STATE OF MICHIGAN

COURT OF APPEALS

LAKE ISABELLA PROPERTY OWNERS ASSOCIATION/ARCHITECTURAL CONTROL COMMITTEE,

Plaintiff-Appellee,

v

LAKE ISABELLA DEVELOPMENT, INC.,

Defendant-Appellant.

UNPUBLISHED
December 11, 1998

No. 204954
Isabella Circuit Court
LC No. 96-009387 CH

Before: Griffin, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Defendant appeals the denial of its motion for summary disposition. This case arose out of a dispute between plaintiff and defendant concerning the continuing viability of restrictive covenants that had been written into the original subdivision deed. The document containing the Building and Use Restrictions of Lake Isabella South provides in paragraph twenty-four[1] that the original restrictions are to continue for twenty-five years from the initial recording of the deed, and further provides for automatic ten-year extensions after the twenty-five-year period expires. Defendant claims that the restrictions may be changed under the provisions of paragraph twenty-four at any time when a majority of the owners of lots agree. Plaintiff asserts that such changes may not occur until after the expiration of the initial twenty-five-year period. The trial court agreed with plaintiff's position and denied defendant's motion for summary disposition. We affirm.

Appellate review of a motion for summary disposition is de novo. *Spiek v Dep't of Transportation,* 456 Mich 331, 337; 572 NW2d 201 (1998). A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of a claim. The court considers the pleadings and any other evidence or documents submitted to determine whether a genuine issue of material fact exists. *Id.* In deciding whether a genuine issue of material fact exists, this Court must give the benefit of reasonable doubt and make all reasonable inferences in favor of the nonmoving party. *Anderson v Wiegand,* 223 Mich App 549, 553; 567 NW2d 452 (1997).

For purposes of this appeal, the parties do not dispute any of the material facts in this case. Instead, their disagreement centers around their differing interpretations of paragraph twenty-four of the original Building and Use Restrictions of Lake Isabella South document. The question to be resolved is whether the phrase "unless an instrument signed by a majority of the owners of the lots has been recorded, agreeing to change said covenants in whole or in part" is a modification only of the phrase "after which time said covenants shall be automatically extended for successive periods of ten years" or is additionally a modification of the phrase "[t]hese covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded."

In reviewing the language of restrictive covenants, this Court recognizes that "[b]uilding and use restrictions in residential deeds are favored by public policy." *Rofe v Robinson (On Second Remand)*, 126 Mich App 151, 157; 336 NW2d 778 (1983). Judicial policy requires that we seek to protect property owners who have complied with deed restrictions because such restrictive covenants protect property values as well as "'aesthetic characteristics considered to be essential constituents of a family environment.'" *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210-211; 568 NW2d 378 (1997), quoting *Rofe, supra* at 151; *Bellarmine Hills Ass'n v Residential Systems Co*, 84 Mich App 554, 559; 269 NW2d 673 (1978). In *Borowski v Welch*, 117 Mich App 712, 716-717; 324 NW2d 144 (1982), this Court summarized the rules for construing restrictive covenants as follows:

> When interpreting a restrictive covenant, courts must give effect to the instrument as a whole where the intent of the parties is clearly ascertainable. . . . Where the intent is clear from the whole document, there is no ambiguous restriction to interpret and the rules pertaining to the resolution of doubts in favor of the free use of property are therefore not applicable. . . . In placing the proper construction on restrictions, if there can be said to be any doubt about their exact meaning, the courts must have in mind the subdivider's intention and purpose. . . . The restrictions must be construed in light of the general plan under which the restrictive district was platted and developed. . . . In attempting to give effect to restrictive covenants, courts are not so much concerned with the grammatical rules or the strict letter of the words used as with arriving at the intention of the restrictor, if that can be gathered from the entire language of the instrument. . . . Moreover, the language employed in stating the restriction is to be taken in its ordinary and generally understood or popular sense, and is not to be subjected to technical refinement, nor the words torn from their association and their separate meanings sought in a lexicon. . . . Covenants are to be construed with reference to the present and prospective use of property as well as to the specific language employed and upon the reading as a whole rather than from isolated words. . . . [Citations omitted.]

The plain language used in paragraph twenty-four of the original Building and Use Restrictions of Lake Isabella South clearly and unambiguously provides that for a period of twenty-five years, the various property restrictions contained in the document will remain in force. Further, the provision indicates that after the twenty-five-year period expires, the "covenants shall be automatically extended

for successive periods of ten years." These phrases express the intent of the original restrictor to provide for stability with respect to the original property restrictions at least during the period of initial subdivision development; hence, paragraph twenty-four provides for a lengthy period of time during which the property restrictions are to remain in force and inviolate. Recognizing, however, that at some point conditions may have so changed that the restrictions will need to be altered, the restrictor also provided the means whereby they could be modified: the recording of an instrument signed by a majority of the owners of the lots agreeing to changes to the covenants.

