

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000758-MR

JAMES B. VIBERT

APPELLANT

v. APPEAL FROM BRECKINRIDGE CIRCUIT COURT
HONORABLE SAM HOUSTON MONARCH, JUDGE
ACTION NO. 97-CI-128

JEFFERSON SANDERS AND MARIE SANDERS,
HUSBAND AND WIFE;
JACK E. MURRAY AND LILLIAN MURRAY,
HUSBAND AND WIFE;
LARRY G. TRIPLETT AND RITA CARLO TRIPLETT,
HUSBAND AND WIFE;
ROBERT B. BURROW AND LELIA BURROW,
HUSBAND AND WIFE;
JERRY GLENN MIDKIFF AND ROSA LEE MIDKIFF,
HUSBAND AND WIFE;
LINDESAY HARDESTY AND RITA HARDESTY,
HUSBAND AND WIFE;
DANNY E. CAPLE AND CHARLOTTE CAPLE,
HUSBAND AND WIFE;
LEO H. HARDY AND IRENE S. HARDY,
HUSBAND AND WIFE;
JOSEPH A. LANHAM AND INEZ LANHAM,
HUSBAND AND WIFE;
FRED M. BAKER AND DOROTHY BAKER,
HUSBAND AND WIFE;
WILLIAM W. EWING AND SUSAN G. EWING,
HUSBAND AND WIFE; AND
WILLIAM BURTON AND SUSAN G. BURTON,
HUSBAND AND WIFE

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: EMBERTON, KNOPF, AND KNOX, JUDGES.

KNOPF, JUDGE: This is an appeal from a summary judgment enforcing a deed restriction and granting injunctive relief to the appellees. Finding no error, we affirm.

The appellant, James B. Vibert, purchased lots 10, 58 and 60 in Lake of the Woods Subdivision, located in Axtel, Breckinridge County, Kentucky, on November 29, 1996. The lots were subject to a recorded 1966 deed restriction which provides:

No house trailers, tents or shacks or other similar structures shall be erected, moved to, placed upon, or used upon said premises.

After Vibert purchased these lots, he began preparing one (1) of them for placement of a manufactured housing structure. The appellees, who are property owners in the Lake of the Woods Subdivision, advised Vibert that the placement of the structure violated the deed restriction. After Vibert made known his intention to place the structure on his property despite his neighbors' objections, the property owners' association amended the deed restriction to provide as follows:

No mobile homes, double-wide trailers, modular homes, sectional homes, or manufactured homes shall be erected upon, moved to, placed upon constructed on or used upon said premises.

The amendment was also duly recorded. The appellees, by counsel, advised Vibert of their intent to enforce the original deed restriction and the deed restriction as amended. Vibert moved the structure onto his lot in July 1997. Shortly thereafter, the appellees filed this action asserting that Vibert's placement of the structure violated the deed

restrictions. The appellees asked the trial court to enforce the restriction and to order Vibert to remove the structure.

The issue was submitted to the trial court on cross-motions for summary judgment. The parties entered into a stipulation of material facts. The trial court granted summary judgment in favor of the appellees, finding that Vibert's manufactured home was prohibited by the original 1966 deed restriction. Consequently, the trial court ordered Vibert to remove the structure from his property. This appeal followed.

The sole issue on appeal is whether the trial court correctly found that the manufactured housing structure, which Vibert refers to as a "manufactured home", is prohibited by the 1966 deed restriction. The appellees do not contend that the 1997 amendment is applicable because it was recorded after Vibert purchased his property.

The deed restrictions do not define the terms "mobile home" or "manufactured home". However, the parties agree that the definitions of these terms in KRS 227.550 provide an adequate guide to their meanings. "Mobile homes" and "manufactured homes" both fall under the definition of "manufactured housing". KRS 227.550(8). The term "mobile home"

means a structure manufactured prior to June 15, 1976, which was not required to be constructed in accordance with the federal act,¹ which is transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width and forty (40) body feet or more in length, or, when erected on site, is three hundred twenty

¹ The term "federal act" refers to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq. KRS 227.550(6)

(320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure.
KRS 227.550(10).

On the other hand, the term "manufactured home"

means a single-family residential dwelling constructed in accordance with the federal act, manufactured after June 15, 1976, and designed to be used as a single-family residential dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The manufactured home may also be used as a place of business, profession, or trade by the owner, the lessee, or the assigns of the owner or lessee and may comprise an integral unit or condominium structure. Buildings the construction of which is not preempted by the federal act are subject to building code requirements of KRS Chapter 198B.
KRS 227.550(7).

The trial court concluded that since the terms "mobile home" and "manufactured home" both come within the definition of the term "manufactured housing", the terms are synonymous.

Merely as a point of logic, we disagree. Simply because two (2) items are subsets within the same class does not necessarily mean that those subsets are identical. It may be true that all mobile homes are manufactured housing, and all manufactured homes are manufactured housing. But, it does not follow that all manufactured homes are mobile homes. Rather, the analysis must focus on comparing the two (2) subsets with each other, rather

than with the larger class to which they belong. Only then can a determination be made as to what extent the subsets overlap.

Nonetheless, we agree with the conclusion reached by the trial court. Comparing the definitions above, the primary differences between a "mobile home" and a "manufactured home", are the requirement that a manufactured home comply with the federal act, and the stipulation that a "mobile home" is "built on a permanent chassis." The fact that a "manufactured home" must comply with the federal act is not, by itself, sufficient to entirely distinguish the two (2) types of structures. KRS Chapter 227 is a comprehensive act dealing with fire protection and prevention. KRS 227.550 through 227.660 sets standards and requirements for the construction and sale of "mobile homes and recreational vehicles." As noted above, manufactured housing structures built after 1976 must comply with the federal act standards for manufactured homes. However, prior to 1996, the terms "mobile home" and "manufactured home" were defined in the same paragraph of KRS 227.550.

With the enactment of 1996 Ky.Acts. Ch. 340, § 1, the two (2) terms are now defined in separate paragraphs. Nonetheless, while the terms for these two (2) types of structure are no longer considered synonymous, they may continue to overlap to some extent. The fact that the terms are defined in separate paragraphs of KRS 227.550 means only that different standards apply to these structures. A determination of whether these structures are distinct or identical depends upon the structures themselves, and not solely upon their definitions.

The parties stipulated that the structure on Vibert's property is "built on a permanent chassis" and meets the definition of manufactured housing set out in KRS 227.550(8). Vibert also concedes that a "mobile home" falls within the "house trailer . . . or other similar structure" provision in the 1966 deed restriction. Consequently, Vibert's structure is sufficiently similar to a mobile home to be subject to the 1966 deed restriction. Therefore, the trial court properly enforced the 1966 deed restriction against him.

Accordingly, the judgment of the Breckinridge Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Shan F. Embry
Leitchfield, Kentucky

BRIEF FOR APPELLEES:

Charles C. Mattingly, III
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