Court of Appeals

Fourth Court of Appeals District of Texas

San Antonio

OPINION

Appeal No. 04-89-00368-CV

Lawrence J. HORAN, ET UX.,
Appellants

v.

James P. BRADY, ET AL,
Appellees

Appeal from the 216th District Court of Kendall County
Trial Court No. 89-8
Honorable Will C. Boyd, Judge Presiding

Opinion by: Gerald T. Bissett, Justice[1]

Sitting: Carlos C. Cadena, Chief Justice
Alfonso Chapa, Justice
Gerald T. Bissett, Justice

Delivered and filed: February 28, 1990

REFORMED, REVERSED AND RENDERED IN PART, AND AFFIRMED IN PART.

This is an appeal from a judgment which granted plaintiffs a mandatory and permanent injunction against defendants Lawrence J. Horan and Ola A. Horan, who were ordered to remove a "Schult Manufactured Home" from a 3.455 acre tract of land in Kendall County, which was owned by them, and who were further commended to desist and refrain from moving, installing or placing, directly or

[1] Assigned to this case by the Chief Justice of the Supreme Court of Texas pursuant to TEX. GOV'T CODE ANN. § 74.003(b) (Vernon 1988).

indirectly, any mobile home or house trailer on the property.

James P. Brady and Anne P. Brady, Louis H. Borgman and Mary Louise Borgman, Ronnie J. Baxter and April A. Baxter, and Michael L. Shaw instituted this suit against defendants for injunctive relief arising from alleged violations of residential restrictions by defendants on lands owned by the parties. They prayed for an injunction requiring defendants to remove "mobile home" from defendants' land and to permanently enjoin them from thereafter moving a "trailer house" or "mobile home" on the premises. Trial was to a jury which answered all questions favorably to plaintiffs, and judgment granting the injunction was signed by the trial court. Subsequent thereto, defendants filed a motion for judgment non obstante veredicto, and in the alternative, motion for new trial, which was overruled by the trial court.

Joe A. Coughran, by deed dated July 19, 1973, recorded in Volume 112, Page 712, Deed Records of Kendall County, Texas, conveyed five (5) separate tracts of land out of the Newton and Taylor Survey No. 179, in Kendall County, Texas, to Clarence L. Nollkamper and Wife, Lurlene Nollkamper. Each tract of land was described by metes and bounds, and all tracts were subjected to certain restrictions. Two of the restrictions are involved in this case, and plaintiffs have alleged that defendants violated them when they moved a "mobile home" on the above mentioned tract of 3.455 acres in December, 1988. The restrictions alleged to have been violated read:

* * * *

All building shall be original construction on the premises, and no buildings not constructed on the premises shall be moved to the premises.

No trailer house or mobil (sic) home shall be placed on the premises for any purpose.

Clarence A. Nollkamper and wife, Lurlene Nollkamper, subsequently sold all five (5) of the tracts purchased by them from Joe A. Coughran. Each deed referred to the restrictions imposed upon all tracts by Coughran. These conveyances by the Nollkampers are summarized as follows:

1. The "first tract," comprising 2.227 acres, was sold to Leon A. Davis and wife, Linda F. Davis, by deed dated April 21, 1975. It recited: "This conveyance is made and accepted subject to restrictions as set forth in deed dated July 19, 1973 as recorded in Volume 112, Page 712 of the Deed Records of Kendall County, Texas";

2. The "second tract," comprising 4.146 acres, and the "third tract," comprising 2.913 acres, were sold to Leon A. Davis and wife, Linda F. Davis, by deed dated September 15, 1975. In that deed, specific mention was made that the two tracts of land were the "same property" described as the "second" and "third" tracts of land conveyed by Coughran to the Nollkampers by deed dated July 19, 1973, "as recorded in Volume 112, Page 712 of the Deed Records of Kendall County, Texas." In addition, the deed stated that "the property described is subject to the following restrictions and limitations," and the restrictions contained in the deed from Coughran to the Nollkampers were set out verbatim; 7.059 total acres

