IN THE COURT OF APPEALS OF IOWA

No. 8-088 / 07-1109
Filed March 14, 2008

SUSAN POWELL, JIM VAUGHN, SHARON VAUGHN, DON GANO, HERBERT TREFTZ, RUTH TREFTZ, CAROLE SIX, and VELMA LEFFERT,
Petitioners-Appellants,

vs.

CEDAR TREE VILLAGE HOMEOWNERS ASSOCIATION, an Iowa non-profit corporation,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Mary E. Howes, Judge.

Members of a homeowners' association appeal from a district court decision denying their petition for a declaratory judgment that the association improperly levied an assessment against them. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Richard A. Davidson and David A. Dettman of Lane & Waterman, L.L.P., Davenport, for appellants.

Stephen T. Fieweger and H. Karl Huntoon of Katz, Huntoon & Fieweger, P.C., Moline, Illinois, for appellee.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

MILLER, J.

Susan Powell, Jim and Sharon Vaughn, Don Gano, Herbert and Ruth Treftz, Carole Six, and Velma Leffert appeal from a district court decision denying their petition for a declaratory judgment that the Cedar Tree Village Homeowners Association (Association) improperly levied an assessment against them. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I. BACKGROUND FACTS AND PROCEEDINGS.

The petitioners own lots in Cedar Tree Village, a planned unit development in Bettendorf, Iowa, and reside in townhomes constructed on the lots. The lots in the development are subject to a document entitled "Restrictive and Protective Covenants and Conditions" (RPC) recorded by the developer in 1976. The RPC identifies certain lots in the development as "Common Area[s]" owned by the Association "for the common use and enjoyment of the members of the Association." All of the owners of the other lots located in the development are members of the Association, which was incorporated "[t]o provide for the maintenance, preservation, and architectural control of the residence Lots and Common Area within . . . Cedar Tree Village."

There are 191 attached townhome units in the development. The six units on the lots owned by the petitioners were constructed in 1996 with vinyl siding. The other 185 units in the development were built approximately twenty-five to thirty years ago with wood siding, which has deteriorated in condition over time. The exterior condition of the townhomes with wood siding has resulted in continuing problems for the Association. The Association consequently

established a "re-siding committee" in 1991. That committee, however, was not certain about the Association's responsibilities for the exterior siding of the townhomes. In 1995, the Association's board of directors sought advice from their attorney, who stated he believed the Association had an obligation to maintain the exteriors of the townhomes pursuant to Article VI, paragraph 4 of the RPC. That provision requires the Association to provide

> exterior maintenance upon each Lot which is subject to assessment hereunder as follows: Paint and maintain gutters, downspouts, exterior building surfaces, . . . and other exterior improvements, excluding driveways, patios and enclosed courtyards. . . . The Association shall replace the roofs on dwelling buildings when necessary due to age.

Article IV of the RPC, "Covenant for Maintenance Assessments," authorizes the Association to collect "(1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected from time to time." Paragraph 3 of that article sets forth the maximum annual assessment the Association is allowed to charge its members and states "the maximum annual assessment may be increased above the limitation . . . only by a vote of two-thirds (2/3) of each class of Members . . . at a meeting duly called for this purpose." Paragraph 4 states that in addition to the annual assessments,

> the Association may levy, in any calendar year, a special assessment applicable to that year only for the purpose of defraying . . . the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, . . . <u>provided that</u> any such assessment shall have the assent of two-thirds (2/3) of the votes of each Class of Members . . . at a meeting duly called for this purpose.

Despite measures taken by the Association to correct the problem, the exteriors of the townhomes with wood siding continued to deteriorate.[1] The Association's board of directors formed a "Siding Taskforce" toward the end of 2005. At a special meeting in March 2006, the taskforce recommended that the siding on the 185 units with wood siding be replaced with vinyl siding. The Association's members approved "a special assessment of the membership of $1,000.00 per unit" for installation of the vinyl siding.

The petitioners refused to pay the special assessment. They filed a petition for declaratory judgment, seeking a determination "as to whether the Association can assess a special assessment for the purpose of raising the funds necessary to install new siding on the dwelling unit buildings." The Association resisted, arguing Article VI, paragraph 4 of the RPC required it to provide exterior maintenance for each lot, which would include replacement of siding. The Association asserted the special assessment was authorized by Article IV, paragraph 3, which allows the members to approve an increase in their annual assessment.

