2019 IL App (2d) 180329-U
No. 2-18-0329
Order filed February 13, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

RODNEY A. FRITZ, Plaintiff-Appellant, v. LAKE CARROLL PROPERTY OWNERS ASSOCIATION, INC., Defendant-Appellee.	)))))))))	Appeal from the Circuit Court of Carroll County. No. 17-L-5 Honorable Val Gunnarsson, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting summary judgment for defendant where the homeowner's association had the authority to enact a rule requiring plaintiff to inspect and pump his privately owned septic system.

¶ 2 Plaintiff, Rodney Fritz (hereinafter Fritz), sued defendant, Lake Carroll Property Owners Association, Inc. (hereinafter the Association) asserting the Association did not have the authority to enact and enforce rule 72.20, which required the inspection and pumping of privately-owned septic systems within the Association's boundaries on a four-year interval. Both sides moved for summary judgment. The trial court granted summary judgment in the Association's favor finding the Association had the authority to enact rule 72.20 but found that

the $25 per day fee was unreasonable as applied in this case. Fritz appeals the court's decision to grant the Association's motion for summary judgment regarding its authority to enact rule 72.20. We hold that the trial court did not err in granting summary judgment in favor of the Association and affirm the trial court's ruling.

¶ 3 I. BACKGROUND

¶ 4 The pleadings and evidentiary material of record reflect the following set of facts. In 1972 a group of developers in Carroll County established a residential development called Lake Carroll by recording its plat and "Declaration of Restrictions and Covenants" (the covenants) with the county recorder. The Association, a not-for-profit corporation, was formed in 1972 by the covenants to promote the common interests of Lake Carroll property owners and, pursuant to the covenants, "have such powers in furtherance of its purpose as are set forth in its Articles and By-Laws." The covenants also established a board of directors (board), responsible for the overall administration of the Association and an environmental control committee to oversee any improvements constructed on any lot in the development. At some point, the environmental control committee changed its name to the architectural and environmental (A & E) committee, but its general purpose remained the same.

¶ 5 The covenants impose upon each property owner the duty to maintain his lot so as to prevent it from becoming "unsanitary or a hazard to health." As mandated in the covenants, the Association's by-laws have been recorded with the county recorder. The by-laws provide multiple purposes for the Association, such as adopting rules and regulations for the general welfare of Lake Carroll and protecting and preserving the ecosystem of Lake Carroll. The by-laws also provide that the A & E committee will review and approve "plans for proposed construction, *** septic systems and other improvements to lots," as well as recommend

"building code rules and regulations to the Board for approval" and the ability to "enforce[] such rules and regulations."

¶ 6 Since its formation, Lake Carroll has grown to become the largest privately owned manmade lake in Illinois. In 1997 Fritz and his wife invested in the development by buying property and building a single family home with a private septic system. Fritz, like any other person who purchases property in Lake Carroll, became a member of the Association by purchasing land within its boundaries and is subject to the covenants as well as the Association's articles, and by-laws.

¶ 7 Over the past four decades, the Association has made periodic changes to its operations. In 2001 the A & E committee adopted a comprehensive set of rules intended to protect against pollution of ground water from inadequately maintained septic systems, including the rule at issue in this appeal. Rule 72.20 requires that all septic systems on private property within Lake Carroll be professionally pumped at four-year intervals regardless of their size or use. The rule imposes an initial $250 fine for non-compliance as well as a $25 fine per day until the member is in compliance with the rule.

¶ 8 Sometime in 2016 Fritz was notified by the Association that his septic tank was due to be pumped pursuant to rule 72.20. Throughout September and October, the Association notified Fritz that if he did not comply with rule 72.20, he would be fined. On October 22, 2016, Fritz emailed the Association and asserted that the Association had "no power over septic systems on private property as clearly written in the covenants that run with the land." He informed the Association that if the Association fined him or took any other action against him, then he would "simply file [a] lawsuit and have the issue settled once and for all." In response, the board

informed him that it was aware of his "feelings regarding the [Association's] rule mandating the pumping of septic systems" and that the issue would be brought up at the next board meeting.

¶ 9 The Association's board met on November 18 and, after consulting their attorney, determined that rule 72.20 was valid. On November 23, 2016, the board sent Fritz a letter stating that he would have a month to comply with the rule, or he would be fined $250. Fritz had not complied with the rule by December 23, 2016, and a $250 fine was assessed to his lot.

¶ 10 On March 20, 2017, Fritz filed a two-count complaint against the Association. The first count, although not labeled as such, alleged that the covenants do not give the Association's board authority to require pumping of septic systems located on private property. The second count alleged that the board breached its fiduciary duty to Fritz. Attached to the complaint were three exhibits: "Exhibit A" was a copy of the covenants, "Exhibit B" was a copy of the 2017 Lake Carroll Association By-Laws, and "Exhibit C" was a copy of Title VII of the Lake Carroll Building Rules and Regulations, which included rule 72.20.