3. The "fourth tract," comprising 2.016 acres, was sold to Leon A. Davis by deed dated July 25, 1975. It recited: "Subject to

restrictions as set forth verbatim in deed dated July 19, 1973 as recorded in Volume 112, Page 712 of the Deed Records of Kendall County, Texas:" and

4. The "fifth tract," comprising 3,435 acres, was sold to Lawrence J. Horan and wife, Ola A. Horan (defendants herein), by deed dated October 23, 1973. It recited: The property described is subject to the following restrictions and limitation," and the restrictions contained in the deed from Coughran to the Nollkampers were set out verbatim.

The aforesaid deed from Coughran to the Nollkampers and the deeds from the Nollkampers conveying the first, second, third and fifth tracts to the grantees, above-named, also contained the phrase "Enforcement of restrictions shall be by injunction or suit for damages." Plaintiffs Ronnie J. Baxter and April A. Baxter are the present owners of the "first tract," comprising 2.227 acres. Plaintiff Michael Shaw is the present owner of 2.000 acres, which is out of either the "second" or "third" tracts, or both. Defendants Lawrence J. Horan and wife, Ola A. Horan are the present owners of the "fifth" tract.

Joe A. Coughran, by deeds dated May 30, 1972 and July 1975, conveyed a tract of 4.655 acres, and a tract of 2.063 acres, to plaintiffs Louis H. Borgman and Nancy Louise Borgman. These deeds stated: "The property described is subject to the following restrictions and limitations," and "Enforcement of restrictions shall be by injunction and or suit for damages." The restrictions in the deed are the same restrictions set out in the deed from Coughran to the Nollkampers.

Joe A. Coughran, by deed dated August 15, 1972, conveyed 1.872 acres to M.M. Sides and wife, Gladys Sides. This deed contained the same restrictions and recitals as those contained in the deed from Coughran to the Borgmans, above-mentioned. This 1.872 acre tract was acquired by plaintiffs James P. Brady and Anne P. Brady, who owned it at time of trial.

The descriptions of the lands in all of the deeds heretofore summarized commence with the statement that the subject land is "located about 1.5 miles S 29 deg. W of the county seat in Boerne, Texas, being a part of Subdivision No. 1 of Survey No. 179" (Newton and Taylor Survey). A plat of that subdivision is recorded in Volume 2, Page 444, Kendall County Deed Records. A comparison of the plat, which shows eight tracts of land, with the aforesaid deeds establishes: (Refers to a non-existent Plat!)

1. The "first tract" in the deed from Coughran to the Nollkampers is the same land designated as "Tract 1" on the plat;
← 80 Acres

2. The "second tract," the "third tract" and the "fourth tract" in the deeds from Coughran to the Nollkampers are the same lands designated as "Tracts 2, 3, and (4)" respectively, on the plat;
→ recurs 2 times
→ 150, 137, 137 Acres

3. The "fifth tract" in the deed from Coughran to the Nollkampers is the same land designated as "Tract 7" on the plat;
→ Not on Plat

4. The "4.655 acre" and the "2.063 acre" tract in the deeds from Coughran to the Borgmans are the same land designated as "Tracts 8 and (4)" respectively, on the plat; and,
→ Does not exist
→ 2nd recurrance 137 acres

5. The "1.872 acre" tract in the deed from Coughran to the Sides is the same land

designated as "Tract 6" on the plat. Does not exist There are no restrictions shown on the plat, and none of the deeds refer to the plat. All deeds in fact do refer to

Defendants contend that the building in question in this case constitutes a "manufactured home," which does not fall within the restrictions. Plaintiffs assert that such building is a "mobile home," which was not of original construction which was built on defendants' land, and, therefore, defendants have violated the restrictions hereinbefore granted. As will be shown, we agree with plaintiffs.

