[Cite as *Horne v. Adena Pointe Homeowners Assn., Inc.*, 2025-Ohio-4916.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
UNION COUNTY

GREG L. HORNE, ET AL.

PLAINTIFFS-APPELLEES,

v.

ADENA POINTE HOMEOWNERS ASSOCIATION, INC., ET AL.,

DEFENDANTS-APPELLANTS.

CASE NO. 14-25-03

OPINION AND JUDGMENT ENTRY

Appeal from Union County Common Pleas Court
Civil Division
Trial Court No. 2023-CV-0145

Judgment Reversed and Cause Remanded

Date of Decision: October 27, 2025

APPEARANCES:

David A. Dye **for Appellant**

Paul W. Mills **for Appellee**

ZIMMERMAN, J.

{¶1} Defendants-appellants, Adena Pointe Homeowners Association, Inc., and Omni Community Association Managers, LLC (collectively, "the Association"), appeal the January 15, 2025 judgment of the Union County Court of Common Pleas granting summary judgment in favor of plaintiffs-appellees, Greg L. Horne and Brett Mays (collectively, "the Homeowners"). For the reasons that follow, we reverse.

{¶2} The facts are not in dispute and were presented to the trial court in a joint stipulation. As relevant here, the Homeowners own a property in the Adena Pointe Subdivision and are subject to its recorded homeowners association ("HOA") covenants. In June 2023, the Homeowners contracted to install solar panels on their home. Because the panels constituted an improvement under the HOA covenants, the Homeowners applied for approval from the Association's Design Review Board.

{¶3} The Association granted the Homeowners a conditional approval, subject to restrictions outlined in a document titled Schedule L. In particular, Schedule L, which is not recorded or contained within the covenants themselves, prohibits solar panels on any part of a home visible from the street and limits total panel coverage to 25 percent of the roof area. The Homeowners were informed that

complying with these restrictions would reduce their system's energy production by 36 percent. Their subsequent request for a variance was denied.

{¶4} Following their unsuccessful attempt at securing a variance, the Homeowners filed a complaint on September 20, 2023 in the trial court seeking a declaratory judgment that they were entitled to install the panels as originally proposed. Specifically, the Homeowners alleged that they were entitled to such judgment because R.C. 5312.16 permits installation of solar panels and the statute provided that a HOA could establish reasonable restrictions concerning the solar panels, but no restrictions were identified in the HOA covenants that were filed in the Recorder's office. The Homeowners also alleged claims for specific performance, breach of contract, promissory estoppel, and breach of fiduciary duty. On November 22, 2023, the Association filed an answer.

{¶5} On June 3, 2024, the parties filed the joint stipulation of facts. After mediation proved unsuccessful, both parties filed motions for summary judgment. On October 29, 2024, the trial court granted summary judgment in favor of the Homeowners after concluding that the solar panel restriction in Schedule L was unreasonable under R.C. 5312.16. The trial court later issued a final, appealable order on January 15, 2025, which resolved all remaining claims and dismissed all other pending issues.

{¶6} The Association filed its notice of appeal on January 23, 2025. It raises six assignments of error for our review, which we will discuss together.

First Assignment of Error

The trial court erred by improperly interpreting and/or applying the provisions of R.C. §5312.16.

Second Assignment of Error

The trial court erred in failing to grant Appellant's motion for summary judgment, because the evidence in the record clearly demonstrates that no genuine issue of material fact exists, Appellant was entitled to judgment as a matter of law, and reasonable minds could not come to any conclusion other than one adverse to Appellees.

Third Assignment of Error

The trial court erred by failing to construe the evidence most strong[l]y in favor of Appellant.

Fourth Assignment of Error

The trial court erred by denying Appellant the benefit of the Business Judgment Rule.

Fifth Assignment of Error

The trial court erred by misapplying the *Montgomery* Test for "Reasonableness", and improperly shifting the burden of proof to the Appellant.

Sixth Assignment of Error

The trial court erred by drawing inferences from the evidence in the record, and by failing to resolve inferences in favor of the Appellant.

{¶7} In its assignments of error, the Association argues that the trial court made two primary errors: it improperly granted summary judgment in favor of the Homeowners, and it wrongly failed to grant summary judgment in the Association's favor. In support of its claims, the Association asserts that the trial court inverted the traditional burden of proof; failed to construe the evidence in the Association's favor as the non-moving party; failed to afford it the presumption of validity granted by the business-judgment rule; and misinterpreted the plain language of R.C. 5312.16.

