

A-23-0836, Hillsborough Homeowners Association v. Paul and Connie Karnish

District Court for Douglas County, Judge Leigh Ann Retelsdorf

Attorney for Appellant: Aaron F. Smeal & Timothy J. Buckley (Smith, Slusky, Pohren & Rogers, LLP)

Attorney for Appellee: Thomas J. Anderson (Thomas J. Anderson, P.C., L.L.O.)

Civil: injunctive relief, covenants and restrictions, waiver

Facts:

The Karnish's own property subject to covenants and restrictions of the Hillsborough Homeowners Association (Association). The covenant at issue in this case prohibits any property owner from conducting business activities of any kind on their property. The Karnish's operate an in-home licensed daycare on their property and have done so continually since 2013. A next-door neighbor reported the activity to the president of the Association in 2013. Shortly thereafter, the Association's president sent a letter to the Karnish's requesting they relocate their business within 15 days. The same neighbor made another complaint a few months later. The Karnish's continued to operate the daycare, apparently without any further action taken by the Association.

In 2019, the same neighbor made an additional complaint to the Association's new president. The new president sent a letter to the Karnish's after receiving the complaint. The Association then filed a legal action against the Karnish's seeking to enjoin them from operating their in-home daycare. After trial, the district court entered an order in favor of the Karnishes finding the Association had waived their right to enforce the covenant due to its failure to object to the violation for 6 years. The Association appeals.

Issues on Appeal:

On appeal, the Associations argues the trial court erred in denying its request for injunctive relief on the ground that it had waived its right to enforce the restrictive covenant against the Karnishes. The Association also argues the trial court erred in admitting evidence offered by the Karnishes of other businesses being operated in other residences in the neighborhood.