

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
LICKING COUNTY, OHIO

TERRY W. MILLER, et al.,

Plaintiffs - Appellees

-vs-

CHARLES P. BELLOFATTO, et al.,

Defendants - Appellants

Case No. 2025 CA 00081

Opinion And Judgment Entry

Appeal from the Licking County Court of
Common Pleas, Case No. 23 CV 00132

Judgment: Affirmed

Date of Judgment Entry: September 11, 2026

BEFORE: Andrew J. King; Craig R. Baldwin; David M. Gormley, Judges

APPEARANCES: J. ANDREW CRAWFORD, MEGAN M. BROWN, for Plaintiffs-Appellees; JOLENE S. GRIFFITH, JOSHUA D. DIYANNI, for Defendants-Appellants.

Baldwin, J.

{¶1} Appellants Charles P. Bellofatto and Kristy L. Bellofatto appeal two judgment entries issued by the trial court granting the motion for summary judgment and the supplemental motion for summary judgment filed by appellees Terry W. Miller, Maria E. Miller, Timothy R. Link, and Elizabeth A. Link. For the reasons that follow we affirm the decisions of the trial court.

STATEMENT OF FACTS AND THE CASE

{¶2} On April 9, 1990, developers Michael and Susan Hannahs filed the necessary documentation with the Licking County Engineer to establish the Hampden Ridge Subdivision. The Subdivision consisted of several lots, and contained a Declaration of

Restrictive Covenant Applicable to Hampden Ridge Subdivision which provided in pertinent part:

Michael S. Hannahs and Susan M. Hannahs, hereinafter called “Developers”, owners and developers of the property described as Hampden Ridge Subdivision in the Township of Granville, Licking County, Ohio under a general plan of development, have adopted the following covenants, restrictions, conditions, agreements, rovisions [sic], easements [sic], reservations, rights and limitations, and such interpretation and construction, made in good faith, shall be binding by such covents [sic], restrictions, conditions, agreements, provisions, easements, reservations, rights and limitations.

1. All lots in this subdivision shall be used exclusively for single family, private dwelling house purposes and no such house shall be erected, placed or suffered to remain upon any lot which is more than two stories in height. No more than one such house shall be erected, placed or suffered to remain upon any lot.

2. No other structure or outbuilding shall be erected, placed or suffered to remain upon any lot except temporary structures erected by the Developers and their assigns in connection with the improvement of the premises.

* * *

5. No structure shall be erected on any lot until the design and location thereof have been approved, in writing, by the Developers, or their

assigns: however, in the event the Developers, or their assigns, fail to approve or disapprove such design or location within 30 days after receipt of a written request for approval, then such approval will not be required, provided the design and location on the lot conform to, and run in harmony with, existing structures in the Subdivision.

In seeking the approval of the design and location of structures, the following information shall be submitted to the Developers or their assigns:

The location on site of all building [sic] or other improvements such as walls, fencing and screening, access drives and other improved areas; patios, decks, pools and porches; plans for all floors, cross-sections and elevations, including projections and wing walls; samples of materials to be used to the extent requested by the Developers; such other information, data and drawings as may be reasonably requested by the Developers.

* * *

18. The covenants, restrictions, conditions, agreements, provisions, easements, reservations, rights and limitations hereinabove mentioned and enumerated are for the benefit and protection of the owners of all lots in this subdivision and shall run with the land until January 1, 2014, at which time the same be [sic] automatically extended for successive periods of five years, unless

by a vote of the majority of the then owners, the same be terminated or be changed in whole or in part.¹

In addition, the last sentence of paragraph 4 of the Restrictive Covenant provides that no garage doors shall face the street.

{¶3} The appellants purchased Lot 10 in the Subdivision on or about April 9, 1996. The Survivorship Deed transferring title of Lot 10 to the appellants described the property to be transferred as follows:

Situated in the State of Ohio, County of Licking, Township of Granville:

Being Lot Number ten (10) in Hampden Ridge Subdivision as the same is numbered and delineated upon the recorded plat thereof of record in Plat Book 14 at Pages 44 through 46, Recorder's Office, Licking County, Ohio.

