivision's homeowners' association:

> In accordance with provisions of the "Prior Restrictions" and the contractual agreement of buyers of Lots within the Property that a Homeowners' Association would be created for the purpose of providing various services and facilities for the use and benefit of the subdivision and all property owners, the Declarant shall, at such time as Declarant deems appropriate, cause the formation and incorporation of the Association as a nonprofit corporation under the laws of the State of Texas . . . . The Articles and/or Bylaws may be amended by a two-thirds majority of the total votes of each Class of Members entitled to be cast at any duly called and constituted meeting of Members of the Association. In the event the Articles or Bylaws shall for any reason be inconsistent with this Declaration, this Declaration shall control. Nothing in this Master Declaration shall prevent the creation, by provision therefore in Supplemental Declaration(s) executed and recorded by Declarant or any person or persons authorized by Declarant, of Subassociations to own, develop, assess, regulate, operate, maintain or manage the Property subject to such Supplemental Declarations.
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> Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject, by covenants of record, to assessment by the Association, including contract sellers, shall be a Member of the Association.

In 2006, the HOA filed its Articles of Incorporation with the secretary of state. The Articles of Incorporation included the following provisions:

> The purpose or purposes for which said Association is organized is to promote the objectives of the developer . . . and its successors and assigns, and for the benefit of the residents and property owners in the Woodland Park Subdivisions . . . which are or hereafter become subject to [the Master Declaration], and any amendments or supplements thereto . . . .
>
> The Association shall be empowered to . . . exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in [the Master Declaration] as the same may be supplemented or amended from time to time as therein provided . . . .
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> Amendment of these Articles shall require the assent of two-third (2/3) of the votes of the Association.

Later in 2006, the developer recorded the HOA's Bylaws. These Bylaws included the following relevant provisions:

> Applicability. These Bylaws provide for the self-government of The Woodland Park Subdivisions . . . which are or hereafter become subject to [the Master Declaration] and any Supplemental Declarations, all as may be amended from time to time.
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> [T]he Board of Directors [of the HOA] is vested with, and responsible for, the following powers and duties . . . .
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> The power and duty to conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations . . . therefor consistent with the law, with the Articles of Incorporation, the [Master] Declaration and these Bylaws, as the Board may deem necessary or advisable . . . .

Then, in 2009, the developer recorded an instrument entitled "Clarification of Applicability of Woodland Park of Georgetown Master Declaration of Covenants, Conditions and Restrictions" (the Clarification). The Clarification explained that the developer "did assert and declare in the Master Declaration that the terms and conditions in the Master Declaration applied in full to all sections/phases of the Woodland Park subdivision, including those residential lots subject to the Prior Restrictions (i.e., lots in Sections 1A, 1B, 3A, 3B, 3C and 4A) and that, to the extent the Master Declaration conflicted with the Prior Restrictions, the Master Declaration controlled." However, the Clarification went on the explain that, "at the time [the developer] recorded the Master Declaration, [the developer] (i) did not own title to certain residential lots in Woodland Park Sections 1A, 1B, 3A, 3B, 3C and 4A; (ii) did not have the consent of the owners of those lots to subject them to the Master Declaration; and (iii) had not reserved unto itself the authority to unilaterally amend the Prior Restrictions or some other authority that would permit it to subject lots it did not own . . . to the Master Declaration." The Clarification provided attached lists of certain lots located in the described sections, and the 3A list included the lot later owned by the Vanns. The Clarification further explained, "Those lots identified as not being owned by [the developer] at the time it recorded the Master Declaration are not subject to the Master Declaration." In a footnote, the Clarification stated, "This clarification does not affect any obligation that the owners of these lots may have to be assessment-paying members of The Homeowners Association for Woodland Park of Georgetown, Inc. (identified in the Section 3A-4A Restrictions as Georgetown Woodland Park Homeowners' Association) . . . under the Section 3A-4A Restrictions, the Bylaws, or any purchase contracts for said lots." Another section of the Clarification stated,

> No Effect on the Prior Restrictions or purchase contracts. This Clarification instrument is not intended to amend, terminate, or otherwise affect the validity of the Prior Restrictions, the Bylaws, or any purchase contracts for lots within the Woodland Park subdivision, and shall not be construed to amend, terminate or otherwise affect such instruments.

