

STATE OF MICHIGAN  
COURT OF APPEALS

---

SHELBY WOODS LAKES HOMEOWNERS  
ASSOCIATION,

UNPUBLISHED  
May 13, 2003

Plaintiff-Appellee,

v

CHARLES LOVE and ANGELA LOVE,

No. 237053  
Macomb Circuit Court  
LC No. 99-000300-CH

Defendants-Appellants.

---

Before: Hoekstra, P.J., and Smolenski and Fort Hood, JJ.

PER CURIAM.

Plaintiff initiated this action to enjoin defendants, residents of the Shelby Woods Lake subdivision, from violating several provisions of a declaration of restrictions governing subdivision property use. Following a bench trial, the circuit court entered an order requiring defendants to remove a private property sign they had posted and a fence around their rear patio that violated the restrictions, and enjoining defendants from erecting these items in the future. Additional allegations of restriction violations by defendants were dismissed. Defendants appeal as of right. We affirm.

Defendants first argue that the circuit court erred in finding that plaintiff was a valid non-profit corporation, as required by subdivision bylaws, and that defendants' residence in the subdivision rendered them members of plaintiff subject to the declaration of restrictions. We find, however, that defendants waived these arguments by affirmatively expressing their agreement to plaintiff's status and the applicability of the declaration of restrictions to their property. *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 684; 591 NW2d 438 (1998). The record reflects that, in their answer to plaintiff's first amended complaint, defendants admitted the first paragraph, which alleged plaintiff's status as a non-profit corporation, and the fourth paragraph, which averred that "as members of the Association, Defendants were bound to abide by said restrictions as contained in the Deed of Restrictions." Because defendants admitted these facts, plaintiff was relieved from proving them at trial. Hence, defendants cannot challenge on appeal the circuit court's findings in these regards.

*Taskey v Paquette*, 324 Mich 143, 147-148; 36 NW2d 876 (1949); *Hilgendorf v St John Hosp & Med Ctr Corp*, 245 Mich App 670, 689; 630 NW2d 356 (2001).<sup>1</sup>

Defendants next contend that the circuit court erroneously interpreted restriction ¶ 13, which they allege applies only to advertising signs, as prohibiting defendants' posting of their private property sign. We decline to address defendants' two-sentence argument with respect to the appropriate interpretation of the restriction limiting the placement of signs on subdivision property, given defendants' failure to cite any authority in support of their position. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 57; 649 NW2d 783 (2002) (explaining that a party may not leave it to this Court to search for authority to sustain or reject its position).<sup>2</sup>

Defendants further assert that the circuit court erred in granting injunctive relief when monetary damages would have sufficiently compensated plaintiff for defendants' minor violations of the restrictions. In their brief on appeal, however, defendants again cite no authority in support of their claim that their erection of a sign constituted such a minor violation of the restrictions that "a fine and/or a suit for money judgment would be a more appropriate remedy." Accordingly, we decline to consider defendants' argument. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210; 568 NW2d 378 (1997).

Defendants lastly argue that the doctrines of estoppel, waiver and laches precluded plaintiff's attempts to enforce the restrictions against them. Estoppel, waiver and laches all constitute affirmative defenses. MCR 2.111(F)(3)(a); *Lothian v Detroit*, 414 Mich 160, 168; 324 NW2d 9 (1982); *Badon v General Motors Corp*, 188 Mich App 430, 433; 470 NW2d 436 (1991). Defendants did not raise these defenses in their answer to plaintiff's original complaint or in response to plaintiff's first amended complaint, as required by MCR 2.111(F)(3). Accordingly, defendants waived these affirmative defenses. *Citizens Ins Co of America v Juno Lighting, Inc*, 247 Mich App 236, 241; 635 NW2d 379 (2001).<sup>3</sup>

---

<sup>1</sup> Furthermore, we need not consider defendants' arguments because their brief on appeal in no way attempts to explain their admissions or otherwise address the admissions as the basis for the circuit court's findings. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997). We need not consider the subissue defendants raise in their statement of questions presented concerning the court's allegedly erroneous finding that plaintiff adopted bylaws, because defendants' brief on appeal fails to set forth any argument or other development of this issue. *Alibri v Detroit/Wayne Co Stadium Authority*, 254 Mich App 545, 559; 658 NW2d 167 (2002).

<sup>2</sup> We note that the restriction plainly prohibits posting any conceivable type of sign, except for one sign advertising a subdivision residence for lease or sale. *Rossow v Brentwood Farms Development, Inc*, 251 Mich App 652, 658; 651 NW2d 458 (2002). The language within the third category of prohibited postings regarding "other advertising devices or symbols" expands or modifies only the category of prohibited billboards. *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999).

<sup>3</sup> Furthermore, the issue is not properly presented because (1) defendants cite no binding and relevant authority tending to establish that the circumstances of the instant case support a finding of estoppel or waiver by plaintiff of its right to enforce the restrictions, or plaintiff's laches in enforcing the restrictions, *Sherman, supra*, and (2) while defendants mention in their discussion

(continued...)

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Michael R. Smolenski  
/s/ Karen Fort Hood

---

(...continued)

of the issue that the circuit court should have found plaintiff estopped from enforcing, or that plaintiff waived, the sign prohibition within restriction ¶ 13, defendants did not include this claim within the statement of the question presented. *Brookshire-Big Tree Ass'n v Oneida Twp*, 225 Mich App 196, 201; 570 NW2d 294 (1997).