

SUPREME COURT OF VERMONT

Tibbetts v. Michaelides, 2011 VT 52

24 A.3d 581 (2011) · No. No. 10-349 · Decided May 16, 2011

SUMMARY

The Vermont Supreme Court affirmed a judgment rejecting neighboring landowners' attempt to enforce a deed restriction limiting construction to five single-family houses. The court held that the restriction benefited land retained by the grantor rather than the conveyed property or a general development scheme, so the neighbors lacked standing to enforce it.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Reiber, C.J.; Dooley, J.; Johnson, J.; Skoglund, J.; Burgess, J.
JURISDICTION	Vermont
DECIDED	May 16, 2011
DOCKET	No. 10-349
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from a superior court final judgment granting plaintiffs relief in a declaratory judgment action concerning a deed restriction and rejecting defendants' counterclaim for enforcement of the restriction.
STANDARD OF REVIEW	Construction of the deed was reviewed de novo. Unpreserved issues were not considered where the record was insufficient or the issue had not been presented to the trial court with specificity and clarity.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Demetrios Michaelides, Alexandria Michaelides, Erwin Waibel, Ramona Waibel v. Jonathan Tibbetts, Marlene G. Tibbetts

TOPICS

- covenants and restrictions
- title disputes
- summary judgment
- standing
- appellate procedure

PRACTICE AREAS

- real estate
- property law
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether the five-house restriction in the Lowell-to-Trono deed was intended to benefit the land retained by Lowell or the land conveyed to Trono and his successors.
2. Whether the neighboring defendants had standing to enforce the five-house restriction against plaintiffs.
3. Whether the trial court lacked subject matter jurisdiction to collaterally review the municipal zoning permit.
4. Whether defendants were entitled to a declaratory judgment concerning plaintiffs' beach-access rights.
5. Whether defendants were entitled to a remand concerning whether plaintiffs' house violated a state subdivision permit.

HOLDINGS

1. The restriction was intended solely to benefit the land retained by Lowell, not the land conveyed to Trono or the subsequent owners of lots created from that conveyance.
2. Because defendants' properties were not intended beneficiaries of the restriction, defendants lacked standing to enforce it against plaintiffs.
3. The court declined to review the challenge because defendants had not clearly raised it below and the record lacked sufficient evidence, notwithstanding that subject matter jurisdiction generally may be raised at any time.
4. The court rejected both claims because they were not properly preserved in the trial court and were not cognizable on appeal.

KEY QUOTATIONS

"It is axiomatic that "[t]he intent of the parties determines which estates or servitude interests are burdened or benefited by a servitude" and that such intent may be either express or "inferred from the circumstances."" (24 A.3d at 583)

"Although the deed does not expressly identify the restriction's intended beneficiary, there was no dispute that, as the trial court found, Lowell retained substantial property "surrounding the five-acre parcel."" (24 A.3d at 584)

FACTUAL BACKGROUND

In 1977, Lydia Lowell conveyed two parcels totaling five acres to J. Peter Trono by a deed stating that no more than five single-family houses could be constructed on the conveyed land. Trono later conveyed the parcels to his construction company, which subdivided the larger parcel into five residential lots and sold those lots, including lots to the defendant neighbors. The smaller parcel was later sold at a tax sale and ultimately conveyed to plaintiffs, who obtained a variance and built a house there in 2003. When plaintiffs attempted to sell the property, the prospective buyers discovered the restriction, and the neighbors refused to consent to the sale.

PROCEDURAL HISTORY

Plaintiffs filed a declaratory judgment action to clear a five-house deed restriction from title after prospective purchasers required the consent of neighboring owners. Defendants answered and counterclaimed for a declaration that plaintiffs' residence violated the restriction and for an injunction requiring removal of the house. On cross-motions for summary judgment, the superior court ruled for plaintiffs, entered final judgment in May 2010, and denied defendants' motion for reconsideration; defendants appealed.

DISPOSITION

affirmed

CASES CITED

- Madkour v. Zoltak, 2007 VT 14, ¶ 14, 181 Vt. 347, 924 A.2d 11
- Cameron's Run, LLP v. Frohock, 2010 VT 60, ¶ 12, 188 Vt. ___, 9 A.3d 664 (mem.)
- Contegni v. Payne, 18 Conn. App. 47, 557 A.2d 122, 124-25 (1989)
- Sofran Peachtree City, L.L.C. v. Peachtree City Holdings, L.L.C., 250 Ga. App. 46, 550 S.E.2d 429, 432 (2001)
- Chimney Hill Owners' Ass'n v. Antignani, 136 Vt. 446, 452, 392 A.2d 423, 427 (1978)
- Creed v. Clogston, 2004 VT 34, ¶ 20, 176 Vt. 436, 852 A.2d 577
- Patch v. Springfield School Dist., 2009 VT 117, ¶ 11, 187 Vt. 21, 989 A.2d 500
- Rogers v. Watson, 156 Vt. 483, 488, 594 A.2d 409, 412 (1991)
- Welch v. Barrows, 125 Vt. 500, 503, 218 A.2d 698, 702 (1966)
- Bischoff v. Bletz, 2008 VT 16, ¶ 15, 183 Vt. 235, 949 A.2d 420
- Progressive Ins. Co. v. Brown, 2008 VT 103, ¶ 8, 184 Vt. 388, 966 A.2d 666

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