

NOT DESIGNATED FOR PUBLICATION

LAKE TERRACE PROPERTY OWNERS' ASSOCIATION, INC. * **NO. 2005-CA-1000**
* **COURT OF APPEAL**
VERSUS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
CYNTHIA ANN PITMAN RODRIGUEZ

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-10534, DIVISION "L-6"
Honorable Kern A. Reese, Judge

* * * * *

Judge Dennis R. Bagneris, Sr.

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(Court composed of Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr., and Judge Edwin A. Lombard)

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AFFIRMED IN PART; REVERSED IN

PART

Defendant/Appellant, Cynthia Ann Pittman Rodriguez (Rodriguez), appeals a March 21, 2005 judgment of the trial court which issued a permanent injunction in favor of plaintiff/appellee, Lake Terrace Property Owners' Association (the Association) ordering Rodriguez to dismantle and reconfigure the carport and utility room additions until they adhere to the provisions of the Lake Terrace Subdivision Building Restrictions. For the reasons below, we affirm in part and reverse in part.

FACTS AND PROCEDURAL HISTORY:

The facts and procedural history of this case were previously set forth in this Court's unpublished opinion in *Lake Terrace Property Owners' Association, Inc., vs. Cynthia Ann Pittman Rodriguez*, 2003-1535 (La.App. 4 Cir. 2/11/04), 868 So.2d 325 as follows:

The Association filed a Petition for Injunctive Relief against Rodriguez on June 26, 2001, alleging that she was in violation of Sections II and V of the Association's duly recorded Building Restrictions as a result of additions made to the existing carport at her Frankfort Street residence in New Orleans, Louisiana^[1]. According to the petition, Rodriguez applied for a building permit through the City Of New Orleans' Department of Safety and Permits, representing that general repairs were being undertaken to replace the existing carport's flat roof that had suffered water damage. The petition alleged

that rather than merely replacing the flat roof, Rodriguez constructed an addition to her carport, which extended 2.9 feet into the six-foot side yard boundary of the property, without prior permission or approval of the Orleans Parish Levee Board.

In its prayer for relief, the Association requested that: (1) a mandatory injunction be issued directing Rodriguez to dismantle and remove the carport addition, (2) that a prohibitory injunction be issued enjoining Rodriguez from constructing an addition to her carport, and (3) that it be awarded attorney's fees and all costs of the proceedings.

Rodriguez responded with an answer, exceptions and a reconventional demand, asserting therein that the Association's claim had prescribed and that the Association had engaged in a pattern of willful, continuous, harassing and discriminatory tortious actions against her, amounting to an invasion of her right to privacy and to malicious prosecution and entitling her to damages.

In September 2001, Rodriguez filed a motion for summary judgment asserting that she was entitled to judgment dismissing the Association's lawsuit against her with prejudice due to the Association's selective, and thus discriminatory, enforcement of its building restrictions. She claimed that since its inception in 1956, the Association had only filed three lawsuits, other than the present lawsuit against her, seeking to enforce its building restrictions. In particular, she alleged that a developer, Gerald Schroeder, who had violated Section V on the building restrictions in the construction of two new houses, was allowed to pay a fine rather than having to tear down the two houses. Attached as an exhibit to her motion was a list of 57 homes in Lake Terrace, which, according to Rodriguez, were in violation of the Association's building restrictions concerning side yards and/or carports without resulting lawsuits against the homeowners. Rodriguez submitted photographs of those 57 homes, allegedly depicting the aforementioned violations, along with affidavits of her husband and brother wherein they stated that they had taken the photographs. In addition, Rodriguez supplied the trial court with a May 18, 1995 letter from the President of the Lake Terrace Property Owners' Association to the residents of Lake Terrace

subdivision wherein he stated that the Association now had an active Building Restrictions Committee, and that the Association intended to enforce the restrictions in order to preserve the unique character and beauty of the neighborhood. The motion was set for contradictory hearing on November 9, 2001.