The building was described in the Certificate of Title as being manufactured by the "Schult Corporation, Navasota, Texas," and consisted of two sections, each 14' x 60' in dimensions, with a separate serial number for each section. It was purchased by defendants from "Spears Mobile Homes," Kerrville, Texas, and was moved by them by truck to their 3.455 acre tract (the "fifth tract") in two sections, where they joined the sections together, placed the joined sections on a pier foundation, and performed the necessary work to make it habitable.

Defendants present three points of error. They read:

POINT OF ERROR NO. 1

> The trial court erred in granting judgment in favor of appellees because appellees wholly failed to plead and prove their authority to seek enforcement of the deed restrictions and failed to obtain a finding sufficient to support their rights to enforce the restrictions.

POINT OF ERROR NO. 2

The trial court erred in granting judgment in favor of appellees for the reason that there was no evidence to support the submission of Jury Question No. 2 and the jury's response to said question.

POINT OF ERROR NO. 3

The trial court erred in granting judgment in favor of appellees for the reason that there was no evidence to support the submission of Jury Question No. 3 and the jury's response to said question.

Plaintiffs alleged that they and defendants are the owners of certain real property in Kendall County; that all deeds to the parties contain identical restrictions and limitations in the use of such properties; that such restrictions prohibit "trailer houses" or "mobile homes" on the premises, and further state that "all buildings shall be of original construction on the premises, and any buildings not constructed on the premises shall be moved off the premises"; that in December, 1988, defendants moved a mobile home or house trailer on the land owned by them (defendants); that such is a substantial breach of the restrictions; and that defendants, although requested to remove the same from their property, failed to do so. Plaintiffs prayed for a permanent injunction, or in the alternative, for damages. The allegations made by plaintiffs in their trial petition are sufficient to plead their authority to seek enforcement of the restrictions.

Question No. 1, as submitted to the jury, and the jury's

answer thereto, read:

Question #1

> Do you find from a preponderance of the evidence that a general plan or scheme existed for the mutual benefit of the properties which are the subject to this suit at the time of the conveyance to the Horans?
>
> You are instructed that a General Plan or Scheme is defined as a general building plan for the common benefit of purchasers of lots. The fact that some lots are not restricted does not negate the existence of a general plan or scheme.
>
> Answer "Yes" or "No."

The jury answered "Yes."

At trial, defendants objected to the submission of Question No. 1 for the reason that it failed to inquire as to whether plaintiffs had actual or constructive knowledge of the general plan or scheme at the time they purchased the property that is the subject to this suit. In addition to objecting to the submission of Question No. 1, defendants requested an instruction from the court that would have instructed the jury that, in determining whether a general plan or scheme existed, the jury could not consider the existence of identical deed restrictions in deeds given after the conveyance of the defendants' property as evidence of such a plan or scheme. Defendants requested instruction was denied and their objection to the submission of Question No. 1 was overruled by the court. Defendants further complained of plaintiffs' failure to obtain a finding based upon the preponderance of the evidence that they (defendants) had actual or constructive knowledge of a general plan or scheme at the time they

purchased the property in question in defendants' motion for judgment non obstante veredicto (and in the alternative) motion for new trial, which was overruled by the trial court.

An owner of land may impose such restrictions on the use thereof as he may desire, provided, of course, that they comport with public policy and are not otherwise illegal. Benbow v. Boney, 240 S.W.2d 438, 441 (Tex. Civ. App.--Waco 1951, writ ref'd).

> Restrictions as to the use of realty are usually inserted (in a deed) primarily for the benefit of the owner in sales of tracts, secondarily for the benefit of purchasers, and, on the whole for all purchasers. After all lots in a tract, or a majority thereof, have been sold, the restrictions become primarily for the benefit of the purchasers.

16 TEX. JUR. 3d, Covenants, § 89, pp. 616-617. See also, Couch v. Southern Methodist Univ., 10 S.W.2d 973, 974 (Tex. Comm'n App. 1928).

