**REL: December 18, 2020**



# ALABAMA COURT OF CIVIL APPEALS

## OCTOBER TERM, 2020-2021

---

## 2190298

---

**Heaven's Gate Ministries International, Inc.**

**v.**

**Mohammand Ali Nejad, MDM Wrecker Service, Inc., Gary A. Bentley, and Terry L. Bentley**

**Appeal from Madison Circuit Court**
**(CV-18-901349)**

HANSON, Judge.

Heaven's Gate Ministries International, Inc. ("Heaven's Gate"), appeals from a judgment entered by the Madison Circuit Court ("the trial

court") declining Heaven's Gate's request to enforce restrictive covenants associated with the Frank Clark Acres commercial subdivision ("the subdivision"). Specifically, in its action, Heaven's Gate sought to require Mohammand Ali Nejad, MDM Wrecker Service, Inc. ("MDM"), Gary A. Bentley, and Terry L. Bentley to discontinue the allegedly prohibited use of their properties and to comply with § 10(B) of the "Declaration of Covenants, Conditions, and Restrictions" ("the covenants") applicable to the subdivision.[1]

The record indicates the following. In September 2003, Colby Development, Inc., the original owner of the 23 lots in the subdivision,

---

[1]Gary Bentley and Terry Bentley were each served with a copy of the complaint in this matter, and each filed an answer. However, they did not participate in the remainder of the litigation, and they have not participated in this appeal. The only indication of their potential involvement appearing in the record on appeal can be found at the beginning of the trial transcript:

> "The Court: And Mr. McGrath, who do you represent?
>
> "Mr. McGrath: MDM Wrecker and the [Bentleys], sir. The [Bentleys] are only in this case, as far as I know, because they hold the mortgage on [the] property, so they are not physically present here, and they are not on the witness list, or anything like that. "

recorded restrictive covenants in the Madison County probate office. In pertinent part, the covenants state the following:

> "10. The following uses of the property in the subject subdivision shall be prohibited:
>
> > ". . . .
> >
> > "(B) No salvage yard, junkyards or any storage facility of any damaged or wrecked motor vehicles of any kind.
>
> "11. [The covenants] are to run with the land and shall be binding on all the parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then recorded owners has been recorded, agreeing to change of said Covenants, in whole or in part."

All the lots within the subdivision were subject to those covenants.

Nejad purchased lot 18 in 2006 and lot 19 in 2009, and the deeds he received for those lots referenced the covenants. MDM, which purchased lot 12 in July 2015, and Heaven's Gate, which purchased lot 17 in August 2013, also received deeds referencing the covenants. Heaven's Gate alleges that, at the time it purchased lot 17, lots 12, 17, 18, and 19 were each being used in accordance with the covenants.

In February 2018, 21 of the lot owners in the subdivision signed a document titled "Release of Restrictions", which was intended to release the owners from sections 1, 2, 3, 8, and 9 of the covenants. After Heaven's Gate refused to sign the Release of Restrictions, some of the lot owners, noting that the covenants had generally not been followed, brought an action ("the lot owners' action") in the trial court against Heaven's Gate seeking a judgment declaring that sections 1, 2, 3, 8, and 9 of the covenants were unenforceable. In that action, on July 26, 2018, the trial court ruled that sections 1, 2, 3, 8, and 9 of the covenants were unenforceable. Heaven's Gate appealed from that judgment; however, this court dismissed the appeal on the basis that the trial court's judgment was void for lack of a justiciable controversy. Heaven's Gate Ministries Int'l, Inc. v. Burnett, 295 So. 3d 72 (Ala. Civ. App. 2019). We note that the enforceability of § 10, the covenant at issue in this appeal, was not placed in issue in the lot owners' action.

In March 2018, before the judgment in the lot owners' action had been entered, Heaven's Gate sent Nejad and MDM correspondence alleging that the use of their respective properties was inconsistent with

§§ 3 and 10(B) of the covenants.[2] In the letters, Heaven's Gate stated that Nejad and MDM were impermissibly operating "junkyards" on their lots and demanded that they bring their properties into compliance with § 3 and § 10(B) within 30 days. In July 2018, Heaven's Gate sued MDM and Nejad, alleging violations of those covenants. Nejad filed a motion for a partial summary judgment as to Heaven's Gate's claim seeking the enforcement of § 3. The trial court entered a partial summary judgment in the action brought by Heaven's Gate in which that court determined

---

[2]Section 3 states:

> "It shall be the responsibility of each owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkept condition on his or her property. No building shall be permitted to stand with its exterior in an unfinished condition for longer than twelve (12) months after the commencement of construction. No property within the subdivision shall be used, in whole or in part, for the storage of any property or thing that will cause such lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property."

that § 3 was unenforceable, and no issue is raised in this appeal as to the correctness of that determination.

