Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00773-CV

Stephen S. **STOKWITZ**,
Appellant

v.

Marcus **TINAJERO**, Charles P. Jones, and Linda Tinajero Jones,
Appellees

From the 81st Judicial District Court, Atascosa County, Texas
Trial Court No. 18-05-0464-CVA
Honorable Lynn Ellison, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: December 16, 2020

AFFIRMED IN PART; REVERSED AND REMANDED IN PART

In this appeal, the parties dispute whether a restrictive covenant prohibits the construction of multiple single-family dwellings on a property. Appellant Stephen Stokwitz argues the trial court erred when it denied his summary judgment motion and ruled in favor of the property owner, appellee Marcus Tinajero, and prospective owners, appellees Charles Jones and Linda Jones, on their competing motion for summary judgment. Because no party has shown its entitlement to summary judgment, we affirm in part and reverse and remand in part.

BACKGROUND

Stokwitz and Tinajero own adjacent tracts of land in Atascosa County, known as the "Williams Estate." The Williams Estate was originally divided through an exchange deed, whereby Warren and Cheryl Williams conveyed approximately 25 acres of land to Paul and Mildred Williams. Paul and Mildred Williams subsequently deeded five acres of this land to Roy and Shirley Reyna. The deed to the Reynas includes a restrictive covenant, stating:

> SUBJECT TO THE FOLLOWING CONDITIONS, RESTRICTIONS AND COVENANTS
>
> The above described property shall be used *only for a single family dwelling* and no building of any kind whatsoever shall be erected or maintained thereon except *a single family dwelling* and such outbuildings as are customar[ily] appurtenant to such dwelling.

(emphases added).

The deed also states that the conveyance "is made subject to all and singular the restrictions, easements, and covenants, if any, applicable to and enforceable against" the property. Tinajero purchased the five-acre tract when the Reynas defaulted on their mortgage.

Paul and Mildred Williams conveyed the rest of the 25 acres they acquired from the exchange deed as well as approximately 380 more acres to Warren and Paula Conn. Stokwitz subsequently purchased a tract from the land conveyed to Warren and Paula Conn, and Stokwitz's tract borders Tinajero's tract on two sides. Stokwitz learned, and Tinajero later confirmed, that Tinajero's mother and stepfather, Linda and Charlie Jones, intended to purchase Tinajero's tract of land and sought to build at least one additional residence on the property. Tinajero also told Stokwitz that they planned to rent out at least two of the dwellings to be built. Stokwitz verbally objected to the building of additional houses because he asserted it would be a violation of the restrictive covenant which restricts the property to be used "for a single-family dwelling."

Stokwitz then filed suit, requesting a temporary restraining order and a temporary injunction to stop the erection of any additional residences on the property because, he argued, it would violate the restrictive covenant in the deed to the Reynas. The trial court granted the temporary restraining order and subsequently granted Stokwitz's request for a temporary injunction, enjoining Tinajero and the Joneses from erecting more than one single-family dwelling on the tract in dispute.

Stokwitz then filed a motion for summary judgment, asking the trial court to enter a declaratory judgment in Stokwitz's favor, convert the temporary injunction into a permanent injunction, enjoin the building of anything more than a single-family residential dwelling on the Tinajero tract, and award Stokwitz reasonable and necessary attorney's fees. The trial court denied this motion and Stokwitz filed a motion for reconsideration, reurging his initial grounds for summary judgment. Tinajero and the Joneses filed a competing motion for summary judgment, arguing that their intention of erecting one additional single-family dwelling does not violate the restrictive covenant. The trial court denied Stokwitz's motion to reconsider and granted Tinajero and the Joneses' motion for summary judgment. Stokwitz appeals.