The case was submitted to the district court on stipulated facts. The court entered a declaratory judgment in favor of the Association, finding the special assessment was authorized by Article IV, paragraph 4 of the RPC, which allows the Association to charge a special assessment for capital improvements to the development's common area. The court found "the buildings to be sided are

[1] The Association asserted in its response to the petition for declaratory judgment that in May 1995, its members approved a "'special assessment' of $36.00 per month per Lot for three years to repair/replace any rotten siding and fascia, caulk, and paint all buildings." Although there is no evidence in the record supporting this assertion, the petitioners did not challenge it in the district court proceedings.

'common areas' and the siding is a 'capital improvement.'" The district court further found the "exterior maintenance paragraph," Article VI, paragraph 4, "can be broadly construed under the facts and circumstances of this case to include siding, although it is not specifically mentioned."

The petitioners appeal. They claim the district court erred in finding that the assessment was authorized by Article IV, paragraph 4, because the townhome units are not common areas within the meaning of the RPC. They further claim the court erred in finding that the Association was responsible for replacing the siding under Article VI, paragraph 4.

II. SCOPE AND STANDARDS OF REVIEW.

Our review of actions for declaratory judgment depends upon how the action was tried to the district court. *Passehl Estate v. Passehl*, 712 N.W.2d 408, 414 (Iowa 2006). Whether a declaratory judgment action is considered legal or equitable in nature is determined by the pleadings, the relief sought, and the nature of the case. *Gray v. Osborn*, 739 N.W.2d 855, 860 (Iowa 2007).

Both parties contend our review should be for the correction of errors at law because the case involves questions of contract interpretation. *See Fjords North, Inc. v. Hahn*, 710 N.W.2d 731, 735 (Iowa 2006) ("Restrictive covenants are contracts."). We agree. *See Sky View Fin., Inc. v. Bellinger*, 554 N.W.2d 694, 696 (Iowa 1996) (reviewing district court's interpretation of a restrictive covenant for correction of errors at law).

The court's findings of fact are binding upon us if those facts are supported by substantial evidence. Iowa R. App. 6.14(6)(*a*). The district court's

legal conclusions, however, are not. *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996).

III. MERITS.

We first address the petitioners' claim that the district court erred in finding the Association was responsible for replacing the siding under Article VI, paragraph 4. The petitioners argue that provision does not allow the Association to use the assessments it collects from its members for installation of vinyl siding. We do not agree.

The RPC states that the assessments collected from the Association's members "shall be used exclusively to promote the recreation, health, safety and welfare of the residents . . . and in particular for the maintenance of the Properties and replacement of roofs as herein provided." Article VI, paragraph 4, "Exterior Maintenance," delineates the specific maintenance duties of the Association, stating in relevant part, that "the Association shall provide exterior maintenance upon each Lot . . . as follows: Paint and maintain gutters, downspouts, exterior building surfaces. . . and other exterior improvements." That provision further states, "The Association shall replace the roofs on the dwelling buildings when necessary due to age." Relying on the maxim "expressio unius est exclusio alterius," which is a "canon of construction holding that to express or include one thing implies the exclusion of the other," *RPC Liquidation v. Iowa Dep't of Transp.*, 717 N.W.2d 317, 324 (Iowa 2006), the petitioners assert the maintenance obligation of the Association regarding its members' townhomes is limited to painting and re-roofing. We conclude otherwise.

"Because restrictive covenants are contractual in nature, we apply contract-based rules of construction to interpret them." *Sky View Fin.*, 554 N.W.2d at 697. "In construing a restrictive covenant, . . . the words must be given their ordinary obvious meaning. . . ." *First Sec. Co. v. Dahl*, 560 N.W.2d 327, 332 (Iowa 1997). Particular words and phrases are not interpreted in isolation; instead, they are interpreted in the context in which they are used. *Hartig Drug Co. v. Hartig*, 602 N.W.2d 794, 798 (Iowa 1999).

Article VI, paragraph 4 clearly states the Association is required to "[p]aint *and* maintain . . . exterior building surfaces." (Emphasis added.) The petitioners' contrary interpretation of the RPC ignores the expressly stated duty of the Association to provide "exterior maintenance" and "maintain . . . exterior building surfaces . . . and other exterior improvements." *See RPC Liquidation*, 717 N.W.2d at 324 (declining to apply the rule expressio unius est exclusio alterius where its application would render what went before it meaningless).

