STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0066

Whitefish Enterprises, LLC,
Respondent,

vs.

Dan Leagjeld, et al.,
Appellants.

Filed August 30, 2021
Affirmed
Florey, Judge

Crow Wing County District Court
File No. 18-CV-19-3407

Mark Thieroff, Siegel Brill, P.A., Minneapolis, Minnesota (for respondent)

Jennifer C. Moreau, Barna, Guzy & Steffen, Ltd., Minneapolis, Minnesota (for appellants)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal from summary judgment and the grant of a permanent injunction based on restrictive covenants in a property declaration, appellants argue that the district court erred by (1) concluding that respondent had standing to enforce the restrictive covenants; (2) determining that an attempted amendment of the declaration was ineffective;

(3) considering undisclosed claims and allegations; (4) granting summary judgment; and (5) providing injunctive relief. We affirm.

FACTS

Ted and Suzanne Leagjeld created a corporation, Driftwood Family Resort, Inc., through which they operated Driftwood Resort (collectively, DFR) on Upper Whitefish Lake from the 1970s until 2008, when the resort closed. In 2010, DFR developed the property for single-family residential use, dividing it into 14 lake lots and two outlots. As part of the development plan, DFR filed a Declaration of Covenants and Restrictions (the declaration). Relevant to this matter, the declaration restricts land use to "single family, private, residential Dwellings" and bans business and commercial buildings. No commercial or industrial use is permitted, except for the use of part of a residence as an office. All vehicles are to be parked in a garage "if available" and "boats, trailers, campers, mobile homes, all-terrain vehicles and other motorized vehicles shall be stored in garages or screened from adjoining Lots and any lakeshore on the Lot." The provisions of the declaration may be amended: "Any amendment, including any amendment creating an Association comprised of Owners of the Property, must obtain approval of at least 66-2/3% of the votes of Members and be in compliance with the provisions of Minn. Stat. § 515B." The document does not define "owners" or "members."

Beginning sometime in the 1990s, DFR permitted the owners of four houseboats to dock their vessels at the resort each summer. The houseboats had been moored at another resort that closed; DFR permitted the boats to be moored on what became Lot 7. This practice continued after DFR subdivided the property and after appellants Dan Leagjeld

and Donna Leagjeld[1] purchased Lot 7. The mooring site included docks, electric hook-ups, and a well for the use of the houseboats, although it is not clear who installed the amenities. The houseboat owners built four sheds on the property, one with an attached deck, and each houseboat owner controlled a corresponding shed. A fifth houseboat and shed joined the others around 2018. Until 2018, neither DFR nor appellants charged the houseboat owners for the privilege of docking there for the summer, but merely asked the houseboat owners to help maintain the land by mowing. From the 1990s until 2008, and from 2011 through 2018, the houseboat owners were allowed to moor their boats through the season, entertain friends and family, store their boats on the property, park their vehicles and trailers on the property, use electricity and water, and maintain sheds on the property, without significant payment. In 2018, the houseboat owners began contributing to the cost of the property taxes. The houseboat owners were not friends or family of DFR or appellants.

In 2013, respondent Whitefish Enterprises, LLC, a company wholly owned by Paul Fischer, purchased Lot 6 of the former DFR property. Fischer built and finished a cabin on Lot 6 in 2014. Appellants, who already owned Lot 7, purchased Lots 8 and 9 from DFR in 2017. Appellants did not build a residence on the lots but groups of people used and visited the houseboats each year and brought "vehicles, travel trailers, boat trailers, recreational vehicles, and sports utility trailers." The sheds owned by the houseboats were originally near the docks but were eventually moved near the property line between Lots 6

[1] Dan Leagjeld is the son of Ted and Suzanne Leagjeld; Donna is his wife.

and 7. Appellants rarely visited their land; all of the activity came from the houseboats and guests of the houseboat owners.

Appellant Dan Leagjeld works in the dredging industry. After acquiring Lots 8 and 9 in 2017, appellants moved some of their dredging equipment, including one barge and a floating backhoe, onto Lot 8 for storage. Appellant could move the equipment into the water from a dirt ramp on Lot 8. He had tried to use a public landing but was unable to do so; the Department of Natural Resources (DNR) suggested that he petition to change the land-use designation on Lots 7, 8, and 9 to commercial so that he could install a concrete ramp.

