REVERSE and REMAND; Opinion Filed November 30, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00783-CV

WILLIE E. WALLS, III, MELODY HANSON, AND MY ROYAL PALACE, DAVID WAYNE WHITAKER, AND ASHUNTIS GRISBY, Appellants
V.
CAPELLA PARK HOMEOWNERS' ASSOCIATION, INC., Appellee

On Appeal from the 162nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-13-14480

MEMORANDUM OPINION

Before Justices Lang, Evans, and Schenck
Opinion by Justice Schenck

Willie E. Walls, III, Melody Hanson, My Royal Palace, David Wayne Whitaker, and Ashuntis Grisby appeal the trial court's judgment granting a permanent injunction and awarding attorney's fees in favor of Capella Park Homeowners' Association, Inc. ("HOA") and denying claims of discrimination in violation of federal and state law.

Walls and Hanson own two homes (the "Group Homes") in which they operate a for-profit residential program, My Royal Palace, that provides support and services to persons with physical and intellectual disabilities, including residents Whitaker and Grisby. The lots on which the Group Homes are situated are subject to restrictive covenants (the "Declaration"), including one such restrictive covenant ("Restrictive Covenant"), which provides that community or group homes must comply with Section 123 of the Texas Human Resources Code. *See* TEX. HUM. RES. CODE ANN. §§ 123.001–.010 (West 2013 & Supp. 2016). At trial and on appeal, appellants

assert the right "to use and enjoy housing in . . . the community they choose to live in" in the same way those without disabilities are able to do. The asserted right proceeds from state and federal fair housing legislation enacted to combat discrimination in the housing market on the basis of disability that has the effect of excluding the disabled.

Appellants contend the HOA is required by law to refrain from enforcing any restrictive covenants against appellants on account of disability and treat them as if they were not disabled or operating homes for the disabled. The HOA argues their obligation to those wanting to use a home as a community or group home begins and ends with Section 123 of the human resources code, which protects the disabled and mandates accommodation of group homes maintained by government or nonprofit operators. No party addressed whether not enforcing the Restrictive Covenant on account of any reason foreclosing application of Section 123 would place an undue burden on the HOA.

Appellants' second issue is their central argument, that they are entitled to an accommodation in the form of an exemption from the Restrictive Covenant insofar as it applies because they are disabled or operating a residence for the disabled.[1] Because we conclude they are, we reverse the trial court's judgment.

BACKGROUND

I. Factual Background

The Group Homes consist of two residential structures situated adjacent to each other in the Capella Park development. Appellants Whitaker and Grisby, suffer severe intellectual and physical disabilities requiring the constant presence of a nurse and the occasional presence of other professionals. They also receive residential support services from Walls and Hanson. At

[1] Appellants' first issue is whether a homeowners' association may enforce restrictive covenants which have the effect of discriminating against people with disabilities residing in a group home when that group home does not meet the requirements of Section 123. However, appellants did not argue that the restrictive covenant had a discriminatory effect at the trial court below. Even if they had, we need not address this issue based on our resolution of their second issue. *See* TEX. R. APP. P. 47.1.

all times, three workers are present at the Group Homes. The lots on which the Group Homes are situated are subject to the Restrictive Covenant, which provides as follows.

> In addition to uses which are inconsistent with applicable zoning or are prohibited or restricted by other recorded covenants, conditions, restrictions or easements, the following uses and activities are prohibited within the Neighborhood without the prior written approval of the Board: a community or group home unless such home meets the qualifications imposed under Section 123.004, et. seq. of the Texas Human Resources Code, as the same may be amended from time to time.

The Group Homes do not qualify as a community home under Section 123 of the human resources code. Section 123 assures the disabled the right to housing and facilities maintained by the government and charities, and makes the right to such housing automatic provided the one-half mile spacing requirement is maintained. *See* TEX. HUM. RES. CODE ANN. §§ 123.004, 123.008.

In February 2013, Walls and Hanson received a letter from the HOA advising that the Group Homes violated the Declaration by conducting a commercial or home business. Over the following months, Walls and the HOA exchanged correspondence in which Walls asserted that the Group Homes provided residential services to disabled individuals and were protected by the federal Fair Housing Act independent of Section 123 of the human resource code. Walls also requested the HOA cease any and all legal or other administrative actions against him. The HOA maintained that the Group Homes were in violation of the Restrictive Covenant and did not qualify as community homes under Section 123 of the human resources code, and, on that basis, could not be permitted to operate.

