STATE OF MICHIGAN

COURT OF APPEALS

HEATHER LAKE HOMEOWNERS ASSOCIATION, Plaintiff-Appellee,	UNPUBLISHED November 18, 2003
v	No. 241860 Oakland Circuit Court
MARLO HEIN and EILEEN HEIN, Defendants-Appellants.	LC No. 01-034582-CZ

Before: Schuette, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order granting plaintiff's request for injunctive relief and directing defendants to remove stonework from their home so as to eliminate the words, "JESUS IS KING." We reverse.

Defendants first argue that reversal is required because of procedural irregularities. We disagree. Initially, defendants complained that the trial court failed to follow the procedures prescribed in MCR 2.116, which governs motions for summary disposition. Defendants' reliance on that rule is misplaced. Plaintiff never moved for summary disposition under MCR 2.116. Instead, plaintiff sought an injunction. The procedures for requesting and obtaining an injunction are set forth in MCR 3.310. Defendants do not allege a violation of that rule.

Defendants' principal complaint is that they were deprived of discovery and an evidentiary hearing, and that the court improperly relied on the arguments of counsel when granting plaintiff's request for injunctive relief. Defendants never complained of these matters below or indicated that further discovery or an evidentiary hearing was necessary. Although defendants' counsel stated at an earlier hearing that it was necessary to schedule "a hearing as to what the plan specifies," the trial court granted counsel's request and rescheduled the hearing to enable counsel to obtain a copy of the construction plans. There is no indication that counsel desired discovery of anything other than defendants' construction plans. Further, at the subsequent hearing, the court specifically inquired whether everyone had been fully heard and defendants did not request any further opportunity to explore other matters. "Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence." *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997). Accordingly, reversal is not warranted on this basis.

We agree, however, that the trial court erred in ordering defendants to remove the challenged stonework. The court granted plaintiff's request for injunctive relief on the basis that defendants failed to obtain approval of the stonework from plaintiff's Architectural Control Committee, contrary to article IV, paragraph 34, of the subdivision's recorded deed restrictions. That provision provides that construction plans and specifications "shall show the nature, kind, shape, height, [and] materials" of the structure to be built, and gives plaintiff "the right to refuse to approve" anything it felt was "not suitable or desirable."

In this case, it is not disputed that defendants' construction plans, including defendants' proposed stonework, was approved by plaintiff. Nonetheless, the construction plans did not disclose that the stonework would be arranged to read, "JESUS IS KING." Thus, at issue here is whether the deed restrictions required defendants to disclose that their stonework would be arranged to display the message, "JESUS IS KING," such that plaintiff's approval was required. In *Sampson v Kaufman*, 345 Mich 48, 50; 75 NW2d 64 (1956), our Supreme Court stated:

> When a question arises as to the meaning of restrictions as set forth in a deed, such covenants are construed strictly against those claiming the right of enforcement and all doubts are resolved in favor of the free use of the property. Courts of equity will not grant relief in cases of this nature unless the right thereto is clear.

Here, paragraph 34 of the deed restrictions only requires that construction plans show the nature, kind, shape, height and materials of the structure. There is no requirement that the plans show the exact arrangement of the building materials for the structure. Furthermore, there is no restriction on signage. Under these circumstances, paragraph 34 is, at best, ambiguous as to whether disclosure of a particular brick arrangement is necessary. Given this ambiguity, any doubts must be resolved in favor of permitting defendants the free use of their property, so as to allow them to arrange the bricks in the manner they desire. Because defendants' submitted plans indicated that their structure would have stone facing and plaintiff approved these plans, there was no clear violation of paragraph 34. Accordingly, plaintiff was not entitled to a court order requiring defendants to remove the stonework.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Bill Schuette
/s/ Mark J. Cavanagh
/s/ Helene N. White