¶ 11 On May 22, 2017, the Association filed its answer with affirmative defenses and a counter-complaint, asserting that Fritz had not complied with rule 72.20 and requesting the trial court enter a judgment against Fritz for $250 and $25 a day for each day he has failed to comply with the rule.

¶ 12 After some continuances, both Fritz and the Association filed motions for summary judgment. On January 11, 2018, the Association filed its brief in support of its motion stating that there were no issues of material fact in front of the trial court and arguing that both the enactment and enforcement of rule 72.20 were valid exercises of the Association's power. Fritz filed his brief in support of his motion for summary judgment on January 12. He argued that the covenants give neither the A & E committee nor the board the authority to make rule 72.20 and

that state regulations only provide homeowners pump septic systems when the system exceeds specific criteria.

¶ 13 Both parties submitted reply briefs to the opposing motion for summary judgment. The Association's reply included documentation of the communication between Fritz and the Association and two affidavits: one from the Association's general manager, which verified the communications between Fritz and the Association, and the second from a building code enforcer, which discussed the procedures generally used for septic systems. In Fritz's reply brief, he again alleged that the Association did not have the authority to enact rule 72.20, arguing that both the Association's by-laws and its covenants as well as the Common Interest Community Association Act (the Act) (765 ILCS 160/1 *et seq*. (West 2016)) and applicable case law do not provide the board the authority to adopt rule 72.20.

¶ 14 The hearing on both motions began on February 13, 2018. At the hearing, Fritz's counsel asserted that he was not sure if the Association's by-laws were properly recorded. To better assist it in determining the outcome of the motions for summary judgment, the trial court continued the argument and allowed both parties to file supplemental briefs regarding whether there was an issue of material fact as to the validity of the by-laws presented to the court.

¶ 15 On April 1, after the supplemental briefs were filed, both attorneys agreed that the by-laws were, in fact, properly recorded with the county recorder, so the hearing continued. Fritz's counsel argued that because rule 72.20 was not recorded, it was not binding. Counsel also argued that the by-laws cannot supersede the covenants' prescribed method of dealing with lots that are kept in an unsanitary condition, which is for the Association to do the required maintenance and then bill the landowner. The Association's counsel argued four points: (1) the trial court should interpret the texts of the covenants and by-laws in a manner that furthers the covenants' purpose;

(2) the covenants place a primary emphasis on the prevention of unsanitary conditions; (3) Illinois law will uphold rules and regulations regarding private property, provided that the regulations are not arbitrary and capricious; and (4) ruling for Fritz would compromise all common interest property communities' ability to enforce their regulations.

¶ 16 On April 5, 2018, the trial court issued a 20-page order. The court granted the Association's motion for summary judgment, finding that the Association had the authority to enact rule 72.20 and entering a judgment against Fritz for $250. Proceeding *pro se*, Fritz timely appealed the court's order for summary judgment in favor of the Association enforcing rule 72.20.

¶ 17 II. ANALYSIS

¶ 18 On appeal, Fritz contends that the trial court erred in granting the Association's motion for summary judgment as a matter of law. He argues two main points in support of his contention: (1) given the language of the covenants, it was not possible for the court to interpret the covenants as authorizing the requirement for privately-owned septic systems to be pumped at four-year intervals; and (2) the Act requires that all rules and regulations be recorded. In response, the Association maintains that the court did not err in granting its motion for summary judgment, arguing that rule 72.20 is a regulation, not a limitation, on the use of privately owned property, which is authorized by both the covenants and by-laws. The Association further maintains that the rule, as it has been enacted, is not prohibited by the Act. We agree with the Association.

¶ 19 We begin with a brief discussion of summary judgment. Summary judgment is proper where the pleadings, depositions, admissions, and affidavits on file reveal that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.

735 ILCS 5/2-1005(c) (West 2016); *Adams v. Northern Illinois Gas Co.*, 212 Ill. 2d 32, 43 (2004). On appeal, our role is to determine whether the trial court correctly found that no genuine issue of material fact existed and whether it correctly entered summary judgment in the Association's favor. *Morningside North Apartments I, LLC V. 1000 N. LaSalle, LLC*, 2017 IL App (1st) 162274, ¶ 10. We review the trial court's ruling on a motion for summary judgment *de novo*. *Peacock v. Waldeck ex rel. Waldeck,* 2016 IL App (2d) 151043, ¶ 3.

¶ 20 When, as in the present case, both parties file cross-motions for summary judgment, they agree that only a question of law is involved and invite the court to decide the case based upon the record. *Chicago Tribune v. College of Du Page*, 2017 IL App (2d) 160274, ¶ 29. The only potential factual issue, whether the by-laws were properly recorded with the county recorder, was dispelled when Fritz's counsel conceded that they were properly recorded. Our thorough review of the record reveals that no additional factual issues remain and that the only question left for us to determine is whether the Association had the authority to enact and enforce rule 72.20.