II. Procedural Background

On December 10, 2013, the HOA filed suit against Walls, Hanson, and My Royal Palace, asserting breach of restrictive covenants and seeking declaratory judgment and a permanent injunction. The following month, Walls, Hanson, and My Royal Palace filed a counterclaim, asserting the HOA had violated the Texas and the Federal Fair Housing Acts. Whitaker and

Grisby intervened, joining in the counterclaims against the HOA for violations of state and federal fair housing statutes. The parties jointly submitted the case for judgment on an agreed statement of facts and exhibits, including the Declaration and related amendments and copies of the correspondence between the HOA and Walls. The parties agreed to submit evidence concerning attorney's fees by way of post-judgment motions.

At trial, the HOA argued the Group Homes violated the Restrictive Covenant because they were not community homes qualified under Section 123 of the human resources code. The HOA urged that Section 123 protects community homes that met certain qualifications, but, by negative implication, it does not prohibit enforcement of restrictive covenants against community or group homes that do not meet those qualifications. It urged below, as here, that a restrictive covenant that does not violate Section 123 is by necessity lawful. The HOA asserted that appellants had failed to prove the requested accommodation of not enforcing the Restrictive Covenant was necessary to afford the disabled persons an equal opportunity.[2] The HOA argued there was no evidence in the stipulated facts that living in a residential community ameliorated the disabilities at issue.

Walls, Hanson, and My Royal Palace conceded the inapplicability of Section 123, as noted, but urged that the state and federal fair housing acts assure the right of disabled to residential housing of their choosing, which is wholly barred by the Restrictive Covenant except insofar as Section 123 would apply. In particular, they argued that without services provided by the Group Homes, disabled individuals would not be able to reside in the community setting and that state and federal discrimination statutes protected such individuals from being isolated and segregated. They asserted that through correspondence with the HOA, My Royal Palace had requested a reasonable accommodation from the HOA of refraining from enforcing the

[2] "[T]here are countless places in Dallas that are not residential neighborhoods that are not deed restricted and this home would be fine in any of those."

Restrictive Covenant. They also made the point that the purpose of the fair housing statutes was to require "reasonable accommodations . . . in policies . . . to allow disabled individuals to use and enjoy housing in . . . the community they choose to live in." Whitaker and Grisby asserted that the law developed under the Fair Housing Act was to allow the disabled to live in the community of their choice and that the defense "they can go live somewhere else" had no support in discrimination case law.

After considering the stipulated facts and exhibits and the parties' arguments and pleadings, the trial court found in favor of the HOA and against appellants. The trial court conducted a subsequent hearing on the HOA's requests for attorney's fees and ultimately awarded $58,498.21 in attorney's fees against Walls, Hanson, and My Royal Palace. Appellants moved for new trial, which the trial court denied.

III. Arguments of the Parties

No party addressed whether not enforcing the Restrictive Covenant—and the requirements of Section 123—would place an undue burden on the HOA. Accordingly, we must address whether the applicability of Section 123 controls the outcome.

During oral argument, appellants argued the Restrictive Covenant was discriminatory on its face. In their briefs, appellants limit their arguments to whether by seeking to enforce the Restrictive Covenant, which requires group homes be in compliance with Section 123, the HOA refused to grant appellants a reasonable accommodation necessary to afford them an opportunity to use and enjoy—or provide for the use and enjoyment of a disabled resident—a dwelling. We will limit our review to the appellants' reasonable-accommodation argument.

DISCUSSION

I. Standard of Review

The case was tried on stipulated facts pursuant to Rule 263. Rule 263 provides in its entirety:

> Parties may submit matters in controversy to the court upon an agreed statement of facts filed with the clerk, upon which judgment shall be rendered as in other cases; and such agreed statement signed and certified by the court to be correct and the judgment rendered thereon shall constitute the record of the cause.
>
> TEX. R. CIV. P. 263.

