IN THE COURT OF APPEALS OF IOWA

No. 7-953 / 07-0425
Filed January 16, 2008

MIDDLE ROAD DEVELOPERS, L.C., RICHARD W. CURTIS, TRACEY L. CURTIS, RINO C. DELLA VEDOVA, CURTIS A. SCHNELL and BENNA LEA SCHNELL,
Plaintiffs-Appellees,

vs.

WINDMILLER DESIGN AND DEVELOPMENT COMPANY, an Iowa Corporation and CITY OF BETTENDORF, IOWA, an Iowa Municipal Corporation,
Defendants-Appellants.

Appeal from the Iowa District Court for Scott County, Mary Howes, District Associate Judge.

Defendants-appellants appeal from a district court order enjoining the development of a parcel of land. **AFFIRMED.**

Tricia Spratt Fairfield of Vollertsen, Britt & Gorsline, Davenport, for appellant, Windmiller Design and Development Company.

Michael Walker and Patrick Vint of Hopkins & Huebner, P.C., Davenport, for appellant, City of Bettendorf.

Terry Giebelstein and Wendy Meyer of Lane & Waterman, L.L.P., Davenport, for appellees.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

BAKER, J.

In this case, we consider whether a note on a plat map can create a use restriction running with the land, thereby preventing a city from selling a parcel of land to a developer without the use restrictions noted on the plat map. For the reasons expressed below, we affirm the trial court's injunction.

I. Background and Facts

Appellee Middle Road Developers, L.C., is the owner of real estate platted as Century Heights Twelfth Addition in the city of Bettendorf. At the time the area was being developed, Robert Fick, principal developer for Middle Road, was told by Bettendorf's planning staff that the city required outlots be set aside in the creek area of the addition for use as a stormwater detention area. The dedication of the stormwater management area in the addition was part of a larger regional stormwater detention facility created by the city and was consistent with the city's comprehensive use map.

Middle Road did not resist the city's requirement of the outlots for green space. In February of 2003, Middle Road conveyed outlot A to the city via a warranty deed, for $27,240, which was below the market price of the land. The deed was prepared by the city's attorney.

The general notes on the plat map of the Twelfth Addition include the following recitation:

> ALL OF OUTLOT A IS A SEWER, DRAINAGE AND DETENTION BASIN EASTMENT. OUTLOT A IS DEDICATED TO THE CITY OF BETTENDORF, IOWA, FOR STORMWATER MANAGEMENT PURPOSES. IT SHALL BE USED AS A RECHARGE-INFILTRATION-DETENTION AREA WITH NATIVE VEGETATION MAINTAINED BY THE CITY OF BETTENDORF, IOWA.

In addition to being consistent with the city's requirements, the designation of outlot A made the residential housing lots adjacent to outlot A more valuable than other lots in the area.

Appellees Richard and Tracey Curtis purchased lot 21 in Century Heights Eleventh Addition, which backed up to outlot A, in May 2001. At that time, Richard Curtis spoke with head city planner, Mark Brockway, about outlot A. Brockway told Curtis that the green space area would remain in its natural state and the city could not change that designation. In May of 2005, the Curtises contacted Fick about building a larger home on lot 16 of Century Heights Sixteenth Addition, which adjoins outlot A. At that time, Tracey Curtis spoke with city planner, Gregory Beck, who assured her outlot A was for water retention only and nothing could be built on it.

Appellee Rino Della Vedova owns lot 17 of Century Heights Twelfth Addition, which adjoins outlot A. He purchased the lot from Craig Windmiller of Windmiller Design and Development Company, who also built Della Vedova's home on the lot. Prior to the purchase, he viewed the plat map of the Twelfth Addition, including the dedication language regarding outlot A. Windmiller also told him that outlot A was to remain green space.

Appellees Curtis and Benna Lea Schnell own lot 16 of Century Heights Twelfth Addition, which adjoins outlot A. Benna Lea testified that they paid a premium for the lot because it adjoined outlot A, they built a house that architecturally takes advantage of the green space, and their use and enjoyment of the property would be drastically affected by a house being built on outlot A.

In mid 2005, Windmiller approached the city about buying all or a portion of outlot A because he had a buyer interested in building there. The city determined that outlot A was larger than necessary for stormwater management. The city published a notice regarding the proposed sale in the August 25, 2005 Bettendorf News, but did not otherwise notify any of the surrounding homeowners of the proposed sale.

On September 6, 2005, the city sold the eastern portion of outlot A to Windmiller, who owned a contiguous lot, for the same amount the city had purchased it from Middle Road. Windmiller subsequently requested the land be re-platted as part of a lot in Fieldstone Pointe Second Addition, intending to build a single family residence on the land. The city approved the re-platting.

In the fall of 2005, Windmiller regraded the eastern portion of outlot A, causing the native vegetation to be removed from the property. It was at this time that the appellees discovered the eastern portion of outlot A had been sold.

On November 16, 2005, appellees Middle Road, Curtis, Della Vedova, and Schnell filed a petition for temporary and permanent injunction against Windmiller. On March 2, 2006, the appellees amended the petition to include the City of Bettendorf. Following a December 5-6, 2006 trial, the court issued an order enjoining Windmiller and the city from using any portion of outlot A for any purpose other than as a recharge-infiltration-detention area with native vegetation. Windmiller and the city appeal.

II. Merits

Because "[a] request for an injunction invokes the court's equitable jurisdiction," our review is de novo. *Matlock v. Weets*, 531 N.W.2d 118,

121 (Iowa 1995). Although we are not bound by them, we give weight to the trial court's fact findings, especially concerning the credibility of witnesses. *Id.* We review a decision by the trial court to allow an exception to the statute of frauds and admit oral evidence of a contract for correction of errors at law. *Kolkman v. Roth*, 656 N.W.2d 148, 151 (Iowa 2003).