Litigation proceeded as to Heaven's Gate's claim that Nejad and MDM had violated § 10(B) of the covenants. At the August 26, 2019, trial, Heaven's Gate presented numerous photographs depicting lot 18 ("Nejad's property") and lot 12 ("MDM's property"). The evidence indicated that "Price Auto," a wrecker company, operated on Nejad's property. Undisputed evidence presented at trial also indicated that at least one wrecked vehicle was on Nejad's property on August 24, 2019. Carolyn Lucas, the pastor for Heaven's Gate, testified at trial that wrecked vehicles were stored on MDM's property. The record further indicates that Mike Mayhall, the owner of MDM, had stored wrecked vehicles on MDM's property before the commencement of Heaven's Gate's action. However, the record contains contradictory testimony as to whether, on the date of trial, MDM was still storing wrecked vehicles on MDM's property. Lucas testified that MDM was still storing wrecked vehicles on its property, and Heaven's Gate offered photographic evidence of MDM's property indicating the presence of wrecked vehicles on MDM's property.

However, Lucas could not testify as to the date on which those photographs were taken, and she admitted that she had not seen MDM's property for approximately two months before trial.

Mayhall testified that, although MDM was a wrecker company, it had never been operated as a wrecker company at MDM's property in the subdivision. Mayhall said that, following the commencement of this action, he had begun to store wrecked vehicles at MDM's principal location, which is outside of the subdivision. Mayhall stated that, at the time of trial, he was storing impounded vehicles on behalf of the City of Huntsville on MDM's property in the subdivision, but he stated that he did not keep inoperable vehicles on MDM's property. Mayhall submitted photographic and video evidence to support his testimony. Mayhall conceded that, if the owners of lots in the subdivision were to be released from the operation of § 10, he would likely resume storing wrecked vehicles on MDM's property.

The trial court entered its judgment on September 4, 2019, finding in favor of Nejad and MDM. In doing so, the trial court stated that, "[a]fter a thorough and fair review of the testimony and the evidence

presented, the Court is not reasonably satisfied that [Heaven's Gate] is entitled to ... relief." Heaven's Gate filed a timely motion to alter, amend, or vacate the judgment, which the trial court denied, and Heaven's Gate timely appealed from the judgment. That appeal, following its transfer to this court pursuant to Ala. Code 1975, § 12-2-7(6), was submitted on the briefs filed by Heaven's Gate and MDM, Nejad and the other appellees having elected not to favor this court with briefs. See note 1, supra.

On appeal, Heaven's Gate argues that the trial court misapplied the law in its determination that Heaven's Gate was not entitled to an injunction against Nejad and MDM enforcing § 10(B) of the covenants. Specifically, Heaven's Gate argues that § 10(B) clearly and unambiguously prevents owners of lots within the subdivision from using their properties to store wrecked or damaged motor vehicles. Therefore, Heaven's Gate contends, the trial court was bound to enforce § 10 against MDM and Nejad because, Heaven's Gate says, those parties had stored wrecked vehicles on their properties, because Price Auto continued to store wrecked vehicles on Nejad's property, and because Mayhall stated that he would like to resume storing wrecked vehicles on MDM's property.

We first address whether the matter before us, as it relates to MDM, is moot. " 'A case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.' " County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979) (quoting Powell v. McCormack, 395 U.S. 486, 496 (1969)). Our supreme court has said:

> " 'The test for mootness is commonly stated as whether the court's action on the merits would affect the rights of the parties.' Crawford v. State, 153 S.W.3d 497, 501 (Tex. App. 2004) (citing VE Corp. v. Ernst & Young, 860 S.W. 2d 83, 84 (Tex. 1993)). 'A case becomes moot if at any stage there ceases to be an actual controversy between the parties.' [Crawford, 153 S.W.3d at 501] (citing National Collegiate Athletic Ass'n v. Jones, 1 S.W.3d 83, 86 (Tex. 1999))."

Chapman v. Gooden, 974 So. 2d 972, 983 (Ala. 2007).

For example, "[w]hen one party sues another in an effort to obtain declaratory or injunctive relief contending that the other party's conduct is wrongful, a showing of 'voluntary cessation' of the challenged conduct can moot the action." Barber v. Cornerstone Cmty. Outreach, Inc., 42 So. 3d 65, 71 (Ala. 2009). "Demonstrating that the action should be deemed moot on this basis, however, is not an easy burden." Id. Our supreme court has noted that a voluntary cessation of an action moots a case only

when the defendant shows that it is "'"absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur."'" Id. (quoting Adar and Constructors, Inc. v. Slater, 528 U.S. 216, 222 (2000), quoting in turn United States v. Concentrated Phosphate Exp. Ass'n, 393 U.S. 199, 203 (1968)).

