

Standing on Deed Restrictions

Lane Marie Brown

Sage Lane Law, PLLC

Blanco, Texas

laniebrownesq@gmail.com

***Sw. Church of Christ v. Country Props. Homeowners*, No. 05-22-01092-CV, 2023 WL 8431507 (Tex. App.—Dallas Dec. 5, 2023, pet. denied) (mem. op.).**

It seems there is always that neighbor who thinks the deed restrictions do not apply to him. When a group of homeowners was granted a temporary injunction to enjoin Southwest Church of Christ (the Church) from continuing construction on a worship center in their residential neighborhood, the Church appealed, asserting, among several issues, that the Homeowners lacked standing, they were just trying to force their objection to a church, and the deed restrictions are void. *Id.* at *1, 4. The Dallas Court of Appeals easily rejected the Church’s arguments and upheld the trial court’s order. *Id.* at *1.

As is always good practice before lawyering up, the concerned homeowners attempted to engage the new neighbor in friendly dialogue. First, when a homeowner met a member of the Church who shared the intention to build a church on the lot, he inquired whether the church member was aware of the neighborhood building restrictions. *Id.* at *2. Because the church member acted unaware of the deed restrictions, the homeowner proactively emailed the document to him. *Id.* Nevertheless, the Church commenced construction on its seven thousand-square-foot worship center with plans for a parking lot, exterior lights, and signage. *Id.* at *2, 5. As construction progressed, another homeowner became concerned when the building underway with metal framing and dormer windows did not look like a residence. *Id.* at *2. She started by calling the builder and then the Church. *Id.* She was informed by the gentleman who answered the phone at the Church that “it doesn’t matter if there’s deed restrictions because they’re a church and they don’t abide by them.” *Id.* Since these neighborly talks were ineffective, the two homeowners conferred with other residents, and they decided to seek legal counsel. *Id.* Never fear; property rights attorneys live to bill another day.

While the Church’s arguments were cleanly defeated in court, they serve as reminders of a couple of lessons on restrictive covenants and injunctive relief:

First, the elements for injunctive relief to preserve the status quo in a deed-restricted neighborhood are slightly different than the general rule for the award of a temporary injunction. A homeowner who seeks to enforce a restrictive covenant must show that the defendant intends to commit an act that would breach the covenant. *Id.* at *3. In other words, the movant is not required to prove the element of irreparable harm if the request is denied. *Id.* Thus, a temporary injunction in such a scenario is warranted when a movant shows the following: 1) a probable right of recovery (i.e., that the complaining homeowners will likely prevail at trial), 2) the defendant intends to commit an act that would breach the restrictive covenant, and 3) there is no adequate remedy at law.

Also, interestingly, the Dallas Court of Appeals, in this deed restrictions case, accepted homeowners’ testimonies that they own lots in the subdivision as evidence of ownership to prove standing to enforce the restrictive covenants. *Id.* However, in a recent trespass and nuisance case, the Austin Court of Appeals explained, “Generally, a bare assertion that a party ‘owns’ property is conclusory and incompetent and thus insufficient to conclusively establish ownership,” when it found a homeowner did not conclusively establish the element of trespass that he owned the real property he sought to protect from sludge runoff from a chicken-feed mill. *Adcock v. Cal-Maine Foods, Inc.*, 03-22-00418-CV, 2024 WL 201963, at *3 (Tex. App.—Austin Jan. 19, 2024, no pet. h.).

To apply these lessons to practice, when reviewing the elements of injunctive relief in a deed-restricted neighborhood, no matter how clear-cut a case might seem, check for conclusive evidence to

establish both the plaintiff's and defendant's ownership of real property in the subdivision.