Parcel No. 19-041292-01-011

Property Address: Lot #10 Hampden Drive

Granville, OH 43023

Subject to: a) Unpaid taxes and special assessments, if any, all of which the Grantee herein assumes and agrees to pay as a further consideration for this convenience. b) Conditions, restrictions and easements, of record.

(Boldface original.)

¹ The record contains no evidence that the Subdivision's covenants and restrictions were not "automatically extended for successive periods of five years", nor have the parties argued as such.

{¶4} The appellants thereafter purchased a second lot, adjacent to Lot 10, which was located outside of the Subdivision, and as such was not subject to the restrictive covenants. In February of 2021, the appellants filed necessary documentation with the Licking County Engineer to replat Lot 10, which they had purchased in 1996 and was subject to the above-described restrictive covenant, with the newly acquired lot. The combined lots were designated as Lot 10A. On or about February 5, 2021, the appellants filed a Quitclaim Deed granting to themselves “all of their right, title and interest in and to two tracts of real estate being a .336 acre tract of real estate (tract 1) from parcel number 019-042378-00.009 and a 2.674 acre tract of real estate (tract 2) from parcel number 019-042378-00.005. SEE EXHIBIT A FOR LEGAL DESCRIPTION.” Exhibit A contained a two-page legal description of the subject property, the first page for the original property which was Lot 10, and the second page for the newly acquired lot. The first page of Exhibit A contained the legal description of the original Lot 10, and included the following final paragraph:

“The herein described 0.336 acres shall not constitute an independent building site separate from the Grantees’ adjacent parcel or transferred as an independent principal building parcel in the future unless approved as such in accordance with applicable Subdivision Regulations. This parcel is to be combined with Auditor’s Parcel Number 19-041292-01.011.”

The second page of Exhibit A, which contained the legal description of the second lot which was re-platted with Lot 10 to create Lot 10A, contained the following final paragraph:

“The herein described 2.674 acres shall not constitute an independent building site separate from the Grantees’ adjacent parcel or transferred as an independent principal building parcel in the future unless approved as such in accordance with applicable

Subdivision Regulations. This parcel is to be combined with Auditor's Parcel Number 19-041292-01.011."

(Italics original.) Parcel Number 19-041292.01-011 is the parcel number of Lot 10, originally purchased by the appellants and subject to the Restrictive Covenant.

{¶5} In August of 2022, the appellants began construction of a 1,440 square foot outbuilding on newly re-platted Lot 10A. The appellants had neither sought nor obtained approval from the Developers as required by the Restrictive Covenant. Appellee Terry Miller spoke with appellant Charles Bellofatto on or about August 15, 2022, regarding Miller's belief that the new construction violated the Subdivision's Restrictive Covenant. Additional communications were had with the appellants regarding whether the ongoing construction violated the Subdivision's Restrictive Covenants. The appellants did not halt construction, nor did they seek approval of the construction from the Subdivision Developers as set forth in paragraph 5 of the Restrictive Covenant. They completed construction of the 1,440 square-foot outbuilding, arguing that Lot 10A was not subject to the Restrictive Covenant.

{¶6} The appellees filed a Complaint for Declaratory Judgment and Injunctive Relief on February 3, 2023, seeking (1) a declaration that the appellants' construction of the outbuilding without written approval of its design and location from the Developers, as well as the configuration of the garage doors and the use of vinyl siding materials, was in violation of the Subdivision's Restrictive Covenant; and, (2) a permanent injunction enjoining the appellants from constructing the outbuilding, as well as a mandatory injunction requiring the appellants to remove the outbuilding. The appellants filed an Answer on March 7, 2023, and a Motion for Summary Judgment on August 7, 2023, to which the Affidavit of appellant Kristy Bellofatto was attached.