The Association filed an opposition to Rodriguez's motion for summary judgment on November 8, 2001. Therein, it alleged that Rodriguez's motion should be denied because it was totally devoid of proper evidentiary support and because it was based upon the fatally flawed premise that 57 homes in the Lake Terrace subdivision exhibited violations of the Lake Terrace Building Restrictions. In support of its opposition to Rodriguez's motion for summary judgment, the Association submitted an affidavit of Charles Ruello, a licensed Louisiana architect, a member of the Association's Board of Directors, and the chairman of the Association's Building Restriction Committee. Therein he stated that he was thoroughly familiar with Lake Terrace's building restrictions. He stated that he became aware of Rodriguez's potential violations of those restrictions through an anonymous telephone call, and that he had investigated the situation and determined that the addition to Rodriguez's carport had been done without first obtaining a permit from the Orleans Levee District and in violation of Section V of the building restrictions. Mr. Ruello then stated that he had investigated each and every one of the 57 alleged building restriction violations claimed by Rodriguez in her motion for summary judgment, and that, in fact, the photographs depicted only 7 possible violations. He opined that Rodriguez was perhaps confused about the difference between a side yard and a rear yard, and attached drawings illustrating those concepts, as dictated by the building restrictions, on both an interior and a corner lot. He disputed Rodriguez's claim that the Association had randomly, selectively or discriminatorily enforced the building restrictions, and gave several examples of recent actions, including lawsuits, taken by the Association in response to its discovery of violations of those restrictions. In addition, Mr. Ruello attached a copy of the city permit applied for by Rodriguez's husband that represented that the project being

undertaken was one of general repairs consisting of the removal/repair of the flat roof on the existing carport. He further stated that he had contacted the Orleans Levee District and had been told that Rodriguez had not sought or obtained a permit for constructing an addition to her carport.

The hearing on Rodriguez's motion took place on November 9, 2001, as scheduled, with the matter being taken under advisement. A week later, the Association filed a motion for summary judgment and request for the issuance of permanent injunctions. The matter was set for contradictory hearing on January 11, 2002.

Meanwhile, on December 11, 2001, the trial court rendered judgment denying Rodriguez's motion for summary judgment and ordering that an injunction be issued to Rodriguez ordering that her carport addition be dismantled and removed, and enjoining her from making any additions to the existing carport in violation of the Lake Terrace Subdivision Building Restrictions. In its written reasons for judgment, the trial judge noted that when Rodriguez purchased her home in 1990, the purchase was made subject to the Building Restrictions that had been recorded in the Orleans Parish Conveyance Office in 1953. The judge noted that the building permit application filed by Rodriguez's husband sought a permit for general repairs to the carport, including replacing its roof. The judge found, however, that the repairs and construction to the carport were performed in contravention of the Building Restrictions in that, first, Rodriguez was required to receive approval from the Orleans Parish Levee Board for any changes, and, second, the repairs and construction brought the carport within 2.9 feet of the sideline boundary, despite the prohibition of any construction within 6 feet of the sideline boundary. The judge further found that although Rodriguez contended that the entire plan of the Building Restrictions had been abandoned, she failed to establish that the restrictions had been so disregarded or unenforced that the original plan for the neighborhood had been undermined. In addition, the judge found that Rodriguez failed to establish that the particular restriction [i.e., the side yard restriction] had been substantially

violated. The trial court signed an injunction on December 18, 2001 enjoining Rodriguez, or anyone acting on her behalf, from making any additions to her existing carport in violation of the Lake Terrace Subdivision Building Restrictions.

Rodriguez timely filed a motion for new trial of the December 11, 2001 judgment. Shortly thereafter, the Association filed an *ex parte* motion and order to reset its previously filed motion for summary judgment and for the issuance of permanent injunctions^[2]. The motions were set for hearing on February 8, 2002.