{¶8} For the reasons that follow, we agree that the trial court erred by granting summary judgment in favor of the Homeowners. However, we conclude that genuine issues of material fact preclude summary judgment in favor of the Association.

Standard of Review

{¶9} Under Civ.R. 56(A), any party asking the court for a favorable ruling on a legal claim may file a motion for summary judgment. This motion can be for all or only a portion of that claim and applies to all claims as well as actions for declaratory judgment.

{¶10} Summary judgment is proper where there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and reasonable minds can reach but one conclusion when viewing the evidence in favor of the non-moving party, and the conclusion is adverse to the non-moving party. Civ.R. 56(C); *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.*, 69 Ohio St.3d 217, 219 (1994). "Trial courts should award summary judgment with caution, being careful to resolve doubts and construe evidence in favor of the nonmoving party." *Welco Industries, Inc. v. Applied Cos.*, 67 Ohio St.3d 344, 346 (1993).

{¶11} "The party moving for summary judgment has the initial burden of producing some evidence which demonstrates the lack of a genuine issue of material fact." *Ineos USA L.L.C. v. Furmanite Am., Inc.*, 2014-Ohio-4996, ¶ 18 (3d Dist.). "In doing so, the moving party is not required to produce any affirmative evidence, but must identify those portions of the record which affirmatively support his argument." *Id.* "The nonmoving party must then rebut with specific facts showing the existence of a genuine triable issue; the nonmoving party may not rest on the mere allegations or denials of the pleadings." *Id.*

{¶12} A fact is material if it is one that "might affect the outcome of the suit under the governing law." *Turner v. Turner*, 67 Ohio St.3d 337, 340 (1996). A genuine issue as to a material fact exists when the evidence is not "so one-sided that one party must prevail as a matter of law," but instead presents "a sufficient disagreement to require submission to a jury." *Id.*

{¶13} We review a decision to grant summary judgment de novo. *Doe v. Shaffer*, 90 Ohio St.3d 388, 390 (2000). Accordingly, this court reviews the record independently and without deference to the trial court's judgment. *Tharp v. Whirlpool Corp.*, 2018-Ohio-1344, ¶ 23 (3d Dist.).

Analysis

{¶14} In this case, trial court granted summary judgment in favor of the Homeowners, and issued a declaration that they were entitled to install their solar panels, after determining that the Association's solar panel restriction was unreasonable. The central issue before the trial court was whether the Association's solar panel restriction was reasonable under R.C. 5312.16. Lacking direct precedent for R.C. 5312.16, the trial court analogized the issue to condominium law and applied the three-part reasonableness test from our sister appellate district in *Montgomery Towne Homeowners' Assn., Inc. v. Greene*. 2008-Ohio-6905, ¶ 12 (2d Dist.). In its application of that test, the trial court repeatedly emphasized a lack of evidence from the Association and ultimately concluded that the restriction was arbitrary and had a discriminatory effect based on a home's orientation.

{¶15} On appeal, the Association asserts that the trial court's decision is based on a series of fundamental legal errors. The Association's primary argument is that the trial court incorrectly inverted the burden of proof, requiring the Association to prove that its restrictions were reasonable instead of requiring the

Homeowners to prove that they were unreasonable. It contends that this error stems from a misapplication of the summary judgment standard since the trial court failed to construe the lack of evidence in the Association's favor as the non-moving party.

{¶16} The Association further argues that the trial court's error was compounded by its failure to apply the business-judgment rule, which grants a legal presumption that the board's actions were taken in good faith. Finally, the Association claims that the trial court misinterpreted R.C. 5312.16, arguing that the statute's plain language unambiguously gives HOAs the authority to establish reasonable restrictions on the size, place, and manner of solar panels. As a result of these errors, the Association contends that the Homeowners failed to support their claim, and therefore the trial court should have granted summary judgment in the Association's favor.

{¶17} In response, the Homeowners contend that the trial court's decision was correct, arguing primarily that R.C. 5312.16 implicitly shifts the burden of proof to the Association to affirmatively prove that any unrecorded restrictions are reasonable. Applying this logic, they also assert that the trial court properly denied the Association's motion for summary judgment because the Association, as a moving party, failed to meet this burden by producing any evidence to demonstrate its restrictions were reasonable.