{¶7} On September 1, 2023, the appellees filed a Memorandum Contra to [Appellants'] Motion for Summary Judgment, as well as a Motion to Strike Improper Lay Witness Opinion Testimony regarding the language contained in paragraph 12 of the Kristy Bellofatto Affidavit. The appellees also filed a Motion for Summary Judgment on September 1, 2023. Briefs in opposition and reply briefs in support were filed by the parties. On February 12, 2024, the trial court issued a Judgment Entry denying the appellants' motion for summary judgment, and granting partial summary judgment to the appellees, finding that the appellees were entitled to summary judgment on the issue of the appellants' failure to obtain written permission from the Developers to construct the outbuilding; the Entry denied the appellees' motion for summary judgment on the issues regarding the configuration of the garage doors and the use of vinyl siding materials. Those issues, as well as the issues involving appellant Kristy Bellofatto's affidavit remained pending before the court.

{¶8} On June 7, 2024, the appellees filed a Supplemental Motion for Summary Judgment and Brief on Damages in which they sought summary judgment on all remaining claims and an order requiring the appellants to tear down the outbuilding. The appellants filed a Memorandum Contra, and appellees filed a Reply in Support. The trial court issued a Judgment Entry on October 2, 2025, in which it granted the appellees' Supplemental Motion for Summary Judgment, including the requested relief, and granted the appellees' September 1, 2023, Motion to Strike Improper Lay Witness Opinion Testimony, specifically paragraph 12 of the Kristy Bellofatto Affidavit.

{¶9} The appellants filed a timely appeal, and set forth the following four assignments of error:

{¶10} “I. THE TRIAL COURT ERRED IN DECIDING THE RESTRICTIVE COVENANTS APPLIED TO THE UNRESTRICTED ACREAGE.”

{¶11} “II. THE TRIAL COURT ERRED IN EXCLUDING RELEVANT EVIDENCE AND CONSIDERING IMPROPERLY INTRODUCED EVIDENCE.”

{¶12} “III. THE TRIAL COURT ERRED IN RESOLVING DISPUTED ISSUES OF MATERIAL FACT ON SUMMARY JUDGMENT IN FAVOR OF THE MOVING PARTY.”

{¶13} “IV. THE TRIAL COURT ERRED IN ORDERING THE EXTRAORDINARY REMEDY OF TEARING DOWN A NEARLY \$150,000 BUILDING.”

ASSIGNMENTS OF ERROR NOS. I, III, and IV

{¶14} The appellants’ first, third and fourth assignments of error are intertwined, and as such we elect to address them together.

Standard Of Review

{¶15} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.*, 30 Ohio St.3d 35, 36 (1987). Accordingly, this Court reviews a trial court’s award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996).

{¶16} Civ. R. 56(C) states in pertinent part: “Summary Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the

action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law ... A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." Thus, summary judgment may be granted only after the trial court determines that: 1) no genuine issues as to any material fact remain to be litigated; 2) the moving party is entitled to judgment as a matter of law; and 3) it appears from the evidence that reasonable minds can come to but one conclusion and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶17} As this Court stated in *Infield v. Westfield Ins. Co.*, 2023-Ohio-1199 (5th Dist.):

It is well established that the party seeking summary judgment bears the burden of demonstrating no issues of material fact exist for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 330, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The standard for granting summary judgment is delineated in *Dresher v. Burt*, 75 Ohio St.3d 280 at 293, 662 N.E.2d 264 (1996): “* * * a party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims. The moving party cannot discharge its initial burden under Civ.R. 56 simply by

making a conclusory assertion the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, if the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.” The record on summary judgment must be viewed in the light most favorable to the opposing party. *Williams v. First United Church of Christ*, 37 Ohio St.2d 150, 309 N.E.2d 924 (1974).

Id. at ¶ 21.

