IN THE COURT OF APPEALS OF IOWA

No. 6-706 / 95-2011

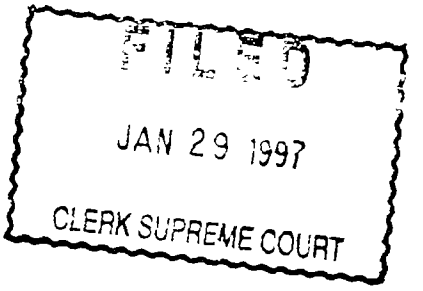
DAVID R. BLECHA, SUSAN M. BLECHA, and All Other Persons Similarly Situated,

Petitioners-Appellees,

vs.

JAMES A. MASHEK,

Defendant-Appellant.



Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge.

Appellant challenges grant of injunctive relief requiring him to move a house from his property. **REVERSED.**

Joseph R. Sevcik and L. Don Snow of Snow, Knock & Sevcik, Cedar Falls, for appellant.

Hugh M. Field of Beecher, Rathert, Roberts, Field, Walker & Morris, P.C., Waterloo, for appellee.

Heard by Habhab, C.J., Cady, and Huitink, JJ., but decided by Habhab, C.J., Cady, Huitink, Streit, and Vogel, JJ. Sackett, J., takes no part.

CADY, J.

This is an appeal from an injunction issued by the district court requiring a house be removed from a residential lot for violation of a restrictive covenant governing minimum size. We reverse the district court decision on our de novo review.

The Sturdy Addition in Waterloo was platted on March 22, 1978. Its deed of dedication contained several restrictive covenants, including the following covenant which established the minimum size of the homes which could be located in the division:

> 1. The lots within said Addition may be used for any purpose permitted by the Zoning Ordinances of the City of Waterloo, Iowa, now in effect or in effect during the period of the validity of these covenants, subject only to the following:
>
> (a) No single family one story or split level residence may be moved onto, built or maintained on any part of said Addition having a ground floor square foot area of less than 900 square feet, exclusive of porches, garages and breezeways;
>
> (b) No single family two story residence may be moved onto, built or maintained on any part of said Addition having a ground floor square foot area of less than 575 square feet, exclusive of porches, garages and breezeways.

The deed of dedication specified the restrictive covenants were to be binding for twenty-one years from the date of the filing of the plat. It also provided any owner of land in the addition could bring an action at law or in equity to enforce the covenants.

James A. Mashek acquired a lot in the addition and moved a house onto it in July 1995. The home had a basement, a first floor with 628 square feet and a second floor with 480 square feet. The second floor was contained within the pitch of the roof. The roof had dormers with windows, however, clearly identifying the presence of a second level of the house.

The neighbors brought an action to enjoin Mashek from moving the home onto his property. They claimed the home was not a "two-story residence" and did not comply with the requirements of the restrictive covenant. They requested injunctive relief and claimed no adequate remedy at law.

The court found Mashek's home was not a two-story residence and did not meet the minimum ground floor size requirements for a one-story home. It granted the application for injunctive relief and ordered Mashek to remove the home from his lot.

Mashek argues on appeal the district court erred in: 1) finding his home was not a two-story residence; 2) construing the restrictive covenant to subject story and a half homes to the size requirements of single story homes; and 3) concluding the appellees' interest in preserving the aesthetical integrity of the addition outweighed the financial hardship he would incur in removing the home.

Standard of Review

Our review of actions for injunctive relief is de novo. Iowa R. App. P. 4.

Covenant

Restrictive covenants are recognized under Iowa law. *Storm Hill Community Ass'n v. Norpel*, 492 N.W.2d 409, 410 (Iowa 1992). They exist to protect existing and future property owners in a subdivision by imposing certain restrictions on land. *Id.* The lot owners must use their lots in conformity with those restrictions. *Id.*

In this case, the covenant restricts the size of a single-family home which can be erected or moved onto each lot. It does this by prescribing the minimum area of the ground floor for a "one-story or split level" residence and for a "two-story" residence.

1. We construe restrictive covenants by determining the intent of the parties as gathered from the entire instrument. *Stockdale v. Lester*, 158 N.W.2d 20, 22 (Iowa 1968). The words used in the agreement are given their ordinary and common meaning, unless otherwise shown. *Id.* When they are ambiguous, the covenant will be strictly construed against the party seeking to enforce it. *Id.* An ambiguity exists when, after application of the pertinent rules of interpretation to the face of the instrument, a genuine uncertainty exists concerning which of two reasonable meanings is proper. *Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 863 (Iowa 1991). A mere disagreement over the meaning of words does not establish an ambiguity for purposes of the rule that a restriction on the free use of property must be strictly construed against the parties seeking to enforce it. *Iowa Realty Co., v. Jochims*, 503 N.W.2d 385, 386 (Iowa 1993).

Mashek argues the terms "one-story" and "two-story" are not ambiguous and he clearly has a "two-story" home because it has two levels of living space. Furthermore, even if the terms may be ambiguous, Mashek asserts the ambiguity must be strictly construed in favor of free use of his property.

While we recognize the rule that restrictions on the free use of property are strictly construed against those seeking to enforce them, we will not allow this principle to subvert the manifest intention of the parties as shown by the entire instrument. *Stockdale*, 158 N.W.2d at 22. A review of the covenant in this case reveals a clear purpose to promote uniformity and symmetry in the subdivision so the appearance and general good of the development will be preserved for all property owners. Thus, in determining whether Mashek's home must meet the "one-story" or "two-story" standards, the focus should be on the structural appearance of the home. A two-story home for the purpose of a building restriction contemplates a structure with two levels of living space.

In this light, we conclude Mashek's home does not violate the covenant. The second level is a visible portion of the house, and is approximately seventy-five percent of the size of the main level. If the Mashek home was intended to be excluded from the subdivision, the language of the covenant failed to include it. Notwithstanding, there is a second reason to deny the injunction.

Equity generally invokes injunctive relief only when necessary to prevent irreparable harm or when the complaining party is without another effective remedy.

Id. If the injury is slight and an injunction would result in serious hardship or loss to the party in violation of the covenant, an injunction is inappropriate. *Id.* Within limitations, injunctions which are likely to cause greater injustice than they seek to prevent are property refused. *Id.* In the end, each case rests with its own particular facts. *Id.*

The district court acknowledged the expense Mashek incurred in moving the house onto the lot. We agree the issuance of an injunction would likely result in serious hardship. Thus, we turn our concern to the injury to the neighboring property owners as a result of the violation.

The neighboring property owners generally opined the Mashek house would decrease the value of their homes. However, Mashek's contractor testified the residence was not completed. Plans called for the addition of a garage, and both the inside and outside are to be renovated. When completed, he believed the Mashek home would be compatible with the neighborhood and valued similar to other homes in the area.

We also observe Mashek reasonably believed the house complied with the covenant before he moved it onto the lot and was unaware of any conflict until he had incurred substantial expenses. He obtained all necessary permits from the city and sought legal services. He stopped construction when the dispute could not be resolved. We believe these are factors which weigh in favor of Mashek. Accordingly,

an injunction would not be necessary to prevent irreparable harm, and would cause serious hardship to Mashek.

We reverse the decision of the district court. The requested injunction shall not issue and Mashek shall not be required to remove the house from the lot.

REVERSED.