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No. 3-10-0540

Order filed June 3, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

BAYLES LAKE HOMEOWNERS ASSOCIATION, an Illinois not-for-profit corporation,)	Appeal from the Circuit Court of the 21st Judicial Circuit, Iroquois County, Illinois
Plaintiff-Appellee,)	
v.)	No. 08-CH-68
BRUNO PELECH, Individually and B.A. HIGGINS DEVELOPMENT, LLC, an Illinois Limited Liability Company,)	
Defendants-Appellants.)	Honorable Adrienne W. Albrecht, Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

Held: The plaintiff sued the defendants for injunctive relief after the defendant began to construct a road across a residential lot, which was intended to provide access to an adjoining subdivision. The circuit court issued the injunction after finding the road was not a residential use as required by a restrictive covenant, and the appellate court affirmed the circuit court's judgment.

The plaintiff, Bayles Lake Homeowners Association, filed a complaint for injunction against the defendants, Bruno Pelech and B.A. Higgins Development, LLC. The plaintiff sought

to enjoin the defendants “from continued construction and development of a private road way” on a lot owned by the defendants in the Bayles Lake Subdivision (the Subdivision). The plaintiff alleged that the “private road way” did not constitute a residential use and therefore violated the Subdivision’s restrictive covenants. The circuit court agreed and issued the injunction, and the defendants appealed. We affirm.

FACTS

This case is before us on the plaintiff’s complaint for injunction, which sought to enjoin the defendants “from continued construction and development of a private road way” on a lot owned by the defendants in the Subdivision. In issuing the injunction, the circuit court found that the road did not constitute a residential use and therefore violated the Subdivision’s restrictive covenants.

The land relevant to this case exists at the southeast corner of Township Road, which runs north-south, and Country Club Lane, which runs east-west, in Iroquois County. The rectangular plot of land at the intersection of these two roads is called Outlot B, which is owned by the defendants. With their shorter ends facing the roads, rectangular-shaped lots run to the east of Outlot B along Country Club Lane and to the south of Outlot B along Township Road. The defendants own the lots to the south of Outlot B, which are numbered 40 through 53. All of the aforementioned lots along Country Club Lane and Township Road are a part of the Subdivision.

The land behind the aforementioned Subdivision lots belonged to the Lakeview Country Club. In 2007, the defendants purchased some of the land in this area from the Lakeview Country Club. Prior to purchasing this land, the defendants requested that the plaintiff annex and

incorporate this land into the Subdivision, as the defendants intended to build residences on the land. The plaintiff denied that request, but the defendants proceeded with their purchase of the land nonetheless.

In April 2007, the plaintiff approved the defendants' request to construct a culvert on Outlot B. The minutes from a March 28, 2007, meeting of the plaintiff's board of directors indicated that the installation of the culvert was "for the purpose of constructing a private driveway [on Outlot B]." The plaintiff issued a building permit on May 22, 2007, for the culvert and driveway on Outlot B.¹ The defendants installed the culvert and began a driveway, but did not finish it. That permit expired in the summer of 2007.

Eventually, the Iroquois County Board approved the rezoning of the land the defendants purchased from Lakeview Country Club. The plat approved by the Iroquois County Board included what was referred to as an "access easement" that ran from Township Road on Lot 41 to the land purchased from Lakeview Country Club.

Defendant Bruno Pelech admitted that he did not approach the plaintiff about building the road on Lot 41. He stated that he decided to abandon the driveway on Outlot B and build the

¹ While the defendants contend in their appellants' brief that the plaintiff later rescinded the building permit by amending the minutes from their meeting, the agreed statement of facts filed on appeal stated that:

"the president of the board of directors stated he would entertain a motion to rescind the previous action of the board in granting a permit to install a culvert on Country Club Lane for access to Outlot B. No motion was made and no action was taken to rescind the permit across Outlot B."

road on Lot 41 after objections to the driveway on Outlot B were raised at the plaintiff's meetings. In May 2007, the plaintiff denied the defendants' request for a permit to build the road on Lot 41.² Nevertheless, the defendants began building the road on Lot 41 in June 2008.

On July 15, 2008, the plaintiff filed its complaint for injunction, which alleged the defendants violated the Subdivision covenant requiring that "lots, except outlots, shall be used for residential purposes exclusively, and only single dwelling houses shall be constructed."

On March 24, 2010, the circuit court issued its decision. In relevant part, the court stated that the restrictive covenant's language was unambiguous. The court found that the defendants' road, which was intended to give access to land outside the Subdivision, did not constitute a residential use. Thus, the court enjoined the defendants from further violations of the Subdivision's covenants. The defendants appealed.

ANALYSIS

On appeal, the defendants argue that the circuit court erred when it granted the plaintiff's motion for injunctive relief. Specifically, the defendants argue that the court erred when it ruled that its "private driveway" did not constitute a residential use and therefore violated the Subdivision's restrictive covenants.

Restrictions on property use are not favored, but such restrictions will be upheld if they are reasonable, clearly defined, and do not violate public policy. *Sherwood v. Rigsby*, 221 Ill. App. 3d 260, 261 (1991). "The generalization that all doubts and ambiguities shall be resolved in favor of free use and against restrictions cannot be used to ignore or override specific language of a restrictive covenant." *Sherwood*, 221 Ill. App. 3d at 261. Whether the circuit court

² The plaintiff requires a permit for "the initial paving of a walkway or driveway."

erroneously interpreted a restrictive covenant is a question of law that we review *de novo*. See *Sadler v. Creekmur*, 354 Ill. App. 3d 1029, 1036 (2004).

In *Sherwood*, this court addressed the question of whether the construction of a street across a residential lot violated a covenant that restricted the lot to residential uses. *Sherwood*, 221 Ill. App. 3d at 261. The defendant intended the street to provide access to a proposed residential development located to the east of the lot. *Sherwood*, 221 Ill. App. 3d at 261. This court held that “[a] street, although it may serve residential property, is not a ‘residential purpose’ within the plain meaning of that term.” *Sherwood*, 221 Ill. App. 3d at 262. Accordingly, this court held that the circuit court erred when it denied the plaintiff’s motion for injunctive relief to enforce the covenant. *Sherwood*, 221 Ill. App. 3d at 262.

This case presents the same circumstance that arose in *Sherwood*. The road the defendants began to build on Lot 41 was intended to provide access to their proposed residential development located directly to the east of the Subdivision lots bordering Township Road. The Subdivision covenant at issue in this case requires that “lots, except outlots, shall be used for residential purposes exclusively, and only single dwelling houses shall be constructed.” Following the rationale in *Sherwood*, the road being constructed by the defendants on Lot 41 did not constitute a residential use as required by the Subdivision’s covenants. *Sherwood*, 221 Ill. App. 3d at 262.

Lastly, we note that the defendants had raised three other issues in their appellants’ brief. However, the defendants abandoned those three arguments in their reply brief after the plaintiff, in its response brief, stated that it never rescinded the permit for the culvert and gravel driveway on Outlot B. Accordingly, we will not address the three arguments abandoned by the defendants.

Further, we will not take the step requested of us by the defendants to “hold, because of Plaintiff’s Judicial Admissions, Defendants have access to their subdivision over Outlot B.” See *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998) (“courts of review in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided”).

For the foregoing reasons, we hold that the circuit court properly ruled that the road built by the defendants across Lot 41 did not constitute a residential use and therefore violated the Subdivision’s restrictive covenants. Accordingly, we hold that the court did not err when it issued the injunction.

The judgment of the circuit court of Iroquois County is affirmed.

Affirmed.