IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

SILVERHAWK HOMEOWNERS ASSOCIATION, INC.,

Plaintiff/Appellee,

vs.

ADEWALE ENIOLA TAWOSE, an individual,

Defendant/Appellant.

Case No. 122,129

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE SHEILA STINSON, DISTRICT JUDGE

REVERSED IN PART, VACATED IN PART, AND REMANDED

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For Plaintiff/Appellee

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Pro Se

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Adewale Tawose appeals a trial court order finding that the plaintiff, Silverhawk Homeowners Association, Inc. (Silverhawk), was entitled to declaratory judgment and an injunction and that Tawose's use of his property constituted a nuisance. Tawose also appeals the court's order denying his motion for new trial. Based on this Court's recent holding in *Graham v. Reynolds*, 2024

OK CIV APP 26, 560 P.3d 51, we find that Silverhawk was not entitled to declaratory judgment or an injunction and thereby reverse that portion of the court's judgment, as well as that portion of the court's order declaring Silverhawk the prevailing party for fee purposes. That portion of the court's order determining that Tawose's use of the property constituted a nuisance pursuant to the declaration *or* other law is vacated and the matter is remanded for the sole purpose of determining whether Tawose's use constituted a nuisance other than via the alleged violation of the declaration.

BACKGROUND

On January 15, 2015, Tawose purchased a home in the Silverhawk Addition in Oklahoma City. As a part of this purchase, Tawose agreed to the *Amended Declaration of Covenants, Conditions, and Restrictions* established by the Silverhawk Homeowners Association. In 2019, Tawose inquired about whether he was allowed to lease his property under the declaration. He was originally told by a member of the Silverhawk's board of directors that the HOA did not restrict rental properties, including short-term rentals, in Silverhawk. Based on that advice, Tawose began the short-term leasing of his property.

However, Silverhawk later changed its position and brought an action against Tawose for declaratory relief, seeking a determination of the parties' rights under the declaration relative to short-term rentals of the property. Silverhawk also sought a temporary and permanent injunction enjoining Tawose from using the property for short-term rentals and alleged that Tawose's use of

the property was a public and/or private nuisance. Tawose brought a counterclaim for breach of contract against Silverhawk.

After extensive motion practice, the case proceeded to a five-day bench trial beginning on January 29, 2024. After trial, the court found in favor of Silverhawk. Before the court memorialized its finding in an order, Tawose filed a motion for new trial. The court issued an order denying the motion on April 1, 2024, and issued its journal entry of judgment in favor of Silverhawk on the same day. Tawose appeals.

STANDARD OF REVIEW

Pursuant to 12 O.S.2011 § 1654, declaratory judgments are "reviewable in the same manner as other judgments." *Okla. City Zoological Tr. v. State ex rel. Pub. Emp. Relations Bd.*, 2007 OK 21, ¶ 5, 158 P.3d 461; *Lockett v. Evans*, 2014 OK 34, ¶ 3, 330 P.3d 488. "A suit for declaratory judgment pursuant to § 1651 is neither strictly legal nor equitable, but assumes the nature of the controversy at issue." *Macy v. Okla. City School Dist. No. 89*, 1998 OK 58, ¶ 11, 961 P.2d 804; *see also Carpenter v. Carpenter*, 1982 OK 38, ¶ 17, 645 P.2d 476 (whether declaratory judgment is legal or equitable depends on "essential nature" of case). Thus, determining the proper standard of review in a declaratory judgment action requires that we evaluate the nature of the case generally, considering the relief sought, the pleadings filed, and the parties' rights and remedies. *See Wickham v. Simpler*, 1946 OK 357, ¶ 13, 180 P.2d 171.