An agreed statement of facts under rule 263 is similar to a special verdict; it is the parties' request for judgment under the applicable law. *Addison Urban Dev. Partners, LLC v. Alan Ritchey Materials Co., LC*, 437 S.W.3d 597, 600 (Tex. App.—Dallas 2014, no pet.). In a rule 263 agreed case, the only issue on appeal is whether the district court properly applied the law to the agreed facts. *Id.* Such a review is less deferential to the trial court, because a trial court has no discretion in deciding what the law is or in properly applying it. *Id.* If the trial court files findings of fact in an agreed case, they are disregarded by the appellate court. *Id.* at 600–01.

II. Applicable Law

In response to a history of national discrimination against individuals with disabilities, Congress enacted the Fair Housing Amendments Act ("FHAA") in 1988. *Groome Res. Ltd., L.L.C. v. Par. of Jefferson*, 234 F.3d 192, 200 (5th Cir. 2000). The purpose of the FHAA was to prohibit discrimination in the national housing market for handicapped individuals. *Id.* at 200–01. The FHAA responded to a recognized prejudice against those with physical disabilities and illness and against people who have been excluded because of stereotypes about their capacity to live safely and independently. *Id.* at 201. Congress found that neutral rules and regulations, even those involving commercial/noncommercial zoning distinctions, nonetheless had a discriminatory effect that resulted from the fact that the disabled were not able to live safely and independently without organized, and sometimes commercial, group homes. *Id.* at 201–02. In 1993, the Texas Legislature enacted the Texas Fair Housing Act ("TFHA") to provide rights and remedies substantially equivalent to those granted under federal law. *See* TEX. PROP. CODE ANN. § 301.002(3) (West 2014).

Both the Fair Housing Act ("FHA") and the TFHA broadly prohibit discrimination in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap, or disability, of that buyer or renter or a person residing in that dwelling. *See* 42 U.S.C.A. § 3604(f)(1); TEX. PROP. CODE ANN. § 301.025(a) (West 2014). The FHA and the TFHA define discrimination to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C.A. § 3604(f)(3)(B); TEX. PROP. CODE ANN. § 301.025(c)(2) (West 2014). The parties have focused their briefs on the federal statute and federal opinions interpreting it and have not identified any difference in how either statute is interpreted by federal or Texas state courts. We will therefore begin our analysis with an evaluation of the federal authorities.

The FHA's reasonable accommodation provision prohibits (1) refusal to make (2) reasonable accommodations in rules policies, practices, or services, when such accommodations (3) may be necessary to afford such person equal opportunity to use and enjoy a dwelling. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1219 (11th Cir. 2008). We address refusal, reasonableness, and necessity—the three elements of a reasonable accommodation claim—in that order.

III. Application of Law to Facts

A. Refusal

To show a refusal of a requested accommodation, a plaintiff must simply establish that he or she requested an accommodation and the defendant refused it. *Oxford House, Inc. v. City of Baton Rouge, La.*, 932 F. Supp. 2d 683, 693 (M.D. La. 2013). Included as an exhibit to the stipulated facts agreed to by the parties is a letter from Walls to the HOA in which he asserted the protections provided by the FHA and asked that the HOA "cease any and all legal and/or administrative actions against Mr. Walls." Appellants argue that they requested a reasonable

accommodation by requesting that the HOA not enforce the Restrictive Covenant and that the HOA refused such request by filing the instant lawsuit. Under similar facts, courts have found that the attempted enforcement of restrictive covenants constituted refusals to make reasonable accommodations necessary to afford plaintiffs an equal opportunity to use and enjoy the dwellings of their choice. *Martin v. Constance*, 843 F. Supp. 1321, 1323, 1326 (E.D. Mo. 1994) (after learning of State of Missouri's intentions to purchase a dwelling for a group home, residents of designated historic neighborhood filed action to enforce restrictive covenant prohibiting use of residence for business purposes).