16 TEX. JUR. 3d, Covenants, § 90, pp. 619-622, states the general rules which govern the disposition of this appeal, as follows:

> An owner of a tract of land may impose restrictions thereon, as part of a general building scheme, with the result that each purchaser of a lot takes it subject to the restrictions in favor of every other lot in the tract, as well as with a right to enforce such restrictions against other purchasers. A general plan, enforceable by the purchasers of lots in the restricted district, is disclosed where it appears that each conveyance by the common grantor implied that every other deed should have the same restrictions, and that the restrictive provisions were intended to be for the benefit of all. This general building scheme, designed to make the property more attractive, forms an inducement to the purchaser to buy, and, since he has presumably

> paid an enhanced price by reason thereof, it enters into and forms a part of the consideration. The mutuality of the covenant arises from the fact that the purchaser submits to a burden on his own land because a like burden imposed on his neighbor's lot is for the benefit of both lots. Such a general plan does not depend on the intent of the common grantor alone, but requires the joint intent of grantor and grantee. However, it is not essential in the execution of a general plan that every lot in the subdivision be impressed with the restrictions.
>
> Before one can be charged with the burden of restrictive covenants pursuant to a general plan or scheme, he must have purchased with knowledge, either actual or constructive, of the plan.

The rules announced in the above quotation are fully supported by case law.[2]

The court, in Davis v. Skipper, 125 Tex. 364, 83 S.W.2d 318, 321-22 (Tex. Comm'n App. 1935, judgment adopted), stated:

> [I]n every case where parties seek to enforce a restrictive covenant the burden of proof is upon them to establish that the covenant was imposed on Defendant's land for the benefit of the land owned by them. It is also well settled that in the absence of proof that a restriction was imposed for the benefit of other land, it is construed as a personal covenant merely with the grantor. In many instances it is held that unless it is expressly shown in the conveyance itself that the restriction is imposed for the benefit of other land, or unless there is an obvious purpose to sell in accordance with the general

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[2] Davis v. Huey, 620 S.W.2d 561 (Tex. 1981); Curlee v. Walker, 112 Tex. 40, 244 S.W. 497 (1922); Hill v. Trigg, 286 S.W. 182 (Tex. Comm'n App. 1926); Lehman v. Wallace, 510 S.W.2d 675 (Tex. Civ. App.--San Antonio 1974, writ ref'd n.r.e.); Fleming v. Adams, 392 S.W.2d 491 (Tex. Civ. App.--Houston 1965, writ ref'd n.r.e.); Hooper v. Lottman, 171 S.W. 270 (Tex. Civ. App.--El Paso 1914, no writ)

> plan, the covenant must be construed as merely a personal one. . . .

At trial, the burden was upon the plaintiffs to prove that a common plan or scheme existed at the time defendants purchased the property in question. As a matter of law, in order to determine if a general plan or scheme exists, the intent of the common grantor alone does not control, but rather it is the joint intent of both the grantor and the grantee that creates the mutual covenant. Massengill v. Jones, 308 S.W.2d 535, 537 (Tex. Civ. App.--Texarkana 1957, writ ref'd n.r.e.).

In the leading case of Hooper v. Lottman, 171 S.W. 270, 271 (Tex. Civ. App.--El Paso 1914), it was said:

> Whether a person not a party to a restrictive covenant had a right to enforce it depends upon the intention of the parties imposing it. The intention is to be ascertained from the language of the deed itself construed in connection with the circumstances existing at the time it was executed.