Here, the primary relief sought by Silverhawk, and ultimately by Tawose, concerned their competing interpretations of Article 2.1 of the Silverhawk

amended declaration. To the extent that issues of law are presented, they are reviewed *de novo*, and the appellate court has plenary, independent and non-deferential authority to reexamine a trial court's legal rulings. *K & H Well Serv.*, 2002 OK 62, ¶ 9, 51 P.3d 1219. Issues of law include matters such as statutory construction, and the interpretation of ambiguous contract provisions "'where the ambiguity can be cleared by reference to other provisions or where the ambiguity arises from the contract language and not from extrinsic facts.'" *Scungio v. Scungio*, 2012 OK 90, ¶ 9, 291 P.3d 616 (quoting *Okla. Oncology & Hematology, P.C. v. U.S. Oncology, Inc.*, 2007 OK 12, ¶ 27, 160 P.3d 936). Thus here, as our review centers solely around the interpretation of the provision at issue and how the terms in the declaration are defined, our review is *de novo*.

Additionally, "[w]hether to grant injunctive relief is generally within the sound discretion of the trial court and its judgment will not be disturbed on appeal unless the lower court has abused its discretion or its decision is clearly against the weight of the evidence." *Farmacy, LLC v. Kirkpatrick*, 2017 OK 37, ¶ 12, 394 P.3d 1256 (citation omitted). "[I]t must also be stated that injunction is an extraordinary remedy, and relief by this means is not to be lightly granted." *Amoco Prod. Co. v. Lindley*, 1980 OK 6, ¶ 50, 609 P.2d 733. Moreover, "[m]atters involving the granting or denial of injunctive relief are of equitable concern. Accordingly, this Court will consider all evidence on appeal." *Edwards v. Bd. of Cnty. Comm'rs of Canadian Cnty.*, 2015 OK 58, ¶ 11, 378 P.3d 54 (citations omitted).

Tawose also appeals the denial of his motion for new trial. Generally, such a denial is reviewed for abuse of the trial court's discretion. *Head v. McCracken*, 2004 OK 84, 2, 102 P.3d 670. "An abuse of discretion occurs when a decision is based on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling." *Spencer v. Okla. Gas & Elec. Co.*, 2007 OK 76, 13, 171 P.3d 890 (emphasis omitted).

ANALYSIS

Tawose first argues that the court should not have granted Silverhawk an injunction prohibiting him from renting out his property for short terms. Tawose also alleges that the court should not have granted declaratory judgment in Silverhawk's favor as the covenants at issue do not prevent short-term rentals. Upon review, we agree.

Oklahoma courts have consistently held that restrictive covenants are not favored and will be strictly construed. *Jackson v. Williams*, 1985 OK 103, ¶ 16, 714 P.2d 1017. The Court in *Jackson* stated that "the intentions of the parties to restrictive covenants ordinarily control the construction of the covenants." *Id.* "In arriving at the parties' intent, the terms of the instrument are to be given their plain and ordinary meaning." *May v. Mid-Century Ins. Co.*, 2006 OK 100, ¶ 22, 151 P.3d 132. "Where the language of a contract is clear and unambiguous on its face, that which stands expressed within its four corners must be given effect." *Id.*

While the Oklahoma Supreme Court has not yet addressed whether a short-term rental of one's home violates a restrictive covenant allowing the use

of a home for strictly residential purposes but prohibiting gainful occupation on the property, the question was recently addressed in a published decision of Division III this Court. *See Graham v. Reynolds*, 2024 OK CIV APP 26, 560 P.3d 51. We find the Court's decision in *Graham* to be cogent and persuasive and adopt its reasoning in full.[1]

In *Graham*, defendant Reynolds used his lake house for short-term rentals through VRBO and other vacation rental websites. *Id.* ¶ 6. Plaintiff Graham brought a declaratory and injunctive action against Reynolds, alleging that his use of the property violated the housing addition's restrictive covenant against "commercial use." *Id.* ¶ 2. The relevant covenant in *Graham* read as follows:

> All lots in said Addition shall be used exclusively for *residential purposes*, and no lot in said Addition shall be used for *commercial purposes*. No building shall be erected, altered, placed or permitted to be on any lot other than one detached, single family dwelling and private garage. No house, garage, or other building shall be moved into the Addition. A building site or plot shall consist of a tract as originally platted, and no lot or plat shall be made smaller than shown on the plat on file.

