COURT OF APPEALS
DECISION
DATED AND FILED

October 18, 2001

Cornelia G. Clark
Clerk of Court of Appeals

No. 01-1204-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

JEVIC ENTERPRISES, INC., AND NEVADA HEIGHTS HOMEOWNER'S ASSOCIATION, INC.,

PLAINTIFFS-RESPONDENTS,

JAY FREDRICK, COLLEEN FREDRICK, STEPHANIE NICHOLS, WALLY BECKER, KERRI BECKER, MARTY BREITKREUTZ AND BRIAN EMMER,

INTERVENORS-PLAINTIFFS-RESPONDENTS,

V.

ARLO E. SCHULTZ AND LORAN R. SCHULTZ,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Dodge County: ANDREW P. BISSONNETTE, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman and Roggensack, JJ.

¶1 PER CURIAM. Arlo and Loran Schultz appeal[1] from a judgment granting injunctive relief to Jevic Enterprises, Inc., and the Nevada Heights Homeowner's Association, Inc. The court concluded that the Schultzes' residence violated a restrictive covenant of the Nevada Heights Subdivision, and ordered it removed. The issues are whether the trial court properly construed the covenant in question and whether the respondents are stopped from enforcing it. We affirm.

¶2 Jevic developed the Nevada Heights subdivision and owned its unsold lots. All of the subdivision lots were subject to a restrictive covenant excluding "mobile homes" from subdivision lots. The restrictive covenant also provided that no building could be placed on a lot without approval from the developer or a subdivision committee.

¶3 In August 1998 the Schultzes viewed a lot in the subdivision and met Jeffrey Weber, Jevic's president and owner. Weber told them about the covenant provisions, and Loran told Weber that the Schultzes did not plan to live in a mobile home. According to her, they wanted to buy a lot and place a "modular" home on it, meaning something similar to a Wausau home. She also showed Weber a floor plan that did not clearly identify for him the type of residence they planned.

¶4 Weber and the Schultzes met again later in the day and the Schultzes again told him that they did not intend to install a mobile home, and again conveyed plans to build a modular home.

[1] This is an expedited appeal under WIS. STAT. RULE 809.17 (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶5 The Schultzes subsequently purchased a lot. Based on the information they provided, Weber approved their plans for what he assumed was a modular-type home. However, the Schultzes did not place a modular home on the lot. Instead, they installed what they labeled a "manufactured home," permitted by the covenant, and what Weber concluded was a mobile home, barred by the covenant.

¶6 After negotiations broke down, Jevic and the Homeowner's Association brought this action for an injunction requiring removal of the Schultz home from their lot. After a bench trial the court found that the Schultzes' "manufactured home" was, in fact, a mobile home within the meaning of the covenant. The court also concluded that Jevic was not estopped by Weber's approval of the Schultzes' plans, because those plans were not complete, and were accompanied by Loran's negligent misrepresentation that they planned to live in an acceptable modular home. In this appeal the Schultzes challenge both determinations.

¶7 Interpreting a written contract presents a question of law, which we review *de novo*. ***Waukesha Concrete Products Co., Inc. v. Capital Indem. Corp.***, 127 Wis. 2d 332, 339, 379 N.W.2d 333 (Ct. App. 1985). The purpose of our review is to determine the parties' intent, and we first examine the contract language to ascertain that intent. ***Id.*** If the contract's language is plain and unambiguous, we construe it according to its plain meaning even though a party may have construed it differently. ***Id***. Unless the contract provides a definition of its terms, we construe them according to their everyday meaning. *See* ***Meyer v. U.S. Fire Ins. Co.***, 218 Wis. 2d 499, 503-04, 582 N.W.2d 40 (Ct. App. 1998).

¶8 It is not disputed that the structure the Schultzes placed on their lot was a "mobile home," as that term is commonly understood and applied by the public, and as it is used in a number of state statutes and regulations. An exception exists, however, under WIS. STAT. ch. 101, subchapter 5, which regulates the manufacturer of manufactured and mobile homes. For purposes of that subchapter, WIS. STAT. § 101.91(2) (1995-96) provides that what previously was referred to as a "mobile home" is denominated a "manufactured home," if built after June 15, 1976. Because the trial court found that the Schultz home is deemed a "manufactured home" under this section, the Schultzes contend that it therefore cannot be a "mobile home" under the covenant, as a matter of law. However, "the term 'manufactured home' is limited to §§ 101.90-101.96, STATS., … the purpose of [which] is to establish uniform construction standards, inspection procedures and licensing of manufacturers of manufactured homes and mobile homes." ***State v. Edlebeck***, 196 Wis. 2d 744, 750-51, 539 N.W.2d 469 (Ct. App. 1995). The term has no application beyond that purpose. It therefore cannot replace for purpose of the covenant what is, beyond dispute, the plain and ordinary meaning given to "mobile home."

¶9 Jevic and the Homeowner's Association were not estopped from enforcing the covenant because Weber approved the Schultzes' plans. Estoppel is an equitable remedy and one who seeks it must have clean hands. ***Kenosha County v. Town of Paris***, 148 Wis. 2d 175, 188, 434 N.W.2d 801 (Ct. App. 1988). The trial court believed Weber's testimony that he based his approval on Loran's misrepresentation of their planned home, leaving the Schultzes in no position to claim estoppel because he believed and relied on that incorrect statement.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.