In June 2009, the Vanns obtained title to their property in Section 3A of Woodland Park. In July 2009, the developer recorded an instrument entitled "Amendment to Woodland Park of Georgetown Master Declaration of Covenants, Conditions and Restrictions" (the Amendment). In essence, this document amended the Master Declaration to reflect the information provided in the Clarification. The Amendment provided that listed properties, including the Vanns' property, were "intentionally deleted as Property which is subject to [the Master Declaration]."

Finally, in February 2012, the HOA's board of directors adopted and recorded a document entitled "Rules and Regulations [for] The Homeowners Association for Woodland Park of Georgetown, Inc. (aka Georgetown Woodland Park Homeowners Association)" (the Rules and Regulations). The Rules and Regulations included the following relevant provisions:

> APPLICABILITY: The Association is the governing homeowners association for all property subject to the Master Declaration, the Section 3A-4A Restrictions, and the Section 4B Restrictions (as subsequently amended). The Association Bylaws, and all Rules and Regulations adopted by the Association, apply to all such property.
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> Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view, except for the twenty-four (24) hour period beginning at 8:00 p.m. the day before a scheduled trash pickup and ending at 8:00 p.m. the day of a scheduled trash pickup.

After the HOA began sending the Vanns notices that they were required to store their trash containers out of view, the Vanns filed their original petition in the justice court on March 21, 2016.

Analysis

The HOA argues that it has authority over the Vanns' property because the 3A Restrictions, which undisputedly apply to the property, provide that "[a]ll lot owners shall become, by accepting their deed to a lot within the subdivision, and continue to be members of" the HOA. The HOA asserts that it is the homeowners' association referenced in the 3A Restrictions, that it duly filed Articles of Incorporation and Bylaws, and that the Articles of Incorporation and Bylaws give the HOA the authority to adopt rules and regulations governing the Vanns' property. The HOA further contends that its board duly adopted the Rules and Regulations and that this document requires the Vanns to store their trash containers out of view.

However, our review of the documents outlined above reveals a gap in the logical chain that would establish the HOA's authority over the Vanns' property. The plain language of the Articles of Incorporation and the Bylaws states that the HOA's governing authority extends only to those properties subject to the Master Declaration as it may be supplemented or amended from time to time. Specifically, the Articles of Incorporation state that the HOA exists "for the benefit of the residents and property owners in the Woodland Park Subdivisions . . . which are or hereafter become subject to [the Master Declaration], and any amendments or supplements thereto," and that the HOA "shall be empowered to . . . exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in [the Master Declaration] as the same may be

supplemented or amended from time to time as therein provided." And the Bylaws proclaim, "These Bylaws provide for the self-government of The Woodland Park Subdivisions . . . which are or hereafter become subject to [the Master Declaration] and any Supplemental Declarations, all as may be amended from time to time." Although the Master Declaration originally purported to apply to the Vanns' property, the Clarification, which the developer recorded before the Vanns purchased their deed, stated that the property that would later become the Vanns' was not subject to the Master Declaration. Moreover, the developer later amended the Master Declaration to bring it into accord with the Clarification. All these events occurred before the HOA adopted the Rules and Regulations on which it relies when arguing that the Vanns must store their trash containers out of view.

It is true that the Clarification provides that it has no effect on prior restrictions such as the 3A Restrictions, and it is also true that the 3A Restrictions envision the creation of a homeowners' association to which the 3A properties would be subject. But the governing documents of the appellee HOA stipulate that the HOA's authority applies to those properties subject to the Master Declaration—the Articles of Incorporation and the Bylaws do not provide the HOA with authority over those properties subject to the 3A Restrictions but not subject to the Master Declaration. Therefore, nothing in the record before us indicates that the appellee HOA is the homeowners' association contemplated by the 3A Restrictions.