In its opinion in Curlee v. Walker, 112 Tex. 40, 244 S.W. 497 (Tex. 1922), the Texas Supreme Court describes the usual circumstances under which courts of equity have upheld the rights of owners of land to enforce restrictions to which they were not parties. The Court states that the reason for allowing the enforcement of the covenants by parties who are not involved in the purchase of the property, is the fact that the restrictions form an inducement for each purchaser to buy the property. Consequently, the restrictions become part of the consideration for the sale of the property. As the Court explains, this is because "the buyer

submits to a burden upon his own land because of the fact that a like burden imposed on his neighbor's lot will be beneficial to both lots." 244 S.W. at 498. The Court further quotes (with approval) from the opinion in Hooper v. Lottman, supra, as follows:

> [S]o the general rule may be safely stated to be that where there is a general plan or scheme adopted by a owner of a tract, for the development and improvement of the property by which it is divided into streets and lots, and which contemplated restriction as to the uses to which lots may be put, or the character and location of improvements thereon, to be secured by a covenant embodying the restriction to be inserted in the deeds to purchasers, and it appears from the language of the deed itself, construed in the light of the surrounding circumstances, that such covenants are intended for the benefit of all the lands, and that each benefit thereof, and such covenants are inserted in all the deeds for lots sold in pursuance of the plan, a purchaser or his assigns may enforce the covenant against any other purchaser and his assigns if he has bought with actual or constructive knowledge of the scheme and the covenant was part of the subject matter of his purchase.

244 S.W. at 498.

As a general rule, the purchaser of land is bound by restrictions imposed on the land of which he has actual or constructive notice. Davis v. Huey, 620 S.W.2d 561, 565-66 (Tex. 1981); Hicks v. Loveless, 714 S.W.2d 30, 33 (Tex. App.--Dallas 1986, writ ref'd n.r.e.).

It is well settled that "a purchaser is bound by every recital, reference and reservation contained in or fairly disclosed by any instrument which forms an essential link in the chain of

title under which he claims." Westland Oil Dev. Corp. v. Gulf Oil, 637 S.W.2d 903, 908 (Tex. 1982); NRC v. Pickhart, 667 S.W.2d 292, 294 (Tex. App.--Texarkana 1984, writ ref'd n.r.e.). That rule applies to restrictions contained in a deed.

It was stated in Loomis v. Cobb, 159 S.W. 305, 307 Tex. Civ. App.--El Paso 1913, writ ref'd), quoted in Westland Oil Dev. Corp. v. Gulf Oil, at page 908:

> The rationale of the rule is that any description, recital of fact, or reference to other documents puts the purchaser upon inquiry, and he is bound to follow up this inquiry, step by step, from one discovery to another and from one instrument to another, until the whole series of title deeds is exhausted and a complete knowledge of all the matters referred to and affecting the estate is obtained. (Emphasis added.)

In the case at bar, defendants admitted that they had actual knowledge of the restrictions contained in the deed from Coughran to them conveying the 3.455 acre tract. They also stated that they did not have any knowledge at the time they purchased this tract that there was a general plan or scheme to restrict any other tract of land in the area of their land.

Neither Joe A. Coughran nor either of the Nollkampers testified in this case. It was stipulated that the restrictions set forth in the deeds admitted into evidence "are identical in each instance in each of the instruments."

Mr. Edgar Schwarz, Jr., a civil engineer, testified that the area shown by the plat constituted the "Coughran Subdivision," which he said was an "unofficial subdivision."

There is no record of this plat

Mr. Willard E. Simpson, a licensed structural engineer, testified that Coughran subdivided the land shown by the plat "in the year of '72 or thereabouts '73," and that Coughran, at the time of the subdivision, told him "that the deeds would restrict the construction or the bringing in and placement of mobile homes and house trailers"; that "the lots would be from two to five acres"; and that "he was going to sell them between two and five thousand dollars an acre." He also testified that the appraised value of the land, as reflected by the tax rolls, was "two hundred and thirty-nine dollars an acre."