¶ 21 We now turn to Fritz's initial argument that it is impossible to interpret the covenants to allow the Association to enact and enforce rule 72.20. To begin, Fritz cites *Ripsch v. Goose Lake*, 2013 IL App (3d) 120319, for the proposition that any attempt by the Association to limit the use of his land, even if for some common good, is prohibited. The Association argues that Fritz's reliance upon *Ripsch* is misplaced, as rule 72.20 is not a limitation of the use of his land, but a mere regulation necessary to protect the integrity of the common lake.

¶ 22 We agree with the Association that Fritz's reliance on *Ripsch* is misplaced. In *Ripsch*, the court upheld a homeowner's association's rule prohibiting three-tank pontoon boats on a common lake, but permitting two-tank pontoon boats. In so holding, the court stated, "If the

Association attempted to limit Ripsch's use of his own land, supposedly for some common good, then it would be prevented from doing so by the holdings in *Westfield* and *Hartman*." *Ripsch*, 2013 IL App (3d) 120319, ¶ 15. Fritz rests his argument solely upon the quoted language and ignores both holdings in *Westfield* and *Hartman*. In *Westfield Homes, Inc. v. Herrick*, 229 Ill. App. 3d 445, 454-54 (1992), the court held that while a homeowner's association's covenants required a committee's approval of "improvements" on private property, the committee was limited to imposing reasonable, non-arbitrary restrictions on the design and construction of above-ground swimming pools, as pools were not included in the list of prohibited additions specifically noted in the covenants. In *Hartman v. Wells*, 257 Ill. 167, 172 (1912), our supreme court upheld a set-back provided in a deed's covenant, prohibiting the construction of porches or other extensions of the homes along a lot line, because "where the intention of the parties is clearly manifested in the creation of the restrictions, they will be enforced in a court of equity."

¶ 23 In light of the decisions in *Westfield* and *Hartman*, Fritz's argument that the Association cannot enact any rules impacting his private land is unavailing. Unlike the association in *Westfield*, the Association is not limiting or regulating what improvements Fritz can make on his land with rule 72.20, but rather ensuring that the condition of the land remain healthy. Further, like the parties in *Hartman*, the Lake Carroll developer clearly stated its intention that every private lot shall be maintained as to prevent it from becoming "unsightly, unsanitary or a hazard to health" in its covenants. Moreover, in its decision, the *Ripsch* court notes that the Restatement (Third) of Property states an "association has no inherent power to regulate use of the individually owned properties in the community, however *except as implied by its responsibility for management of the common property*." (Emphasis added). Restatement (Third) of Prop.: Servitudes § 6.7, cmt b (2000); *Ripsch*, 2013 IL App (3d), ¶ 17. Here, the reasoning provided for

enacting rule 72.20 was to protect the lake from significant health risks associated with improperly maintained and functioning septic systems. Taking into consideration the holdings in *Westfield* and *Hartman*, as well as *Ripsch*'s reliance of the Restatement, Fritz's reliance upon the single statement from *Ripsch* does not support his contention.

¶ 24 Fritz furthers his argument that the covenants do not allow the Association to enact rule 72.20 because the covenants are "ambiguous" and do not explicitly allow for a "seven member board of directors" to "act outside the authority the covenants give them." The Association responds that homeowner's association's powers for self-regulation are broad and given the language in the covenants, the enactment of rule 72.20 was well within its authority.

¶ 25 Because members in a voluntary association agree to abide by the rules and regulations adopted by the organization, courts generally do not interfere with the internal affairs of a voluntary association absent mistake, fraud, collusion, or arbitrariness. *Poris v. Lake Holiday Property Owners Ass'n*, 2013 IL 113907, ¶ 31. Associations are " 'left free to enforce their own rules and regulations by such means and with such penalties as they may see proper to adopt ***.' " *Id.* (citing *Engel v. Walsh*, 258 Ill. 98, 103 (1913)). Covenants should be interpreted according to the principles of contract interpretation, construing relevant documents together with relevant statute. *Stobe v. 842-848 West Bradley Place Condominium Ass'n*, 2016 IL App (1st) 141427, ¶ 13 (interpreting a condominium declaration according to principles of contract interpretation).