Id. ¶ 5. Graham asserted that the covenant's limitation to residential use and the exclusion of commercial use was "clear and obvious." *Id.* ¶ 16. He presented evidence that Reynolds's rental scheme garnered significant income for Reynolds, over $30,000 in both 2019 and again in 2020. *Id.* Reynolds filed a motion for summary judgment which the court granted, finding that the short-

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[1] Further, this division of the Court of Civil Appeals also recently held in accordance with *Graham* in an unpublished decision. *See Crystal Lakes Homeowners' Association, Inc., v. Just Like Home Rentals LLC*, No. 122,352 (COCA Div. II) (February 27, 2025) (unpublished) (available at https://www.oscn.net/dockets/GetCaseInformation.aspx?db=appellate&number=122,352).

term rental of Reynolds's lake property did not violate the restriction against use of the property for a business purpose because the short-term renters used the property for ordinary residential purposes. *Id.* ¶ 11.

Division III of this Court affirmed. In reaching its decision, the Court noted that the intentions of the parties in drafting the document were difficult to ascertain as neither "residential purpose" nor "commercial purpose" were defined within the addition's restrictive covenants. *Id.* ¶ 15. Further, there was "no apparent restriction on renting one's property" in the addition, regardless of the duration of the rental term. *Id.* Specifically, the Court noted,

> Graham's assertion which focuses on the idea that Reynolds' rental income and potential profit mark a prohibited "commercial purpose" and Reynolds' assertion the residential activity in which his guests engage while at the lake house is consistent with a permitted "residential purpose" are both reasonable interpretations of the covenant terms. Because multiple reasonable interpretations can be gleaned from the restrictive covenant text, we find both terms, "residential purpose" and "commercial purpose", are ambiguous as the terms are presented here.

Id. ¶ 21. As a result, Division III found the terms in the covenants must be strictly construed so that "all ambiguities will be resolved in favor of the unencumbered use of the property." *Id.* ¶ 22 (citing *Jackson v. Williams*, 1985 OK 103, ¶ 16, 714 P.2d 1017, 1021). The Court held that, "[t]his resolution favors Reynolds' unencumbered use and ability to rent his property for short-term rentals." *Id.*

Here, Silverhawk's restriction reads as follows:

> Section I. Use. The Lots in Silverhawk shall be used for private residence purposes only. No store or business, no gas or automobile service station, no flat, duplex, or apartment house, though intended for residence purposes, and no building of any kind whatsoever shall be erected or maintained thereon, except private

> dwelling houses, and such dwelling house in its entirety being designated for occupancy by a single family.

Plaintiff's Trial Exhibit 1-C, Bates SH_000035. Notably, the terms "private residence purposes," "private dwelling houses," and "occupancy by a single family" are not further defined in the declaration. While the covenant does prohibit "business," in the absence of further definition or clarification of whether renting the property constitutes a "business" in the covenants, it is unclear whether a short-term rental constitutes "business" or is an approved use of the property for "private residence purposes." Thus, we find as this Court did in *Graham*, that there are two viable interpretations of the covenant at issue. Silverhawk contends that Tawose's rental income and profit are evidence of a "business;" meanwhile, Tawose asserts that renting his home to guests constitutes a use of the property for "private residence purposes." In light of these two conflicting interpretations, we similarly find that the covenant at issue is ambiguous. As this Court did in *Graham*, we resolve the ambiguities in favor of the unencumbered use of the property, which therefore allows Tawose to use his property in the Silverhawk addition for short-term rentals.[2]