STANDARD OF REVIEW

We review a trial court's ruling on a summary judgment *de novo*. *Tarr v. Timberwood Park Owners Assoc., Inc.*, 556 S.W.3d 274, 278 (Tex. 2018). To prevail on a traditional motion for summary judgment, the movant must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003). In reviewing a trial court's summary judgment ruling, we take as true all evidence favorable to the nonmovant, indulging every reasonable inference and resolving any doubts in the nonmovant's favor. *Knott*, 128 S.W.3d at 215. When both parties file a motion for summary judgment and one is granted and one is denied,

as in this case, we review the summary judgment evidence presented by both sides and determine all questions presented and render such judgment as the trial court should have rendered. *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872 (Tex. 2000). "If the issue raised is based upon undisputed and unambiguous facts, then the reviewing court may determine the question presented as a matter of law." *Gramercy Ins. Co. v. MRD Invs., Inc.*, 47 S.W.3d 721, 724 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). "However, if resolution of the issues rests on disputed facts, summary judgment is inappropriate, and the reviewing court should reverse and remand for further proceedings." *Id.*

STANDING TO ENFORCE A RESTRICTIVE COVENANT

Stokwitz argues the trial court erred in granting summary judgment in favor of Tinajero and the Joneses and in denying his summary judgment. He asserts Tinajero and the Joneses were not entitled to summary judgment because the restrictive covenant in dispute restricts construction on the property to only one single-family dwelling and that he has standing to enforce the restrictive covenant because the covenant touches and concerns the land and bound the Reynas as well as their successors, Tinajero and the Joneses. Tinajero and the Joneses respond that Stokwitz is not entitled to enforce the restrictive covenant because he was not in privity with the grantors who burdened the property and because the restriction did not arise through a general scheme or development. They also argue that the restrictive covenant does not limit the number of dwellings that can be built on the land but only restricts the type of dwellings that can be built. We agree with Tinajero and the Joneses and hold that Stokwitz has not proven, as a matter of law, that he has standing to enforce the restrictive covenant because he was not a party to the covenant, he has not established privity of estate with the contracting parties, and he has not established that there was a general plan or scheme of development.

Standing is a threshold question and should be addressed first. *Exxon Corp. v. Pluff*, 94 S.W.3d 22, 26 (Tex. App.—Tyler 2002, pet. denied). Standing is implicit in the concept of subject-matter jurisdiction, and subject-matter jurisdiction is essential to the authority of a court to decide a case. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). We review standing under the same standard by which we review subject-matter jurisdiction generally. *Id.* at 446. Whether the trial court has subject-matter jurisdiction is a question of law that we review *de novo*. *Tex. Dep't of Transp. v. A.P.I. Pipe and Supply, LLC*, 397 S.W.3d 162, 166 (Tex. 2013); *Myer v. Cuevas*, 119 S.W.3d 830, 833 (Tex. App.—San Antonio 2003, no pet.).

A. Privity of Estate

A restrictive covenant such as a deed restriction "is a contractual agreement between the seller and purchaser of real property." *Ski Masters of Tex., LLC v. Heinemeyer*, 269 S.W.3d 662, 668 (Tex. App.—San Antonio 2008, no pet.). Ordinarily, a restrictive covenant may be enforced only by the parties to the restrictive covenant agreement and those parties in privity with them. *Id.* Privity of estate exists when there is a mutual or successive relationship to the same rights of property. *Westland Oil Dev. Corp. v. Gulf Oil Corp.*, 637 S.W.2d 903, 910–11 (Tex. 1982); *see Wayne Harwell Props., v. Pan Am. Logistics Ctr., Inc.*, 945 S.W.2d 216, 218 (Tex. App.—San Antonio 1997, writ denied) ("Texas has accepted the view that this requirement is satisfied by either simultaneous or successive interests in the *same land*.") (emphasis added). At least one court has held that the interest transferred must covey the land involved, or an easement in the land, in order to meet the privity of estate requirement. *Wayne Harwell Props.*, 945 S.W.2d at 218 (citing *Clear Lake Apartments v. Clear Lake Utils. Co*, 537 S.W.2d 48, 51 (Tex. App.—Houston [14th Dist.] 1976), *aff'd as mod. sub nom., Clear Lake City Water Auth. v. Clear Lake Utils. Co.*, 549 S.W.2d 385 (Tex. 1977)); *see MPH Prod. Co. v. Smith*, No. 06-11-00085-CV, 2012 WL 1813467, at *2 (Tex. App.—Texarkana May 18, 2012, no pet.) (mem. op.). "[P]rivity of estate

requires more than a common source of title." *Wasson Interests, Ltd. v. Adams*, 405 S.W.3d 971, 974 (Tex. App.—Tyler 2013, no pet.).

