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IN THE
COURT OF APPEALS OF INDIANA

HERBERT SCHMIDT,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 32A01-0904-CV-209
	)	
DAVID KOCH and DENISE KOCH,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable David H. Coleman, Judge
Cause No. 32D02-0809-PL-38

December 9, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Herbert Schmidt appeals from the trial court's judgment for David and Denise Koch following a bench trial. Schmidt raises a single issue for our review, which we restate as whether the court's judgment is clearly erroneous.

We affirm.

FACTS AND PROCEDURAL HISTORY

Schmidt and the Kochs are neighbors residing in the Linden Square neighborhood ("Linden Square") in eastern Hendricks County. Property owners within Linden Square are subject to certain covenants and restrictions. In particular, Paragraph 20(l) of the Declarations of Covenants and Restrictions of Linden Square Property Ownership states, in relevant part, that "[a]ll passenger vehicles shall be parked in a garage or on the driveway of the Dwelling Unit. No vehicles shall be parked on the streets, in the yards or in any Common Areas." Plaintiff's Exh. 1 at 25.

In 2004 or 2005, the Kochs purchased the lot in Linden Square next to Schmidt's lot. On numerous occasions since, the Kochs' guests, but not the Kochs themselves, have parked their vehicles on the street near the Kochs' residence. At times, Schmidt's driveway, sidewalk, mailbox, and/or fire hydrant have been blocked by those vehicles. Schmidt has asked the Kochs to not permit their guests to park on the street. Schmidt has called the police about the Kochs' guests parking on the street. On at least one occasion, Schmidt parked his pickup truck directly behind the Kochs' vehicles in their driveway "to get the police out there . . . [b]ecause [the Kochs] blocked my mailbox[and] wouldn't move." Transcript at 27-28.

On September 2, 2008, Schmidt filed a complaint against the Kochs seeking injunctive relief to prohibit the Kochs' guests from parking vehicles on the public streets within Linden Square. The court held a bench trial on March 23. At that trial, the Kochs testified that "they have asked their guests to move their vehicles after discovering that their guests parked on the street." Appellant's App. at 5. The Kochs also "introduced photographs into evidence showing [Schmidt's] vehicles and those of his guests parked on the street in front of his house." Id. Schmidt admitted that "his guests and relatives have parked on the street in front of his house at Christmas and on other occasions." Id. Specifically, Schmidt conceded that his wife frequently has guests over that "park to visit," Transcript at 29; that every year during Christmas he has his "family com[e] to our house. We have five girls, seventeen children, seventeen . . . grandchildren, seventeen great-grandchildren . . . for an hour, two hours," id. at 31; and that he, his wife, and his daughter had each parked their respective vehicles on the Linden Square streets, id. at 28, 35-36.

On April 7, the court issued its order denying Schmidt's request for an injunction. The court found as follows:

> [Schmidt] admitted on cross examination that he parked his pickup truck directly behind the defendant's vehicles blocking their driveway on at least one occasion out of frustration.
>
> . . . The defendants introduced photographs into evidence showing the plaintiff's vehicles and those of his guests parked on the street in front of his house.
>
> The plaintiff admits that his guests and relatives have parked on the street in front of his house at Christmas and on other occasions.

Appellant's App. at 5. The court then concluded:

> [Schmidt] failed to carry his burden of proof. The court finds no evidence that the [Kochs] violated the restrictive covenants of the subdivision . . . or that they blocked [Schmidt's] mailbox or driveway. On the contrary, the evidence revealed that [Schmidt] himself violated the restrictive covenants by parking his pickup truck on the street directly in front of the defendant's driveway thereby blocking the driveway.

Id. at 6 (emphasis added). The court also concluded that the restrictive covenants of Linden Square did not adequately put members of the general public on notice that parking on the street in Linden Square is prohibited. This appeal ensued.

DISCUSSION AND DECISION

Standard of Review

Schmidt sought a permanent injunction, which is an extraordinary equitable remedy that should be granted only with caution. Stewart v. Jackson, 635 N.E.2d 186, 189 (Ind. Ct. App. 1994), trans. denied. Injunctions may be appropriate in cases where a restrictive covenant has been violated. Id. Generally, the denial of an injunction lies within the sound discretion of the trial court and will not be overturned unless it was arbitrary or amounted to an abuse of discretion. Id.