Uniformity in the restrictions imposed on tracts of land, or lots, is one of the strongest proofs of the existence of a plan or scheme to promote the development of raw or vacant lands for controlled residential purposes. Such proof exists in this case. Another test of whether a general plan or scheme exists for residential development is the intent of the original grantor (who imposed the restrictions) to benefit all purchasers of the tracts by the imposition of such restrictions by creating a higher value for the tracts of land, See Lehman v. Wallace, 510 S.W.2d 675, 680 (Tex. Civ. App.--San Antonio 1974, writ ref'd n.r.e.). Simpson's testimony shows that Coughran, the original grantor, intended to benefit all purchasers of the tracts of land which he subdivided and subjected to identical restrictions by increasing the value of the tracts by the restrictions. The fact that Coughran, as grantor, and the Nollkampers, as grantees, and the defendants, as

grantees, accepted deeds to their respective tracts of land which contained identical restrictions is some evidence that a general plan or scheme was in existence. This is reinforced by the fact that all of the grantees from the Nollkampers to third persons (who are not parties to this suit, and the deeds by them to still other third persons) were either made expressly subject to the same restrictions set out in the deed from Coughran to the Nollkampers, or it was stated in each deed that the conveyance was made subject to the identical restrictions contained in the deeds from Coughran to the Nollkampers.

Coughran and the Nollkampers are the common grantors of plaintiffs Ronnie J. Baxter, April A. Baxter, Michael L. Shaw and the defendants Lawrence J. Horan and Ola A. Horan. The deeds from Coughran to the Nollkampers, and from the latter to the defendants, constituted constructive notice to the defendants that their land, as well as the other four tracts conveyed by Coughran to the Nollkampers, was burdened by the restrictions contained in the deeds, because both deeds form "an essential link in the chain of title under which the claim," and they are bound by them.

Considering all of the evidence, Coughran, by impressing upon all five of the tracts conveyed to the Nollkampers a uniform and identical set of restrictions, and the Nollkampers, by the acceptance of the deed, intended to establish a plan or scheme to ensure the development of a residential area of high standards. Therefore, plaintiffs Ronnie J. Baxter, April A. Baxter and Michael

L. Shaw, the owners of lands in the five tracts, proved that they had a legal right to enforce the restrictions against defendants.

Plaintiffs James P. Brady, Anne P. Brady, Louis H. Borgman and Mary Louise Borgman, do not claim under the deed from the Nollkampers. They claim under Coughran, their common grantor, and the deed from Coughran to the Nollkampers covering the five tracts of land is not in their chain of title. while the evidence establishes the fact that Coughran intended that the lands now owned by these plaintiffs be part of the general scheme or plan to restrict all eight tracts owned by him, there is no evidence that the Borgmans, the grantees in the deed from Coughran, had any knowledge, actual or constructive, of such plan or scheme or consented thereto. Nor is there any evidence that M.M. Sides and wife, Gladys Sides, the original grantee of Coughran of the land now owned by James P. Brady and Anne P. Brady, had any knowledge, actual or constructive, of such plan or scheme, or consented thereto. The mere fact that various deeds from a common grantor contain identical restrictions is not sufficient, of themselves, to show that the establishment of a general plan or scheme was intended, or that such restrictions were imposed for the benefit of any other lots conveyed by the grantor, since the existence of such a plan or scheme depends not on the intent of the grantor alone, but on the intent of the grantee as well. 16 TEX. JUR. 3d Covenants, § 120, p. 685. Therefore, plaintiffs James P. Brady, Anne P. Brady, Louis H. Borgman and Mary Louise Borgman did not

prove that they had a legal right to enforce the restrictions against defendants. We further hold that Question No. 1, as submitted by the trial court was correct both as to form and substance. The restrictions in the deeds to the Borgmans and the Sides were personal to them and to Coughran, their common grantor, and from whom they deraign title.

The jury, in response to Question No. 2, found that the defendants violated the deed restriction that states: "No trailer house or mobile home shall be placed on the premises for any purpose." It was further found, in answer to Question No. 3, that defendants violated the deed restriction which states: "All building shall be of original construction on the premises, and no buildings not constructed on the premises shall be moved to the premises."

The words and phrases used in a deed restriction will be given their commonly accepted meaning. Curb v. Benson, 564 S.W.2d 432, 433 (Tex. Civ. App.--Austin 1978, writ ref'd n.r.e.).

