STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0535

Board of Directors, Colony by the Greens Townhome Association,
Respondent,

vs.

Jackie Santopietro,
Appellant.

Filed November 20, 2023
Affirmed
Cleary, Judge[*]

Wright County District Court
File No. 86-CV-22-3401

Stephen R. Conroy, Conroy Law Office, Ltd., Monticello, Minnesota (for respondent)

Lindsey L. Larson, Anne T. Regan, Hellmuth & Johnson, PLLC, Edina, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Schmidt, Judge; and Cleary, Judge.

NONPRECEDENTIAL OPINION

CLEARY, Judge

Appellant and townhome owner Jackie Santopietro challenges the grant of summary judgment for respondent Board of Directors of the Colony by the Greens Townhome

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Association (the Board) on its breach-of-contract claim against Santopietro relating to her construction of a deck. We affirm.

FACTS

Santopietro owns a townhome on Jerry Liefert Drive in Wright County, Minnesota within the Colony by the Greens Townhouse Association.[1] The Colony by the Greens Townhouse Association is governed by the Declaration of Covenants, Conditions, and Restrictions (the Declaration) and the by-laws. Section 8.2 of the Declaration provides a process for requests for alterations to the property, including the common elements.

On June 25, 2020, Santopietro submitted a letter to the Board requesting permission to build a 12' x 24' deck outside the back door of her townhome in the common elements. On July 23, 2020, the Board sent a letter to Santopietro denying her request because homeowners "cannot use the common ground for personal use." On August 6, 2020, Santopietro wrote a letter expressing her disagreement with the denial. It stated:

> As discussed in the June Board meeting, I am willing to go the patio route or patio blocks, whatever materials the board prefers I use. I just expect the Board to uphold my rights as an Owner of a Townhome in this association. Section 3.2 paragraph B states owners have the right of overhang and encroachment of improvements on a lot which are inconsistent with the use of other members. 12 feet outside my back door meets that criteria. Section 8 lists the criteria I need to meet for approval. If there is criteria I am not meeting for the deck or if you prefer I put in a patio please let me know. Otherwise please do the appropriate thing and approve the request.

[1] The following facts are taken from the district court's February 16, 2023, order granting summary judgment in favor of respondent. The facts are undisputed and framed in the light most favorable to Santopietro as the nonmoving party. *See Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 189-90 (Minn. 2019).

The Board did not respond to Santopietro's letter.

On May 5, 2021, Santopietro sent another signed letter to the Board requesting permission to construct a deck. On June 24, 2021, the Board denied the request because the "sun room has used up all of your available space for your unit" and you "cannot build on the common property for your personal use."

On October 23, 2021, the Board sent another letter to Santopietro, stating:

> Regarding request to add a deck at the Annual Board Meeting on September 16, 2021 without request in writing.
>
> Ms. Jackie Santopietro,
>
> As stated in previous letters, your request for a deck has been denied. You cannot build on the common property. The request is denied.
>
> When you closed on your unit, you were given the by-laws and at the time of your closing you agreed to the by-laws and the board's decision.
>
> The request for a deck is closed.

Santopietro then constructed a deck.

On July 12, 2022, the Board sent Santopietro a letter informing her that she was being fined $100 per day beginning on May 2, 2022 for the following "offenses": (1) "[c]onstruction of deck on common element that has been denied by the Board of Directors twice"; (2) "[d]is-assembling irrigation system, tampering with watershed and in ground electrical box"; (3) "[v]ehicle (golf cart) parked/driven on common element"; (4) "[p]otted plants on common element without written request or Board approval"; and (5) "[b]ird feeders in trees in common element without written request or Board approval."

The next day, the Board filed a breach of contract claim alleging that Santopietro constructed her deck without approval, violating section 3.6 of the Declaration. The Board then moved for summary judgment. Santopietro opposed the Board's motion for summary judgment.

