

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

OCTOBER 31, 1995

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(1), STATS.

NOTICE

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

No. 95-0616

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

HASELWANDER BROS., INC.,

Plaintiff-Appellant,

v.

ALLEN D. TAINTER, II,
a/k/a MIKE TAINTER
and TONI K. TAINTER,

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Eau Claire County: BENJAMIN D. PROCTOR, Judge. *Reversed and cause remanded.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Haselwander Bros., Inc., a real estate developer, appeals a judgment, after a trial to the court, that dismissed its lawsuit for an injunction seeking to enforce a restrictive real estate covenant against landowners Allen and Toni Tainter. The Tainters bought their real estate from Haselwander, the common grantor of all land in the development. As a part of every conveyance, Haselwander reserved covenants barring the construction of any building on the buyers' land without Haselwander's prior written approval.

These covenants lacked express standards purporting to restrict Haselwander's review. Its lawsuit sought to remove a small poolhouse that the Tainters had built adjacent to their swimming pool, over Haselwander's objection. The trial court ruled that Haselwander had no right to unreasonably withhold approval and that Haselwander's opposition was arbitrary, unreasonable, and capricious. On appeal, Haselwander argues that the trial court misunderstood relevant case law and erroneously held Haselwander's decision to be arbitrary. We reverse the judgment and remand the matter for proceedings consistent with this opinion.

Haselwander's contends that the trial court misread and misapplied the holding in *Dodge v. Carauna*, 127 Wis.2d 62, 377 N.W.2d 208 (Ct. App. 1985). According to Haselwander, the trial court allowed the poolhouse on the ground that the covenant contained no objective standards to govern Haselwander's decision. This mischaracterizes the trial court's ruling. Although the trial court at one point asked whether it should disregard the covenant on the ground that it lacked objective criteria, the court did not employ such a rationale in reaching its decision; rather, trial court's decision, if read fairly, reveals that the trial court ultimately reviewed Haselwander's disapproval of the poolhouse for signs of arbitrariness and unreasonableness inherent in Haselwander's reasoning process and in its analysis of the extrinsic facts. In sum, we are satisfied that the trial court did not adopt an erroneous analysis and allow the poolhouse because of the covenant's failure to contain express standards.

Nonetheless, we conclude that the trial court erroneously ruled that Haselwander's actions were arbitrary, unreasonable and capricious. Courts will uphold common grantors' applications of restrictive, standardless, real estate covenants, as long as their applications are nonarbitrary, reasonable, honest and objective. See *Carauna*, 127 Wis.2d at 66, 377 N.W.2d at 210-11. Here, the material facts are undisputed, and we therefore review the trial court's ruling de novo. *State v. Williams*, 104 Wis.2d 15, 21-22, 310 N.W.2d 601, 604-05 (1981). Two factors justified Haselwander's disapproval of the poolhouse. First, the poolhouse tended to obstruct neighbors' views of Haselwander's adjacent golf course. Second, it changed the neighborhood ambiance, backdrop, and setting; it stood as the area's only poolhouse at a point removed from the Tainters' residence. These factors furnished an objective, reasonable, and nonarbitrary basis for Haselwander to oppose the poolhouse. Trial exhibit photographs reveal the poolhouse's clash with the locale's existing features and

provide a reasonable basis to refuse permission for the construction of the poolhouse.

The trial court erroneously relied on other matters in concluding that Haselwander's refusal was arbitrary. The trial court pointed out that nothing barred Haselwander from putting trees or buildings on its golf course. The trial court felt that these presented equivalent potential for obstructing views and altering the neighborhood's existing contours. The trial court also pointed out that the restrictive covenant placed no limits on the number of trees landowners could plant. These, it implicitly concluded, could obstruct views and change the contours of the neighborhood as much as the poolhouse. The Tainters did not acquire the right to obstruct views by construction of a building because trees might obstruct views some someday; the fact that the covenant exempted trees and Haselwander's buildings did not enlarge the Tainters' rights or limit Haselwander's powers on matters that the covenant did in fact cover. Trees are dramatically different from buildings in both structure and aesthetics. Haselwander's ability to construct buildings on the golf course does not restrict its right to enforce building standards on residential lots because the panoramic view of the valley is not distracted by buildings constructed within the golf course in the valley.

The trial court also erroneously saw evidence of arbitrariness in the seemingly different levels of scrutiny Haselwander had applied to the Tainters' original pool plans and their subsequent poolhouse. The trial court pointed out that Haselwander approved rather vague pool plans and had dropped objections it originally had to the pool fence. The trial court apparently concluded that Haselwander's scrutiny of the poolhouse inexplicably departed from its earlier hands-off approach and that this helped show arbitrariness. We disagree with this analysis. The primary concern in this case was the characteristics of the poolhouse itself. As we noted above, the poolhouse sufficiently diverged from the neighborhood's existing aesthetics to render Haselwander's decision reasonable. Haselwander's prior action, while relevant, did not refute this fact. On remand, the trial court shall issue an injunction requiring either the poolhouse's removal, or its relocation to an area consistent with the neighborhood's existing contours.

By the Court.—Judgment reversed and cause remanded for proceedings consistent with this opinion.

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