A. Use Restriction/Covenant Running with the Land

The appellants argue the note on the plat map does not create a covenant or use restriction running with the land. Windmiller also argues a strict test should be applied in construing agreements that restrict the free use of property.

It is well settled that "restrictions on the free use of property are strictly construed against the party seeking to enforce them, . . . and doubts will be resolved in favor of the unrestricted use of property." *Stockdale v. Lester*, 158 N.W.2d 20, 22 (Iowa 1968) (citations omitted). This strict rule of construction, however, "'should never be applied in such a way as to defeat the plain and obvious purpose of the restriction.'" *Leverton v. Laird*, 190 N.W.2d 427, 432 (Iowa 1971) (quoting *Jones v. Haines, Hodges & Jones Bldg. & Dev. Co.*, 371 S.W.2d 342, 344 (Mo. Ct. App. 1963)). "[T]he true rule is that the intention of the parties may be ascertained from the language of the instrument or may be implied from the surrounding circumstances." *Id.* (citation omitted). A more liberal approach recognizes building restrictions "more as a protection to the property owner and the public rather than as a restriction on the use of property." *Id.* at 431 (citations omitted).

While it may have been previously unclear whether a plat map could create a covenant or use restriction running with the land, the recent case of

Gray v. Osborn, 739 N.W.2d 855 (Iowa 2007), makes it clear that the plat map alone can provide the necessary language to bind successive owners of real estate to restrictions or limitations on its use. In *Gray*, noting that "[a]n easement created via a plat map is valid under Iowa law," the court looked to the intention of the parties to determine the existence of an easement. *Gray*, 739 N.W.2d at 861 (*citing Maddox v. Katzman*, 332 N.W.2d 347, 351 (Iowa Ct. App. 1982)). The court held that, because the plat clearly denoted an intention to create an easement, and the purchasers had notice, the plat established an easement. *Id.* at 861-62.

We believe the same reasoning applies to this case and hold that the note on the plat map establishes use restrictions. "[W]hen land is dedicated with limitations on the dedication and the city accepts the plat as dedicated, such action is not void and the limitations have been recognized." *Leverton*, 190 N.W.2d at 433. The city bought outlot A at below market value for the dual purpose of providing a drainage basin and green space. The purposes were clearly noted on the plat. Because the plat map clearly denoted an intention to create use restrictions and Windmiller had notice of the restrictions, the plat established the use restrictions, which survive the city's ownership and are applicable to Windmiller. *See id.* at 434 ("[Use] restrictions survive public ownership by the city and are applicable to its grantees.").

B. Admission of Oral Evidence

The appellants also argue that the trial court erred in allowing oral evidence of the plaintiffs' discussions with city employees because the statute of

frauds renders evidence of an oral promise creating an interest in land inadmissible.

> [T]he erroneous admission of evidence does not require reversal unless a substantial right of the party is affected. In other words, the admission of evidence must be prejudicial to the interest of the complaining party. This requires a finding that it is probable a different result would have been reached but for the admission of the evidence or testimony.

Mohammed v. Otoadese, 738 N.W.2d 628, 633 (Iowa 2007) (internal citations and quotations omitted). Because we hold that the language on the plat itself establishes use restrictions, evidence regarding the plaintiffs' discussions with city employees is irrelevant to the outcome of this case. Therefore, we need not consider this issue on appeal.

C. Proper Procedure for Sale of Outlot

The appellants also argue that the city properly sold a portion of outlot A to Windmiller without the restrictions because it properly followed Iowa Code section 354.23 (2005) for vacation and sale of the land. The determination of whether the city followed the proper procedure involves two questions: (1) whether the sale procedure was proper under Iowa Code section 364.7 and (2) whether the city could vacate the use restrictions under section 354.23 as part of the sale. We find that the sale procedure was appropriate but could not be done without the use restrictions.

Pursuant to section 354.23, a city "may vacate part of an official plat that had been conveyed to the city . . . or dedicated to the public which is deemed by the governing body to be of no benefit to the public." *See also Carson v. State*, 240 Iowa 1178, 1189, 38 N.W.2d 168, 175 (1949) ("[W]here land, already

publicly owned, is designated for some particular public use no contractual trust arises in favor of the general public that precludes subsequent diversion of it by proper legislative authority to some other and different public use.").

Once the city determined it did not need the portion of outlot A, it was empowered to sell it. *See Leverton*, 190 N.W.2d at 434. The city could not, however, sell the land free of the restrictions contained in the plat. Where "each lot owner is presumed to have bought with notice of and in reliance on the material in the plat dedication, [p]rivate rights have arisen." *Id.* Although the city can sell the land, "in doing so it should not be allowed to destroy the original scheme of restrictive covenants applicable to all of the other land." *Id.* The appellants knew the user restrictions were in the plat and also knew of the prior position of adjoining landowners. Further, the adjoining landowners acquired rights to the restrictions because of the increased value and desirability of their properties because of those restrictions. Even if we were to hold that the attempted release of the restriction was a vacation of public lands, this case turns on the rights created at the time outlot A was conveyed to the city and is not controlled by the city's later attempted nullification of the restriction. The sale of the land was proper; the attempted release of the restrictions was not.

III. Conclusion

The plat map clearly creates use restrictions, and Windmiller had notice of the restrictions. The city could sell outlot A but not free of the restrictions contained in the plat. We affirm the trial court's injunction prohibiting Windmiller and the city from using any portion of outlot A for any purpose other than as a

recharge-infiltration-detention area with native vegetation.

AFFIRMED.