Based on the reasoning of the above-cited cases and the ambiguous language in Silverhawk's amended declaration, we reverse the portions of the court's order granting injunctive and declaratory relief in favor of Silverhawk. Accordingly, we also reverse the court's order of specific assessments and

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[2] Because we find in favor of Tawose on these issues, we need not address Tawose's argument that the court erred in finding that Silverhawk had not breached its contract with Tawose.

penalties against Tawose. The court's order specified that because Tawose's short-term rental violated the amended declaration, Silverhawk was entitled to specific assessments of $8,258 as provided for in Section 5.10, a provision which provided for certain monetary penalties, of the amended declaration. Because we hold that Tawose's short-term rental of his property does not violate the amended declaration, Silverhawk is not entitled to these penalties.

The court's order also found that Tawose's use of the property was a nuisance because Silverhawk "proved by the greater weight of the evidence that [Tawose's] operation of the short-term rental business either violated the amended declaration *or* that there had been an annoyance or injury of some kind to the enjoyment of others' comfort of their property." ROA 1819 (emphasis added). Upon review, we vacate this and the related portions of the court's order as it is unclear whether the court's finding is based on its erroneous conclusion that the short-term rental of property in and of itself violated the declaration or because the defendant's conduct otherwise constituted a public or private nuisance pursuant to statutory law, or through violation of some other provision of the declaration. Because we find that Tawose's short-term rental of his property is not prohibited by the declaration, it follows that the use of the property for that purpose cannot, in and of itself, constitute a nuisance or violate the declaration. However, it is possible that Tawose's conduct constituted a nuisance in some other, unspecified fashion. We remand to the trial court to make a first instance determination of this issue, in light of the foregoing determination that the short-term rental of property in and of itself does not

violate the declaration, and therefore cannot be the sole basis for the finding of a nuisance under the declaration or under state law. *See Bivins v. State ex rel. Oklahoma Mem'l Hosp.*, 1996 OK 5, ¶ 19, 917 P.2d 456, 464 ("An appellate court will not make first-instance determinations of disputed *law* or *fact* issues.").

Finally, the court's order also found that Silverhawk was the prevailing party for attorney fee purposes. That finding is also vacated in light of the foregoing. *See Thompson v. Indep. Sch. Dist. No. 94 of Garfield Cnty.*, 1994 OK 139, ¶ 6, 886 P.2d 996, 998 (holding that a prevailing party fee award is automatically vacated when the underlying judgment upon which it was based is reversed).

REVERSED IN PART, VACATED IN PART, AND REMANDED.

WISEMAN, P.J., concurs, and FISCHER, J., dissents.

FISCHER, J., dissenting:

Although the term "business" is not defined in the Section I "Use" restrictions in the Amended Declaration of Covenants for the Silverhawk residential development, as the Majority would require, the term's meaning is clear when the language of Section I is considered as a whole and prevents Tawose's use of the house as a short-term rental business.

The Section I "Use" restriction reads as follows:

> Section I. Use. The Lots in Silverhawk shall be used for private residence purposes only. No store or business, no gas or automobile service station, no flat, duplex, or apartment house, though intended for residence purposes, and no building of any kind whatsoever shall be erected or maintained thereon, except private dwelling houses, and such dwelling

> house in its entirety being designated for occupancy by a single family.

The first sentence of Section I provides that the houses built on lots in Silverhawk "shall be used for private residence purposes only." The word "residence" is not a technical term but commonly understood to mean more than just a place where a person is temporarily, physically present. The plain, ordinary meaning of residence "is a place where one's habitation is fixed without the present purpose of removing therefrom." *Jones v. Burkett*, 1959 OK 221, ¶ 0, 346 P.2d 338 (Syllabus 2). Residence describes a "settled or fixed abode of a character indicating permanency, at least for an indefinite time" and "signifies a party's permanent home and principal establishment." *Id.* The words of a contract are to be understood in their ordinary and popular sense . . . ." 15 O.S.2021 § 160.

