IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. CVA1 07-57
Lower Ct. Case No. 04-CC-1837

TASIA KLAPIS,

Appellant,

vs.

ORANGE TREE ESTATE HOMES SECTION ONE MAINTENANCE ASSOCIATION, INC.,

Appellee.
_____/

Appeal from the County Court,
for Orange County,
Antoinette Plogstedt, County Judge.

Chris A. Draper, Esquire,
For Appellant.

Peter R. McGrath, Esquire,
For Appellee.

Before POWELL, LEBLANC, KIRKWOOD, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING LOWER COURT

Appellee Orange Tree Estate Homes Section One Maintenance Association, Inc., (Appellee) filed a complaint against Appellant Tasia Klapis (Appellant), a member resident, seeking removal of two vehicles belonging to Appellant's son which were parked on Appellant's property in violation of two association covenants. The Association's Declaration of Covenants

and Restrictions prohibits the parking of inoperable vehicles and activity constituting a nuisance. After the parties impassed at mediation, a one day non-jury trial was held at which a number of witnesses testified and tangible exhibits were admitted in evidence. Thereafter, the county judge entered an extensive final judgment in favor of Appellee. The final judgment found that the two vehicles were inoperable and constituted a nuisance in violation of the Association's Declaration of Covenants and Restrictions. The county court also entered a mandatory injunction ordering the permanent removal of the vehicles from Appellant's property.

This appeal followed. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Issues

Appellant contends that (1) the judgment was not supported by substantial competent evidence; (2) she proved her affirmative defense that the claim was barred by the statute of limitations; and (3) the county court committed reversible error by refusing to allow her to amend her answer to add the affirmative defense of selective enforcement.

I.

We start by stating several fundamental principles of appellate review. "[I]n appellate proceedings, the decision of a trial court has the presumption of correctness, and the burden of demonstrating error is upon the appellant." Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1151 (Fla. 1979). Additionally, a trial court's findings of facts will not be disturbed unless the decision is not supported by competent substantial evidence, or it is against the manifest weight of the evidence, or a prejudicial error appears from the face of the judgment

itself. See Zerquera v. Centennial Homeowners' Ass'n, Inc., 721 So. 2d 751 (Fla. 3d DCA 1998). Lastly, "[w]hen reviewing the facts, the appellate court must disregard conflicting evidence and accept the facts in evidence which are most favorable to the party who prevailed below." Amjad Munim, M.D., P.A. v. Azar, 648 So. 2d 145, 148-49 (Fla. 4th DCA 1994).

We do not find it necessary to summarize the testimony of the witnesses. It is sufficient to say that after careful examination of the record on appeal, the transcript of the testimony, and the briefs and legal authorities, we conclude that the judgment is supported by substantial competent evidence, is not against the manifest weight of the evidence, and no reversible error appears on the face of the judgment.

II.

Appellant failed to carry the burden of proving her affirmative defense of statute of limitations. The statute of limitations in a homeowner association's enforcement action, such as this one, is five years. See Sheoah Highlands, Inc. v. Daugherty, 837 So. 2d 579 (Fla. 5th DCA 2003); § 95.11(2)(b), Fla. Stat. In the absence of a case precisely on point, we hold that the statute begins to run when a complaint of the violation is made to a director or the board of directors, not when a continuing violation first comes into existence, as Appellant argues.[1] See Baker v. Hickman, 969 So. 2d 441, 443 (Fla. 5th DCA 2007)("As a general proposition, statute of limitations periods begin to run with the discovery by the plaintiff of an act constituting an invasion of the plaintiff's legal rights.").

In this case, the only relevant evidence on this issue was the testimony of the Community

[1] We note that in this case, the violation was discovered by the Association's contract manager.

Association Manager, who was employed at the time, that in July 2003, in response to complaints of residents, she inspected appellant's property and determined that certain vehicles parked in appellant's driveway constituted a violation of applicable covenants in the declaration of restrictions governing the resident members of the Association. The complaint in this action was filed May 28, 2004, well within the statute of limitations.

III.

The transcript shows that the trial court ruled that Appellant's pro se answer did not raise the affirmative defense of selective enforcement. The trial court denied Appellant's oral motion to amend the answer to assert that defense. The motion was made for the first time during trial at the close of Appellee's case-in-chief. Although the trial court did not specifically state the reasons for denying the motion, Appellee's objection was that the motion was untimely and would prejudice Appellee because Appellee was not prepared to present contrary evidence on the issue of selective enforcement. Implicit in the ruling was a finding that that would be the case. Appellant's counsel vaguely represented that he would offer evidence that the association did not enforce the covenant against parking boats and vehicles on the street. However, he did not proffer that he was prepared to present evidence that the association had not enforced the covenant against parking inoperable automobiles in driveways, which was the issue in this case. We find that the trial court did not err in denying Appellant's motion to amend because evidence of dissimilar violations is not a valid defense. See McMillan v. Oaks of Spring Hill Homeowner's Ass'n, Inc., 754 So.2 d 160 (Fla. 5th DCA 2000).

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that the trial court's "Final Judgment" is **AFFIRMED**; Appellant's "Motion for Attorney's Fees" is

DENIED; and this case is **REMANDED** to the trial court for purposes of determining Appellee's entitlement to, and amount of, attorney's fees and costs as previously reserved for in the Final Judgment.

DONE and **ORDERED** at Orlando, Florida this 31 day of August, 2009.

/s/
ROM W. POWELL
Senior Judge

/s/
BOB LEBLANC
Circuit Judge

/s/
LAWRENCE R. KIRKWOOD
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail on this 31 day of August, 2009, to the following: **Chris A. Draper, Esquire**, 2500 Maitland Center Parkway, Suite 209, Maitland, Florida 32751 and **Peter McGrath, Esquire,** 801 North Magnolia Avenue, Suite 304, Orlando, Florida 32803.

/s/
Judicial Assistant