Rodriguez filed an opposition to the Association's motion for summary judgment on February 4, 2002. She argued that the Association's motion should be denied because the Association had made a judicial admission, in its brief in opposition to her motion for summary judgment, that there were genuine issues of material fact regarding the 57 building restriction violations alleged by Rodriguez which demanded a denial of her motion.^[3] In addition, Rodriguez argued that some members of the Association's Board of Director's and/or its Building Restrictions Committee were in the practice of providing professional services to residents of Lake Terrace in conjunction with the building or renovating of their homes, and that none of those residents-turned-clients have been sued even when violations of the building restrictions resulted. Moreover, Rodriguez claimed that her attempts at deposing Mr. Ruello and other current and former members of the Association's Board of Director's had been thwarted.

Rodriguez filed a memorandum in support of her motion for new trial on February 5, 2001, asking the trial court to reconsider its finding that the Association had not discriminatorily and selectively enforced its building restrictions against her.

Although the hearing on the parties' competing motions took place, as scheduled, on February 8, 2002, with the trial judge issuing his rulings from the bench, no written judgment was rendered until April 24, 2003^[4]. In that judgment, the Association's motion for summary judgment and issuance of

permanent injunction was granted and Rodriguez's motion for new trial was denied as moot....

Based on the facts and procedural history in the first appeal, this Court concluded that the trial court erred in rendering judgment on the merits in a summary fashion, and without a full evidentiary hearing or trial on the merits. Consequently, this Court: (1) vacated the portion of the December 11, 2001 judgment, which rendered judgment in favor of the Association and issued an injunction to Rodriguez; (2) vacated the separate injunction signed by the trial court on December 18, 2001; (3) vacated the entire April 24, 2003 judgment, which had granted summary judgment in favor of the Association and issued a permanent injunction; and (4) remanded the case to the trial court for a full evidentiary hearing or trial on the merits.

Thereafter, a three-day bench trial was held in March 2005. Following the trial, the trial court ruled in favor of the Association and ordered Rodriguez to "dismantle and reconfigure the carport and utility room additions to the property at 1608 Frankfurt Street, New Orleans, Louisiana 70122 until the said additions strictly adhere to the provisions of the Lake Terrace Subdivision Building Restrictions." The trial court ordered Rodriguez to pay attorneys fees, expert fees, and all costs incurred by the Association. Further, the trial court ordered that Rodriguez's reconventional demand be dismissed with prejudice. Rodriguez now appeals this final

judgment.

ASSIGNMENTS OF ERROR:

Rodriguez assigns two errors in this appeal. First, she asserts that the trial court's reasons for judgment constitute prima facie evidence that the fact-finding process was interdicted to the extent that *de novo* review is the only appropriate standard of review. Second, she claims that the trial court committed legal error in awarding attorney's fees to the Association.

STANDARD OF REVIEW:

The manifest error standard is the appropriate standard of review for the issuance of a permanent injunction. *Mary Moe, L.L.C. v. Louisiana Bd. of Ethics*, 2003-2220 at p. 9, 875 So.2d 22, 29. Under this standard, in order to reverse a trial court's determination of a fact, an appellate court must review the record in its entirety and find that a reasonable factual basis does not exist for the finding, and further determine that the record establishes that the fact finder is clearly wrong or manifestly erroneous. *Stobart v. State through Dept. of Transp. and Development*, 617 So.2d 880, 882 (La.1993). Thus, if the trial court's findings are reasonable in light of the record reviewed in its entirety, this court may not reverse, even if convinced that had it been sitting as trier of fact, it would have weighed the evidence differently.

DISCUSSION:

In her first assignment of error, Rodriguez argues that the trial court's reasons for judgment constitute prima facie evidence that the fact-finding process was interdicted to the extent that *de novo* review is the only appropriate standard of review. Rodriguez argues that the language used by the trial court in its reasons for judgment was unusually harsh and that the trial court's conclusions are not reasonable.

In its reasons for judgment, the trial court stated as follows:

Cynthia Ann Pittman Rodriguez and her spouse, Greg Rodriguez, incarnated the old adage regarding the camel and the tent. Ms. Rodriguez and her spouse took a city building permit allowing repair of a flat carport roof damaged by water and developed that into a new roof for the back of their home and a new bricked in carport and utility room (the masonry was not completed). She and her spouse willfully and wantonly disregarded the Lake Terrace Subdivision Building Restrictions, as well as the Comprehensive Zoning Ordinance of the City of New Orleans. There is no other reasonable course of action but to grant the injunctive relief sought by Lake Terrace Property Owners' Association, Inc. and order Ms. Rodriguez to immediately bring the renovations into compliance. The Lake Terrace community has been plagued with this eyesore of horrific proportions for almost five (5) years. Therefore, Ms. Rodriguez is ordered to execute the Court's order immediately or face sanctions for non-compliance.

The Court finds that Ms. Rodriguez's arguments regarding abandonment of all or part of the building restrictions to be without merit. Further, the Court found no credible evidence of discriminatory enforcement of the restrictions. The Lake Terrace Property Owners' Association, Inc. is to be commended for doing civic-minded service for their

community, receiving little remuneration, if any.

Finally, the reconventional demand filed by Cynthia Ann Pittman Rodriguez is found to be without merit and is hereby DISMISSED with prejudice.

We first note that this Court reviews judgments--not “reasons for judgment.” *Succession of Velasquez-Bain*, 471 So.2d 731, 751 (La.App. 4 Cir.4/9/85). Thus on appeal, this Court examines the result of that judgment, not the reason why the trial court reached that result. Accordingly, where this Court believes that the trial court reached the proper result, the judgment will be affirmed. *Id.*

In this case, the record establishes that Rodriguez did in fact violate the restrictions of the Lake Terrace Subdivision when: (1) she failed to submit her plans for expansion to the Levee Board for approval; (2) she expanded her existing carport; and (3) she enclosed an area of the carport such that the side yard was reduced to less than 6 inches on the east side of her property. Accordingly, we find that there was a reasonable factual basis for the trial court’s judgment, which ordered Ms. Rodriguez to dismantle and reconfigure the carport and utility room additions to adhere to the provisions of the Lake Terrace Subdivision Building Restrictions.

In her second assignment of error, Rodriguez argues that the trial court committed legal error in awarding attorney’s fees to the Association.

Specifically, Rodriguez alleges that there is neither a statute nor a contract that provides for the award of attorney's fees to the Association.

Contrarily, the Association argues that there is a statutory basis for an award of attorney's fees under Louisiana Revised Statute 9:1141.8. This statute states:

The community documents of residential planned communities shall have the force of law between the homeowners association and the individual lot owners and as between individual lot owners. The remedies for breach of any obligation imposed on lot owners or the association shall include damages, injunctions, or such other remedies as are provided by law.

The Association alleges that because it specifically sought damages, including the special damages of attorney's fees, and because of the authority found in La. R.S. 9:1141.8, the trial court appropriately granted the Association an award of attorney's fees.

We first note that the record does not show why the trial court decided that an award of attorney's fees was appropriate in this case. As a general rule, attorney's fees may not be awarded to a successful litigant unless specifically provided for by statute or contract. *Campbell v. Melton*, 2001-2578, p. 15 (La.5/14/02), 817 So.2d 69, 80. There is no contract between the parties providing for an award of attorney's fees. The Association's cause of action involves a Petition for Injunctive Relief against Rodriguez

for violations of the Association's Building Restrictions, which do not contain a provision authorizing the award of attorney's fees. Further, we find nothing in La. R.S. 9:1141.8 that expressly permits the imposition of attorney fees. As such, we decline to hold that La. R.S. 9:1141.8 provides a statutory basis for the imposition of attorney fees. For these reasons, we find that the trial court erred in awarding attorney's fees to the Association and we hereby reverse that portion of the judgment.

In conclusion, we affirm that part of the trial court's judgment which issued a permanent injunction against Ms. Rodriguez, and we hereby reverse that part of the judgment which awarded attorney's fees to the Association.

AFFIRMED IN PART; REVERSED IN

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