In May 2019, appellants applied to the county board for (1) a land-use amendment, changing the zoning on Lots 7, 8, and 9 from Shoreland District (residential) to Waterfront Commercial; (2) a conditional use permit (CUP) permitting uses for a dredging business and associated activities, and a houseboat business; and (3) an after-the-fact variance, permitting the sheds to remain near the docks. Respondent objected, citing the restrictive covenants in the declaration.

In July 2019, the county board approved the land-use amendment and the CUP, but denied the after-the-fact variance. Respondent served a summons and complaint on appellants on August 23, 2019. On August 29, 2019, appellants filed an amendment to the declaration, signed by some of the other lot owners. The amendment would permit commercial activities on Lots 7, 8, and 9, specifically allowing a dredging business and a houseboat business, and allow the land-use designation on those lots to be changed to

Waterfront Commercial. Appellants and respondent disputed whether the amendment was made in compliance with the terms of the declaration.

Despite the purported amendment, respondent continued to pursue its lawsuit; the parties filed cross-motions for summary judgment in June 2020. After a hearing, the district court made the following conclusions of law: (1) respondent has standing to enforce the declaration; (2) appellants are violating the declaration's restrictive covenants by running a houseboat business, failing to screen vehicles, operating a dredging business and storing dredging equipment on the lots; (3) appellants' attempt to amend the declaration failed because it did not comply with Minn. Stat. ch. 515B, which requires a unanimous vote to change a land-use designation from residential to non-residential; (4) even if the change required only a two-thirds vote, appellants' amendment was only supported by 62.5% of the owners; (5) appellants' activities are causing respondent irreparable harm and respondent is entitled to injunctive relief; and (6) appellants' other arguments are baseless. This appeal follows.

DECISION

I. Respondent had standing to enforce the terms of the declaration.

Appellants argue that respondent does not have standing under Minn. Stat. §§ 515B.1-101-.4-118 (2020) to enforce the declaration. The declaration states that enforcement of its provisions is to be made "in accordance with the provisions of Minn. Stat. §515B." Appellants assert that respondent is not an association or has not shown that it is adversely affected by violation of the declaration, as is required to establish standing under section 515B.4-116. The district court concluded that respondent had standing "as

an owner of a parcel benefited by the Declaration." We review the issue of whether a party has standing de novo, as a question of law. *Minn. Sands, LLC v. County of Winona*, 940 N.W.2d 183, 192 (Minn. 2020).

"Standing is acquired in two ways: either the plaintiff has suffered some 'injury-in-fact' or the plaintiff is the beneficiary of some legislative enactment granting standing." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). Standing requires a party to have "a sufficient stake in a justiciable controversy to seek relief from a court." *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007).

Minn. Stat. § 515B.4-116, which governs enforcement of the declaration, states that any person who is "adversely affected by the failure to comply [with a declaration, provision, bylaws, or rules] has a claim for appropriate relief." An association also has standing to pursue claims on behalf of owners of two or more units, but no association was created in this case. *Id*. The question, then, is whether respondent was adversely affected by the failure to comply with the declaration.

The declaration's general purpose is to "establish a general plan and uniform scheme of development and improvement of the Property" and to "provide for the preservation and enhancement of property values, amenities and opportunities within the Property in order to contribute to the personal and general health, safety, and welfare" of the property owners. In part, this purpose is achieved by limiting the development to "single family, private, residential Dwellings and for no other purpose." The declaration also forbids commercial activities and has strict requirements for dwelling appearances and screening of vehicles. Section 4.3 of the declaration provides that the covenants are

"binding upon the Owners of any portion thereof, and shall inure to the benefit of the Owners of the property." Respondent was subject to the restrictive terms of the declaration and had the right to expect the benefits of it as well. *See* Minn. Stat. § 515B.4-116(a) (providing that any person affected by a violation of a declaration "has a claim for appropriate relief").

Respondent alleged violations of the restrictive covenants in its complaint sufficient to show an adverse effect from noncompliance with the declaration. In the absence of an association, the only means of enforcement are the owners subject to the declaration. The district court did not err by finding that respondent had standing to pursue this action.

