FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2521

RICHARD and CHRISTINE LUTZ,

Appellants,

v.

JOSEPH and CARRIE PANETTA,

Appellees.

On appeal from the Circuit Court for Gulf County.
Dustin Stephenson, Judge.

November 30, 2020

B.L. THOMAS, J.

This case involves the interpretation of restrictive covenants in a Gulf County subdivision that prohibited mobile homes, house trailers, and structures of a temporary character. In addition, the covenants required every residence to possess "*a ground floor area of 1200 feet excluding open porches and garages*." (Emphasis added.) The trial court interpreted this clear language to allow Appellees to violate the covenants by placing a 30-foot "fifth-wheel" recreational vehicle on their lot because the covenants did not specifically prohibit recreational vehicles. We reverse the trial court's order with directions to enter judgment for Appellants and order the removal of the recreational vehicle. The order erroneously disregarded the unambiguous intent of the covenants

when read *in toto* to require permanent residential dwellings in the subdivision.

This Court reviews and interprets the language of a restrictive covenant de novo and does not defer to the trial court's view. *Leamer v. White*, 156 So. 3d 567, 571 (Fla. 1st DCA 2015). "[W]hen interpreting covenants, one must look at the document as a whole to determine the intent of the parties." *Robins v. Walter*, 670 So. 2d 971, 974 (Fla. 1st DCA 1995); *Barnett v. Destiny Owners Ass'n, Inc.*, 856 So. 2d 1090, 1092 (Fla. 1st DCA 2003). According to this Court:

> Florida adheres to the general rule that a reasonable, unambiguous restriction will be enforced according to the intent of the parties as expressed by the clear and ordinary meaning of its terms. If it is necessary to construe a somewhat ambiguous term, then intent of the parties as to the evil sought to be avoided expressed by the covenants as a whole will be determinative.

Barnett, 856 So. 2d at 1092 (quoting *Barrett v. Leiher*, 355 So. 2d 222, 225 (Fla. 2d DCA 1978)).

Although it may be correct that restrictions on property use are not *favored or implied,* the obvious right of property owners to define the character and nature of their living environment is of equal stature because it rests on the fundamental right of persons to voluntarily enter into contracts to protect their vision of the best use of property in their own neighborhoods. *Robins*, 670 So. 2d at 974–75 (holding covenants validly prohibited use of residential property as "bed and breakfast" under provision prohibiting businesses); *Bennett v. Walton Cty.,* 174 So. 3d 386 (Fla. 1st DCA 2015) (holding land development code validly prohibited use of property for non-residential uses including wedding venues and other events).

The only reasonable interpretation of the covenants as a whole prohibits Appellees from attempting to live in a recreational vehicle in a residential subdivision meant to include only permanent fixed dwellings with ground floors of 1,200 feet, excluding porches and garages. Appellees conceded there is no

permanent dwelling on the property. Appellees' non-self-propelled recreational vehicle falls within the scope of the restrictive covenant's references to house trailers and temporary structures as alternatives to a permanent dwelling, as evidenced by the undisputed facts that Appellees have the vehicle moved on and off of the lot, and had utilities installed for hookup when the vehicle is there. To allow Appellees to reside in a recreational vehicle violates the deed covenants they agreed to comply with when they purchased the property. Because Appellees' actions violated the restrictive covenants, we reverse.

RAY, C.J., and KELSEY, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Carrie R. McNair of Akerly Law, PLLC, Coppell, TX, for Appellants.

Valentina M. Palmer and Clifford W. Sanborn of Barron & Redding, P.A., Panama City, for Appellees.