

STATE OF MICHIGAN
COURT OF APPEALS

BRUCE R. MAUS, BRENDA L. MAUS,
DONALD H. SKELLY, JOSEPH S. TEKIELI,
ROBIN M. TEKIELI, THOMAS E. WATSON,
and JACQUELINE M. WATSON,

UNPUBLISHED
May 11, 2006

Plaintiffs-Appellants,

v

No. 258552
Livingston Circuit Court
LC No. 03-020116-CH

SHEILA K. KNISS, a/k/a TERI KNISS,
individually, and as the Trustee for the SHEILA K.
KNISS-KNAPP LIVING TRUST, M & M
BUILDING CONSTRUCTION, INC., JASON
JANESKI, CORRIE L. JANESKI, DANIEL J.
MALLINSKI, STACEY M. KOWALCZYK,
MICHAEL BROWN, and ANDREA BROWN,

Defendants-Appellees.

Before: Kelly, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

In this action involving deed restrictions, plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendants. We affirm.

When the Whispering Meadows Estates subdivision was created, it consisted of ten parcels of land, each approximately ten acres in size. The ten parcels were subject to several deed restrictions, including:

5. Said parcels shall be used for single family private residence only. Garages shall be attached with which one wall of the garage shall be in common with the wall of residence and no smaller than two car garages shall be allowed.

In 2001, defendant Sheila Kniss divided some of the original ten-acre parcels into smaller sub-parcels, which were then sold to the remaining defendants. Plaintiffs, who own other properties in the subdivision, asserted that defendants had violated the deed restrictions by dividing some of the original ten-acre parcels and constructing single-family homes on the resulting sub-parcels. The trial court concluded that paragraph 5 of the deed restrictions did not explicitly prohibit division of the original parcels, and did not prevent single-family residential

use on the resulting sub-parcels. Therefore, the court granted summary disposition in favor of defendants.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition under MCR 2.116(C)(8) is appropriate if the pleadings are legally insufficient to state a claim, and no factual development could justify recovery. *Liggett Restaurant Group, Inc v Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003). In an action based on a written instrument, the written instrument is considered part of the pleadings. *Id.*

When the written terms of a deed restriction are unambiguous, the courts must give effect to the instrument as a whole. *Village of Hickory Pointe Homeowners Ass'n v Smyk*, 262 Mich App 512, 515-516; 686 NW2d 506 (2004). Where restrictions are clear and definite, they are enforced as written. *Hill v Rabinowitch*, 210 Mich 220, 224; 177 NW 719 (1920). Judicial construction may not expand such unambiguous restrictions. See *Borowski v Welch*, 117 Mich App 712, 716; 324 NW2d 144 (1982). When an instrument's language is unambiguous and no reasonable person could differ with respect to its application, a trial court should grant summary disposition to the proper party. *Henderson v State Farm Fire and Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

The trial court determined that paragraph 5 unambiguously allowed division of the original ten-acre tracts for residential purposes, provided that the homes built on the resulting sub-parcels were used for "single family private residence" purposes only. We agree.

A deed restriction is a contract. *Stuart v Chawney*, 454 Mich 200, 210; 560 NW2d 336 (1997). Contractual language is to be interpreted within the constraints of the rules of grammar. *Pendill v Maas*, 97 Mich 215, 218; 56 NW 597 (1893). "[T]he fact that a contract does not define a relevant term does not render the contract ambiguous." *Terrien v Zwit*, 467 Mich 56, 76; 648 NW2d 602 (2002). Nor is a word ambiguous merely because different dictionary definitions exist. *Twichel v MIC General Ins Corp*, 469 Mich 524, 535 n 6; 676 NW2d 616 (2004). Rather, undefined terms are interpreted in accordance with their commonly used meaning. *Terrien, supra* at 76.

While paragraph 5 plainly limits the type of *activity* allowed within Whispering Meadows Estates to "single family private residence," it is silent with respect to the allowable *density or number of homes* that may be built. We decline to broaden the unambiguous deed restrictions so as to prohibit further division of the original ten-acre lots or to prohibit conforming residential use of the resulting sub-parcels. To do so would constitute impermissible judicial expansion of the deed restrictions' clear and limited language. *Borowski, supra* at 716.

Plaintiffs also argue that the trial court should have granted them leave to amend the pleadings to more fully explain the parties' intentions underlying the deed restrictions in this case. However, in light of the fact that the deed restrictions are unambiguous, the trial court properly applied them as written. Any additional evidence concerning the parties' intent would have been irrelevant. It is axiomatic that a trial court need not grant leave to amend when, as here, the amendment would have been futile. *Hakari v Ski Brule, Inc*, 230 Mich App 352, 355; 584 NW2d 345 (1998).

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Kathleen Jansen

/s/ Michael J. Talbot