At the hearing on December 13, 2022, the district court heard arguments from both parties. The Board argued that it had denied both of Santopietro's formal requests to build a deck and that the letter from August 6, 2020, was not a formal request but a complaint about the prior rejection of her request. It confirmed that Santopietro already has a covered porch on the back of her home and that no other units have both a deck and a covered porch. Santopietro argued that the Board ignored two sections of the Declaration, sections 3.2 and 3.3, that permitted her construction of the deck. She also argued that the August 6, 2020, letter was a formal request that the Board ignored.

On February 16, 2023, the district court granted the Board's motion for summary judgment. Santopietro appeals.

DECISION

Santopietro argues that the district court erred by granting summary judgment in favor of the Board on its breach-of-contract claim.

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01; *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017). "A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party." *Leeco, Inc. v. Cornerstone Bank*, 898 N.W.2d 653, 657 (Minn. App.

2017), *rev. denied* (Minn. Sept. 27, 2017). A material fact is one that affects the outcome or result of a case. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). We review a district court's grant of summary judgment de novo and, in doing so, view the evidence in the light most favorable to the party against whom the district court granted summary judgment. *Henson*, 922 N.W.2d at190.

Santopietro makes two arguments on appeal. First, Santopietro argues that sections 3.2 and 3.3 of the Declaration permit her to build her deck. She specifically contends that the district court erred in its interpretation of the plain meaning of section 3.2(d) of the Declaration. Second, and in the alternative, Santopietro argues that the district court erred in finding her August 6, 2020, letter was not a formal request. We address each argument in turn.

I. The district court did not err in interpreting section 3.2(d) of the Declaration.

First, Santopietro argues that the district court erred in interpreting section 3.2(d). The governing documents of a homeowners' association constitute a contract between the association and its individual members. *See Swanson v. Parkway Ests. Townhouse Ass'n*, 567 N.W.2d 767, 768 (Minn. App. 1997). Accordingly, an association's declarations and bylaws are interpreted according to contract interpretation principles. *Harkins v. Grant Park Ass'n*, 972 N.W.2d 381, 388 (Minn. 2022). The primary purpose in construing a contract is to determine the intention of the parties based on the language of the contract and enforce that intent. *Hall v. City of Plainview*, 954 N.W.2d 254, 266 (Minn. 2021). "In interpreting a contract, the language is to be given its plain and ordinary meaning." *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). We

also construe it "as a whole," "attempt to harmonize all [of its] clauses," and seek to avoid interpretations that render a provision meaningless. *See Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525-26 (Minn. 1990). Additionally, we "will not construe the terms so as to lead to a harsh and absurd result." *Brookfield*, 584 N.W.2d at 394.

When moving for summary judgment, Santopietro argued that section 3.2(d) of the Declaration permits her construction of a deck. Section 3.2(d) states:

> Member's Easement of Enjoyment. Every member shall have the following nonexclusive appurtenant easements to common area:
>
> . . . .
>
> d. Right of overhang and encroachment of improvements on a lot which are inconsistent with the use of the common areas by other members.

Santopietro asserts that her construction of the deck is authorized by section 3.2(d) because "[a] deck directly adjacent to a townhome unit is 1) an improvement 2) which is inconsistent 3) with the use of common areas 4) by other members—like the other decks that already exist within the Association."

The district court rejected Santopietro's argument that her construction of the deck, after the Board denied her formal requests, was authorized by section 3.2(d) of the Declaration. It concluded that the "wording of Section 3.2(d) is confusing and nonsensical" because the current wording would give every homeowner the right to construct improvements on the common areas that *are inconsistent* with the use of other homeowners and that this result "is clearly not the intent of the parties." As a result, it determined that

the word "not" was accidentally omitted between the words "are" and "inconsistent." It reasoned that when section 3.2(d) is read in context, "it is . . . clearly inapposite to the entirety of the Declaration which clearly requires consent or permission from the Board to construct any structure on the common areas."