{¶18} The Homeowners also reject the application of the business-judgment rule as inappropriate for HOAs, which they argue are bound by a higher standard of

fiduciary duty. Finally, they maintain that they were entitled to judgment in their favor because there is no genuine issue of material fact demonstrating that the restriction is substantively unreasonable. They contend that this is evidenced by the 36 percent reduction in energy production, resulting from a rule based purely on aesthetics and enforced despite never being a recorded covenant.

{¶19} "An action for a declaratory judgment is a civil action." *Renee v. Sanders*, 160 Ohio St. 279 (1953), paragraph one of the syllabus. "A declaratory judgment action provides a means by which parties can eliminate uncertainty regarding their legal rights and obligations." *Mid-Am. Fire & Cas. Co. v. Heasley*, 2007-Ohio-1248, ¶ 8. "The purpose of a declaratory judgment action is to dispose of 'uncertain or disputed obligations quickly and conclusively,' and to achieve that end, the declaratory judgment statutes are to be construed 'liberally.'" *Id.*, quoting *Ohio Farmers Indemn. Co. v. Chames*, 170 Ohio St. 209, 213 (1959). This liberal construction, however, does not eliminate the core requirement that a court may only "decide 'an actual controversy.'" *Id.* at ¶ 9, quoting *Corron v. Corron*, 40 Ohio St.3d 75, 79 (1988). A court's judgment must be one that will definitively "'confer certain rights or status upon the litigants.'" *Id.*, quoting *Corron* at 79.

{¶20} As in other civil proceedings, the plaintiff in a declaratory judgment action bears the burden of proof. *Chagrin Falls v. Chagrin Falls Twp. Trustees*, 69 Ohio App.3d 133, 137 (8th Dist. 1990); *Bush v. Baldwin*, 1991 WL 117249, * 2 (3d Dist. June 20, 1991). Generally, in such action, the plaintiff must prove the

allegations of their case by a preponderance of the evidence. *Bd. Of Coventry Twp. Trustees v. Augustine*, 1985 WL 10753, * 1 (9th Dist. June 19, 1985).

{¶21} Because the core of this appeal centers on the interpretation of R.C. 5312.16 and its effect on the traditional burden of proof in a civil action, we begin our analysis with the statutory text itself, which provides, in relevant part:

> (A) Unless specifically prohibited in the declaration, any owner may install a solar energy collection device on the owner's dwelling unit or other location within the owner's lot if either of the following conditions apply:
>
> (1) The cost to insure, maintain, repair, and replace the unit''s roof or alternative location within the lot is not a common expense of the owners association and is instead the owner's responsibility.
>
> (2) The declaration specifically allows for and regulates the types and installation of solar energy collection devices within the planned community and establishes responsibility for the cost to insure, maintain, repair, and replace such devices.
>
> (B) Notwithstanding division (A) of this section, an owners association may establish reasonable restrictions concerning the size, place, and manner of placement of solar energy collection devices.

R.C. 5312.16(A)-(B).

{¶22} The Homeowners argue that subsection (A), which permits solar panels unless "specifically prohibited in the declaration," implicitly shifts the burden to the Association to prove that its unrecorded restrictions are reasonable. We disagree. The statute's plain language does not alter the traditional burden of proof in a civil action. Instead, subsection (B) unambiguously grants a HOA the authority to "establish reasonable restrictions." The word "reasonable" establishes

the legal standard by which a restriction is to be judged, not who bears the burden of proving it.

{¶23} Consequently, because the Homeowners sought a declaration that they were entitled to install solar panels on their home, they bore the burden of proving every essential element of their case by a preponderance of the evidence, including that the Association's restrictions in Schedule L were unreasonable. Furthermore, when the Homeowners moved for summary judgment, they also carried the burden of demonstrating that there were no genuine issues of material fact and that they were entitled to judgment as a matter of law, even when viewing all evidence in a light most favorable to the Association.

{¶24} The trial court, however, failed to hold the Homeowners to this standard. Instead, faced with a lack of case authority interpreting R.C. 5312.16, the trial court looked to persuasive authority from our sister appellate district and applied the reasonableness test from *Montgomery*. While we do not formally adopt the *Montgomery* test for all cases involving R.C. 5312.16, we find no error with the trial court's decision to apply persuasive authority in this matter of first impression. Nevertheless, the trial court's application of that test was flawed from the outset because it fundamentally inverted the summary judgment burden of proof.