Here, Stokwitz was not a party to the restrictive covenant in dispute. Instead, Paul and Mildred Williams and Roy and Shirley Reyna were the parties to the restrictive covenant in the 1989 warranty deed, by which Paul and Mildred Williams deeded five acres to Roy and Shirley Reyna. Nonetheless, Stokwitz contends that he has standing to enforce the restriction because he is in privity with Paul and Mildred Williams. They are both his and the Reynas' predecessors in title; therefore, Stokwitz contends, he is entitled to enforce the restriction on the five-acre property that Paul and Mildred Williams deeded to the Reynas, which is now owned by Tinajero.

We hold, however, that the summary judgment evidence does not establish privity, as a matter of law, because Stokwitz has not demonstrated that the conveyance from Paul and Mildred Williams to Warren Williams and Paula Conn, and the conveyance from Paul and Mildred Williams to the Reynas were made from the same parcel of land. In other words, Stokwitz has shown only a common source of title but not that his tract of land came from the original parcel of property, the 25 acres, out of which was deeded five acres to the Reynas, through a deed with a restrictive covenant. *See id.* (stating that privity of estate requires more than just a common source of title). Therefore, Stokwitz has failed to establish that he is in privity of estate with the parties to the covenant. *See id.*

i. The Tinajero Chain of Title

There are two chains of title involved in this case and both begin with an exchange deed. In 1980, Warren and Cheryl Williams conveyed 25.027 acres to Paul and Mildred Williams. These 25.027 acres of land are from the Ana Maria Postert Survey No. 1079. In 1989, Paul and Mildred Williams deeded five acres out of the 25.027 acres above to the Reynas. This deed contains the

restrictive covenant in dispute. The Reynas then defaulted on their mortgage, and Tinajero subsequently acquired the same five acres of land. This is the Tinajero chain of title.

ii. The Stokwitz Chain of Title

The Stokwitz chain of title can be traced back to Paul and Mildred Williams, but it is unclear whether this chain includes the 25.027 acres from the Ana Maria Postert Survey No. 1079 that were involved in the 1980 exchange deed. In 1990, Paul and Mildred Williams deeded to Warren Williams and Paula Conn what remained of the 25.027 acres from the Ana Maria Postert Survey No. 1079 after the five-acre conveyance to the Reynas in 1989. Paul and Mildred Williams also conveyed to Warren Williams and Paula Conn, through this 1990 conveyance, approximately 380 additional acres of land. In 1998, Paula Conn deeded to Warren Williams 200 acres of the land that she owned out of the Ana Maria Postert Survey No. 1079, including the approximately 20 acres of what she owned from the 25.027 acres that were originally conveyed through the 1980 exchange deed. Warren Williams, in 2004, then deeded to Daniel and Leann Kunz 4.307 acres out of the Ana Maria Postert Survey No. 1079. It is unclear from the record whether these 4.307 acres were within the 25.027 acres described in the 1980 exchange deed. In 2010, Daniel and Leann Kunz deeded to Stokwitz 8.511 acres out of the Ana Maria Postert Survey No. 1079. Again, it is unclear from the record whether these acres were within the 25.027 acres described in the 1980 exchange deed. Through these conveyances, Stokwitz can point to a common predecessor, Paul and Mildred Williams, as can Tinajero; however, Stokwitz must be able to show privity of estate with respect to the burdened land, in this case the 25.027 acres described in the 1980 exchange deed, and he cannot do so because it is not clear, on this record, that any of the 25.027 acres were involved in the 2004 and 2010 deeds. *See id.* (holding that the assignees lacked standing to enforce covenants restricting the use of an owner's 3.014 acre tract, despite the fact that the assignees and the owner both deraigned title from the city); *see also Jeansonne v. T-Mobile West*

Corp., No. 01-13-00069-CV, 2014 WL 4374118, at *5 (Tex. App.—Houston [1st Dist.] Sept. 4, 2014, no pet.) (mem. op.) ("A restrictive covenant is not enforceable solely due to a common source of title, but requires either privity of contract or a general plan or scheme of development").[1]

B. General Plan or Scheme

Stokwitz also argues that he can enforce the restrictive covenant because there was a general plan or scheme adopted by the owners of the tract for the development and improvement of the property. Stokwitz supports this contention by pointing to evidence of intent for a general plan to limit developments on the property, such as words used within the restriction (which would demonstrate an intention for the restriction to pass with title to the land) and affidavits of family members (who remembered the Williamses' intent to protect development of the property from multi-family purposes.) However, even if there were such an intent, it is insufficient to meet the elements of the existence of a general plan or scheme.