Santopietro argues that the district court erred by inserting the word "not," which was not included by the drafters, and asserts that her interpretation of the section is "entirely sensical." We disagree. As the district court identified, the Declaration regulates residents use of common areas and includes specific processes for requesting, approving, and constructing improvements. *See Hall*, 954 N.W.2d at 266 (stating that the primary purpose in construing a contract is to determine the intention of the parties based on the language of the contract and enforce that intent). It is illogical to read this section of the Declaration as authorizing homeowners the right to construct improvements on the common area that are inconsistent with the use of other homeowners. *See Brookfield*, 584 N.W.2d at 394. As a result, when the Declaration is read as a whole, the only logical interpretation is that the word "not" was excluded between the words "are" and "inconsistent." *See Chergosky*, 463 N.W.2d at 525-26. This reading is consistent with the other portions of the Declaration and provides each homeowner the right to use common elements so long as that use is consistent with other homeowners' use of the common area.[2]

[2] In the alternative, Santopietro asserts that the district court erred by determining that the contract was unambiguous. *See Windcliff Ass'n, Inc. v. Breyfogle*, 988 N.W.2d 911, 920 (Minn. 2023) (quotation omitted) (providing that a contract is ambiguous when the language is susceptible to two or more reasonable interpretations). She asserts that section 3.2(d) is susceptible to two interpretations—with and without the word "not." As explained above, because section 3.2(d) can only be logically interpreted when read with the word

In sum, the district court did not err in interpreting the section 3.2(d) of the Declaration.

II. The district court did not err by determining that Santopietro's August 6, 2020, letter was not a formal request under section 8.2(a) of the Declaration.

Second, Santopietro argues that the district court erred by determining that her August 6, 2020, letter was not a formal request under section 8.2(a) of the Declaration. Section 8.2(a) provides:

> Detailed plans, specifications and related information regarding any proposed alteration, in form and content acceptable to the Board of Directors, shall be submitted to the Board of Directors at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.

Santopietro further argues that section 8.2(b) authorized her construction of the deck because the Board failed to respond to the August 6, 2020, letter within 60 days of receipt. Section 8(b) provides:

> If the Board of Directors fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications and all other information requested by the Board of Directors, then approval will not be required, and this Section shall be deemed to have been fully complied with so long as the alterations are done in accordance with the plans, specifications and related information which were submitted.

The district court determined, based on a "review of [the August 6, 2020] letter," that "she was simply expressing her disappointment with the Board's decision and her

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"not," it is only susceptible to one reasonable interpretation. Accordingly, the district court did not err by determining that the contract was unambiguous.

expectations of the Board's obligations under the Declaration" and the letter "was not a new request submitted in accordance with Section 8.2(a)." The district court reasoned that the letter included no new or detailed plans or specifications regarding her proposal to build a deck that had not already been reviewed and rejected by the Board. Accordingly, the district court concluded that the August 6, 2020, letter was not a formal request.

Santopietro argues that the district court erred by deciding disputed issues of material fact about whether her August 6, 2020, letter was a formal request under section 8.2(a) of the Declaration. We disagree. The record supports the district court's determination that the letter does not comply with the requirements for a formal request under section 8.2(a), and, unlike the other two letters requesting to construct the deck, the text of the letter does not suggest it was a formal request.

Additionally, Santopietro did not begin construction 60 days after the August 6, 2020, letter. In fact, on May 5, 2021, nine months after the August 6, 2020, letter and seven months after the 60-day marker imposed by section 8.2(b), Santopietro submitted another formal request. That request was denied on June 24, 2021. Following that denial, Santopietro constructed the deck. Because the August 6, 2020, letter was not a formal requested under section 8.2(a) of the Declaration, and the Board timely denied the last request Santopietro submitted, she had no authority to build the deck.[3] As a result, the

[3] Santopietro further argues that the district court made improper credibility determinations about her declaration in which she stated that she understood the August 6, 2020, letter to be a "formal, second submission pursuant to Declaration Section 8.2(a)." Courts must not weigh facts or determine the credibility of affidavits and other evidence on summary judgment. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). However, whether Santopietro believed the August 6, 2020, letter was a request is

district court did not err by granting summary judgment in favor of the Board on its breach-of-contract claim.

Affirmed.

immaterial to the dispute presented here—whether the August 6, 2020, letter meets the requirements for a formal request under section 8.2(a). The district court did not err.