In City of Erie v. Pap's A.M., 529 U.S. 277 (2000), the Supreme Court of the United States held that it had authority to review the correctness of a permanent injunction entered in favor of an establishment hosting nude dancing, that effectively barred enforcement of a city ordinance that made it an offense to knowingly appear nude in public notwithstanding potential justiciability concerns stemming from the closure of the establishment; the Court held that "[s]imply closing [the establishment was] not sufficient to render [the] case moot" because the establishment was "still incorporated under [state] law" and "could again decide to operate a nude dancing establishment in" the city. 529 U.S. at 287; accord Barber, 42 So. 3d at 73-74 (employing City of Erie analysis). Likewise, in this case, MDM stored wrecked vehicles on its property in the subdivision until this action was commenced, is still incorporated in this

state as a wrecker company, and actively stores wrecked vehicles on another property. Moreover, Mayhall testified at trial that he would resume storing wrecked vehicles on MDM's property in the subdivision if § 10(B) is ever deemed unenforceable. Based upon these facts, we cannot say that it is "absolutely clear" that it is reasonably certain that MDM would not again store wrecked vehicles on MDM's property in the subdivision so as to render the case moot as to MDM.

We now turn to the merits of the case and note that,

> "[b]ecause the trial court heard ore tenus evidence, the trial court's findings of fact are given a presumption of correctness, and we will not reverse the trial court's judgment based on those findings of fact 'unless it is clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence.' Odom v. Hull, 658 So. 2d 442, 444 (Ala. 1995). Where, however, the issue is the application of law to the facts, the presumption of correctness has no application and our review is de novo."

Page v. Gulf Coast Motors, 903 So. 2d 148, 150 (Ala. Civ. App. 2004).

Here, the question is one of interpretation of § 10(B). On the subject of interpreting restrictive covenants, our supreme court has said that "restrictive covenants ... will be recognized and enforced when established by contract," but "they are not favored in the law and will be strictly

construed." Carpenter v. Davis, 688 So. 2d 256, 258 (Ala. 1997). This court has also observed that,

> " 'in construing restrictive covenants, all doubts must be resolved against the restriction and in favor of free and unrestricted use of property. However, effect will be given to the manifest intent of the parties when that intent is clear .... Furthermore, restrictive covenants are to be construed according to the intent of the parties in the light of the terms of the restriction and circumstances known to the parties.'

"Hines v. Heisler, 439 So. 2d 4, 5-6 (Ala. 1983). If there is no inconsistency or ambiguity within a restrictive covenant, the clear and plain language of the covenant is enforceable by injunctive relief.' Carpenter [v. Davis], 688 So. 2d [256] at 258 [(Ala. 1997)].

> " ' "[W]hether or not a written contract is ambiguous is a question of law for the trial court." "An ambiguity exists where a term is reasonably subject to more than one interpretation." "The mere fact that adverse parties contend for different constructions does not in itself force the conclusion that the disputed language is ambiguous." '

"Ex parte Awtrey Realty Co., 827 So. 2d 104, 107 (Ala. 2001) (citations omitted). Moreover, the parties cannot create ambiguities by setting forth 'strained or twisted reasoning.' Twin City Fire Ins. Co. v. Alfa Mut. Ins. Co., 817 So. 2d 687, 692 (Ala. 2001). Nor does an undefined word or phrase create an inherent ambiguity. Id."

Hipsh v. Graham Creek Estates Owners Ass'n, 927 So. 2d 846, 848-49 (Ala. Civ. App. 2005).

Section 10(B) explicitly prohibits the owners of lots within the subdivision from using their properties as a salvage yard, junkyard, or as any form of a storage facility for any damaged or wrecked motor vehicles. It is undisputed that damaged or wrecked motor vehicles have been stored on both MDM's and Nejad's properties. Morever, although the covenant does not explicitly define the term "junkyard," that term is commonly understood as a location used for the storage of wrecked and inoperable vehicles. Cf. Jaffe Corp. v. Board of Adjustment of Sheffield, 361 So. 2d 556, 562-63 (Ala. Civ. App. 1977) (holding that municipal ordinance excluding "junkyards" from light-industrial zones barred terminal facility's transport and storage of scrap metal on light-industrial property adjacent to residential area).

Viewing the covenant at issue in a manner consistent with its plain meaning, as Hipsh requires, we discern that the clear intent of § 10(B) is to prevent property owners from storing, among other things, wrecked vehicles on their properties. Because wrecked vehicles have indisputably

been stored on both MDM's and Nejad's properties, MDM and Nejad have violated § 10(B) of the covenants.

