IN THE COURT OF APPEALS OF IOWA

No. 8-411 / 97-1377

JAMES C. CLARK and KAREN L. CLARK,

Appellants,

vs.

SOUTH SQUAW VALLEY SUBDIVISION, JAMES S. MARSHEK, and SUSAN M. MARSHEK,

Appellees.

SEP 30 1998

Appeal from the Iowa District Court for Story County, Carl E. Peterson, Judge.

The appellants appeal from the district court's declaratory judgment ruling that a restrictive covenant prohibiting more than one residence on a lot prevented the plaintiffs from replatting their nineteen-acre lot in a subdivision. **REVERSED.**

Bruce P. Bickel, Ames, for appellants.

Larry R. Curtis, Ames, for appellees.

Considered by Cady, C.J., and Vogel, and Mahan, JJ.

CADY, C.J.

James and Karen Clark appeal the district court ruling enforcing a restrictive covenant. We reverse the district court.

The dispute in this case involves the development of the South Squaw Valley Subdivision. The South Squaw Valley Subdivision was developed in phases or additions. The preliminary plat of the South Squaw Valley Subdivision provided for 52 single-family residential lots. The sewage and water system were constructed with a capacity for 52 single-family residential lots. Restrictive covenants which were a part of the development provided "not more than one residence shall be constructed on any one lot in the subdivision."

The Clarks purchased a 19-acre lot (lot 17) in Story County. They signed the restrictive covenant at the time of the third addition. By signing the agreement, the Clarks were able to join the plat, and receive sewer and water service from the development. They constructed a home on the southern portion of the lot, intending to subdivide the remainder of the property into seven residential lots.

Most of the lots in the development are less than one acre. Other than the Clarks' 19-acre lot, the lots range from .48 acres to 2.19 acres. Although the preliminary plat was approved for 52 single-family lots, only 41 lots were used.

Because of the restrictive covenant, the Clarks filed an action for declaratory judgment against the subdivision and the property owners. The Clarks sought a determination that the restrictive covenant limiting the residential lots in the subdivision to a single residence was not enforceable against their property. The

Marsheks were the only property owners in the subdivision who participated in the suit.

The district court found the one residence per lot restriction was applicable to the Clarks' property. The district court determined the Clarks were aware of the restrictive covenant, there was no ambiguity in the language of the covenant, the covenant was founded upon reasonable concerns, and the homeowners purchased their lots with the expectation no additional lots would be developed. The trial court therefore found the language of the covenant limited the number of residences to one for each lot in the plat and would prohibit the replatting of lot 17 to smaller lots.

On appeal the Clarks contend the district court erred by interpreting the restrictive covenant to prohibit further development of their lot and by enforcing the restrictive covenant.

This case was tried in equity. Accordingly, our review is de novo. Iowa R. App. P. 4; *First Securities Co. v. Dahl,* 560 N.W.2d 327, 329 (Iowa 1997). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *Lemmon v. Hendrickson,* 559 N.W.2d 278, 279 (Iowa 1997).

Restrictive covenants exist to protect existing and future property owners in a subdivision by placing certain restrictions on the land so that lot owners use their lots in conformity with those restrictions. *Stone Hill Community Ass'n v. Norpel,* 492 N.W.2d 409, 410 (Iowa 1992). Because restrictive covenants are contractual in nature, we apply contract-based rules of construction to interpret them. *Sky View*

Financial, Inc. v. Bellinger, 554 N.W.2d 694, 697 (Iowa 1996). In construing a restrictive covenant, due regard must be had for the purposes contemplated by the parties, but the words must be given their ordinary obvious meaning as commonly understood at the time the instrument was executed. *First Securities Co.*, 560 N.W.2d at 332. Where the wording of a restriction is ambiguous, its meaning must be strictly construed against the party seeking to enforce it. *Sky View Financial, Inc.*, 554 N.W.2d at 697.

A restriction on the use of property can be either express or implied. *Compare Grange v. Korff*, 248 Iowa 118, 130, 79 N.W.2d 743, 750-51 (Iowa 1956) (holding implied restriction of one dwelling house on a particular lot unenforceable) *with Beeler Development Co. v. Dickens*, 254 Iowa 1029, 1035, 120 N.W.2d 414, 418 (Iowa 1963) (holding express restrictive covenant prohibiting re-subdivision of lots reasonable).

The Clarks first contend the district court erred by interpreting the restrictive covenant to prohibit the further platting and subdivision of their 19-acre parcel of land. Specifically, they assert: (1) further subdivision of their lot is consistent with the general scheme of development because the single-family residential lots in the development averaged between three-quarters and one acre in size; (2) at the time they signed the restrictive covenant, they intended to subdivide their lot; (3) the restrictive covenant for the third addition is silent about any further splitting or subdivision; and (4) reserved easements for the future extension of Mathews Road

allowing access to the undeveloped portion of Clarks' lot demonstrates the approval of the Planning and Zoning Commission of potential further development of their lot.

We first find the record in this case does not support the finding of an express provision restricting the further subdivision of lot 17. While the covenant forbids more than one residence on any one lot in the subdivision, it clearly does not make any provision concerning the further splitting or subdivision of the lots. We construe any ambiguity in the covenant against the drafter. *Sky View Financial, Inc.*, 554 N.W.2d at 697. The drafter of the covenant could have provided that no residential lot will be further subdivided. *See Beeler Development Co.*, 254 Iowa at 1031, 120 N.W.2d at 414. The drafter, however, did not make this express provision.

Furthermore, the record does not support an implied restriction. *See Grange*, 248 Iowa at 130, 79 N.W.2d at 750. In this case, the general developmental scheme does not support an implied covenant baring further division of lot 17.[1]

Although we find the restrictive covenant does not bar further subdivision of lot 17, we must still enforce the language concerning one residential dwelling per lot. Until lot 17 is further subdivided, we must give effect to the plain and unambiguous language in the covenant. Accordingly, we enforce the language of the covenant providing not more than one residence shall be built on any one lot, but find the

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[1] Although we find there is not an implied covenant for further division of lot 17, we note an implied covenant may apply to the other lots in the development because of their size.

Clarks' lot is subject to further subdivision consistent with the developmental scheme in the South Squaw Valley Subdivision third addition.

REVERSED.