

COURT OF APPEALS OF TEXAS, SEVENTH DISTRICT AT AMARILLO

Kimberly Ann Smith v. Andrew G. Dixon and Lauren M. Dixon

No. 07-20-00197-CV · No. No. 07-20-00197-CV · Decided July 14, 2021

SUMMARY

The Texas Seventh Court of Appeals affirmed a summary judgment in favor of neighboring property owners in a dispute involving alleged violations of restrictive covenants, negligence, nuisance, and requests for injunctive relief. The court held that Kimberly Ann Smith inadequately briefed her appellate issues and therefore waived them.

CASE DETAILS

COURT	Court of Appeals of Texas, Seventh District at Amarillo
WRITING FOR THE COURT	Quinn, C.J.; Pirtle, J.; Parker, J.
JURISDICTION	Texas
DECIDED	July 14, 2021
DOCKET	No. 07-20-00197-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final summary judgment rendered for the defendants on all of Smith's claims and denying her motion to amend the judgment or for a new trial.
STANDARD OF REVIEW	The court reviews the interpretation of a restrictive covenant as a matter of law and will not disturb the trial court's interpretation unless it is incorrect as a matter of law. The court also requires an appellant to adequately brief issues with clear and concise argument supported by legal authority and record citations.
PRECEDENTIAL VALUE	Memorandum opinion; treated as nonprecedential under Texas appellate practice
PARTIES	Kimberly Ann Smith v. Andrew G. Dixon, Lauren M. Dixon

TOPICS

- appellate procedure
- preservation of error
- summary judgment
- covenants and restrictions
- real estate

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Smith adequately briefed and preserved appellate complaints concerning the restrictive covenant, negligence, nuisance, and related claims.
2. Whether the trial court correctly interpreted the restrictive covenant as expiring on January 1, 1985.

HOLDINGS

1. Smith waived all appellate issues because her brief failed to present substantive argument supported by appropriate citations to legal authority and the record.
2. The court did not disturb the trial court's interpretation that the restrictive covenant provided for only one automatic ten-year extension and therefore expired on January 1, 1985.

KEY QUOTATIONS

“an appellant has the burden to provide us with a “clear and concise argument for the contention made,” supported by appropriate citation to legal authority and to the record.” (at 5)

“Since Appellant has provided us with neither substantive argument regarding her complaints, nor made citation to legal authority and the record, she has inadequately briefed any issue.” (at 5-6)

FACTUAL BACKGROUND

Smith and the Dixons were next-door neighbors. Smith alleged that a 2018 addition to the Dixons' home violated a restrictive covenant requiring a minimum setback, and she also complained about odors, barking dogs, air-conditioning noise, and rainwater runoff. She asserted claims for breach of restrictive covenants, negligence, nuisance, personal-injury damages, diminished property value, and injunctive relief. The trial court determined that the setback restriction expired by its own terms on January 1, 1985, and granted summary judgment on all claims.

PROCEDURAL HISTORY

Smith sued her neighbors, alleging violation of a restrictive covenant and later adding negligence, nuisance, personal-injury, diminished-property-value, and injunctive-relief claims. The defendants filed a hybrid traditional and no-evidence motion for summary judgment. After multiple opportunities to supplement her response, Smith still failed to provide properly authenticated summary-judgment evidence. The trial court granted summary judgment for the defendants and denied Smith's post-judgment motion to amend or for a new trial. Smith timely appealed pro se.

DISPOSITION

affirmed

CASES CITED

- Voice of the Cornerstone Church Corp. v. Pizza Prop. Partners, Inc., 160 S.W.3d 657, 665 (Tex. App.—Austin 2005, no pet.)
- Hearn-Haynes v. Fin. Ins. Exch., No. 14-04-00461-CV, 2005 Tex. App. LEXIS 9573, at *3-4 (Tex. App.—Houston [14th Dist.] Nov. 17, 2005, no pet.) (mem. op.)
- Benchmark Bank v. Crowder, 919 S.W.2d 657, 663 (Tex. 1996)
- Brooks v. Auros Partners, Inc., No. 07-18-00354-CV, 2020 Tex. App. LEXIS 3459, at *5 (Tex. App.—Amarillo Apr. 22, 2020, no pet.) (mem. op.)

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