B. Reasonableness

The determination of whether an accommodation is reasonable is highly fact-specific and determined on a case-by-case basis. *Advocacy Ctr. for Persons with Disabilities, Inc. v. Woodlands Estates Ass'n, Inc.*, 192 F. Supp. 2d 1344, 1348, 1350 (M.D. Fla. 2002) ("In the instant case, the Court finds that Defendant did not reasonably accommodate Plaintiffs, in violation of the FHAA, when it failed to waive the enforcement of its deed restrictions [prohibiting business use of lots] contained in the Declarations."). In determining whether the reasonableness requirement has been met, a court may consider as factors the extent to which the accommodation would undermine the legitimate purposes and effects of existing regulations and the benefits that the accommodation would provide to the disabled. *See Bryant Woods Inn, Inc. v. Howard Cty., Md.*, 124 F.3d 597, 604 (4th Cir. 1997). It may also consider whether alternatives exist to accomplish the benefits more efficiently. *Id.* And in measuring the effects of an accommodation, the court may look not only to its functional and administrative aspects, but also to its costs. *Id.* "Reasonable accommodations" do not require accommodations which impose undue financial and administrative burdens or changes, adjustments, or modifications to existing programs that would be substantial, or that would constitute fundamental alterations in the nature of the program. *Id.* Thus, for example, even though a prohibition of pets in

apartments is common, facially neutral, and indeed reasonable, the FHA has been read to require a relaxation of it to accommodate a service dog for a deaf person because such an accommodation does not unduly burden or fundamentally alter the nature of the apartment complex. *Id.*

Here, the agreed facts state that three workers drive vehicles to the Group Homes and park them adjacent to the Group Homes and that ambulances have serviced the Group Homes in connection with medical emergencies. The facts also state that only three workers are present at the Group Homes, thus no more than three vehicles would be routinely parked at any one time. Additionally, three individuals routinely reside in each Group Home. All readily admit that the HOA permits group or community homes that comply with Section 123 of the human resources code, which permits as many as six residents and two supervisors to reside in one home at the same time to operate on properties subject to the Restrictive Covenant. TEX. HUM. RES. CODE ANN. § 123.006(a) (West 2013). Moreover, the HOA's deed restrictions, which were admitted as an exhibit to the agreed facts, permit up to three "unrelated [non-disabled] persons to live together as a single housekeeping unit." *See Schwarz*, 544 F.3d at 1221 (explaining that "if the proposed use is quite similar to surrounding uses expressly permitted by the zoning code, it will be more difficult to show that a waiver of the rule would cause a 'fundamental alteration' of the zoning scheme"); *Oxford House*, 932 F. Supp. 2d at 693. Likewise, the restrictions permit property owners to lease their homes to unrelated people. Accordingly, the proposed use of the dwellings in question is similar to the uses already permitted by the HOA, the only difference being the fact that the unrelated persons are disabled. On these facts, we conclude the requested accommodation is reasonable. *See Bryant Woods*, 124 F.3d at 604.

C. Necessary to Afford Equal Opportunity

This case is somewhat unusual as the requested accommodation and concomitant necessity analysis turns on the appellants' ability to be present at all. In most cases, the question

is framed around a request to obtain an accommodation from a facially neutral requirement concerning limitation on parking,[3] the presence of pets,[4] or the number of residents in a structure.[5] Here, the question is whether appellants may operate a facility at all.

The "necessary" element—the FHA provision mandating reasonable accommodations which are *necessary* to afford an equal opportunity—requires the demonstration of a direct linkage between the proposed accommodation and the "equal opportunity" to be provided to the disabled person. *Bryant Woods*, 124 F.3d at 604. This requirement has attributes of a causation requirement. *Id.* And if the proposed accommodation provides no direct amelioration of a disability's effect, it cannot be said to be "necessary." *Id.*

The HOA argued at trial and at oral argument that appellants cannot satisfy this necessity requirement because the care the residents require could be done "in a commercial setting" or "anywhere" else. We reject this argument because the essential question in reasonable accommodation cases is whether the disabled have an equal opportunity to live in the dwellings *of their choice*, not simply an opportunity to live somewhere, like the state or charitable facilities the HOA would permit as the exclusive alternatives to those seeking to provide living arrangements to the disabled. *See Schwarz*, 544 F.3d at 1225; *see also Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 784 (7th Cir. 2002) ("When a zoning authority refuses to reasonably accommodate these small group living facilities, it denies disabled persons an equal opportunity to live in the community of their choice.").

