

OHIO COURT OF APPEALS, FOURTH APPELLATE DISTRICT, ADAMS
COUNTY

Tunnacliffe v. Carr

2025-Ohio-5590 · No. Adams App. Nos. 23CA1166 and 23CA1167 · Decided December 10, 2025

SUMMARY

The Ohio Fourth District Court of Appeals reviewed consolidated appeals arising from a jury verdict that Barbara Carr and Donna Barrett violated restrictive covenants governing minimum lot size and mobile-home use. The court upheld the findings of covenant violations and rejected the appellants’ defenses and other assignments of error, but held that the attorney-fee award was unsupported by sufficient evidence of reasonableness. The court modified the judgment to vacate the jury’s attorney-fee award and remanded for modification, leaving unchallenged expert-witness and deposition fees and the attorney fees awarded after the injunction hearing intact.

CASE DETAILS

COURT	Ohio Court of Appeals, Fourth Appellate District, Adams County
WRITING FOR THE COURT	Michael D. Hess; Wilkin; Smith
JURISDICTION	Ohio Court of Appeals, Fourth Appellate District, Adams County
DECIDED	December 10, 2025
DOCKET	Adams App. Nos. 23CA1166 and 23CA1167
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Donna Barrett and Barbara Carr appealed judgments entered after a jury trial found that they violated restrictive covenants governing real property and awarded damages and attorney fees. They also appealed the denial of post-trial motions for judgment notwithstanding the verdict, a new trial, and remittitur.
STANDARD OF REVIEW	Manifest-weight review requires examination of the entire record, weighing the evidence and reasonable inferences, considering witness credibility, and determining whether the factfinder lost its way and created a manifest miscarriage of justice. A Civ.R. 50(B) motion for judgment notwithstanding the verdict is reviewed de novo; the evidence is construed most strongly in favor of the nonmoving party, and the motion may be granted only when reasonable minds could reach but one conclusion.

PRECEDENTIAL VALUE	Published
PARTIES	Donna Barrett, Barbara Carr v. Charles E. Tunnacliffe, Trustee of the Tunaman Revocable Living Trust, et al.

TOPICS

covenants and restrictions real estate damages remedies appellate procedure

PRACTICE AREAS

real estate restrictive covenants remedies appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence supported the rejection of Barrett's laches defense.
2. Whether the restrictive covenants had been waived or abandoned because of other properties, including properties exempted by a prior judgment entry, and whether the covenants remained enforceable.
3. Whether the evidence supported findings that Carr and Barrett violated the 20-acre subdivision restriction and that Barrett violated the mobile-home restriction.
4. Whether the jury could determine attorney fees treated as damages under the restrictive covenants and whether the evidence supported the amount awarded.
5. Whether Barrett could obtain restitution of the purchase price after the trial court ordered rescission of the deed.
6. Whether the trial court improperly allowed the jury to decide legal questions or improperly excluded hardship evidence.
7. Whether Carr could challenge possible future collection consequences and the injunctive relief entered in favor of Tunnacliffe.

HOLDINGS

1. The jury's rejection of Barrett's laches defense was supported by competent, credible evidence because Tunnacliffe offered excuses for the delay and Barrett failed to prove material prejudice.
2. The evidence supported rejection of Carr's and Barrett's waiver and abandonment defenses because the neighborhood had not changed so substantially that the restrictions became valueless.
3. The Cowan Covenants were enforceable, and competent evidence supported the jury's findings that Carr and Barrett violated the 20-acre restriction and that Barrett violated the mobile-home restriction.
4. When a restrictive covenant makes reasonable attorney fees part of recoverable damages, the issue may be submitted to the jury unless the right to jury determination is waived or the parties stipulate to a different procedure; however, an award requires evidence establishing the reasonableness of the fees, not merely the hourly rate.

5. The appellate court declined to consider Barrett's claim for repayment of the purchase price because she had not asserted that claim in the trial court.
6. Carr could not challenge possible future collection activities or judgment liens because those consequences were contingent and had not occurred; she also lacked standing to assert errors affecting another party or the appellee.

KEY QUOTATIONS

"We find that the jury's award of attorney's fees was not supported by sufficient evidence and was against the manifest weight of the evidence." (§ 2)

"The jury's verdict in so far as it included the award of attorney's fees was not supported by sufficient evidence and was against the manifest weight of the evidence." (§ 56)

"We remand the cause to the trial court for the limited purpose of modifying the judgment entry" (§ 92)

FACTUAL BACKGROUND

The Cowan family subjected a 509.1-acre Adams County farm to restrictive covenants prohibiting mobile or modular homes used as residences and subdivision into tracts smaller than 20 acres. The Carrs divided their 30.832-acre property into a 20-acre tract and a 10.832-acre tract and sold the smaller tract to Donna and Ronald Barrett despite acknowledging that the subdivision violated the covenants. The Barretts installed a single-wide mobile home on the property, continued to use it as a permanent residence, and refused requests to remove it. Charles Tunnacliffe, who owned other property subject to the covenants, unsuccessfully attempted to obtain an amendment or voluntary rescission before filing suit in 2016.