II. Respondent's cause of action was not moot because the attempted amendment of the declaration was ineffective.

Appellants argue that the district court erred by concluding that the attempted amendment of the declaration was ineffective and, therefore, that respondent's suit was not moot. We review de novo whether a cause of action is moot. *Isaacs v. Am. Iron & Steel Co.*, 690 N.W.2d 373, 376 (Minn. App. 2004), *review denied* (Minn. Apr. 4, 2005). A cause of action is moot "if an event occurs that resolves the issue or renders it impossible to grant effective relief." *Id.* Appellants assert that the amendment of the declaration to permit rezoning and commercial use makes it impossible to grant respondent effective relief. The question of mootness depends on whether the amendment to the declaration was effective.

The declaration is a contract. *See* Restatement (Second) of Contracts §1 (1981) ("A contract is a promise or a set of promises for the breach of which the law gives a remedy,

or the performance of which the law in some way recognizes a duty."). "Absent ambiguity, the interpretation of a contract is a question of law." *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *review denied* (Minn. July 19, 2011). The district court concluded that the contract was unambiguous as to the activities prohibited by the restrictive covenants and the clauses governing amendment of the declaration.

The declaration requires that "any amendment . . . must obtain the approval of at least 66-2/3% of the votes of Members *and* be in compliance with the provisions of Minn. Stat. §515B." (Emphasis added). Minn. Stat. § 515B.2-118 governs amendment of declarations. This section provides that amendments must be approved by two-thirds of unit owners generally, but requires unanimous consent of unit owners for certain changes, including an amendment that "changes the authorized use of a unit from residential to nonresidential." Minn. Stat. § 515B.2-118(a)(3). The district court concluded that the amendment sought to change the authorized use of the property from strictly residential to waterfront commercial, and, therefore, it was ineffective because the vote was not unanimous.

Appellants argue that this section does not apply because residential use is permitted in a property designated as "waterfront commercial," and the designation as "nonresidential" is appropriate only when a restriction prohibits residential use. Minn. Stat. § 515B.1-103(30) ("For purposes of this chapter, a unit is restricted to nonresidential use if the unit is subject to a restriction that prohibits residential use as defined in this section whether or not the restriction also prohibits the uses described in this paragraph.") The district court rejected this interpretation of the statute. The same section limits

"residential use" to "use as a dwelling, whether primary, secondary or seasonal" but not including hotels or motels or rental of partial units or dwellings. *Id.* This definition of "residential" does not include mixed uses such as commercial and residential, as suggested by appellants.

The district court's interpretation of the declaration and statute is not erroneous. A unanimous vote was necessary to amend the declaration because the amendment sought to change the use from residential to nonresidential, even if the change was not "restricted to nonresidential use." Because the amendment was not effective, respondent's cause of action is not moot.

III. The complaint provided adequate notice of respondent's claims.

Appellants argue that the district court improperly considered claims that had not been pleaded or raised prior to summary judgment. Specifically, appellants argue that respondent's complaint did not give them notice of violations of Paragraph 3.1.6 of the declaration (requiring screening or garaging of vehicles) or of respondent's claim for deprivation of quiet enjoyment and loss of property value. The district court determined that the complaint provided adequate notice of respondent's cause of action and that some of the issues raised were intended to show the consequences of appellants' violations of the declaration.

Minn. R. Civ. P. 8.01 requires "a short and plain statement of the claim showing that the pleader is entitled to relief." We review de novo whether a complaint sets forth a claim on which relief can be granted, accepting the facts alleged in the complaint as true and construing all reasonable inferences in favor of the nonmoving party. *Halva v. Minn.*

State Colls. & Univs., 953 N.W.2d 496, 500 (Minn. 2021). Minnesota is a notice-pleading state, allowing plaintiffs to plead "broad general statement[s] which may express conclusions rather than . . . a statement of facts sufficient to constitute a cause of action." *Id.* (quotation omitted). "A pleading is sufficiently detailed when it gives fair notice to the adverse party of the incident giving rise to the suit with sufficient clarity to disclose the pleader's theory upon which his claim for relief is based." *Id.* at 503 (quotation omitted).

Respondent's complaint alleges the existence of the restrictive covenants under the declaration and specifically alleges violations of sections 3.1.1 and 3.1.4, limiting activity to residential use and forbidding commercial or business usages. The complaint is adequate to meet the notice-pleading requirements despite not mentioning section 3.1.6, requiring garaging or screening of vehicles, which respondent raised in its motion for summary judgment.