Defendant maintains that this provision for change must operate during the initial twenty-five-year period, but that interpretation is in conflict with the evident intent of the restrictor. If defendant's interpretation is correct, then the restrictive covenants provide no stability to the existing lot owners in the subdivision or to prospective buyers. The covenants would be subject to change almost daily as new owners purchased lots (or buyers purchased existing homes) and created potential new majorities. As the restrictor evidently recognized, the time during which this problem would be most acute would be the period of initial development. Therefore, paragraph twenty-four clearly provides that changes *may not be made* during the initial twenty-five years. The next phrase of paragraph twenty-four then indicates that *after* the twenty-five-year period expires, the restrictions will automatically be carried forward *unless* a majority of the owners of lots agree to changes. Thus, the ability to change or modify the restrictions was intended by the restrictor to arise *only* after the subdivision had been given an opportunity to be settled and all, or most, of the lots had been sold and developed.

Defendant attempts to draw support for its interpretation of paragraph twenty-four by resorting to sentence diagrams and explanations of grammar. However, this Court in *Borowski, supra* at 716, cautioned that it was the intent of the restrictor that controlled, not "grammatical rules or the strict letter of the words used." However, even if the rules of grammar are resorted to, defendant's argument must still fail. In *Dale v Beta-C, Inc,* 227 Mich App 57, 69; 574 NW2d 697 (1997), this Court observed that "it is a general rule of statutory, as well as grammatical, construction that a modifying clause is confined to the last antecedent unless a contrary intention appears." In the instant case, the modifying clause "unless an instrument signed by a majority of the owners of lots has been recorded" follows immediately after the clause providing for automatic ten-year extensions of the restrictions and can only apply to that last antecedent clause.

Defendant's reliance on this Court's decision in *Ardmore Park Subdivision Ass'n, Inc v Simon,* 117 Mich App 57; 323 NW2d 591 (1982), is misplaced because the modification was agreed to *after* the expiration of the initial restriction period. Defendant nonetheless argues that *Ardmore Park, supra,* can be read to hold that where a restrictive covenant contains a modification provision, a majority of the owners can invoke that provision at any time, reasoning that if that were not so, the owners in *Ardmore Park, supra,* would have to have waited until the end of the ten-year period before enacting the modifications. However, this Court said nothing about attempts to modify the restrictions before the expiration of the initial time period and instead held only that the provision allowed such agreements to be modified during the successive ten-year periods arising *after* the initial period of restriction had expired.

Defendant also contends that since restrictions are to be strictly construed against those seeking to enforce them so as to protect the free use of one's property, *Rofe, supra* at 158, this Court must support the right of the majority lot owners to change the original restrictions. This argument must also be rejected. While it is true that in cases involving ambiguities, this Court must strictly construe property restrictions against those seeking enforcement and must resolve any doubts in favor of the free use of property, *id.*, this case does not involve ambiguous language. Absent any ambiguity, it is the policy of this state to enforce restrictive covenants as written. *Webb, supra* at 210-211.

Defendant's reliance on *Moore v Kimball*, 291 Mich 455; 289 NW2d 213 (1939), and *Sampson v Kaufman*, 345 Mich 48; 75 NW2d 64 (1956), is likewise unavailing because those cases are factually dissimilar in that the restrictions in each of those cases had expired. In the instant case, the original restrictions have not yet expired; thus, neither *Moore, supra,* nor *Sampson, supra,* are applicable.

The intent of the restrictor is apparent from a reading of the whole Building and Use Restriction document as originally drafted. The plain language of paragraph twenty-four forbids modifications to the restrictive covenants until twenty-five years have passed, an event that does not occur until April 5, 2001. Accordingly, construing the facts most favorably to plaintiff, defendant improperly attempted to change the restrictions prior to the expiration of the initial twenty-five-year period. The trial court therefore properly enforced the intent of the restrictor by granting injunctive relief to plaintiff and by denying defendant's motion for summary disposition.

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Richard A. Bandstra

[1] Paragraph twenty-four of the original Building and Use Restrictions of Lake Isabella South reads as follows:

> These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the owners of the lots has been recorded, agreeing to change said covenants in whole or in part. The terms of this section do not apply to section thirty-three (33), which is in perpetuity.