Analysis

{¶18} The issue of restrictive covenants was discussed by this Court in *Heather Lake Ass'n v. Billiter*, 2017-Ohio-8387 (5th Dist.):

. . . Restrictive covenants in deeds are generally interpreted by those rules used to interpret contracts. *McBride v. Behrman*, 28 Ohio Misc. 47, 50, 272 N.E.2d 181 (1971). In the case of contracts, deeds, or other written instruments, the construction of the writing is a matter of law which is reviewed de novo. See, *Martin v. Lake Mohawk Property Owner's Ass'n.*, 5th Dist. No. 04 CA 815, 2005-Ohio-7062, ¶ 23, citing *Long Beach Ass'n v. Jones*, 82 Ohio St. 3d 574, 576, 1998 Ohio 186, 697 N.E.2d 208 (1998). Under a de novo review, an appellate

court may interpret the language of the contract substituting its interpretation for that of the trial court. *Witte v. Protek Ltd.*, 5th Dist. No.2009CA00230, 2010-Ohio-1193, ¶ 6, citing *Children's Medical Center v. Ward*, 87 Ohio App.3d 504, 622 N.E.2d 692 (1993).

Ohio's legal system "does not favor restrictions on the use of property." *Driscoll v. Austintown Assocs.*, 42 Ohio St. 2d 263, 276, 328 N.E.2d 395 (1975). "The general rule, with respect to construing agreements restricting the use of real estate, is that such agreements are strictly construed against limitations upon such use, and that all doubts should be resolved against a possible construction thereof which would increase the restriction upon the use of such real estate." *Bove v. Geibel*, 169 Ohio St. 325, 159 N.E.2d 425 (1959), paragraph one of the syllabus. Furthermore, "[i]f the covenant's language is indefinite, doubtful, and capable of contradictory interpretations, the court must construe the covenant in favor of the free use of land." *Farrell v. Deuble*, 175 Ohio App. 3d 646, 2008-Ohio-1124, 888 N.E.2d 514, ¶ 11, citing *Houk v. Ross*, 34 Ohio St.2d 77, 296 N.E.2d 266 (1973), paragraph two of the syllabus.

There are five requirements for the creation of an enforceable restriction on the use of land by covenant. *Lipchak v. Chevington Woods Civic Ass'n*, 5th Dist. Fairfield No. 14-CA-40, 2015-Ohio-263, ¶ 33. These requirements are as follows:

First, the restrictions must be a part of the general subdivision plan, applicable to all lots in the subdivision. Second, lot purchasers must be given adequate notice of the restriction. Third, the restrictions

must be in accord with public policy, and they are unenforceable to the extent that they are not. Fourth, the restriction cannot be implied, but must be express. Fifth, the restrictions must run with the land, and therefore must be inserted in the form of covenants in the owner's chain of title. Otherwise, subsequent purchasers are not bound.

Lipchak v. Chevington Woods Civic Ass'n, 5th Dist. Fairfield No. 14-CA-40, 2015-Ohio-263, ¶ 33, citing *Dillingham v. Do*, 12th Dist. Butler Nos. CA2002-01-004, CA 2002-01-017, 2002-Ohio-3349, ¶ 12.

Id. at ¶ 22-24. Thus, while it is true that Ohio law does not favor restrictions on a landowner's use of his or her real property, restrictive covenants are nevertheless subject to established rules of contract interpretation and may be enforced if certain requirements are satisfied.

{¶19} Restrictive covenants are contracts, and as such are construed based upon general principles of contract interpretation. General contract principles were discussed by the Ohio Supreme Court in the seminal case of *Alexander v. Buckeye Pipeline Co.*, 53 Ohio St.2d 241 (1978), "Common words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument." *Id.* at paragraph 2 of the syllabus, 245-246. The *Alexander* Court stated further that "... where the terms in an existing contract are clear and unambiguous, this court cannot in effect create a new contract by finding an intent not expressed in the clear language employed by the parties." *Id.* at 246. This Court recently discussed appellate review of a trial court's interpretation of a contract in *Crum-Cianflone v. Cianflone*, 2026-Ohio-663 (5th Dist.):

"The standard analysis used to review a trial court's interpretation of a written contract * * * begins with the threshold question of whether the writing is ambiguous—that is, reasonably susceptible to more than one interpretation." (Citation omitted.) *Adams v. MHC Colony Park, L.P.*, 224 Cal.App.4th 601, 619, 169 Cal. Rptr. 3d 146 (2014)....

