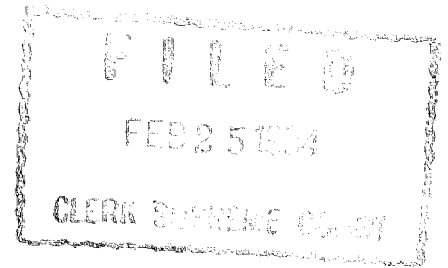


IN THE COURT OF APPEALS OF IOWA

No. 3-660 / 93-0684



PATRICK M. MORRIS and
MARILEA A. MORRIS,

Plaintiffs-Appellees,

vs.

SAHU, INC., and SAHEB SAHU,
President,

Defendants-Appellants.

Appeal from the Iowa District Court for Dallas County,
William H. Joy, Judge.

Defendants appeal a finding of nuisance and the award
of damages. **REVERSED AND DISMISSED.**

James L. Sayre of James L. Sayre, P.C., Des Moines, and
Rex Darrah, Des Moines, for appellants.

John P. Roehrick of Roehrick, Hulting & Moisan,
Des Moines, for appellees.

Heard by Sackett, P.J., Habhab, J., and Peterson, S.J.*

*Senior judge from the 1st Judicial District serving on
this court by order of the Iowa Supreme Court.

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SACKETT, P.J.

Plaintiffs-appellees Patrick M. Morris and Marilea A. Morris own a lot in a subdivision known as Sahu Acres in rural Dallas County. Sahu Acres was platted by defendant-appellant Sahu, Inc. Defendant-appellant Saheb Sahu is president of Sahu, Inc. Plaintiffs sued defendants claiming defendants did not enforce the restrictive covenants in the plat. The case was tried to the court who found the covenants of the plat did not allow for livestock within the development, and the owner of one lot has five horses and three goats; the owners of another lot have three horses; and, the owners of a third lot has one horse. The court found the horses and goats were livestock. The trial court found the failure of defendants to enforce the covenant of Sahu Acres is an obstruction to plaintiffs comfortable enjoyment of their property and constitutes a nuisance which must be abated. The court further found plaintiffs had been damaged by the nuisance and awarded plaintiffs damages of \$2000 against defendant corporation and further ordered defendants to remove the animals. This appeal follows.

Defendants appeal contending the evidence does not support a finding of a nuisance and the trial court should not have ordered its abatement and, further, the evidence does not support a finding the covenants are enforceable. We reverse.

In this equity action, our review is de novo. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981).

We first address defendants' claim the covenants the trial court relied on were not enforceable because by its terms it had expired. Plaintiffs advance this issue was not preserved for appellate review.

A subparagraph of the Article of the covenants captioned "Specific Provisions and Use Restrictions" provides:

If any titleholder, or his heirs or assigns, shall violate any of the covenants or restrictions herein before January 1, 1990, it shall be lawful for any other person or persons owning any of the lots in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction and either to prevent him or them from doing so or to recover damages or other dues for such violation.

This case was tried in 1993. The above subparagraph clearly provides if any titleholder of any lot violates use restrictions before January 1, 1990, an action for injunctive relief may be commenced. A restriction on the free use of property must be strictly construed against a party seeking to enforce such restriction. See Iowa Realty Co. v. Jochims, 503 N.W.2d 385, 386 (Iowa 1993). The restrictions, by its terms, were limited in duration. We will not extend them beyond their duration. See Braaten v. Jarvi, 347 N.W.2d 279, 283 (Minn. App. 1984).

Furthermore, the evidence at trial was defendants no longer owned the lots where the horses and goats were located. The owners of the goats and horses were not made parties to this proceeding. Consequently, the trial court has no jurisdiction over their use of the land.

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Defendants next claim there was no showing nine horses and three goats on three separate five-acre lots in rural Dallas County were a nuisance.

Plaintiffs presented evidence the Waukee Police Department had notified residents of Sahu Acres, in June 1992, that the department received a report of goats being killed in their area and the department believed it was done by dogs. The department did not know if the dogs were wild or local dogs running at-large. The letter said the department was doing extra patrol in the neighborhood to try to find the dogs. Marilea testified the presence of the goats and the wild dogs caused her fear for herself and her children. She testified she was offended by the animals presence and was worried other covenants might not be enforced. Plaintiffs testified they bought their lot to build a house but have not done so because of the presence of the animals. Additional evidence of the alleged nuisance was the testimony of Patrick that he did not like to look at horses.

The lots in question are in rural Dallas County, a few miles north of Waukee, Iowa. The plat was an approximate eighty-four acre tract that was divided into fourteen lots. The lots are a minimum of five acres and a maximum of nearly seven acres.

The lots were initially platted in 1978. By 1983, only three of the fourteen lots were sold. Sahu, in 1983, had a letter sent to the then lot owners clarifying the

restrictions to allow for horses unless someone objected within a specified time. There were no objections made. There was no recording made of this transaction and so the Dallas County records did not divulge this to plaintiffs.

In 1989, a lot sold where the owner has continuously kept horses since June 1989. On another lot that sold July 1, 1988, the owner has kept horses since the time of purchase. On a lot that sold in July 1991, the owners have kept horses and three goats since the time of purchase. Plaintiffs purchased their lot in June or July 1991. Plaintiffs claimed at the time of purchase they had no knowledge of the presence of the horses and goats.

Three owners testified they purchased their property relying on the fact they could keep horses. The properties were advertised as "Horse Heaven" in the multiple listing.

We find from the evidence there were horses in the development when the plaintiffs purchased the lot and plaintiff knew there were horses in the development. The evidence presented by the plaintiffs does not support a finding the horses and three goats were a nuisance. We recognize plaintiff Patrick does not like to look at horses. We will not consider the fact the sight of a horse in rural Iowa is offensive to a litigant as evidence of nuisance. Plaintiffs point to the letter from the Waukeet Police Department about the dogs as further evidence of the nuisance. While we do not disagree with plaintiffs that wild or unrestrained dogs might under

circumstances create a nuisance, the presence or absence of these dogs in this area is not the issue. While plaintiffs seem to argue the goats attract the dogs, there is no evidence to support this conclusion.

Nor can we assume, as plaintiffs argue, if the horses and goats are not removed, there will be no restrictions on the land and soon there will be herds of livestock and old cars. The issue of future use of the land is not at issue in this proceeding.

We reverse the trial court; quash the injunction; and, order plaintiffs' action dismissed.

REVERSED AND DISMISSED.