Appellants also argue that the district court erred by considering certain evidence first identified in the summary-judgment proceedings. We review the district court's decision on what evidence to consider on a motion for summary judgment for an abuse of discretion. *Antonello v. Comm'r of Rev.*, 884 N.W.2d 640, 644-45 (Minn. 2016). In *Antonello*, the supreme court approved the exclusion of certain evidence raised first on summary judgment because it was not material to the issue before the tax court: the taxpayers were challenging a decision as to whether they had properly documented charitable deductions and the commissioner, at the summary-judgment hearing, asked the court to address a computational error in the calculation of the taxpayers' liability. *Id.* The

tax court excluded evidence of the computational error as not material to the issue before the court—whether the taxpayers had properly documented a charitable deduction. *Id.*

The district court here found that respondent's "deprivation-of-use-and-enjoyment claim" related directly to its allegation that appellants were "conducting a dredging business and a houseboat business in violation of the declaration," and that the claims were within the notice-pleading requirements. The district court concluded that appellants were on notice that respondent claimed they

> were doing things with houseboats and dredging, which they were not allowed to do; and that the assertions that [respondent] put forth in these summary judgment proceedings about their loss of quiet enjoyment and concerns of decreased property values are not claims or unpled claims, but rather, they are explanations of the consequences and effects they are experiencing by [appellants'] violation of the declaration.

Because the district court's explanation for considering the evidence is reasonable and logical based on the facts in the record, we conclude that the district court did not abuse its discretion in this decision. *See Blehr v. Anderson*, 955 N.W.2d 613, 624 (Minn. App. 2021) (quotation omitted).

Appellants also argue that respondent's deprivation-of-use-and-enjoyment claim should be barred because respondent failed to supplement its answers to interrogatories. Specifically, appellants challenge two interrogatories: (1) when asked to describe all facts that supported the allegation that appellants were running a houseboat business, respondent replied that it believed appellants were "renting" five docks for houseboats and permitted five sheds and (2) when asked to identify all non-residential uses on "any of the lots," respondent objected to the question as "vague and undefined." Appellants did not seek a

clarification of this response. Neither of the interrogatories cited by appellants demand an answer relating to deprivation of use and enjoyment. When appellants objected before the summary-judgment hearing, respondent offered to change the date of the summary-judgment hearing and make Fischer available for a deposition, but appellants declined to depose him. On these facts, there is no basis to bar this claim.

IV. The district court's grant of summary judgment is supported by the record and the law.

Appellants argue that the district court erred as a matter of law by granting summary judgment because the undisputed facts did not support its conclusions that (1) appellants were operating businesses on their lots in violation of the declaration; (2) appellants were permitting activities that were inconsistent with those of other residents; and (3) vehicles were inadequately screened in violation of section 3.1.6.

We review a grant of summary judgment "de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). We view the evidence in the light most favorable to the nonmoving party. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). Contract interpretation is a question of law subject to de novo review. *City of Duluth v. Fond du Lac Band of Lake Superior Chippewa*¸ 843 N.W.2d 577, 581 (Minn. 2014). If a contract is clear and unambiguous, the agreement will be enforced as expressed in the contract. *Id.* Unambiguous contract language is assigned its plain meaning. *Id.* at 582.

The district court found the following facts were undisputed: (1) the declaration limited the use of the property to "single family, private, residential" dwellings; (2) the declaration prohibited "manufacturing, trade, business, commerce, industry, profession or other occupation," except for a private office; (3) the declaration required all automobiles of owners or occupants (excluding temporary guests) to be parked in garages or otherwise screened; (4) the declaration required all boats, trailers, campers, mobile homes, all-terrain vehicles and other motorized vehicles to be stored in garages or screened from adjoining lots and the lakeshore, if possible; (5) appellants visited their property only to mow; (6) at least since 2018, the houseboat owners contributed to the property taxes; (7) sheds on the property belonged to and were controlled by the houseboat owners; (8) appellants stored a barge and a floating backhoe used in their dredging business on the property, which were visible to neighboring lots; (9) three of the houseboats were stored on the property for the winter; (10) appellants used a ramp on the property to permit access for dredging and to remove and store houseboats in the winter; and (11) five docks on appellants' property were reserved to the houseboats and were serviced by running water and electrical hook-ups.

