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IN THE
COURT OF APPEALS OF INDIANA

NORTHEAST CIVIC ASSOCIATION, INC., An Indiana Not-For-Profit Corporation, and 38th & FRANKLIN ROAD NEIGHBORHOOD PARK, INC., an Indiana Not-For-Profit Corporation,	)	
Appellants/Plaintiffs,	)	
vs.	)	No. 49A02-1003-PL-470
GLORIA J. BEARD, MARY E. MILLS, ELAINE ADAMS, COMMUNITY ALLIANCE OF THE FAR EASTSIDE, INC., an Indiana Not-	)	

For-Profit Corporation, MARK HARRISON, as)
Trustee of the MARTIN FAMILY TRUST,)
WAL-MART STORES EAST, L.P., a Delaware)
Limited Partnership, and THE DEPARTMENT)
OF PARKS AND RECREATION OF)
INDIANAPOLIS-MARION COUNTY,)
INDIANA,)
)
Appellees/Defendants.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robyn L. Moberly, Judge
Cause No. 49D05-0403-PL-483

December 6, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellants/Plaintiffs Northeast Civic Association, Inc., ("NECA"), and 38th and Franklin Road Neighborhood Park, Inc., ("38th Neighborhood Park"), appeal the trial court's grant of summary judgment in favor of Appellees/Defendants Gloria J. Beard, Mary E. Mills, Elaine Adams, Community Alliance of the Far Eastside, Inc., ("CAFÉ"), Mark J. Harrison, as Trustee of the Martin Family Trust ("the Trustee"), Wal-Mart Stores East ("Wal-Mart"), and the Department of Parks and Recreation of Indianapolis Marion County ("the Parks Department"). Finding no genuine issues of material fact, we affirm the trial court's grant of summary judgment.

FACTS AND PROCEDURAL HISTORY

The facts are undisputed. In the 1990's, the Martin Family Trust ("the Trust") owned

a 63-acre parcel of land at 38th Street and Franklin Road on the eastside of Indianapolis, ("the Parcel"). The Trust attempted to have the Parcel rezoned for development several times over the years, but was unsuccessful because of remonstrations by neighborhood associations, including NECA. In 1999, in order to satisfy the remonstrators and proceed with development, the Trust agreed to deed, with certain restrictions, 9.35 acres of the Parcel ("the Park Tract") to NECA. The deed transferring the Park Tract to NECA required the neighborhood association to use the Park Tract for "open space, park, recreational, or civic purposes and for no other use or purpose." Appellant's App. 588. The deed further provided that "[i]n the event that the Real Estate is not used for the purposes described herein, title to the Real Estate shall automatically revert to Grantor, or its successors or assigns." Appellant's App. 588. The "Statement of Commitments" the Trust made to zoning authorities to achieve a zoning variance included the following paragraph:

> A portion of the Property containing approximately 9.35 acres, shown on the Site Plan as the Neighborhood Park shall be dedicated to [NECA] . . . so long as such property is used for such purposes. The Neighborhood Park shall be named "Ed Martin Park," or otherwise memorialized by a plaque or other prominent structure featuring the dedication of the Neighborhood Park by the Ed Martin family.

Appellant's App. 578.

Shortly after the land transfer, NECA President Matt Hooker embezzled funds from NECA and moved out of the neighborhood in which NECA was active.[1] Following Hooker's departure, NECA "fell apart." Appellant's App. 459. No new president was elected, no meetings were held, no dues were collected, and no activities took place. The Indiana

[1] Hooker was subsequently convicted of embezzlement.

Secretary of State administratively dissolved NECA in 2002 because NECA failed to file an annual report. NECA never used the Park Tract.

The following year, the Trust had an opportunity to sell the Parcel for development; however, the land needed to be reconfigured before it could be sold. The Trustee initiated meetings with Parks Department representatives, former NECA officers and directors, and members of CAFÉ, an umbrella association that provides neighborhood groups with support. Former CAFÉ director Jim Kane also attended the meetings. The discussions at the meetings included several proposals, including selling a portion of the Parcel to Wal-Mart for development and transferring the remaining portion of the Parcel to the Parks Department.

On October 7, 2003, previous NECA directors Gloria Beard, Elaine Adams, and Mary Mills convened NECA and executed a "Joint Written Consent in Lieu of Meetings of the Members and the Board of Directors of [NECA.]" Appellant's App. 651-55. Pursuant to the terms of the agreement, Beard, Adams, and Mills conveyed the Parcel to CAFÉ on October 8, 2003. The deed was recorded that same day. Appellant's App. 151. CAFÉ conveyed the Parcel to the Trust on December19, 2003. The Trust conveyed a portion of the Parcel to Wal-Mart that same day. The Trust also conveyed a rectangular portion of the Parcel to the Parks Department. This parcel of land, which was slightly larger than the Park Tract initially conveyed to NECA, provided a large buffer between the neighborhood and the commercial development.

While Beard, Adams, and Mills were working on the transfer of the land to Wal-Mart, Kane and former NECA member Lyndy Kouns devised a plan to secretly transfer the Park

Tract to 38th Neighborhood Park. Although Kane had never been a member, officer, or director of NECA and did not live in the NECA neighborhood boundaries, Kane instructed his attorney to draft a document to be signed by former NECA board members that would transfer the Park Tract to 38th Neighborhood Park. The deed was signed on October 21, 2003, and Kane recorded the deed the following day. No one notified Beard, Adams, Mills, or CAFÉ members about Kane's plan to transfer the Park Tract to 38th Neighborhood Park.

