

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-000753-MR

FLOYD DOTSON AND EDNA DOTSON

APPELLANTS

v. APPEAL FROM GARRARD CIRCUIT COURT
HONORABLE ROBERT J. JACKSON, JUDGE
ACTION NO. 96-CI-171

VERNON HELTON; WILLIAM CLARK;
JAMES P. ROUSEY; ROGER AYRES;
CHAT HESTER; AND ROGER HENDERSON

APPELLEES

OPINION

REVERSING AND REMANDING

** ** * * *

BEFORE: GUIDUGLI, KNOX, AND MILLER, JUDGES.

MILLER, JUDGE: Floyd Dotson and Edna Dotson bring this appeal from a February 14, 1997 summary judgment of the Garrard Circuit Court. We reverse and remand.

In November 1990, appellants purchased Tract No. 5 of the Treadway Corporation Subdivide in Lancaster, Garrard County, Kentucky. The deed contains a restrictive covenant, which states in relevant part as follows:

Further specific restrictions are that there shall be no mobile or modular homes placed or erected on the above described property.

Appellants thereafter purchased a structure that had been used as a temporary classroom at the Camp Dix School in Garrard County. Appellants moved the structure onto their property. Consequently, a "Complaint Seeking Declaration of Rights and Issuance of a Permanent Injunction" was filed in the Garrard Circuit Court by Vernon Helton, William R. Clark, James P. Rousey, Roger Ayres, Chat Hester, and Roger Henderson (appellees). In the complaint, appellees alleged that appellants violated the restrictive covenant by moving the aforementioned structure onto the property.

On December 19, 1996, appellants responded to the complaint by filing a handwritten pro se answer, which stated in relevant part as follows:

The Bulding [sic] on our Lot is . . . **Not** a Trailer [sic][,] is **Not** a Mobile[,] is **Not** a modular[.] [T]his Bulding [sic] Does Not Seperate [sic][,] Does Not Boults [sic] to gather [sic][,] and is **25** Feet Wide[.] [I]t has No Steel Beams[,] No Axels [sic][,] No tounge [sic][,] And Does Not come Apart[.] (Emphases in original.)

So we have Done Nothing wrong to any one[.]

The appellees filed a motion for summary judgment and, in support thereof, attached the affidavit of one John Michael Thomas, a certified building inspector for the City of Danville, Kentucky. In essence, Thomas opined that the building appears to qualify as a "mobile unit building." Ultimately, the circuit court entered summary judgment in favor of appellees by concluding that the

"structure" was a "modular and/or mobile home" and, as such, violated the restrictive covenant. This appeal followed.

Summary judgment is proper only when there exists no material issue of fact and the movant is entitled to judgment as a matter of law. Ky. R. Civ. P. 56; Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991).

Appellants contend that the circuit court committed reversible error by entering summary judgment. We agree with the appellants and believe that the circuit court's entry of summary judgment was premature. It is uncontroverted that the structure purchased by appellants was not a typical mobile or modular home within the common usage of the terms. Indeed, as appellants' answer points out, it "is **Not** a Traylor [sic]." Conversely, it was a structure used as a temporary classroom. The restrictive covenant in appellants' deed clearly disallows the placement of "mobile or modular homes" upon the property. We believe the terms mobile or modular homes to be ambiguous. We are of the opinion that the circuit court should take additional evidence to determine the proper meaning of the terms as intended by the parties and thereupon determine whether appellants' structure is such a "mobile or modular home." See Parrish v. Newbury, Ky., 279 S.W.2d 229 (1955). In so doing, we believe it incumbent upon the court to recognize that such ambiguous restrictions upon land are to be strictly construed against its drafter. Id.

For the foregoing reasons, the judgment of the circuit court is reversed, and this cause is remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

William E. Johnson Jr.
Lexington, KY

BRIEF FOR APPELLEES:

William E. Oliver
Lancaster, KY