¶ 26 The covenants at issue provide that they shall be applicable to every lot owner in Lake Carroll. The lots shall be "maintained in such a manner as to prevent their becoming unsightly, unsanitary or a hazard to health." The covenants give the Association the power to enter privately owned lots to fix any such unsightly, unsanitary, or hazardous conditions and charge

the lot owner the cost of doing so as a part of his annual assessment. The covenants also establish committees and provide the committees the power to adopt written rules and regulations of general application. The environmental control committee, now the A & E committee, was granted the authority to make rules regarding, among other things, the form and content of applications, the number of copies of plans and specifications, and provisions for notice of approval. Finally, the covenants give the Association "such powers in the furtherance of its purposes as are set forth in its Articles and By-Laws." If the covenants were the Association's only governing document, then perhaps Fritz's argument would be persuasive, as they provide a specific remedy for unsightly, unsanitary, or hazardous conditions—like a septic system that needs to be pumped. However, the by-laws, as referenced in the covenants, also provide us with guidance.

¶ 27 In relevant part, the by-laws initially state that the membership adopted several purposes and objectives. Two of the enumerated purposes are to "adopt rules and regulations for the general welfare of Lake Carroll" and "protect and preserve the eco-system of Lake Carroll." The by-laws go on to define rules and regulations as "the current Rules and Regulations and A & E Building Rules and Regulations" that "are subservient to the Association Declaratory Statements of Covenants and Restrictions and By-Laws." The by-laws also give the A & E committee the authority to review and approve proposed construction of septic systems, to recommend rules and regulations to the board, and to enforce such rules and regulations.

¶ 28 Contrary to Fritz's assertion that the covenants do not grant the Association's board the authority to enact rules, the covenants allow for the power in the by-laws, and the by-laws provide the authority for the board to enact rules and regulations that the A & E committee proposes. The intent behind the by-laws was to give the A & E committee the power to both

enact and enforce rules regarding septic systems. Because the covenants allow the Association to have powers in furtherance of the purposes set forth in the by-laws, and the by-laws allow the board to adopt rules and regulations both for "the general welfare" and to "protect and serve the ecosystem of Lake Carroll," we cannot say that rule 72.20 was improperly enacted without the necessary authority. See *Poris*, 2013 IL 113907, ¶ 33 (rejecting a challenge to a homeowner's association's traffic rules when the association's articles of incorporation tasked the association to construct and maintain roadways and "do all things reasonably necessary therefore.")

¶ 29 We now turn to Fritz's second argument. Fritz argues that the Act requires that rules and regulations be recorded and because rule 72.20 was not recorded, it cannot be enforced against him. The Association maintains that its rules and regulations do not need to be recorded under the plain language of the Act. Again, we agree with the Association.

¶ 30 Our primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. *People ex rel. Illinois Department of Corrections v. Hawkins*, 2011 IL 110792, ¶23. "The most reliable indicator of the legislature's intent is the plain language of the statute." *Poris*, 2013 IL 113907, ¶ 47. When the language of the statute is clear and unambiguous, it should be applied as written without resort to any extrinsic aids or tools of interpretation. *Id.*

¶ 31 Fritz's argument rests entirely on the Act's definition of "community instruments" as "all documents and authorized amendments thereto recorded by a developer or *** association, including, but not limited to, the declaration, bylaws, operating agreement, plat of survey, and rules and regulations." 765 ILCS 160/1-5 (West 2016). He asserts that in order to be enforced, a rule or regulation must be a community instrument properly recorded at the county recorder's office. However, the Act never specifies that rules and regulations *must* be recorded, and Fritz ignores two additional instances in the Act that reference both "instruments" and "rules and

regulations." First, the Act requires the association to maintain and make available certain records, specifically listing "copies of the recorded declaration, other *community instruments*, other duly recorded covenants and bylaws and any amendments, articles of incorporation, articles of organization, annual reports, and *any rules and regulations adopted by the board* ***." (Emphasis added.) 765 ILCS 160/1-30(i)(1)(i) (West 2016). Second, the Act requires that the board make certain records, including "the declaration, other instruments, and any rules and regulations[,]" available to prospective buyers. 765 ILCS 160/1-35(d)(1) (West 2016).

¶ 32 What is clear through the plain language of the Act is that while rules and regulations may be part of recorded community instruments, they may also exist outside of the community instruments. Because rules and regulations can exist outside of community instruments, and the Act does not provide that rules and regulations must be recorded in order to be enforceable, we therefore agree with the Association that the language in the Act does not make rule 72.20 unenforceable. See *Board of Directors of 175 East Delaware Place Homeowners Ass'n v. Hinojosa*, 287 Ill. App. 3d 866, 891-92 (1997) (enforcing a "no-dog" regulation made by a board of directors for a condominium association, because the relevant statute did not require a restriction be written in the by-laws to be enforceable).

¶ 33 Because the covenants and by-laws granted the Association the authority to enact rules and regulations and the Act does not prohibit the Association from making such a rule, we conclude that rule 72.20 was within the authority of the Association. We affirm the trial court's order for summary judgment.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the trial court's order of summary judgment in favor of the Association.

¶ 36 Affirmed.