In December 2003, the Trust conveyed a portion of the Parcel to Wal-Mart, which began constructing a store on the property. In March 2004, NECA and 38th Neighborhood Park filed a Verified Complaint to Quiet Title and for Damages against Beard, Mills, Adams, CAFÉ, the Trustee, and Wal-Mart. The complaint was amended in August 2004 to include the Parks Department. The complaint asked the trial court to declare that Beard, Mills, and Adams did not legally transfer title of a portion of the Parcel to CAFÉ and that the further transfers to the Trustee and Wal-Mart were null and void. Appellant's App. 164. The complaint also alleged that the defendants violated Indiana statutes governing the conduct of directors and committed fraud and/or conspiracy to commit fraud as well as tortious interference with a contractual relationship and asked the trial court to award plaintiffs general and/or compensatory damages.

Following the exchange of written discovery and depositions in the summer of 2005, the litigation lapsed into dormancy. Eventually, the trial court sua sponte set a Rule 41(E) motion to dismiss hearing in July 2008 because of NECA and 38th Neighborhood Park's failure to prosecute their claim. The cause of action survived the dismissal hearing, and both

sides resumed discovery. In August 2009, Beard, Mills, Adams, CAFÉ, the Trustee, Wal-Mart, and the Parks Department filed summary judgment motions. The trial court held a hearing on the motions in February 2010.

After the hearing, the trial court granted the defendants's summary judgment motions. Specifically, the court stated as follows in its order:

> NECA failed to use the park tract of land as required by the deed from the Martin Family. At the time NECA was dissolved, while still not having done anything to use or maintain the land for any purpose, the automatic reversion provision of the original deed became effective. The Court finds, as a matter of law, the failure to use the property for any purpose, coupled with the dissolution of the corporation, caused a reversion to the Martin Family Trust on August 15, 2002, at the latest.

Appellant's App. 23. NECA and 38th Neighborhood Park appeal.

DISCUSSION AND DECISION

NECA and 38th Neighborhood Park argue that the trial court erred in granting summary judgment in favor of Beard, Mills, Adams, CAFÉ, the Trustee, Wal-mart, and the Parks Department. Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). In reviewing a trial court's ruling on summary judgment, this Court stands in the shoes of the trial court. *Perryman v. Motorist Mut. Ins. Co.*, 846 N.E.2d 683, 687 (Ind. Ct. App. 2006). We must determine whether there is a genuine issue of material fact and whether the trial court has correctly applied the law. *Id.* In so doing, we consider all of the designated evidence in the light most favorable to the non-moving party. *Id.* The party appealing the grant of summary judgment has the burden of persuading this Court that the

trial court's ruling was improper. *Id.*

Our review is not altered where a trial court enters findings of fact and conclusions of law in granting a summary judgment motion. *Decker v. Zengler*, 883 N.E.2d 839, 842 (Ind. Ct. App. 2008), *trans. denied*. In such a context, we are not bound by the trial court's specific findings and conclusions although they aid our review by providing us with a statement of reasons for the trial court's action. *Id.*

A deed is to be regarded in its entirety and the parts thereof are to be construed together so that no part is rejected. *Hememway Mem'l Presbyterian Church of Ohio Valley Presbytery of Synod of Lincoln Trails of the United Presbyterian Church v. Aigner, et al.*, 443 N.E.2d 93, 94 (Ind. Ct. App. 1982). The object of construction is to ascertain the intent of the parties and it must be their intent that every part has some meaning. *Id.* A construction which reconciles the different parts is favored. *Id.* When the language of the deed is unambiguous and the intent of the parties can be clearly ascertained from the instrument, our only duty is to give effect to the terms as written in the deed. *Id.*

In *Hememway*, the Scales family deeded some property to the State. The deed provided that the property was to be established and maintained as a "place of recreation for the benefit of the public." *Id.* at 93. The deed also provided that if the grantee failed to maintain the property for such use, the property would revert back to the grantors or their survivors should they be living and then to the trustees of the church. The State subsequently transferred the property to Warrick County. Hememway filed suit against the State and Warrick County to enforce its right to the property. The trial court granted summary

judgment in favor of the State and the County. On appeal, this Court reversed the grant of summary judgment in favor of the State after concluding that the State's transfer of title to Warrick County violated the terms of the deed causing a reversion to the church. *Id.*

Hememway is instructive. Here, the deed transferring the Park Tract to NECA required the neighborhood association to use the Park Tract for "open space, park, recreational, or civic purposes and for no other use or purpose." Appellant's App. 588. The deed further provided that "[i]n the event that the Real Estate is not used for the purposes described herein, title to the Real Estate shall automatically revert to Grantor, or its successors or assigns." Appellant's App. 588. As in *Hememway*, NECA's failure to use the Park Tract as set forth the in the deed violated the terms of the deed causing a reversion to the Trust. Accordingly, the trial court did not err in granting summary judgment in favor of Beard, Mills, Adams, CAFÉ, the Trustee, Wal-Mart, and the Department of Parks.

The judgment of the trial court is affirmed.

DARDEN, J., and BROWN, J., concur.