

CORNER V. MILLS

COURT OF APPEALS OF INDIANA, 1995
650 N.E.2D 712

FACTS Christiana Acres is a subdivision consisting of thirty-two lots in Elkhart, Indiana. The tract was divided in 1937 by then-owners Perry and Florence Shupert. Between 1939 and 1941, four lots were sold without restrictions. In 1942, one of the lots was sold with several restrictions, including a residential use restriction, a sideline and setback provision, a minimum lot size to build restriction, a prohibition of noxious or offensive activities, a racial restriction (prohibiting occupancy by nonwhites), a restriction against temporary residential structures, and a minimum building size and cost restriction. Between 1942 and 1946, two of the lots were sold; one with the above restrictions and one without. In 1946, the tract was recorded without any restrictions by all of the owners. At the time, all of the owners were using their lots for residential purposes. Subsequently, thirteen lots were sold. These lots all had restrictions, although they did not all have identical restrictions. All but one had a residential use restriction.

The plaintiffs own lots in the subdivision that are located near a commercialized thoroughfare. They believed that their property would be more valuable if used for commercial purposes and filed a complaint seeking declaratory relief to have the restrictive covenants on their property lifted. The defendants, who are also residents of the subdivision, filed a counterclaim seeking enforcement of the covenants. The trial court found the racial covenants unenforceable but upheld the residential use restrictions on Christiana Acres.

DECISION Judgment affirmed.

OPINION Hoffman, J. Restrictive covenants which restrict use of land based on race are unconstitutional. [Citation.] Thus, indisputably, the racial restriction contained in

the deeds are invalid. However, as the defendants point out, restrictive covenants are express contracts between a grantor and a grantee. [Citation.] Accordingly, as in other contracts, illegal covenants may be removed if to do so will not affect the intent or symmetry of the remaining covenants. [Citation.]

Racial restrictions aside, it is evident that the other residential covenants seek to independently ensure the residential quality of Christiana Acres. They do this by setting forth very specific set-back and minimum value requirements, by prohibiting certain commercial and trade behavior, and by imposing restrictions against certain temporary residential structures. As the trial court noted in its findings, severing the illegal racial covenants only destroys a small portion of the covenants' intent. It does not affect the prevailing and apparent intent to have Christiana Acres remain residential. Consequently, the trial court did not err in redacting the illegal covenants while allowing the others to remain intact.

Plaintiffs next contend the trial court erred in finding a general scheme or plan of residential development to exist in Christiana Acres. In support of their argument, plaintiffs argue that some of the covenants are ambiguous, and point out that many of the deeds are not identical in their restrictions, that some properties do not have restrictions on them at all, and that several lots were conveyed without restrictions before the plat was recorded.

However, the lack of uniformity in restrictions in a subdivision does not conclusively prove the nonexistence of a general plan or scheme for residential development. [Citation.] Nor does the fact that some of the lots contain no restrictions, that a few lots were conveyed before the plat was recorded, or that the recorded plat itself contains no restrictions, conclusively show the nonexistence of such a plan. [Citations.]

Instead, in determining whether a general scheme or plan of development exists, the pertinent focus is on whether the circumstances and facts of the case, including the language of the deeds and the grantors' actions, reveal an intent by them to create such a plan or scheme. [Citation.]

In 1946, the plat was recorded. At that time, all owners maintained their properties strictly for residential use. Also, each property owner joined in the recording. In doing so, it is reasonable to infer that the owners all intended to combine in their efforts to develop Christiana Acres as a residential neighborhood. By making Christiana Acres exclusively residential, it is also inferable that the common grantors wished to enhance the value of their lots to the benefit of all others in the subdivision.

At present, every owner can trace their properties to this common source beginning in 1946. Moreover, a review of the deeds in aggregate reveals unmistakable intent to place residential restrictions on the properties and the subdivision as a whole. [Citation.] After the initial recording, although not identical, lots were consistently transferred with various residential restrictions. ***

Next, plaintiffs complain that because there has been significant commercial development [next to Christiana

Acres] in recent years, the continued residential nature of Christiana Acres is no longer feasible. The facts, however, indicate a conclusion to the contrary.

It is only where the use of the property and the surrounding area has so radically changed from what was originally envisioned making the covenants no longer sustainable, that they will be lifted as unenforceable [Citation.] In this analysis, the equities must be viewed to determine if they favor dismantling the neighborhood restrictions.

Plaintiffs' unilateral speculation that their properties are worth more if developed commercially is insufficient by itself to nullify the otherwise valid covenants for residential use. [Citation.]

INTERPRETATION Illegal covenants can be removed from an agreement, provided it will not affect the intent or symmetry of the remaining covenants.

ETHICAL QUESTION Did the court fairly decide this case? Explain.

CRITICAL THINKING QUESTION What limits should the law place on the extent and duration of private restrictive covenants? Explain.
