

SUPREME COURT OF THE STATE OF MONTANA

Bennett v. Hill

2015 MT 30 (2015) · No. DA 14-0355 · Decided February 3, 2015

SUMMARY

The Montana Supreme Court reversed summary judgment in favor of defendants concerning a wall constructed near the boundary of a golf course and neighboring properties. The court held that genuine issues of material fact existed regarding whether the wall was a spite fence, constituted a nuisance, and was incidental to golf-course use under subdivision restrictions. The court also reversed the award of attorney fees and remanded the matter for further proceedings.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Michael E. Wheat; Michael E. Wheat; Mike McGrath; Laurie McKinnon; Beth Baker; James Jeremiah Shea
JURISDICTION	Montana
DECIDED	February 3, 2015
DOCKET	DA 14-0355
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal from orders granting defendants summary judgment on spite-fence, nuisance, and subdivision-restriction claims and awarding defendants attorney fees.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under the same standard applied by the district court. The interpretation of a restrictive covenant and whether legal authority exists for an attorney-fee award are reviewed as conclusions of law for correctness.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	Wendell E. Bennett Jr., Kathryne L. Bennett, Karla Lange, Schneiter Enterprises, Ltd., Roger F. Dallner Trust v. Ronald S. Hill, individually, Specialized Construction, Inc., Ronald S. Hill, LLC, Lake Hills Golf, LLC

TOPICS

appellate procedure

standard of review

construction law

nuisance

covenants and restrictions

PRACTICE AREAS

appellate procedure

real estate

construction law

torts

remedies

QUESTIONS PRESENTED

1. Whether the district court erred by granting summary judgment for defendants on the spite-fence claim.
2. Whether the district court erred by granting summary judgment for defendants on the nuisance claim.
3. Whether construction of the wall violated the subdivision restrictions, including whether the restrictions had been waived or whether the golf-course exception applied.
4. Whether the district court erred by awarding attorney fees to defendants.

HOLDINGS

1. Summary judgment for defendants was improper because genuine issues of material fact existed concerning whether the wall served a beneficial purpose by stopping trash and trespassers.
2. A beneficial or reasonable purpose does not, by itself, immunize conduct or a structure that would otherwise constitute a nuisance.
3. Summary judgment was improper because genuine issues of material fact existed as to whether the restrictions were waived and whether the wall was incidental to use of the property as a golf course under Paragraph 16.
4. The attorney-fee award had to be reversed because defendants no longer prevailed after reversal of the summary-judgment orders.

KEY QUOTATIONS

“A beneficial or reasonable purpose will not immunize something that would otherwise constitute a nuisance from being ruled a nuisance.” (¶ 20)

“For each of the issues discussed above, we hold either that the District Court’s application of the law was incorrect or that there were genuine issues of material fact.” (¶ 33)

FACTUAL BACKGROUND

Plaintiffs owned several lots in the Lake Hills Subdivision, adjacent to a golf-course property owned by Lake Hills Golf, LLC. Defendants constructed an approximately 800-foot concrete and rebar wall, about nine feet high and ten feet from the shared boundary, after obtaining a city building permit. The subdivision's recorded restrictions required written Architectural Control Committee approval for fences, walls, or hedges and contained an exception for structures incidental to golf-course use. Plaintiffs alleged that the wall violated the restrictions and constituted both a nuisance and a spite fence.

PROCEDURAL HISTORY

Plaintiffs sued defendants concerning construction of a concrete wall near the boundary between a golf-course property and plaintiffs' subdivision lots. After discovery, defendants moved for summary judgment on the claims, and plaintiffs sought partial summary judgment on whether the wall violated the subdivision restrictions. The Montana Thirteenth Judicial District Court granted summary judgment on all issues for defendants and awarded defendants attorney fees. Plaintiffs appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for proceedings consistent with the opinion; the orders granting summary judgment and attorney fees were reversed.

CASES CITED

- Beaverhead County v. Montana Association of Counties Joint Powers Insurance Authority, 2014 MT 267, ¶ 11, 376 Mont. 413, 335 P.3d 721
- Lewis & Clark County v. Hampton, 2014 MT 207, ¶ 23, 376 Mont. 137, 333 P.3d 205
- Creveling v. Ingold, 2006 MT 57, ¶¶ 5, 8, 331 Mont. 322, 132 P.3d 531
- Thornton v. Flathead County, 2009 MT 367, ¶ 13, 353 Mont. 252, 220 P.3d 395
- Tarlton v. Kaufman, 2008 MT 462, ¶ 24, 348 Mont. 178, 199 P.3d 263
- Martin v. Artis, 2012 MT 249, ¶ 14, 366 Mont. 513, 290 P.3d 687
- Stamm v. Kehrner, 222 Mont. 167, 168, 171, 720 P.2d 1194, 1195-96 (1986)
- Ekwortzel v. Parker, 156 Mont. 477, 478-79, 482, 482 P.2d 559, 561-62 (1971)
- Nelson v. C & C Plywood Corp., 154 Mont. 414, 416-17, 434, 465 P.2d 314, 315, 325 (1970)
- McKay v. Wilderness Dev., LLC, 2009 MT 410, ¶ 28, 353 Mont. 471, 221 P.3d 1184
- Kelly v. Lovejoy, 172 Mont. 516, 520, 565 P.2d 321, 324 (1977)
- Harland v. Anderson Ranch Co., 2004 MT 132, ¶ 44, 321 Mont. 338, 92 P.3d 1160