

SUPREME COURT OF SOUTH DAKOTA

Prairie Hills Water & Dev. Co. v. Gross

653 N.W.2d 745 (S.D. 2002), 2002 SD 133 · No. No. 22135 · Decided November 6, 2002

SUMMARY

The South Dakota Supreme Court upheld an injunction barring the defendants from operating a commercial sandblasting, painting, welding, and related business in a residential subdivision. The court held that the business violated restrictive covenants and constituted a public nuisance because of its noise, dust, traffic, and safety impacts. It affirmed attorney-fee liability for the property owners under the covenants but reversed liability for non-property owners.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Sabers, Justice; Konenkamp, Justice; Amundson, Retired Justice
JURISDICTION	South Dakota
DECIDED	November 6, 2002
DOCKET	No. 22135
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendants appealed a trial court judgment enjoining their commercial business operations in a residential subdivision and awarding the plaintiff attorney fees under restrictive covenants.
STANDARD OF REVIEW	For an injunction, the court reviews factual findings for clear error and the decision to grant injunctive relief for abuse of discretion. A finding is clearly erroneous only when the reviewing court is left with a definite and firm conviction that a mistake has been made; an abuse of discretion is discretion exercised for an end or purpose not justified by reason and evidence.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential.
PARTIES	Jim Gross, Scott Gross, Steve Gross, d/b/a JS & S Wood and Iron, Linda Paulson v. Prairie Hills Water and Development Company

TOPICS

covenants and restrictions

nuisance

equitable relief

remedies

real estate

PRACTICE AREAS

real estate

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remedies

QUESTIONS PRESENTED

1. Whether the defendants' commercial business violated the residential covenants and restrictions.
2. Whether the defendants' commercial business constituted a public nuisance under South Dakota law.
3. Whether the trial court abused its discretion by granting a permanent injunction.
4. Whether the restrictive covenant authorized attorney fees against both property-owning and non-property-owning defendants.
5. Whether the plaintiff was entitled to appellate attorney fees.

HOLDINGS

1. The defendants' commercial sandblasting, painting, welding, grinding, and related operations violated the restrictive covenants because they conflicted with the subdivision's residential purpose and unreasonably disturbed neighboring property owners.
2. The defendants' business constituted a public nuisance because its sight, noise, dust, traffic, and safety problems substantially and unreasonably interfered with the use and enjoyment of property throughout the subdivision.
3. The trial court did not abuse its discretion by permanently enjoining the defendants' commercial business activities in the subdivision.
4. Covenant 11 authorized attorney fees against subsequent property owners because it was incidental to covenants directly benefiting the land and therefore ran with the land under SDCL 43-12-2.
5. Covenant 11 did not authorize attorney fees against defendants who did not own subdivision property because its express terms imposed the obligation only on a property owner violating the covenants.
6. The plaintiff was entitled to \$3,000 in appellate attorney fees against Jim Gross and Linda Paulson, while the defendants' motion for appellate attorney fees was denied.

KEY QUOTATIONS

“The real intention of the parties, particularly that of the grantor, should be sought and carried out whenever possible.” (752)

“The existence of a nuisance is subject to a rule of reason. It involves the maintenance of a balance between the right to use property and the right to enjoy property unaffected by others' uses.” (753)

“Because Covenant # 11 runs with the land, its attorney fee provision is enforceable against subsequent grantees like Jim Gross and Linda Paulson, even though they are not in privity with the original grantor.” (757)

FACTUAL BACKGROUND

The Prairie Hills Ranchettes subdivision was developed for residential use and was subject to covenants prohibiting noxious or offensive activity and conduct that would annoy or become a nuisance to surrounding property owners. The defendants operated a full-time commercial business involving sandblasting, painting, welding, grinding, engine repair, and related activities, including work on large trailers, buses, and trucks. Neighbors and other property owners testified that the business generated excessive noise, dust, vibrations, traffic, and safety concerns, including noise audible inside nearby homes with windows and doors closed. The defendants knew of the restrictive covenants when they purchased the property and continued operating and promoting the business after the subdivision board requested that they stop or relocate it.