Id. at ¶ 26. The language contained in the Subdivision's Restrictive Covenant is clear and unambiguous, and as such is interpreted based upon the plain meaning of the words contained therein.

{¶20} The five requirements for the creation of an enforceable restriction on the use of land by covenant as set forth in *Heather Lake, supra*, are satisfied in this case. First, the restrictions in this case are part of the Hampden Ridge Subdivision plan and are applicable to all lots in the Subdivision. The appellants purchased Lot 10 in the Subdivision and were aware of the restrictions; they purchased a lot which was adjacent to the Subdivision, then had both properties re-platted, thereby making the newly acquired lot a part of the Subdivision. This merger of properties within the Subdivision is evidenced by the language contained in the appellants' Quitclaim Deed merging the properties following re-platting, which specifically references the properties as merged into Lot 10A and a part of the Subdivision: "[t]his parcel is to be combined with the Auditor's Parcel Number 19-041292-01.011," which is the parcel number of the original Lot 10, purchased by the appellants in 1996 and subject to the Restrictive Covenant.

{¶21} The second requirement is that lot purchasers must be given adequate notice of the restriction. In this case the appellants were on notice of the restrictions; they simply believed, mistakenly, that the restrictions did not apply to the newly acquired lot despite the

fact that they themselves had merged the new lot with the original lot - which was subject to the restrictions. Further, the appellees raised the restrictive covenant issue with the appellants, which also placed them on notice of the potential applicability of the restrictions to the construction of the outbuilding. The appellants could have filed a declaratory judgment action themselves to confirm whether or not the restrictions applied to Lot 10A, but instead chose to proceed with construction of the outbuilding. They did so at their own peril.

{¶22} Third, the restrictions must be in accord with public policy, and are unenforceable to the extent that they are not. The covenants and restrictions herein were established by the Developers for the benefit of all property owners within the Subdivision, and contained a process by which property owners could seek approval for the design and location of structures within the Subdivision which may be outside the covenant's parameters. The appellants failed to seek such approval.

{¶23} Fourth, the restriction cannot be implied, it must be express. In this case the restrictions are expressly set forth in the Declaration of Restrictive Covenant Applicable to the Hampden Ridge Subdivision. Finally, fifth, the restrictions must run with the land, and therefore must be inserted in the form of covenants in the owner's chain of title. In this case, paragraph 18 of the Restrictive Covenant specifically states that the restrictions run with the land, and automatically extend for successive periods of five years unless action is taken by the property owners within the Subdivision to discontinue said extension. The record reflects no such action taken by the property owners within the Subdivision to terminate the automatic five-year extensions of the Restrictive Covenant.

{¶24} The Hampden Ridge Subdivision Restrictive Covenant clearly and unambiguously states that "no other structure or outbuilding shall be erected, placed or

suffered to remain upon any lot” without the written approval of the Developers. The appellants were aware of the Restrictive Covenant, failed to seek the Developers’ approval of the design and location of outbuilding, and continued with construction of the outbuilding at issue despite being put on further notice by neighbors. The appellants proceeded in doing so at their own risk.

