

COURT OF APPEALS OF GEORGIA

Hayes v. Lakeside Village Owners Ass'n, Inc., 282 Ga. App. 866

640 S.E.2d 373 (2006) · No. A06A2257 · Decided December 13, 2006

SUMMARY

The Georgia Court of Appeals affirmed summary judgment for a homeowners association in a personal injury action arising from the collapse of a chair in a common area. The court held that a recorded covenant requiring parcel owners to inspect common facilities and use them at their own risk was enforceable against subsequent grantees with notice, shifted the inspection duty away from the association, did not require the owners' signatures, and did not violate Georgia public policy.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Blackburn, Presiding Judge; Mikell, Judge; Adams, Judge
JURISDICTION	Georgia
DECIDED	December 13, 2006
DOCKET	A06A2257
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the grant of summary judgment to a homeowners association in a personal injury action alleging negligence and gross negligence.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, with the evidence and all reasonable conclusions and inferences viewed in the light most favorable to the nonmovant.
PRECEDENTIAL VALUE	Published, precedential opinion of the Court of Appeals of Georgia.
PARTIES	William Hayes, Ruth Hayes v. Lakeside Village Owners Association, Inc.

TOPICS

[premises liability](#) [negligence](#) [assumption of risk](#) [appellate procedure](#) [standard of review](#)

PRACTICE AREAS

[Torts](#) [Real property](#) [Homeowners associations](#) [Civil procedure](#)

QUESTIONS PRESENTED

1. Whether the recorded covenant was a covenant concerning the land or its use and therefore enforceable against the Hayeses as subsequent grantees with notice.
2. Whether the covenant shifted the duty to inspect and maintain the common areas from the Association to the parcel owners and users.
3. Whether an alleged latent defect or gross negligence created a factual issue precluding summary judgment.
4. Whether the covenant was unenforceable against the Hayeses because they did not sign it.
5. Whether enforcement of the covenant violated Georgia public policy or OCGA § 44-3-231(g).

HOLDINGS

1. A covenant concerning land or its use is enforceable against a subsequent grantee with notice, even if the covenant is not a traditional covenant running with the land and the subsequent grantee did not sign it. The covenant here concerned the use and enjoyment of the common areas and was enforceable against the Hayeses because they had notice through their deed and the recorded covenant.
2. The covenant shifted the duty to inspect the common areas and the risk of their use to the parcel owners and users, relieving the Association of a duty to inspect the common areas and maintain them in a safe condition for purposes of the Hayeses' claim.
3. The alleged defect in the chair and the allegation of gross negligence did not preclude summary judgment because, under the enforceable covenant, the Association owed the Hayeses no duty to inspect the common area, and a negligence claim requires a breached legal duty.
4. The covenant was enforceable against the Hayeses without their signatures because the obligation arose from a restrictive covenant concerning land and its use, not from a contract requiring their assent by signature.
5. Enforcement of the covenant did not violate Georgia public policy or OCGA § 44-3-231(g). The statute did not apply because the recorded covenant predated the statute and the property was not submitted to the statutory article; in any event, the covenant did not prevent the Hayeses from bringing a tort action.

KEY QUOTATIONS

“It is only necessary that the covenant concern the land or its use, and that the subsequent grantee has notice of it.” (376)

“all users of, and visitors to, the common area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.” (376)

“Before negligence can be predicated upon a given act, some duty to the individual complaining must be sought and found, the observance of which duty would have averted or avoided the injury or damage.” (377)

“Exculpatory clauses in Georgia are valid and binding, and are not void as against public policy when a business relieves itself from its own negligence.” (378)

FACTUAL BACKGROUND

In September 2004, William and Ruth Hayes owned property in the Lakeside Village community and were dues-paying members of the homeowners association, which owned and managed the community's common areas. While using a common area for recreation, William Hayes was injured when a chair collapsed. The Hayeses alleged that the Association negligently and grossly negligently failed to maintain the chair, while the Association relied on a recorded covenant, referenced in the Hayeses' deed, requiring parcel owners and users to inspect common facilities and use them at their own risk.

PROCEDURAL HISTORY

The Hayeses sued Lakeside Village Owners Association after William Hayes was injured when a chair in a common area collapsed. The Association moved for summary judgment based on a recorded restrictive covenant assigning parcel owners responsibility to inspect common facilities and requiring users to use them at their own risk. The trial court granted summary judgment for the Association, and the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Matjoulis v. Integon Gen. Ins. Corp., 226 Ga. App. 459(1), 486 S.E.2d 684 (1997)
- Copelan v. Acree Oil Co., 249 Ga. 276, 277-278(2), 290 S.E.2d 94 (1982)
- Lowry v. Norris Lake Shores Dev. Corp., 231 Ga. 549, 551, 203 S.E.2d 171 (1974)
- Timberstone Homeowner's Ass'n v. Summerlin, 266 Ga. 322, 323-324, 467 S.E.2d 330 (1996)
- Robinson v. Kroger Co., 268 Ga. 735, 740(1), 493 S.E.2d 403 (1997)
- Trustees of Trinity College v. Ferris, 228 Ga. App. 476, 477(1), 491 S.E.2d 909 (1997)
- City of Douglasville v. Queen, 270 Ga. 770, 771(1), 514 S.E.2d 195 (1999)
- Vaughn v. Pleasant, 266 Ga. 862, 471 S.E.2d 866 (1996)
- Turner v. Sumter Self Storage Co., 215 Ga. App. 92, 95(3), 449 S.E.2d 618 (1994)
- Redding v. Tanner, 231 Ga. App. 250, 251(1), 498 S.E.2d 156 (1998)
- Emory Univ. v. Porubiansky, 248 Ga. 391, 393, 282 S.E.2d 903 (1981)
- Anderson v. Lynch, 188 Ga. 154, 159, 3 S.E.2d 85 (1939)
- My Fair Lady of Ga. v. Harris, 185 Ga. App. 459, 460, 364 S.E.2d 580 (1987)
- Perdue v. Baker, 277 Ga. 1, 14(6), 586 S.E.2d 606 (2003)
- Bradford Square Condo. Ass'n v. Miller, 258 Ga. App. 240, 249, 573 S.E.2d 405 (2002)