Here, however, the trial court entered findings of fact and conclusions thereon sua sponte. Sua sponte findings control only as to the issues they cover, and a general judgment will control as to the issues upon which there are no findings. Yanoff v. Muncy, 688 N.E.2d 1259, 1262 (Ind. 1997); see Rennaker v. Gleason, 913 N.E.2d 723 (Ind. Ct. App. 2009). We will affirm a general judgment entered with findings if it can be sustained on any legal theory supported by the evidence. Yanoff, 688 N.E.2d at 1262. When a court has made special findings of fact, we review sufficiency of the evidence using a two-step process. Id. First, we must determine whether the evidence supports the

trial court's findings of fact. Id. Second, we must determine whether those findings of fact support the trial court's conclusions. Id.

Findings will be set aside only if they are clearly erroneous. Id. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. Id. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. Id. In order to determine that a finding or conclusion is clearly erroneous, an appellate court's review of the evidence must leave it with the firm conviction that a mistake has been made. Id. In applying this standard, we neither reweigh the evidence nor judge the credibility of the witnesses. Crawley v. Oak Bend Estates Homeowners Ass'n, Inc., 753 N.E.2d 740, 744 (Ind. Ct. App. 2001) (citation and quotation omitted), trans. denied. Rather, we consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

Further, Schmidt appeals from a negative judgment. See Curley v. Lake County Bd. of Elections & Registration, 896 N.E.2d 24, 32 (Ind. Ct. App. 2008), trans. denied. He must, therefore, establish that the trial court's judgment is contrary to law. Id. A judgment is contrary to law only if the evidence in the record, along with all reasonable inferences, is without conflict and leads unerringly to a conclusion opposite that reached by the trial court. Id. We review conclusions of law de novo and give no deference to the trial court's determinations about such questions. Id.

We also note that the Kochs have not filed an appellees' brief. When appellees do not file a brief, we do not need to develop an argument for them and we apply a less stringent standard of review. In re R.M.M., 901 N.E.2d 586, 588 (Ind. Ct. App. 2009).

We may reverse the trial court if the appellant is able to establish prima facie error, which is error at first sight, on first appearance, or on the face of it. Id. The appellees' failure to submit a brief does not relieve us of our obligation to correctly apply the law to the facts in the record in order to determine whether reversal is required. Khaja v. Khan, 902 N.E.2d 857, 868 (Ind. Ct. App. 2009).

Injunctive Relief

In order to be awarded a permanent injunction, Schmidt carried the burden of demonstrating each of the following four factors: (1) that his remedy at law against the Kochs was inadequate; (2) that he had succeeded on the merits of his action; (3) that the threatened injury to Schmidt outweighed the harm of an injunction to the Kochs; and (4) that granting the injunction would not disserve the public interest. See Ferrell v. Dunescape Beach Club Condos. Phase I, Inc., 751 N.E.2d 702, 712-13 (Ind. Ct. App. 2001). Permanent injunctions are limited to prohibiting injurious interference with rights. Id. at 713.

Schmidt argues that the trial court erred in denying his request for injunctive relief because it failed to apply various principles of property law. Specifically, Schmidt asserts that the trial court treated the Kochs' guests as "general public members parking in a place" rather than as "invitees of Mr. [and] Mrs. Koch." Appellant's Brief at 14. But Schmidt's argument fails to acknowledge that the trial court entered judgment against him for multiple reasons. While one of the trial court's rationales for denying Schmidt's request for injunctive relief was that the Kochs' visitors did not have adequate notice of the restrictive covenant, another rationale was that Schmidt had unclean hands to request

injunctive relief. Schmidt's failure to address the trial court's conclusion that his unclean hands precluded his request for the injunctive relief acts as a waiver of our review of that issue. See Ind. Appellate Rule 46(A)(8)(a).

Schmidt's waiver notwithstanding, we briefly review the trial court's judgment. As we have discussed:

> A party seeking the equitable relief of injunction must come into court with clean hands. "Unclean hands" is an equitable doctrine that demands that one who seeks relief in a court of equity must be free of wrongdoing in the matter before the court. The alleged wrongdoing must have an immediate and necessary relation to the matter being litigated. For the doctrine of unclean hands to apply, the misconduct must be intentional. The purpose of the unclean hands doctrine is to prevent a party from reaping benefits from his misconduct. The doctrine is not favored by the courts and is applied with reluctance and scrutiny.

Galloway v. Hadley, 881 N.E.2d 667, 678 (Ind. Ct. App. 2008) (emphasis added; citations omitted).

In Stewart, one family, the Stewarts, tried to enforce a restrictive covenant against their next-door neighbors, the Jacksons. 635 N.E.2d at 188. The Jacksons were operating a home daycare out of their residence, which, according to the Stewarts, violated the neighborhood's restrictive covenants against operating a business out of a home. Id. The Stewarts brought a suit requesting injunctive relief prohibiting the Jacksons from operating the daycare. