

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD T. SCOTT, BARBARA K. SCOTT,
MICHAEL BARTHOLEMEW, JILL
BARTHOLEMEW, DAVID CHANDLER,
JENNIFER CHANDLER, KATHY DAVIS, JACK
DAVIS, THOMAS EVANSON, NANCY
EVANSON, MICHAEL THIEMANN, ROBIN
THEIMANN, LAWRENCE URIDGE and SUSAN
URIDGE,

Plaintiffs-Appellees,
Cross-Appellants,

v

CONAN FURTWANGLER,

Defendant-Appellant,
Cross-Appellee.

UNPUBLISHED
October 13, 1998

No. 203182
Jackson Circuit Court
LC No. 96-76943-CH

Before: Smolenski, P.J., and McDonald and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting summary disposition to plaintiffs pursuant to MCR 2.116(C)(10) and (I)(2) and ordering him to remove his mobile home from the property for violation of restrictive covenants. We affirm.

At issue in this case is whether defendant is in violation of a "Declaration of Restrictions" that prohibits using "house trailers" as residences on the property and requires ranch style houses to have at least twelve hundred square feet of livable floor space. The restrictions apply to property owned by plaintiffs and defendant. Defendant's mobile home was erected on the property in 1996. The parties do not dispute that defendant's mobile home has less than twelve hundred square feet of livable space, although there appears to be some disagreement as to the exact square footage of the mobile home. The trial court found that defendant's mobile home is not a "house trailer," but that it is less than twelve hundred square feet. The trial court granted summary disposition in favor of plaintiffs pursuant to MCR

2.116(C)(10) and (I)(2), restrained defendant from modifying the mobile home to comply with the square footage requirements, and ordered defendant to remove it from the property. Defendant appeals as of right. Plaintiffs cross-appeal.

Defendant challenges the trial court's grant of summary disposition to plaintiffs. We review the trial court's decision de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Defendant first argues the right to enforce the restrictions has been waived. Previously, from 1983 to 1989, another mobile home was present on the property, which apparently belonged to defendant's brother. This mobile home was substantially smaller than defendant's. Defendant argues because his family was allowed to live in the smaller mobile home without objection, plaintiffs cannot now enforce the restrictions.¹ We disagree.

There is no waiver where the character of the neighborhood intended and fixed by the restrictions remains unchanged. *Rofe v Robinson (On Second Remand)*, 126 Mich App 151, 155; 336 NW2d 778 (1983). Defendant does not argue the character of the neighborhood was changed by the earlier presence of the mobile home on the property. Indeed, since the mobile home was removed in 1989, it could not have affected the character of the neighborhood when defendant erected his mobile home on the property in 1996. Accordingly, defendant's claim that waiver applies must fail.

Next, defendant claims the trial court improperly granted summary disposition where genuine issues of material fact remain. On this issue, defendant has merely set forth conclusory statements in his brief. We decline to consider this argument because of defendant's cursory consideration of the issue. *Meagher v Wayne State University*, 222 Mich App 700, 716; 565 NW2d 401 (1997).

Defendant next argues the trial court erred in viewing the mobile home without giving notice to the parties. Defendant appears to claim that the trial court's action somehow deprived him of due process. It does appear that the trial court viewed the scene to ascertain facts, and it is improper for the trial court to make factual findings on a summary disposition motion. *Jackhill Oil Co v Powell Production Co*, 210 Mich App 114, 117; 532 NW2d 866 (1995). However, defendant has failed to explain why we should reverse the trial court on this basis. Defendant concedes in this Court and conceded in the trial court that his mobile home does not comply with the twelve hundred square foot requirement. We will not reverse the trial court where it reaches the right result for the wrong reason. *Phinney v Perlmutter*, 222 Mich App 513, 532; 564 NW2d 532 (1997).

Defendant also argues the trial court's relief was inequitable because it restrained him from modifying his mobile home to comply with the square footage requirements. We disagree.

The decision whether to grant injunctive relief is within the sound discretion of the trial court, the exercise of which may not be arbitrary, but in accordance with the fixed principles of equity jurisprudence and the evidence in the case. *Jeffrey v Clinton Twp*, 195 Mich App 260, 263; 489 NW2d 211 (1992). This Court reviews the grant of an injunction for an abuse of

discretion. *Senior Accountants, Analysts & Appraisers Ass'n v Detroit*, 218 Mich App 263, 269; 553 NW2d 387 (1996). An abuse of discretion will be found where the trial court's decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992).

The trial court's decision did not constitute an abuse of discretion. A restrictive covenant should be construed in connection with the surrounding circumstances that the parties had in mind when they made it, the location and character of the entire tract of land, the purpose of the restriction, including whether it was for the benefit of the grantor or the grantee and subsequent purchasers, and whether it was in pursuance of a general building plan for the development and improvement of the property. *Brown v Hojnacki*, 270 Mich 557, 560-561; 259 NW 152 (1935); *Webb v Smith (After Second Remand)*, 224 Mich App 203, 570; 568 NW2d 378 (1997). The plain language of the restrictions in this case clearly demonstrates an intent to create a homogenous subdivision of residences that were designed and constructed with certain minimal space requirements. The restrictions only authorize the construction of two types of residences, ranch style homes and multi-level homes. The restrictions do not authorize future additions to meet the minimum space requirements. If the trial court allowed an addition to be made to defendant's mobile home, then the court would be rewriting the restrictions, and in effect would allow future owners to construct a small house and then modify it at a later time to reach the minimum living space requirements. The trial court's ruling in this case is no more severe than this Court's order in *Webb, supra*, which required the defendants to demolish their home because it violated a restrictive covenant barring construction on a half-lot. As this Court stated in *Webb*, "[t]he order requiring defendants to demolish their home seems harsh; nonetheless, we point out that the applicable deed restrictions were readily ascertainable." *Id.* at 214. Accordingly, we hold the trial court did not abuse its discretion in restricting defendant from modifying the mobile home.

On cross-appeal, plaintiffs challenge the trial court's finding that the mobile home did not constitute a "house trailer." The trial court granted plaintiffs relief on the basis that the mobile home did not have twelve hundred square feet of living space. Because we affirm the trial court, we need not decide whether the mobile home was a "house trailer" as contemplated by the restrictions.

Affirmed.

/s/ Michael R. Smolenski

/s/ Gary R. McDonald

/s/ Henry William Saad

¹ We note that in their brief on cross-appeal, plaintiffs assert the occupants of the first mobile home claimed they were in the process of building a house and were living in the mobile home during construction.