PROCEDURAL HISTORY

The Adams County Court of Common Pleas entered judgment after a jury found that Carr and Barrett violated the covenant prohibiting subdivision into lots smaller than 20 acres and that Barrett violated the covenant prohibiting mobile homes used as residences. The trial court awarded damages, attorney fees, costs, and injunctive relief requiring removal of Barrett's mobile home and, under specified circumstances, rescission of the deed to Carr. The trial court denied post-trial motions, and the two appeals were consolidated. The appellate court affirmed the merits rulings, set aside the jury's attorney-fee award for insufficient evidence, modified the monetary judgment, and remanded for that limited modification.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must modify the judgment entry by reducing the \$29,100 award against Carr and Barrett for violating the 20-acre lot restriction to \$4,386.25, and reducing the \$29,100 award against Barrett for violating the mobile-home restriction to \$4,386.25. The unchallenged expert-witness fees, court-reporter deposition fees, and post-injunction attorney-fee award remain intact.

CASES CITED

- State Dept. of Nat. Resources, Div. of Forestry v. Srofe, 2024-Ohio-1842, ¶ 34 (4th Dist.)
- State v. Thompson, 78 Ohio St.3d 380, 387 (1997)
- C.E. Morris Co. v. Foley Const. Co., 54 Ohio St.2d 279 (1978), syllabus
- Meek v. Geneva, 2017-Ohio-7975, ¶ 49 (5th Dist.)
- Bungard v. Jeffers, 2014-Ohio-334, ¶ 12 (4th Dist.)
- State ex rel. Leneghan v. Husted, 2018-Ohio-3361, ¶ 18
- State ex rel. Pennington v. Bivens, 2021-Ohio-3134, ¶ 26
- State ex rel. Doran v. Preble Cty. Bd. of Commrs., 2013-Ohio-3579, ¶ 30 (12th Dist.)
- Freelon v. GRG Farms, Inc., 2024-Ohio-4764, ¶ 32 (6th Dist.)
- Wallace v. Clifton Land Co., 92 Ohio St. 349 (1915), paragraph one of the syllabus
- Dixon v. Van Sweringen Co., 121 Ohio St. 56 (1929), paragraphs one and two of the syllabus
- DeRosa v. Parker, 2011-Ohio-6024, ¶¶ 8-9, 44 (7th Dist.)
- Cleveland Baptist Assn. v. Scovil, 107 Ohio St. 67, 71-77 (1923)
- Goutras v. Dillon-McDonald, 1991 WL 207949 (5th Dist. Sept. 30, 1991)
- Houk v. Ross, 34 Ohio St.2d 77, 91 (1973)
- Santora v. Schalabba, 2002-Ohio-2756, ¶ 10 (8th Dist.)
- Eastley v. Volkman, 2012-Ohio-2179, ¶ 25
- Simon v. Aulino, 2020-Ohio-6962, ¶ 19 (4th Dist.)
- Morgan Woods Homeowners' Assn. v. Wills, 2012-Ohio-233, ¶¶ 61-62 (5th Dist.)
- Heather Lake Assn. v. Billiter, 2017-Ohio-8387, ¶ 37 (5th Dist.)
- Bittner v. Tri-Cnty. Toyota, Inc., 58 Ohio St.3d 143, 143, 145-146 (1991)
- Stonehenge Land Co. v. Beazer Homes Investments, LLC, 2008-Ohio-148, ¶¶ 44-48 (10th Dist.)
- Christe v. GMS Mgt. Co., Inc., 88 Ohio St.3d 376, 378-379 (2000)
- Brantley, Inc. v. Tornstrom, 2024-Ohio-2908, ¶ 41 (8th Dist.)
- Matter of B.S., 2024-Ohio-5183, ¶ 74 (4th Dist.)
- Benner v. Hammond, 109 Ohio App.3d 822, 827 (4th Dist. 1996)
- Benjamin v. Ernst & Young, L.L.P., 2006-Ohio-2739, ¶ 4 (10th Dist.)
- Dayton Lodge, L.L.C. v. Hoffman, 2013-Ohio-5755, ¶ 35 (2d Dist.)
- Keller v. Columbus, 2003-Ohio-5599, ¶ 26
- State v. Loving, 2009-Ohio-15, ¶¶ 4-5 (10th Dist.)
- Texas v. United States, 523 U.S. 296, 300 (1998)
- MidAm Bank v. Dolin, 2005-Ohio-3353, ¶ 123 (6th Dist.)
- Nationwide Mut. Fire Ins. Co. v. Logan, 2006-Ohio-2512, ¶ 24 (12th Dist.)
- Garrett v. Sandusky, 68 Ohio St.3d 139, 141 (1994)
- Barker v. Glen Meadows Nursing Home, 2009-Ohio-2626 (12th Dist.)

- Clarkwestern Dietrich Bldg. Systems, LLC v. Certified Steel Stud Assn., Inc., 2017-Ohio-2713, ¶¶ 30-31 (12th Dist.)

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