NO. COA01-266

NORTH CAROLINA COURT OF APPEALS

Filed: 05 March 2002

RICHARD B. PARKER and wife, ANITA M. PARKER; and LARRY D. SEVERT and wife, NANCY H. SEVERT

v.

Wilkes County
No. 99 CVD 962

BILLY R. HIGGINS and wife, ROSIE G. HIGGINS

Appeal by plaintiffs from judgment entered 10 August 2000 by Judge Jeanie R. Houston in Wilkes County District Court. Heard in the Court of Appeals 7 November 2001.

Craige, Brawley, Liipfert & Walker, L.L.P., by William W. Walker, for plaintiffs-appellants.

No brief filed for defendants-appellees.

THOMAS, Judge.

Plaintiffs appeal the trial court's order that an attempt to amend restrictive covenants of a subdivision was ineffective as to defendants' lot.

Plaintiffs contend the trial court erred in determining that: (1) "as a matter of equity" defendants should not be bound by the burden of any "amended" restrictive covenants; and (2) the warranty deed was not a valid and effective instrument to amend the restrictive covenants. For the reasons herein, we hold defendants

are not bound by the amendments.

Plaintiffs, Richard B. Parker, and wife, Anita M. Parker, and Larry D. Severt and wife, Nancy H. Severt, and defendants, Billy R. Higgins, and wife, Rosie G. Higgins, are all owners of lots in Berry Mountain Estates subdivision in Wilkes County. Defendants bought a lot in the subdivision in May of 1997. At the time, the original restrictive covenants, recorded on 3 April 1969 in volume 498, pages 81-84 of the Wilkes County Registry, were effective. They provide in pertinent part:

> 8. No structure of a temporary character, tent, shack, garage, barn, basement, trailer of any type, or other out-building shall be used on any lot at any time as a residence either temporarily or permanently.
>
> . . . .
>
> 14. These covenants are to run with the land and shall be . . . automatically extended for successive periods . . . unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

By 4 November 1998, defendants had obtained all necessary permits from the county for the placement and construction of a modular home on their land, and a dealer at Expression Homes ordered the home.

A majority of the lot owners, including defendants, signed signature pages attached to a form general warranty deed, recorded on 6 November 1998, which included the following amendment to the original restrictive covenants:

> No mobile home nor modular home is permitted on any lot, excepting those in place at the time of the recording of this amendment.

Defendant Rosie Higgins testified that the amended restrictive covenant was not attached to the list of signatures two neighbors brought to her home late one night. She assumed the list she and her husband signed concerned the ongoing fight against a neighboring lot owner's undersized modular home, which was in violation of the original restrictive covenants. The two neighbors, however, testified that the amendment was attached to the signature pages.

After learning in March of 1999 that defendants planned to install a modular home, plaintiffs warned them in writing on 31 March 1999 that any attempt to install the home would result in legal action. Defendants nevertheless began installing their home in early May of 1999. Plaintiffs responded by filing a suit alleging violation of the restrictive covenants. The trial court entered a temporary restraining order, followed by a preliminary injunction directing defendants to stop all work on their home.

In a bench trial, the trial court determined that: (1) defendants should not be bound in equity by the burden of any "amended" restrictive covenants because defendants had purchased their home and received all necessary permits from the county for its placement on their lot before the deed was recorded; (2) the general warranty deed purporting to amend the original restrictive covenants is not a valid instrument to amend restrictive covenants; (3) the injunction should be lifted; and (4) defendants may begin the process of completing the placement of their home on the property. Plaintiffs appeal, and argue two assignments of error.

On appeal, a trial court's findings of fact in a bench trial have the force of a jury verdict and are conclusive if supported by competent evidence. *Foster v. Foster Farms, Inc.*, 112 N.C. App. 700, 706, 436 S.E.2d 843, 847 (1993). Conclusions of law drawn by the court from the facts found, however, involve legal questions and are always reviewable *de novo* by the appellate court. *Mann Contr'rs, Inc. v. Flair with Goldsmith Consultants-II, Inc.*, 135 N.C. App. 772, 775, 522 S.E.2d 118, 121 (1999). Because the facts are not disputed, we review only the conclusions of law.

Plaintiffs first contend that the trial court erred in determining that defendants should not, in equity, be bound by any amended restrictive covenants. It is not necessary to address that contention, however, because we hold that defendants are not bound *in law* by the amended restrictive covenants.

Our courts have held that a vested right may exist where a party obtained a valid permit, incurred significant expenditures or obligations in good faith reliance thereon, and then found the authorization to build revoked based on a subsequently enacted zoning ordinance. *In re Campsites Unlimited*, 287 N.C. 493, 500-01, 215 S.E.2d 73, 77 (1975) (*citing Keiger v. Board of Adjustment*, 281 N.C. 715, 190 S.E.2d 175 (1972); *Town of Hillsborough v. Smith*, 276 N.C. 48, 170 S.E.2d 904 (1969); *Warner v. W & O, Inc.*, 263 N.C. 37, 138 S.E.2d 782 (1964); *Stowe v. Burke*, 255 N.C. 527, 122 S.E.2d 374 (1961)). A landowner may establish a vested right by satisfying certain requirements:

> [O]ne who, in good faith and in reliance upon a permit lawfully issued to him, makes

> expenditures or incurs contractual obligations, substantial in amount, incidental to or as part of the acquisition of the building site or the construction or equipment of the proposed building for the proposed use authorized by the permit, may not be deprived of his right to continue such construction and use by the revocation of such permit, whether the revocation be by the enactment of an otherwise valid zoning ordinance or by other means, and this is true irrespective of the fact that such expenditures and actions by the holder of the permit do not result in any visible change in the condition of the land.

Hillsborough, 276 N.C. at 55, 170 S.E.2d at 909. Where a property owner has reasonably made a substantial expenditure of money, time, labor or energy in a good faith reliance of a government approved land-use, he has a vested right. *Michael Weinman Associates General Partnership v. Town of Huntersville*, __ N.C. App. __, __, 555 S.E.2d 342, 345 (2001).

The vested right doctrine does not distinguish between the landowner who expends money resulting in visible, physical changes in the condition of the land, and one who expends a like amount incurring binding contractual obligations for such construction or acquisition of materials or equipment. *Hillsborough*, 276 N.C. at 54, 170 S.E.2d at 909. In the present case, there was no visible change in the condition of the land when the purported amendment was recorded. However, contractual obligations and expenditures were made and occurred in reliance on the original restrictive covenants and existing zoning laws. Defendants entered into a purchase contract for the modular home only after they presented the pre-amended restrictive covenants to the manager of Home Expressions. They then closed on their loan, made the down

payment, and by 4 November 1998, had "obtained all permits needed from Wilkes County." There was also adequate evidence of good faith on the part of defendants.

Defendants had obtained a vested right to proceed with the placement of their modular home before the amendment to the restrictive covenants was recorded. Irrespective of a consideration of equity, they were not bound by the amendments.

Based on the foregoing, we likewise do not address plaintiffs' second assignment of error.

AFFIRMED.

Judges WYNN and WALKER concur.

Report as 30(e).