In addition, Silverhawk's Section I "Use" restriction requires that the "private residence" be occupied by a "single family." It is clear that the signatories to the Silverhawk Covenants did not intend that a "residence" in the addition could be used by 365 single families on successive days in a one-year period. "A contract must be so interpreted as to give effect to the mutual intention of the parties, as it existed at the time of contracting . . . ." 15 O.S.2021 § 152.

The Majority finds it unclear whether a "short-term rental" constitutes a "business," and therefore concludes that the "Use" restriction is ambiguous. However, as the district court found, "business" is defined in the Oklahoma Sales Tax Code as any activity engaged in with the object of gain. 68 O.S.2021

§ 1352(4). The income Tawose "gained" from renting his Silverhawk property was subject to Oklahoma tax and Tawose paid that tax.

Further, in order to conduct the short-term rental business that he engaged in, Tawose was required to obtain a "Home Sharing" license from the City of Oklahoma City and pay hotel and motel tax on the income he earned from the short-term rental of his Silverhawk property. Municipalities in Oklahoma have authority in the exercise of their police power to enact regulations not inconsistent with State statutes. *Magnum Energy Inc. v. Bd. of Adjustment for City of Norman*, 2022 OK 26, ¶ 12, 510 P.3d 818, 822. Tawose applied for and received the required license from Oklahoma City and paid the hotel and motel tax on the income he received from his short-term rental business.

It is not necessary that the term "business" be expressly defined in the Silverhawk Covenants. The laws in effect at the time the Covenants were adopted, including statutes and city ordinances, are a part of the contract between Silverhawk and the property owners subject to those Covenants. *See Sunray DX Oil Co. v. Cole*, 1967 OK 242, ¶ 18, 461 P.2d 305, 309, *cert. denied*, 396 U.S. 907, 90 S. Ct. 223 (1969) (statutes enacted in the exercise of state police powers are a part of the law in existence whenever a contract is executed and become incorporated as a part of any contract). *See also, Siloam Springs Hotel, LLC v. Century Sur. Co.*, 2017 OK 14, ¶ 7, 392 P.3d 262, 273 (Kauger, J., concurring in part/dissenting in part), and *State ex rel. Crawford v. Guardian Life Ins. Co. of Am.*, 1997 OK 10, ¶ 18, 954 P.2d 1235, 1245 (Opala, J., dissenting) (both citing *Sunray DX v. Cole* regarding the existing law incorporated

into insurance contracts). *Graham v. Reynolds*, 2024 OK CIV APP 26, 560 P.3d 51, relied on by the Majority, does not address this issue. Therefore, the analysis of the identified "relevant covenant" in that case does not compel the result in this case.

Reviewing the Silverhawk Covenants in their entirety, it is clear that Tawose's short-term rental of his Silverhawk property, facilitated by a vacation rental management company, constituted a prohibited business and violated the Covenant provision limiting Silverlake property owners to use of their "private residence" for "single family occupancy." "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the others." 15 O.S.2021 § 157. When the Silverhawk Section I "Use" restriction is considered in its entirety, it is not ambiguous, and no further definition of "business" or "single family occupancy" is necessary to find, as the district court did, that the Covenant restriction prohibits Tawose's short-term rental to thirty-six business customers over a two-year period.[1]

I would summarily affirm the district court's Judgment and the order denying Tawose's motion for a new trial pursuant to Okla. Sup. Ct. R. 1.202, 12 O.S.2021, ch.15, app. 1., and, therefore, I respectfully dissent.

July 14, 2025

[1] Tawose's argument that he was advised by Silverhawk officials that short-term rentals were permitted is factually and legally unpersuasive. "Generally, ambiguity in written language is not created by the conduct of one of the parties to a contract." *Hensley v. State Farm Fire and Cas. Co.*, 2017 OK 57, ¶ 36, 398 P.3d 11, 23.