COURT OF APPEALS
DECISION
DATED AND RELEASED

JANUARY 28, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1331-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

ARNOLD E. SMITH,

Plaintiff-Appellant,

v.

DOUGLAS G. SLOCK
and MARGARET SLOCK,

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL J. BARRON, Judge. *Reversed*.

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Arnold E. Smith filed suit against Douglas and Margaret Slock, alleging that the Slocks parked vehicles on their driveway in a manner that violated deed restrictions limiting their parking area. After both parties moved the trial court for summary judgment, the trial court granted summary judgment to the Slocks. Smith appeals. By order dated June 11, 1996,

this case was submitted to the court on the expedited appeals calendar. We conclude that the deed restrictions clearly prohibit the Slocks' parking practices. We therefore reverse the trial court's judgment.

The relevant facts are undisputed. Smith and the Slocks live next door to one another in a Greendale subdivision. In 1955, when the subdivision was established, a "Declaration of Restrictions" was recorded at the office of the Register of Deeds. Among other things, the restrictions establish setbacks for the lots in the subdivision. Paragraph 2.6 of the restrictions, entitled "Auto Parking, Garage, etc.," provides, in relevant part:

> Provision shall be made on each lot for the on-site parking of one auto, and not more than two; to consist of a properly surfaced area, a carport, a garage, or a combination of any two; and connected to the alley or street by a properly surfaced driveway. The parking area shall be located within the building setback lines as herein defined....

It is undisputed that the building setback between the Smith and Slock properties is five feet. In other words, the restrictions prohibit Smith and Slock each from building structures within five feet of their joint property line.

There is no dispute that in 1976, one of the prior owners of the Slock home expanded the existing driveway. According to Smith, the expanded driveway "invaded" the five-foot setback, coming to within a foot of the lot line he now shares with the Slocks. Apparently, after Smith complained to the prior owners, they agreed that they would not park vehicles within the five-foot setback.

The Slocks purchased the home in 1991, and began parking one of their cars on the concrete slab within the five-foot setback on the joint property line with Smith. The Slocks acknowledged that they sometimes parked their car within two feet of the property line, but they noted that such parking is permitted by current Greendale codes.

It is undisputed that Smith asked the Slocks, on the basis of the deed restrictions, to refrain from parking on the portion of their driveway that "invaded" the setback, but the Slocks refused. Smith then commenced the underlying action, seeking an injunction prohibiting the Slocks from parking within five feet of the property line. As we have noted, both parties moved for summary judgment because the outcome of the dispute hinged on interpretation of the deed restrictions and involved no material factual disputes.

After reviewing the parties' submissions, the trial court held that the deed restrictions cited by Smith related not to parking, but only to parking structures other than driveways. It reasoned that because no garage or building was involved in Smith's complaint, the deed restrictions did not prohibit "Mr. Slock or his wife or any owner of that property from parking within two inches of Mr. Smith's line." It is from this ruling that Smith appeals.

We review summary judgments *de novo*, employing the same methodology as the trial court. ***Green Springs Farms v. Kersten***, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987). Summary judgment is appropriate where there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. Section 802.08(2) and (6), STATS.

The meaning of a deed restriction is "a question of law that we review independently of the trial court." ***Zinda v. Krause***, 191 Wis.2d 154, 165, 528 N.W.2d 55, 59 (Ct. App. 1995).

> Whether the language of a restrictive covenant is ambiguous is also a question of law. The language in a restrictive covenant is ambiguous if it is susceptible to more than one reasonable interpretation. However, if the intent of a restrictive covenant can be clearly ascertained from the covenant itself, the restrictions will be enforced.

Id. at 165-66, 528 N.W.2d at 59 (citations omitted). If the purpose of the restriction can be "clearly discerned" from its terms, "the covenant is enforceable against any activity that contravenes that purpose." ***Id***. at 167, 528 N.W.2d at 59.

We conclude that the deed restriction at issue in this case is unambiguous and that its purpose, to limit the areas in which residents can park, is readily discernable.

The Slocks' primary argument is that the parking restriction must be read together with the restriction on building location. That restriction prohibits the construction of a "building, attached appurtenance, or garage" within the setback from the adjoining property line. They suggest that reading this restriction with the parking restriction makes clear that the parking restriction at issue here relates only to buildings. We can see nothing in the deed restrictions to warrant such an interpretation, however, because the parking restriction is clear and unambiguous on its face.

As we have noted, the deed restriction at issue is entitled: "Parking, Garage, etc." While the Slocks correctly note that a substantial portion of the restriction relates to the construction and location of parking structures, the restriction also unambiguously states: "The parking area shall be located within the building setback lines as herein defined." This phrase limits the location of the parking area — driveway, carport, garage, etc. — and its purpose is clear: to prohibit residents from parking cars outside the setbacks of their property.

Although the parking area for the Slock residence was expanded in 1976, this case does not involve Smith's objection to that expansion. Smith did not seek removal of the pad in his action against the Slocks.[1] Rather, he

[1] The Slocks contend that Smith failed to file his complaint within six months after they began parking outside the setback lines and that, under the deed restrictions, Smith is therefore estopped from filing a complaint. More specifically, they contend that the restrictions require the bringing of a complaint within six months.

The restriction that the Slocks cite in support of this claim states that a residential committee is to approve "plans and specifications" at variance with the restrictions. The restriction states, however, that "if no suit has been commenced within six months from the completion or alteration, approval will not be required and the related covenants shall be deemed to have been fully complied with."

Because this restriction applies only to "alterations" in the property, it appears that this restriction would apply in the instant case *if* Smith were seeking the removal of the offending alteration -- the expanded driveway. As we note, Smith is only seeking an injunction against activity by the Slocks that violates the restrictions.

asked the trial court only to prohibit the Slocks from parking their car in a manner that violated the recorded parking restrictions. The trial court denied Smith's request, reasoning that the restrictions only applied to structures and not to parking. We see no such limitation in the restriction, however. The prohibition of "parking area" outside the setback lines clearly is intended to prohibit parking outside those same lines. The trial court should have granted Smith the injunction he sought based on the deed restrictions of record.[2]

By the Court.—Judgment reversed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

[2] The Slocks contend that our reading of the parking restrictions would prohibit all residents from parking in their driveways because all residents would thereby violate a setback restriction in some manner. Although the setbacks for each property in the subdivision are included in the record, we cannot evaluate this argument because it was never litigated before the trial court. In addition, the Slocks claim that Smith does not have "clean hands" because his own parking practices violate the deed restrictions on which is argument is based. Again, we have no way to evaluate this claim. This case was decided on cross motions for summary judgment and involved only interpretation of the relevant deed restrictions and the setbacks related to this individual dispute.