Thus, in this case, "equal opportunity" the appellants seek is the opportunity for disabled persons to live on lots subject to the Restrictive Covenant. The agreed facts indicate Whitaker and Grisby are individuals with disabilities as defined by the FHA, and that three individuals

[3] *E.g.*, *Bryant Woods*, 124 F.3d at 602.

[4] *E.g.*, *Bronk v. Ineichen*, 54 F.3d. 425, 429 (7th Cir. 1995).

[5] *E.g.*, *Oxford House*, 932 F. Supp. 2d at 687.

with disabilities routinely reside in each of the Group Homes. *See* 42 U.S.C. § 3602(h). Their physical and intellectual disabilities require the constant presence of a nurse and the occasional presence of other personnel. The agreed facts also state that the Group Homes provide services to persons with disabilities as defined by the FHA and that their staff is present twenty-four hours a day. Thus, the stipulated facts establish that the residents of the Group Homes require the services provided by the Group Homes to directly ameliorate the effects of their disabilities. *See Oconomowoc Residential Programs*, 300 F.3d at 784 ("Often, a community-based residential facility provides the only means by which disabled persons can live in a residential neighborhood, either because they need more supportive services, for financial reasons, or both."). While the HOA urges that the facts do not demonstrate living in Capella Park is necessary to ameliorate their disabilities in view of the potential access to other "countless places in Dallas" or to state facilities within the reach of Section 123, this showing is not necessary and in fact is precisely what the fair housing acts were meant to avoid. *See Schwarz*, 544 F.3d at 1225; *id.*; *Groome Res. Ltd.*, 234 F.3d at 200–02; *see also* PROP. § 301.002(3).

We turn now to whether appellants have shown a direct linkage between the proposed accommodation and the equal opportunity to be provided to Whitaker, Grisby, and the other disabled persons residing in the Group Homes. The correspondence between Walls and the HOA demonstrates a request that the HOA not proceed with enforcing the Restrictive Covenant. The record demonstrates that the HOA sought and obtained a permanent injunction ordering Walls, Hanson, and My Royal Palace to cease operating the Group Homes on the lots in question. As noted above, the residents need the services provided by the Group Homes to ameliorate the effects of their disabilities. By forcing the Group Homes to cease operations, the residents will no longer be able to live in the dwelling of their choice. Put differently, we conclude that, under these facts, it is necessary for the HOA to refrain from enforcing the Restrictive Covenant so that the residents may have the same opportunity as non-disabled

persons to reside on the lots in question. *See Oxford House*, 932 F. Supp. 2d at 694 ("Oxford House has also shown that the requested accommodation may be necessary for equal opportunity because 'a modification of the definition of a "family" . . . is warranted so that [Oxford House] may have the same opportunity to rent a house as do persons without handicaps.'"). Accordingly, we conclude the necessity element has been met. We sustain appellant's first issue.[6]

CONCLUSION

We reverse the judgment of the trial court, dissolve the permanent injunction, and remand this case for proceedings consistent with this opinion.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

160783F.P05

[6] We do not assume that the TFHA is necessarily coterminous of the FHA, nor do we view the language of the state statute as mere surplusage. However, in view of our determination of appellant's first issue under the Federal Housing Act, we pretermit any analysis of the Texas Federal Housing Act as unnecessary. TEX. R. APP. P. 47.1. In a third issue, appellants challenge the award of attorney's fees against Walls, Hanson, and My Royal Palace, but given our disposition of the second issue, we need not address the third. *See id.*

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

WILLIE E. WALLS, III, MELODY HANSON, AND MY ROYAL PALACE, DAVID WAYNE WHITAKER AND ASHUNTIS GRISBY, Appellants

No. 05-16-00783-CV V.

CAPELLA PARK HOMEOWNERS' ASSOCIATION, INC., Appellee

On Appeal from the 162nd Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-13-14480.
Opinion delivered by Justice Schenck, Justices Lang and Evans participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED**. We dissolve the permanent injunction and **REMAND** this case for further proceedings.

It is **ORDERED** that appellant WILLIE E. WALLS, III, MELODY HANSON, AND MY ROYAL PALACE, DAVID WAYNE WHITAKER AND ASHUNTIS GRISBY recover their costs of this appeal from appellee CAPELLA PARK HOMEOWNERS' ASSOCIATION, INC.

Judgment entered this 30th day of November, 2017.