It is also true that the Rules and Regulations purport to apply to those properties subject to the 3A Restrictions in addition to those subject to the Master Declaration. However, the Rules and Regulations are subordinate to the Articles of Incorporation and Bylaws. The Articles of Incorporation state, "Amendment of these Articles shall require the assent of two-third (2/3) of the votes of the Association." Nothing in the record before us indicates that the Articles of Incorporation

were ever amended. In addition, the Bylaws provide an amendment procedure but also state the following:

> Any amendment to these Bylaws which would conflict with the provisions of the Articles of Incorporation, the Declaration or other applicable restrictive covenants shall be ineffective unless and until the appropriate provisions of the Articles of Incorporation, the Declaration or other applicable restrictive covenants, whether one or more, as the case may be, are so amended in accordance with their respective amendment procedures.

Nothing in the record before us indicates that the Bylaws were ever amended. The Bylaws further provide that any rules and regulations adopted by the HOA's board of directors "shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation and these Bylaws."

Because the Articles of Incorporation and Bylaws provide that the HOA only has authority over those properties subject to the Master Declaration (which does not include the Vanns' property) and nothing in the record before us indicates that these documents have ever been amended, we conclude that the HOA's board of directors did not have the authority to unilaterally declare in the Rules and Regulations that the HOA has governing authority over properties, like the Vanns', that are subject to the 3A Restrictions but are not subject to the Master Declaration.

We further note that the 3A Restrictions, which undisputedly apply to the Vanns' property, do not require the homeowners to store their trash containers out of view. Instead, the 3A Restrictions only require that the lot not be used as a "dumping ground" and that trash must "be kept in sanitary containers." The HOA does not dispute that the Vanns are complying with these requirements.

Because the HOA has no authority over the Vanns' property and nothing in the record before us demonstrates that the Vanns' property is subject to deed restrictions requiring them to store their trash containers out of view, the Vanns are entitled to the declarations they requested, unless the HOA has raised a fact question concerning an affirmative defense. In its motion for summary judgment, the HOA contends that the statute of limitations bars the Vanns' suit because the Vanns filed suit more than four years after the HOA recorded the Rules and Regulations. "Generally, a cause of action accrues and limitations begin to run when facts come into existence that authorize a party to seek a judicial remedy." *In re Estate of Denman*, 362 S.W.3d 134, 144 (Tex. App.—San Antonio 2011, no pet.). "However, a cause of action under the [UDJA] does not accrue until there is an actual controversy between the parties." *Id.*; *see Murphy v. Honeycutt*, 199 S.W.2d 298, 299 (Tex. Civ. App.—Texarkana 1946, writ ref'd) ("The statute of limitations in a declaratory action does not begin to run against the right to maintain the same, until an actual controversy has accrued or occurred, and undisclosed conflicting claims between persons bearing jural relations do not constitute a controversy which would set in operation the statute of limitations against the action for declaratory relief.") (cleaned up); *see also In re Estate of Florence*, 307 S.W.3d 887, 892 (Tex. App.—Fort Worth 2010, no pet.) ("Although we agree with Ormand that the Heirs were interested persons who had standing to bring a declaratory judgment action at the time Conard's Will was admitted to probate, we do not agree with Ormand's contention that their claim arose and began to accrue at that time . . . . [I]t was not until Ormand became the executor of Eleanor's estate and asserted a different interpretation that a conflict arose between the Heirs and Eleanor . . . ."); *Outlaw v. Bowen*, 285 S.W.2d 280, 284 (Tex. Civ. App.—Amarillo 1955, writ ref'd n.r.e.) ("In Texas the

statutes of limitation do not apply to . . . a suit for a declaratory judgment, at least until the provisions of such are set in action by the actual occurrence of a controversy . . . .").