{¶25} We are unpersuaded by the appellants’ argument that the second lot, on which the outbuilding was constructed, was not subject to the Restrictive Covenant. The appellants purchased Lot 10 in 1996 and were aware of the Restrictive Covenant. They subsequently purchased an adjacent lot which was outside the Subdivision and not subject to the Restrictive Covenant. However, they legally merged the later acquired lot with Lot 10 in the Subdivision, thus subjecting the new lot to the Restrictive Covenant. The language contained in Exhibit A of the appellants’ Quitclaim Deed, filed after the re-platting of the subject lots, specifically references the second lot, stating that “[t]he herein described 2.674 acres shall not constitute an independent building site separate from the Grantees’ adjacent parcel or transferred as an independent principal building parcel in the future unless approved as such in accordance with applicable Subdivision Regulations. This parcel is to be combined with Auditor’s Parcel Number 19-041292-01.011.” Parcel Number 19-041292-01.011 is the parcel number for the original Lot 10. The language is clear. The second lot, on which the appellants built their outbuilding, merged with the original Lot No. 10 during re-platting, and as such became subject to the Subdivision’s Restrictive Covenant.

{¶26} We find that the trial court correctly found that no genuine issues of material fact existed regarding the interpretation of the language of the Restrictive Covenant. The language contained therein was clear and unambiguous. The appellants simply failed to

comply with the requirements set forth in the Restrictive Covenant. Furthermore, they did so despite being on notice of the same. They proceeded at their own peril, and unfortunately now must face the remedy of removing the non-compliant outbuilding from their property. While this remedy may seem harsh, if a party chooses to violate a restrictive covenant, that violation is, in and of itself, the “damage.” The only remedy that can redress said damage is removal of the offending structure. The appellants’ assignments of error numbers one, three and four are without merit.

ASSIGNMENTS OF ERROR NO. II

{¶27} The appellants submit in their second assignment of error that the trial court erred with regard to the evidentiary ruling regarding the Kristy Bellofatto Affidavit. We disagree.

Standard Of Review

{¶28} “Decisions involving the admissibility of evidence are reviewed under an abuse-of-discretion standard of review.” *Est. of Johnson v. Randall Smith, Inc.*, 2013-Ohio-1507, ¶ 22, citing *State v. Hancock*, 2006-Ohio-160 (2006). To find an abuse of discretion, this Court must determine that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

Analysis

{¶29} The appellants argue that paragraph 12 of appellant Kristy Bellofatto’s Affidavit, attached to the appellants’ August 7, 2023, Motion for Summary Judgment, was in compliance with the Ohio Rules of Evidence and was therefore properly before the trial court. We disagree.

{¶30} Evid. R. 701 provides for opinion testimony by lay witnesses, and states:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

{¶31} In this case, appellant Kristy Bellofatto averred in paragraph 12 of her Affidavit that the “average person” would not know that the homes at the beginning of Hampden Drive are not a part of the Subdivision. The trial court did not abuse its discretion when it determined that there was “no indication that Ms. Bellofatto has any knowledge as to what a hypothetical ‘average person’ would believe concerning the boundaries of the subdivision or that her opinions on that subject are rationally based upon any perception she may have.” Furthermore, said statement did not assist the trial court in making a determination regarding the restrictive covenant issues. The trial court did not act unreasonably, arbitrarily or unconscionably when it granted the appellees’ Motion to Strike paragraph 12 of appellant Kristy Bellofatto’s Affidavit. The appellants’ second assignment of error is without merit.

CONCLUSION

{¶32} Based upon the foregoing, the appellants' assignments of error numbers one, two, three, and four are overruled, and the decision of the Licking County Court of Common Pleas is hereby affirmed.

{¶33} Costs to the appellants.

By: Baldwin, J.

Gormley, J. concur.

King, P.J. concurs in part; dissents in part.

King, J., concurring in part and dissenting in part.

{¶ 34} I join the majority in affirming the trial court's February 12, 2024 decision that the outbuilding violates Sections 1, 2, and 5 of the restrictive covenants, and in denying the assignment directed to the striking of paragraph 12 of Kristy Bellofatto's affidavit. I dissent from the affirmance of the trial court's October 2, 2025 order that the structure be torn down.

{¶ 35} I concur that Sections 1, 2, and 5 of the restrictive covenants mean what they say, and I would affirm the trial court's February 12, 2024 declaration that the outbuilding was constructed in violation of those provisions. Although that answers the liability aspect of this case, I dissent from this court's opinion reaching the same result as the trial court's October 2, 2025 judgment entry ordering that the structure be razed.