{¶25} Importantly, the summary judgment standard requires a court to construe all of the evidence, and resolve any reasonable inferences, in a light most favorable to the non-moving party. Here, the trial court did the opposite; it drew a

negative inference against the Association from the lack of evidence in the record—such as the absence of facts regarding when Schedule L was adopted—rather than construing that silence in the Association's favor. This was a misapplication of the summary judgment standard since the Association had no duty to prove its restrictions were reasonable. Instead, the Homeowners had the duty to produce evidence demonstrating an absence of a genuine issue material of fact that they were unreasonable.

{¶26} The only affirmative evidence that the Homeowners presented to support their claim of unreasonableness was the fact that the restrictions would result in a 36 percent reduction in energy production. It is critical to distinguish the dual role that this fact plays in our summary judgment analysis. Here, this single fact, presented without any supporting context, is insufficient to entitle the Homeowners to judgment as a matter of law. That is, to win their own motion, the Homeowners needed to show that the restriction was so unreasonable that no factual dispute could exist. In this case, the Homeowners offered no evidence reflecting (for instance) that the remaining supplemental energy production was insufficient for their needs, that the aesthetic purpose of the restriction was illegitimate, or that the rule was otherwise arbitrary. Therefore, because the 36 percent reduction does not foreclose all possible justifications for the rule, it is not so one-sided as to demand victory for the Homeowners. Simply put, receiving less supplemental

energy than desired is not the legal standard for what makes a HOA restriction unreasonable.

{¶27} Notwithstanding that conclusion, the Association maintains that its decision is also protected by the business-judgment rule. The rule provides a rebuttable presumption that a board of directors' business decisions are made knowledgeably, in good faith, and with the genuine conviction that the action serves the company's best interests. *Reister v. Gardner*, 2020-Ohio-5484, ¶ 12. While not extensively litigated in Ohio in this context, some courts have held that the business-judgment rule should apply when reviewing the actions of a HOA. *See, e.g.*, *Schaefer v. Chautaqua Escapes Assn., Inc.*, 2016 WL 7107680, *4 (N.Y.S. Dec. 6, 2016); *Jinks v. Sea Pines Resort LLC*, 2025 WL 2319657, *3 (4th Cir. Aug. 12, 2025).

{¶28} However, we need not decide whether the business-judgment rule applies to Ohio HOAs in this case. While the rule acts as a shield to protect a board's decisions, a plaintiff must first come forward with sufficient evidence to challenge those decisions. Because the Homeowners failed to meet their initial burden of producing evidence that creates a genuine issue of material fact as to the unreasonableness of the restriction, we do not need to reach the question of whether the Association would be entitled to this heightened presumption.

{¶29} Consequently, the question then becomes whether the Association is entitled to summary judgment in its favor as to *any* of the Homeowners' claims. We

conclude that it is not. While the Homeowners were properly held accountable for the undeveloped record in the reversal of their own motion for summary judgment, that failure does not create a victory for the Association. In other words, the Homeowners' failure to carry their burden on their own motion does not automatically entitle the Association to judgment on its motion. *See Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996) (holding that the moving party cannot discharge its initial burden by making a conclusory assertion that the nonmoving party has no evidence to prove its case). To prevail on its motion, the Association had an independent burden to affirmatively demonstrate the absence of a genuine issue of material fact regarding the reasonableness of its restrictions.

{¶30} The Association failed to meet this burden. To counter the Homeowners' evidence of a substantial impairment to the functionality of their solar panels, the Association placed *nothing* on its side of the scale. That is, instead of producing affirmative evidence—such as affidavits from board members detailing a consistent aesthetic rationale, meeting minutes where the rule was discussed, or data regarding property values—the Association rested on the Homeowners' failure of proof and the sparse stipulated record. This is insufficient to sustain its own motion for summary judgment.

{¶31} Decisively, genuine issues of material fact exist regarding both the procedural validity and substantive reasonableness of Schedule L. In general, a rule is invalid if the enacting body failed to follow the prescribed procedures for its

adoption. *See, e.g.*, *State ex rel. Kent Elastomer Prods., Inc. v. Logue*, 2024-Ohio-5451, ¶ 62 (10th Dist.). In this case, the record is silent on how, when, or by whom Schedule L was adopted, creating a threshold factual question as to whether the Association acted within the scope of its authority. Thus, whether the Association acted within the scope of its authority in creating this unrecorded restriction is a genuine issue of material fact that must be resolved before its reasonableness can even be considered.