As noted above, Mayhall testified at trial that he had ceased using MDM's property located in the subdivision to store wrecked vehicles. However, just as MDM's belated compliance does not render the case moot, it also does not nullify Heaven's Gate's right to enjoin future use of the property in a manner that is inconsistent with § 10(B). Our supreme court has stated that "[w]hen a restrictive covenant is broken ... an injunction should be issued because the mere breach of a covenant is a sufficient basis for interference by injunction." Tubbs v. Brandon, 374 So. 2d 1358, 1361 (Ala. 1979).

We acknowledge that, at times, our caselaw has not strictly adhered to the foregoing standard and that exceptions have been allowed in particular circumstances. For example, in Grove Hill Homeowners' Ass'n v. Rice, 43 So. 3d 609 (Ala. Civ. App. 2010), we stated that the standard for issuing a permanent injunction requires the plaintiff to

> " 'demonstrate success on the merits, a substantial threat of irreparable injury if the injunction is not granted, that the threatened injury to the plaintiff outweighs the harm the

> injunction may cause the defendant, and that granting the injunction will not disserve the public interest.' "

43 So. 3d at 613 (quoting TFT, Inc. v. Warning Sys., Inc., 751 So. 2d 1238, 1242 (Ala. 1999)). Additionally, modern caselaw has embraced a relative-hardship test. Under the relative-hardship test, "a restrictive covenant 'will not be enforced if to do so would harm one landowner without substantially benefiting another landowner.' " Grove Hill Homeowners' Ass'n v. Rice, 90 So. 3d 731, 736 (Ala. Civ. App. 2011) ("Grove Hill II") (quoting Lange v. Scofield, 567 So. 2d 1299, 1302 (Ala. 1990)).

However, in Grove Hill II, this court also stated that, in balancing the equities, a plaintiff is entitled to a permanent injunction when a defendant breaches an unambiguous restrictive covenant of which the defendant had notice. 90 So. 3d at 739. To hold otherwise would " 'allow individual [property owners] to violate restrictive covenants if those [property owners] were subjectively convinced that the violation would improve the value of the subdivision property.' " 90 So. 3d at 740 (quoting Willow Lake Residential Ass'n v. Juliano, 80 So. 3d 226, 239 (Ala. Civ. App. 2010). We noted that such an act " 'directly contradicts the law that

"a party to a covenant is entitled to seek its enforcement even if the ... breach does not negatively impact the value of his property." ' " 90 So. 3d at 740 (quoting Willow Lake, 80 So. 3d at 239, quoting in turn Viking Props., Inc. v. Holm, 155 Wash. 2d 112, 121 n. 4, 118 P. 3d 322, 327 n. 4 (2005)). In Grove Hill II, we also held that "a landowner who actively breaches a restrictive covenant with actual knowledge or constructive notice of the content of the covenant cannot invoke the relative-hardship test." 90 So. 3d at 737 (citing Maxwell v. Boyd, 66 So. 3d 257 (Ala. Civ. App. 2010)).

Therefore, because MDM's deed provided MDM with, at the very least, constructive notice of the covenants, MDM's belated compliance with § 10(B) does not nullify Heaven's Gate's right to a permanent injunction ensuring MDM's continued compliance with § 10(B).[3]

[3]In its brief, MDM asserts the potential applicability of the equitable defense of unclean hands. MDM alleges that Heaven's Gate pursued an injunction against MDM to enforce § 10(B) of the covenants only because Heaven's Gate desired to bolster its own defense in the lot owners' action. Our supreme court has stated that the "purpose of the clean hands doctrine is to prevent a party from asserting his, her, or its rights under the law when that party's own wrongful conduct renders the assertion of such legal rights 'contrary to equity and good conscience.' " J & M Bail

Moreover, because MDM had constructive notice of § 10(B), a balancing-of-the-equities or relative-hardship analysis is not warranted. Accordingly, we conclude that the trial court erred in denying Heaven's Gate's request for an injunction to prohibit Nejad and MDM from storing wrecked vehicles on their respective lots. The judgment is therefore reversed, and the cause is remanded for the trial court to enter a judgment consistent with this opinion.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Moore and Donaldson, JJ., concur.

Edwards, J., concurs in the result, without writing.

---

Bonding Co. v. Hayes, 748 So. 2d 198, 199 (Ala. 1999) (quoting Draughon v. General Fin. Credit Corp., 362 So. 2d 880, 884 (Ala. 1978)). Under our caselaw, the clean-hands doctrine has been interpreted to mean that a plaintiff cannot enforce a restrictive covenant when that plaintiff is also in breach of a restrictive covenant. See Hankins v. Crane, 979 So. 2d 801, 812 (Ala. Civ. App. 2007) (holding that a defendant could not assert the clean-hands doctrine when he did not show that a plaintiff had actually violated a restrictive covenant). Because MDM has not shown that Heaven's Gate has violated any of the remaining existing covenants, its unclean-hands defense necessarily fails.