We conclude that an actual controversy did not arise between the Vanns and the HOA until the HOA began sending the Vanns notices that they were required to store their trash containers out of view.[2] The Vanns could have read the Rules and Regulations in light of the other documents in their chain of title and concluded that the Rules and Regulations were not binding on them because they were not subject to the Master Declaration or the HOA's authority. Indeed, as discussed above, the Vanns would have been correct in that interpretation. Nothing in the record before us indicates that the Vanns had notice that the HOA would attempt to enforce the Rules and Regulations against

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[2] The HOA relies on *Beadles v. Lago Vista Owners Ass'n*, No. 03-02-00228-CV, 2002 WL 31476657 (Tex. App.—Austin Nov. 7, 2002, pet. denied) (not designated for publication), for the proposition that, "[i]n the context of a homeowners association's governing documents, the statute of limitations begins to run when the relevant instrument or rule change becomes effective." In *Beadles*, the plaintiff sought a declaratory judgment challenging, among other things, an amendment to the Association's voting structure made more than four years before the plaintiff filed suit. *See id.* at *1. This Court held that the statute of limitations barred the suit because the plaintiff was on constructive notice of the amendment at the time he purchased his property and because the amendment did not violate state law as the plaintiff claimed. *See id.* at *3–4. We conclude, however, that *Beadles* is distinguishable because the plaintiff in *Beadles* was merely challenging a discrete action of the Association, not its authority over his property generally. The Vanns, in contrast, are seeking declaratory relief not just from one action of the HOA, but from its ongoing assertion of governing authority over them. *See Northwest Austin Mun. Util. Dist. No. 1 v. City of Austin*, 274 S.W.3d 820, 838 (Tex. App.—Austin 2008, pet. denied) ("We disagree with the City, however, that our decision in *Beadles* stands for a rule that a declaratory-judgment action will be barred by limitations even when there [is] a continuing violation of a state statute. On the contrary, we held that *because* there was never a violation of the statute in the first place, there was no continuing violation and therefore no basis for concluding that the statute of limitations had been tolled.") (cleaned up). That is, the Vanns are seeking a declaration defining their relationship to the HOA both in the past and moving forward. In addition, when the Vanns purchased their property, no document was in the property records to make the Vanns aware of the HOA's position.

them until the HOA began sending them notices, which undisputedly occurred less than four years before the Vanns filed suit.[3]

Because we have concluded that the Vanns have established as a matter of law that the HOA does not have governing authority over their property nor the ability to enforce the Rules and Regulations against the Vanns and have further concluded that the statute of limitations does not bar the Vanns' suit, we hold that the trial court erred in granting the HOA's motion for summary judgment and in denying the Vanns' motion. Accordingly, we sustain the Vanns' appellate issues.

CONCLUSION

Simply put, the HOA's Articles of Incorporation and Bylaws provide that the HOA only has authority over those properties subject to the Master Declaration, and the Vanns' property is not subject to the Master Declaration. Therefore, the HOA has no authority over the Vanns' property. Accordingly, we reverse the trial court's final summary judgment. We render judgment declaring: (1) that the Vanns' deed restrictions do not require them to store their trash containers out of view on non-trash collection days and that any HOA rules or actions to the contrary conflict with the superior authority of the deed restrictions and therefore cannot be enforced; and (2) that the

[3] Were we to conclude that limitations barred the Vanns' suit, untenable results would follow. It would mean that a homeowners' association could effectively annex property merely by filing a document in a property's chain of title asserting governing authority over the property. The association could then wait four years and then begin enforcing whatever regulations it saw fit over the purportedly annexed property. If the homeowners sought a declaration that they were not subject to the association, the association could rely on the statute of limitations. The homeowners would then be perpetually subject to the association because they did not challenge the association's authority over them within four years, even though their deed restrictions did not give the association governing authority over them and even though the association asserted no authority over them during the four-year limitations period.

record before us indicates the HOA has no power to adopt or enforce rules applicable to the Vanns' property nor authority over the Vanns' property generally. We also remand this cause to the trial court for a reconsideration of attorney's fees. *See* Tex. Civ. Prac. & Rem. Code § 37.009; *WaiWai, LLC v. Alvarado*, No. 03-13-00540-CV, 2014 WL 6844934, at *5 (Tex. App.—Austin Nov. 26, 2014, no pet.) (mem. op.) ("Although we are not required to do so, when we reverse a declaratory judgment that includes an award of attorney's fees and costs, we may remand to the trial court to reconsider its award of attorney's fees and costs.").

Scott K. Field, Justice

Before Chief Justice Rose, Justices Pemberton and Field

Reversed and Rendered in Part; Reversed and Remanded in Part

Filed: August 30, 2018