{¶32} Beyond the procedural questions, a genuine issue of material fact also exists regarding the substantive reasonableness of the restriction. Critically, the question of whether the Association's restriction is reasonable under R.C. 5312.16 is an inherently fact-dependent inquiry that cannot be resolved in an evidentiary vacuum. Accordingly, to survive the Association's motion, the Homeowners needed to present only *enough* evidence to show that a legitimate dispute exists. The Homeowners' evidence of a 36 percent reduction in energy production, while insufficient to grant them judgment as a matter of law, is enough to create a genuine issue of material fact that precludes summary judgment for the Association. Indeed, in this analysis, it is entirely plausible that a reasonable trier of fact could conclude that a 36 percent efficiency loss imposed for an unsubstantiated aesthetic reason is, in fact, unreasonable. This is particularly true given the long-held principle in Ohio that restrictive covenants are disfavored and are to be strictly construed against limitations on the free use of property. *See Dixon v. Van Sweringen Co.*, 121 Ohio

St. 56, 68 (1929). Therefore, on this undeveloped record, a reasonable trier of fact could plausibly conclude that such a substantial impairment, imposed for an unsubstantiated aesthetic reason, is unreasonable. Accordingly, the proper remedy is not to declare a winner by default, but to remand the cause for further proceedings where a factual foundation can be built because the procedural validity remains an open question on the present record.

{¶33} In sum, we conclude that genuine issues of material fact preclude summary judgment for either party. The Homeowners failed to meet their burden of demonstrating that the restrictions were unreasonable as a matter of law, but the Association likewise failed to show the absence of a factual dispute that would entitle it to judgment. The unresolved question of the restriction's reasonableness is the lynchpin for the entire case. The Association's entitlement to summary judgment on the Homeowners' claims for breach of contract, breach of fiduciary duty, specific performance, and promissory estoppel all hinge on this central factual dispute. Because this dispositive fact remains unresolved, summary judgment is inappropriate for any of the Homeowners' claims. Therefore, the proper remedy is to reverse the judgment of the trial court and remand the case for further proceedings where a factual foundation can be built.

{¶34} For these reasons, the Association's third, fifth, and sixth assignments of error are sustained and their first, second, and fourth assignments of error are overruled.

Judgment Reversed
and Cause Remanded

MILLER, J., concurs.

WALDICK, P.J., concurring in part and dissenting in part.

{¶35} I concur with the majority's reversal of summary judgment in this case because, as the majority states, there was a "misapplication of the summary judgment standard since the Association had no duty to prove its restrictions were reasonable." (Maj. Opinion at ¶ 25). In other words, the trial court misapplied the burden of proof. Although in resolving a summary judgment motion the evidence must be construed in favor of the nonmoving party, the burden of proof in the underlying declaratory judgment remained with Homeowners to establish that the restrictions were unreasonable. Since the Homeowners did not present evidence that established the restrictions were *un*reasonable, summary judgment in favor of the Homeowners was improper.

{¶36} However, this case presents a unique circumstance in that the parties indicated at the trial court level, and during oral arguments, that *there is no more evidence to present*. Disregarding this, the majority's holding returns this case to the

trial court for a hearing that the parties seemingly do not want, to present evidence that the parties have indicated they do not have.

{¶37} I would decide this case on the stipulated evidence before in the record. Simply put, Homeowners have presented no actual evidence that the HOA's restrictions are unreasonable. Homeowners have presented no evidence that "Schedule L" was somehow improperly adopted or adopted outside the scope of the HOA's authority. Homeowners have presented no evidence that a 36 percent reduction was "unreasonably" detrimental to their needs (rather than their desires), or that the reduction was enough to overcome the inherent reasonableness in an HOA's desire to maintain aesthetic uniformity in a community.

{¶38} Given the record before us, I would remand the matter for the trial court to grant summary judgment in favor of the HOA. At the very least, I would reverse and remand the matter for the trial court to consider the HOA's summary judgment motion again in the first instance, applying the appropriate standards regarding reasonableness. For these reasons, I respectfully concur in part, and dissent in part.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are sustained and it is the judgment and order of this Court that the judgment of the trial court is reversed with costs assessed to Appellees for which judgment is hereby rendered. The cause is hereby remanded to the trial court for further proceedings and for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. See App.R. 30.

William R. Zimmerman, Judge

Mark C. Miller, Judge

Juergen A. Waldick, Judge
Concurs in Part, Dissents in Part

DATED:
/hls