

NEBRASKA SUPREME COURT

Estates at Prairie Ridge Homeowners Assn. v. Korth

298 Neb. 266 (2017) · No. No. S-16-1108 · Decided December 1, 2017

SUMMARY

The Nebraska Supreme Court considered whether restrictive covenants governed homeowners’ repainting of their residence blue without prior approval. The court held that the covenants’ plain language did not regulate exterior paint color and that the homeowners therefore violated no restrictive covenant. The judgment for the homeowners association was reversed, and the case was remanded with directions to enter judgment for the homeowners.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	December 1, 2017
DOCKET	No. S-16-1108
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Homeowners appealed a district court judgment in favor of a homeowners association in an equitable action to enforce restrictive covenants. The Nebraska Supreme Court moved the appeal to its docket and reviewed the judgment de novo on the record.
STANDARD OF REVIEW	An action to enforce restrictive covenants is equitable in nature. On appeal from an equity action, the Nebraska Supreme Court decides factual questions de novo on the record and independently determines questions of both fact and law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Duane R. Korth, Kathryn A. Korth v. The Estates at Prairie Ridge Homeowners Association

TOPICS

- covenants and restrictions
- real estate
- contract interpretation
- appellate procedure
- summary judgment

PRACTICE AREAS

real estate

contracts

appellate procedure

equitable relief

QUESTIONS PRESENTED

1. Whether the restrictive covenant concerning external improvements required approval before the homeowners could repaint the exterior of an existing residence.
2. Whether the covenants concerning nuisances or annoyances, storage of things obnoxious to the eye, and compliance with laws or rules prohibited the residence's blue exterior paint color.
3. Whether the homeowners could challenge the denial of their motions for summary judgment on appeal.

HOLDINGS

1. The plain language of article I, section 2, did not govern the homeowners' repainting of their existing residence because repainting was not the construction, erection, placement, or continued presence of an external improvement within the covenant's terms.
2. The covenant prohibiting objectionable, unlawful, or offensive trade or activity and things that may become a nuisance or annoyance did not apply to the residence's exterior paint color.
3. The covenant prohibiting the storage of property or things that would be obnoxious to the eye did not apply to exterior paint color because paint color is not something stored on the land.
4. The homeowners did not violate the covenant requiring compliance with county and state health requirements, permits, and rules and regulations because the evidence showed no violation independent of the other restrictive covenants.
5. The denial of a motion for summary judgment is neither appealable nor reviewable.

KEY QUOTATIONS

"The restrictive covenants at issue were not ambiguous and did not apply to Homeowners' repainting of their residence. Because Homeowners did not violate any restrictive covenants, we reverse, and remand with directions to the district court to enter judgment in Homeowners' favor." (298 Neb. at 278)

FACTUAL BACKGROUND

The homeowners purchased a lot subject to restrictive covenants and initially obtained approval for construction of their residence. Approximately ten years later, they repainted the residence blue without seeking approval, although the covenants did not expressly address exterior paint color. The homeowners association, as successor to the developer's interests, sued to require repainting in an earth-tone color, and the district court found violations based on provisions concerning external improvements, nuisances or annoyances, storage of things obnoxious to the eye, and compliance with rules.

PROCEDURAL HISTORY

The homeowners association sued after the homeowners repainted their residence blue without obtaining approval. The district court entered judgment for the association, finding that repainting was an external

improvement requiring approval and that the color was a nuisance, annoyance, and obnoxious to the eye. The homeowners timely appealed; the Supreme Court reversed and remanded with directions to enter judgment in the homeowners' favor.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the district court with directions to enter judgment in the homeowners' favor.

CASES CITED

- Kalkowski v. Nebraska Nat. Trails Museum Found., 290 Neb. 798, 862 N.W.2d 294 (2015)
- Tyler v. Tyler, 253 Neb. 209, 570 N.W.2d 317 (1997)
- Skyline Woods Homeowners Ass'n v. Broekemeier, 276 Neb. 792, 758 N.W.2d 376 (2008)
- Boyles v. Hausmann, 246 Neb. 181, 517 N.W.2d 610 (1994)
- Mutual of Omaha Bank v. Watson, 297 Neb. 479, 900 N.W.2d 545 (2017)
- Southwind Homeowners Ass'n v. Burden, 283 Neb. 522, 810 N.W.2d 714 (2012)
- Wessel v. Hillsdale Estates, Inc., 200 Neb. 792, 266 N.W.2d 62 (1978)
- David Fiala, Ltd. v. Harrison, 290 Neb. 418, 860 N.W.2d 391 (2015)
- Frohberg Elec. Co. v. Grossenburg Implement, 297 Neb. 356, 900 N.W.2d 32 (2017)
- Village of Pheasant Run v. Kastor, 47 S.W.3d 747 (Tex. App. 2001)
- West Hill Colony v. Sauerwein, 138 N.E.2d 403 (Ohio App. 1956)
- In re Claims Against Pierce Elevator, 291 Neb. 798, 868 N.W.2d 781 (2015)
- Caruso v. Parkos, 262 Neb. 961, 637 N.W.2d 351 (2002)

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