{¶ 36} The 2024 entry appropriately reserved the remedy. It stated summary judgment "resolve[s] counts, not pre-determine[s] remedies," and "[t]he proper remedy for the violations is an issue separate from those addressed here." Despite this admonition to itself, the trial court's 2025 entry then found, on the same paper record, "that Defendants were aware of the requirements they violated and opted to violate them despite this" and treated that finding as sufficient to require demolition, despite the covenant (paragraph 19) allowing for compensatory damages too.² This court repeats that error.

{¶ 37} The question is not whether the covenant binds the defendants; it does. But we cannot draw from the conclusion that the covenant is enforceable that plaintiffs also made a sufficient factual showing to be entitled to a mandatory injunction. A mandatory injunction

²Paragraph 19 states: "In the event that any person or persons violate, or attempt to violate, any of the covenants, restrictions . . . hereinabove enumerated . . . any lot owner in this subdivision shall have the right to prosecute any proceedings at law or in equity against such person or persons, either to enjoin such violation or to recover damages [for] the same." *See* Plaintiffs' June 7, 2024 Supplemental Motion for Summary Judgment, Exhibit 3.

to remove a structure is an extraordinary equitable remedy. *Miller v. City of W. Carrollton*, 91 Ohio App.3d 291, 296–298 (2d Dist. 1993) ("When the court is thus asked to undo something that has been done, it must, for obvious reasons, act in a careful and conservative manner and grant the relief only in situations which so clearly call for it as to make its refusal work a real and serious hardship and injustice"). We should handle a mandatory injunction as the extraordinary request that it is.

{¶ 38} Again, entitlement to a mandatory injunction is not automatically established here by the fact of a breach. The plaintiffs must still show a clear right to have the building torn down; the court weighs benefit against hardship, including whether the violation was willful or the product of a good faith mistake. *Id.* Whether the Bellofattos built in knowing defiance is a question of fact, with scant evidence from which to glean an answer. Here, the plaintiffs have not adduced evidence upon which no reasonable mind could disagree with an entitlement to the injunction.

{¶ 39} To the extent that the trial court's order made an inference to justify the razing, it occurred in the wrong direction. Summary judgment requires that we construe the record in favor of the nonmoving party. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). A largely silent and narrow record on this question would suggest that by making inferences in favor of the nonmoving party, the proper course was, and still is, to deny the motion. Awareness of a recorded covenant is not, by operation of law, the same fact as a decision to defy it without a good faith basis for doing so. Nor is it permissible at this stage to draw that inference in favor of the plaintiffs because they won on a different legal issue.

{¶ 40} I would reverse only the mandatory injunction and remand for an evidentiary hearing on good faith and the appropriate remedy, which might be compensatory damages

instead. It is not my view that demolition is never available, because that is not the law. Instead, I would hold that it is not the automatic price of a breach of a covenant. That is what makes a mandatory injunction an extraordinary remedy. At a minimum, the standard requires that the question of good faith or the lack of it be resolved on evidence. There was not sufficient evidence in this record to grant summary judgment on that question.

{¶ 41} This court's opinion in *Samsa v. Hess*, 2015-Ohio-429 (5th Dist.), does not require a different result. There, the trial court heard from the builder who was in violation of the restrictive covenants. He had been told to read the restrictions, admitted to receiving a lawyer's letter to stop, paused, and then finished the building anyway. *Id.* at ¶ 10-13. Willfulness was found on testimony. The legal rule for which *Samsa* is cited — that a court need not balance the equities once a violation is shown to be deliberate — presupposes that finding. It does not authorize a court to supply the finding on summary judgment so that the balance never occurs. Constructive notice of a recorded covenant explains why the restriction binds the Bellofatts. It does not, without more, establish that they built in willful defiance - the finding on which the 2025 judgment entry and the majority opinion rest the demolition order. For this reason, I dissent in part.