Under Texas law, "[a] property owner may subdivide property into lots and create a subdivision in which all property owners agree to the same or similar restrictive covenants designed to further the owner's general plan or scheme of development." *Jeansonne*, 2014 WL 4374118, at *4. When property has been developed under such a general plan or scheme of development, each property owner in the development has standing to enforce deed restrictions against other property owners within the development. *Country Cmty. Timberlake Vill., L.P. v. HMW Special Util. Dist.*, 438 S.W.3d 661, 667–68 (Tex. App.—Houston [1st Dist.] 2014, pet.

[1] Stokwitz relies on *Voice of Cornerstone Church Corporation v. Pizza Property Partners* in support of privity of estate, but the case is distinguishable. There, it was undisputed that the party asserting standing was a "successor-in-interest." *See Voice of Cornerstone Church Corp. v. Pizza Prop. Partners*, 160 S.W.3d 657, 666 (Tex. App.—Austin 2005, no pet.) (holding that a restrictive covenant bound a successor to the burdened land because the covenant ran with the land). Here, the parties dispute whether Stokwitz is a "successor-in-interest" because they dispute whether Stokwitz has shown that he is in privity of estate with respect to the burdened land. *See Westland Oil Dev. Corp.*, 637 S.W.2d at 910–11 (stating that privity of estate exists when there is a mutual or successive relationship to the same rights of property).

denied). To establish a general plan or scheme of development, the party seeking to enforce the restriction must show (1) that a common grantor (2) developed a tract of land (3) for sale in lots and (4) pursued a course of conduct that indicates he intends to inaugurate a general scheme or plan of development (5) for the benefit of himself and the purchasers of various lots, and (6) by numerous conveyances (7) inserts in the deeds substantially uniform restrictions, conditions and covenants against the use of the property. *Id.*

Here, there are only two abutting properties and they do not contain identical restrictive covenants. Instead, one property is subject to the restrictive covenant, and the other is not. Therefore, Stokwitz has failed to meet his burden of establishing a general plan or scheme. *See Jeansonne*, 2014 WL 4374118, at *7 (finding no evidence of a general plan or scheme of development because the covenants were only imposed upon one piece of property and not the other); *see also Russell Realty Co. v. Hall*, 233 S.W. 996, 999 (Tex. App.—Dallas 1921, writ dism'd w.o.j.) (holding that buyers of lots in one section did not have standing to enforce deed restrictions on another section because the developer subdivided a single parcel of land by filing two plats and imposing deed restriction on only one section).

CONCLUSION

We hold that Stokwitz has not proven as a matter of law that he has standing to enforce the restrictive covenant applicable to an adjoining tract of land owned by Tinajero because Stokwitz is not a party to the covenant, has not established that he is in privity of estate with the contracting parties, and has not established that there was a general plan or scheme of development. *See Country Cmty. Timberlake Vill., L.P.*, 438 S.W.3d at 668 ("[I]t is well settled that a restriction on a piece of property may not be enforced by one who owns land not subject to the restriction, absent privity of contract or a general plan or scheme of development applicable to the land that the plaintiff does own." (citing *Wasson Interests, Ltd.*, 405 S.W.3d at 974)). Having determined that

Stokwitz has failed to prove he has standing to enforce the restrictive covenant as a matter of law, we need not construe the covenant. *See* TEX. R. APP. P. 47.1.

Because resolution of the issue of Stokwitz's standing to enforce the restrictive covenant rests on disputed facts, summary judgment is inappropriate. *See Gramercy Ins. Co.*, 47 S.W.3d at 724. We, therefore, affirm the trial court's denial of Stokwitz's motion for summary judgment, reverse the summary judgment granted in favor of Tinajero and the Joneses, and remand the case for further proceedings consistent with this opinion. *See FM Props. Operating Co.*, 22 S.W.3d at 872.

Rebeca C. Martinez, Justice