PROCEDURAL HISTORY

Prairie Hills sued the defendants, alleging that their commercial sandblasting, painting, welding, woodworking, and related activities violated subdivision covenants and constituted a public nuisance. After a bench trial, the trial court found covenant violations and a public nuisance, issued a permanent injunction, and awarded attorney fees against all defendants. The Supreme Court of South Dakota affirmed the injunction and the attorney-fee award against the property owners, but reversed and remanded the award against non-property owners.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse and remand the attorney-fee portion of the judgment so that the attorney-fee obligation is imposed only against property owners Jim Gross and Linda Paulson. The injunction and the attorney-fee award against those property owners are affirmed.

CASES CITED

- Maryhouse, Inc. v. Hamilton, 473 N.W.2d 472 (S.D. 1991)
- Cunningham v. Yankton Clinic PA, 262 N.W.2d 508 (S.D. 1978)
- Dacy v. Gors, 471 N.W.2d 576 (S.D. 1991)
- Gross v. Gross, 355 N.W.2d 4 (S.D. 1984)
- Myron v. Coil, 82 S.D. 180, 143 N.W.2d 738 (1966)
- Piechowski v. Case, 255 N.W.2d 72 (S.D. 1977)
- Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956)
- Northwestern Pub. Serv. Co. v. Chicago & N.W. Ry. Co., 87 S.D. 480, 210 N.W.2d 158 (1973)
- Black Hills Power and Light Co. v. Schuft, 86 S.D. 194, 193 N.W.2d 429 (1972)
- Aberdeen v. Wellman, 352 N.W.2d 204 (S.D. 1984)
- Greer v. City of Lennox, 79 S.D. 28, 107 N.W.2d 337 (1961)
- Johnson v. Drysdale, 66 S.D. 436, 285 N.W. 301 (1939)

- Gross v. Connecticut Mutual Life Insurance Co., 361 N.W.2d 259 (S.D. 1985)
- Sherburn v. Patterson Farms, Inc., 1999 SD 47, 593 N.W.2d 414 (S.D. 1999)
- Harksen v. Peska, 1998 SD 70, 581 N.W.2d 170 (S.D. 1998)
- Union County v. Hoffman, 512 N.W.2d 168 (S.D. 1994)
- U.S. v. City and County of San Francisco, 310 U.S. 16, 60 S. Ct. 749, 84 L. Ed. 1050 (1940)
- O'Connor v. King, 479 N.W.2d 162 (S.D. 1991)
- McLain v. Anderson, 933 P.2d 468 (Wyo. 1997)
- Valenti v. Hopkins, 324 Or. 324, 926 P.2d 813 (1996)
- Donaca v. Ivall, 44 Or. App. 121, 605 P.2d 709 (1980)
- Sheridan v. Martinsen, 164 Mont. 383, 523 P.2d 1392 (1974)
- Riley v. Boyle, 6 Ariz. App. 523, 434 P.2d 525 (1967)
- Barrows v. Jackson, 112 Cal. App. 2d 534, 247 P.2d 99 (1952)
- Ludgate v. Somerville, 121 Or. 643, 256 P. 1043 (1927)
- Garrett v. BankWest, 459 N.W.2d 833 (S.D. 1990)
- Dawson v. Corbett, 71 S.D. 106, 21 N.W.2d 758 (1946)
- In re Guardianship of T.L.R., 2002 SD 54, 645 N.W.2d 246 (S.D. 2002)
- Paloma Investment Limited Partnership v. Jenkins, 194 Ariz. 133, 978 P.2d 110 (Ariz. Ct. App. 1998)
- White v. Wilhelm, 34 Wash. App. 763, 665 P.2d 407 (1983)
- Eagle Enterprises, Inc. v. Gross, 39 N.Y.2d 505, 384 N.Y.S.2d 717, 349 N.E.2d 816 (1976)
- Raintree Corporation v. Rowe, 38 N.C. App. 664, 248 S.E.2d 904 (1978)
- Choisser v. Eyman, 22 Ariz. App. 587, 529 P.2d 741 (1974)
- Latses et al. v. Nick Floor, Inc., 99 Utah 214, 104 P.2d 619 (1940)
- State v. Mark Weaver, 2002 SD 76, 648 N.W.2d 355 (S.D. 2002)