

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

AYMAN OSMAN AND ASMAA ALZEIN,

Appellants,

v.

Case No. 5D19-2183

SILVERTHORN/HERNANDO HOMEOWNERS'
ASSOCIATION, INC.,

Appellee.

_____ /

Opinion filed August 14, 2020

Appeal from the Circuit Court
for Hernando County,
Donald E. Scaglione, Judge.

Nathan A. Carney, of Carney Law Firm,
P.A., Tampa, for Appellants.

Kimberly L. Garno, of Terra Law Firm, P.A.,
Tampa, for Appellee.

PER CURIAM.

Appellants, Ayman Osman and Asmaa Alzein (“Homeowners”), appeal a Final Summary Judgment and mandatory injunction entered in favor of Appellee, Silverthorn/Hernando Homeowners’ Association, Inc. (“HOA”). The HOA accused Homeowners of “multiple, ongoing violations” of the HOA’s Declaration of Covenants and Restrictions (“Declaration”) by failing to maintain their properties in “neat and attractive

condition.” Because a genuine issue of material fact precludes summary judgment, we reverse and remand.¹

Homeowners own three properties subject to the Declaration, two of which are vacant lots. The HOA moved for final summary judgment and a mandatory injunction. In support, the HOA submitted an affidavit from its property manager, who swore he had sent Homeowners violation notices for multiple issues on their properties, including overgrown lawns, weed-riddled landscaping, a discolored pool, a moldy roof, and a dirty mailbox. He confirmed these violations were numerous, continual, and ongoing.

In response, Homeowners timely filed summary judgment evidence, featuring Osman’s affidavit. He swore he cured all violations. He explained that Homeowners had moved out of the neighborhood and contracted for property maintenance, but his contractors failed to perform. He further contended that he had hired new contractors, he was increasing his supervision over them, and they had resolved all Declaration violations.

The trial court found there were no disputed issues of material fact and the HOA was entitled to judgment as a matter of law. It concluded Homeowners were violating the Declaration because they were not currently maintaining, and continually failed to maintain, their lots “in a neat and attractive condition.” The injunction precluded Homeowners from violating *any* Declaration provision while they owned property in the

¹ Because the entry of summary judgment was inappropriate, we do not reach the other issues raised on appeal regarding the appropriateness and scope of the trial court’s mandatory injunction.

HOA. The trial court warned Homeowners that future violations would be punishable by fines and incarceration via the court's contempt powers.

Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law. *Volusia Cty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). The party moving for summary judgment must prove conclusively the nonexistence of a material fact. *Lin v. Demings*, 219 So. 3d 124, 125 (Fla. 5th DCA 2017). We review a trial court's final summary judgment de novo and draw every possible inference in favor of the non-moving party. *Genuinely Loving Childcare, LLC v. Bre Mariner Conway Crossings, LLC*, 209 So. 3d 622, 625 (Fla. 5th DCA 2017).

Here, a genuine issue of material fact exists on the most critical aspect of the lawsuit: whether Homeowners are in violation of the Declaration. *See Boyle v. Hernando Beach S. Prop. Owners' Ass'n*, 124 So. 3d 317, 319–20 (Fla. 5th DCA 2013) (reversing final summary judgment in part because of genuine issues of material fact about the property's condition). Osman's affidavit calls into question the trial court's conclusion that Homeowners were not maintaining their lots "in a neat and attractive condition."

Accordingly, we remand this matter to the trial court for vacatur of the mandatory injunction and further proceedings.

REVERSED and REMANDED with INSTRUCTIONS.

EVANDER, C.J., EISNAUGLE and TRAVER, JJ., concur.