In reviewing "no evidence" points, an appellate court considers only the evidence and inferences tending to support the jury verdict and disregards all evidence to the contrary, and will affirm the judgment if there is any evidence or probative value to support the verdict in a jury tried case. International Bank, N.A. v. Morales, 736 S.W.2d 622, 624 (Tex. 1987); Woodward v. Ortiz, 150 Tex. 75, 237 S.W.2d 286 (1951). The standard to be applied to "no evidence" is whether such evidence, either direct or

circumstantial, amounts to more than a mere scintilla. Joske v. Irvine, 91 Tex. 574, 44 S.W. 1059 (1898); Kincaid v. Gulf Oil Corp., 675 S.W.2d 250 (Tex. App.--San Antonio 1984, writ ref'd n.r.e.).

Defendants argue that there was no evidence of the intent of Coughran, the common grantor of the lands owned by plaintiffs and defendants, regarding the meaning of the terms "mobil (sic) home" and "trailer house." We do not agree.

As already stated, Simpson testified as to his conversation with Coughran about the purpose of the restrictions, the intent of the restrictions, and the type of restrictions which Coughran would put in place. This testimony was not objected to by appellants. Simpson specifically stated that he and Coughran had a common understanding of the terms "trailer house" and/or "mobile home." In addition to having personal knowledge of Coughran's intent in creating the restrictions, Simpson personally examined a similar type of structure to the one which is the subject to this lawsuit. Based upon that examination, as well as his own expertise and experience, he determined that the structure placed on defendant's property is, in fact, a mobile home, and is different from a "site-built" home. His testimony constitutes evidence of intent of Coughran, and is sufficient to support the submission of and the jury's response to Question No. 2.

Defendants further contend that "as a matter of law," the placement of the structure in question did not violate the

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restriction inquired about in Question No. 3. They argue that since the structure in question was a "manufactured home," which consisted of two preassembled component parts, and was moved onto defendants' land and made habitable by them, that the "construction of the house" on defendants' land did not violate the subject restrictions. We disagree.

It is undisputed that the structure was moved by defendants on the land in December, 1988. It is conclusively shown by the evidence that the structure consisted of two sections which were manufactured off the defendants' land, and then transported by defendants from Kerrville, Texas, by truck to defendants' land, where the two separate sections were joined together and placed on concrete piers.

It was stated in Wilmoth v. Wilcox, 734 S.W.2d 656, 658 (Tex. 1987):

> [I]n the late 1960's the term 'mobile home' began to replace the term 'house trailer.' In the late 1970's the industry applied the term 'manufactured homes' to the products . . .

The court, in Wilmoth, held that restrictive covenants in a subdivision prohibiting "house trailers" also prohibits mobile homes and manufactured homes. We follow that holding in deciding that the structure violated the subject restrictions. It was not of original construction on the premises of defendants, and it was a structure which was not constructed on the premises. There is sufficient evidence to support the submission of and the jury's response to Question No. 3.

We have considered all of defendants' points of error. All points insofar as they challenge the judgment as to plaintiffs Ronnie J. Baxter, April A. Baxter and Michael L. shaw are overruled. Defendants' point of error number one insofar as plaintiffs James P. Brady, Anne P. Brady, Louis H. Borgman and Mary Louise Borgman are concerned is sustained.

We reform the judgment of the trial court by deleting therefrom all the relief granted to plaintiffs James P. Brady, Anne P. Brady, Louis H. Borgman and Mary Louise Borgman, and render judgment that they take nothing in their suit against defendants, and we affirm that portion of the judgment which granted the injunction against the defendants in favor of plaintiffs Ronnie J. Baxter, April A. Baxter and Michael L. Shaw, and decreed that they recover all costs of court and attorney's fees from defendants as therein provided.

REFORMED, REVERSED AND RENDERED IN PART, AND AFFIRMED IN PART.

GERALD T. BISSETT

Justice

DO NOT PUBLISH.