Based on these undisputed facts, the district court concluded that appellants were operating a commercial dredging business and a houseboat business on their property. The district court also found that storage of the dredging equipment and the winter storage of the houseboats without screening violated section 3.1.6 of the declaration. Notably, although the district court mentioned the added traffic from guests of the houseboat owners

and respondent's allegations of noise and deprivation of quiet enjoyment, the decision is not based on these allegations.

The district court concluded that the terms of the declaration were unambiguous. The district court further concluded that appellants were in clear violation of sections 3.1.1 (restricting property to residential uses), 3.1.4 (prohibiting commercial activities), and 3.1.6 (requiring screening or garaging of vehicles of all types). Our de novo review of the declaration is consistent with the district court's analysis. Based on the undisputed facts and application of unambiguous contract terms, the district court's grant of summary judgment was not erroneous.

V. Injunctive relief is the appropriate remedy.

Appellants argue that the district court erred by granting a permanent injunction in favor of respondent. Appellants assert that respondent failed to sustain its burden of showing irreparable harm and that the district court failed to consider remedies other than injunctive relief. We review a district court's exercise of its equitable powers for an abuse of discretion. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011).

> An injunction will not be granted to enforce the provisions of a contract unless the court is satisfied that the enforcement will be just and equitable and will not work hardship or oppression. Therefore, to be granted a permanent injunction, a party must show that any remedy at law would be inadequate and that an injunction is necessary to prevent great and irreparable injury.

St. Jude Medical, Inc. v. Carter, 913 N.W.2d 678, 683 (Minn. 2018) (quotations and citation omitted). Although the declaration specifically permits enforcement by equitable remedy, "[w]hen equitable considerations are present, we will consider factors beyond the

intent of the parties, no matter how unambiguously that intent may be expressed in a contract provision." *Id.*

The district court concluded that respondent was entitled to injunctive relief because appellants were violating the declaration and respondent had no adequate legal remedy. The district court stated that the declaration was intended to protect use and enjoyment of real estate, "which by its very nature is unique," adding that the deprivation of quiet use and enjoyment and the aesthetic harm of appellant's conduct could not be measured in money damages.

It is difficult to see how enforcement of the declaration by injunctive relief would work hardship or oppression on appellants. The declaration clearly states that in order to preserve and enhance property values, amenities, and opportunities within the property, it would impose certain restrictions, including limiting the use to "single family, private, residential Dwellings," prohibiting "manufacturing, trade, business, commerce, industry, profession or other occupation whatsoever," and requiring garaging and screening of vehicles and boats of all types. These restrictive covenants were in place before the property was conveyed to appellants.

In *LaValle v. Kulkay*, 277 N.W.2d 400, 402 (Minn. 1979), the landowner developed property that was subject to a restrictive covenant that limited development of the lots to single-family houses. In an action to enforce the restrictive covenant by injunction, the supreme court noted that the validity of the injunctive relief depended on the grantor's intent, a factual issue to be determined by the district court, which would not be set aside unless clearly erroneous. *Id.* The district court found that, although some exceptions to

the restrictions were granted, the grantors intended the general plan to restrict development to single-family houses. *Id.* at 403. The supreme court held that the plaintiffs were entitled to enforce the restrictive covenants with injunctive relief. *Id.* The language of the declaration here shows an intent to limit use of the property to residential purposes.

Minnesota law views land as unique when compared to other types of property; equitable relief may not be available if monetary damages are adequate to compensate for most types of property, but "special status [is] accorded to land as distinguished from other forms of property." *Shaughnessy v. Eidsmo*, 23 N.W.2d 362, 368 (Minn. 1946) ("[D]amages for the breach of a contract for the sale and purchase of any interest in land is always considered inadequate, without regard to the size, value or location of the land . . . probably due historically to the peculiar respect and consideration which has been accorded to land in English law" (quotation omitted)); *see also Christie v. Christie*, 911 N.W.2d 833, 839-40 (Minn. 2018) (citing *Shaughnessy* for the principle that land has a "special status" compared with other forms of property). Considering this special status accorded to land, it was reasonable for the district court to conclude that monetary damages would be inadequate and that the only adequate remedy for appellants' conduct was to enjoin them from further violating the restrictive covenants at issue.

The district court's decision to grant injunctive relief was not an abuse of discretion. Appellants are in open violation of the restrictive covenants, and monetary damages are not an adequate remedy for the ongoing harm.

Affirmed.