The petitioners further argue that the term "exterior maintenance" should be "construed narrowly, limited to routine upkeep" because "it is established Iowa law that restrictive covenants are to be construed strictly against the party seeking enforcement." While it "is true that a restriction on the free use of property must be strictly construed against a party seeking to enforce it," that rule has "application 'only where the wording of the restriction is ambiguous.'" *Iowa Realty Co., Inc. v. Jochims*, 503 N.W.2d 385, 386 (Iowa 1993) (citation omitted). A mere disagreement, as here, over the meaning of a word does not establish ambiguity. *Sky View Fin.*, 554 N.W.2d at 697.

"Words of a contract must be given their commonly understood meaning." *Iowa Realty Co.*, 503 N.W.2d at 386. The word "maintain" is commonly used to mean "acts of repairs and other acts to prevent a decline . . . from an existing state or condition; . . . replace." Black's Law Dictionary 953 (6th ed. 1990). We therefore conclude the district court did not err in finding that the replacement of the siding was within the Association's responsibility to maintain the exterior building surfaces.

We turn next to the petitioners' claim that the district court erred in finding the assessment charged by the Association for the vinyl siding was authorized by Article IV, paragraph 4. That provision authorizes the Association to charge a "special assessment" for the "cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area." The district court found the townhome units were common areas within the meaning of Article IV, paragraph 4 because "[t]he buildings themselves are owned by the Association, not owned by the individual owners who own the ground only." The evidence in the record does not support this finding.

Article I of the RPC defines "Common Area" to mean "all real property owned by the Association for the common use and enjoyment of the members of the Association." "Lot" is defined as "any plot of land shown upon any recorded subdivision map or plat of the Properties with the exception of the Common Area." "Owner" means the "record owner, . . . of a fee simple title to any Lot which is a part of the Properties." Each stage of the development plan for Cedar Tree Village likewise distinguished between "residence lots" and the "common area lots." For example, the first stage of the development consisted of 58

residence lots and three common area lots. Thus, it is clear from the RPC and the development plan that the townhome units are not "Common Area[s]." Furthermore, the Association admits that "the owners of the property do in fact own the real estate and dwelling constructed on the real estate" and concedes the district court incorrectly found the townhome units were common areas. We therefore conclude the district court erred in determining that Article IV, paragraph 4 authorized the assessment charged by the Association.

The Association argues, however, that we should affirm the court's ruling because the assessment was authorized by paragraph 3 of Article IV. That provision allows the Association to increase its members' annual assessment if such increase is approved by the required majority of the Association's voting members. The district court did not address this argument in its ruling although it was raised by the Association in its pleadings.

While "we may affirm the ruling on a proper ground urged but not relied upon by the trial court," *Krohn v. Judicial Magistrate Appointing Comm'n*, 239 N.W.2d 562, 563 (Iowa 1976), we decline the Association's invitation to do so in this case. Our task in cases we review for the correction of errors at law "is to determine the proper rules of law applicable to facts previously decided." *State v. Marcum*, 245 Iowa 396, 398, 62 N.W.2d 238, 239 (1954). We must "confine [ourselves] to the correction of errors at law and a possible review of facts determined from the evidence introduced below." *Id.* "It is neither our duty nor privilege to decide disputed fact questions." *Id.*

The Association's argument regarding whether the assessment was authorized under Article IV, paragraph 3 would require us to engage in contract

interpretation in the first instance. Contract interpretation may involve resolution of questions of fact where, for example, the meaning of the agreement depends on extrinsic evidence. *Walsh v. Nelson*, 622 N.W.2d 499, 504 (Iowa 2001) (remanding case for the "district court, as the trier of fact, to interpret the contract anew" because "'[i]f the language in a contract is ambiguous, evidence may be admitted as to the intent of the parties, *and the determination of the parties' intent is a question of fact*'" (citation omitted)). We therefore remand the case to the district court to determine whether Article IV, paragraph 3 authorized the special assessment charged by the Association for installation of vinyl siding on the 185 townhome units that have wood siding.

IV. CONCLUSION.

We conclude the district court did not err in finding that replacement of the siding was within the Association's responsibility to maintain the exterior building surfaces. The court did err in finding that Article IV, paragraph 4 of the RPC authorized the assessment charged by the Association because, as the parties agree, the townhome units are not common areas within the meaning of that provision. We remand the case to the district court to determine whether Article IV, paragraph 3 authorized the assessment charged by the Association for installation of vinyl siding on the 185 townhome units that have wood siding.

The judgment of the district court is accordingly affirmed in part and reversed in part. We remand for further proceedings consistent with this opinion.

Costs on appeal are taxed one-half to the petitioners and one-half to the Association.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.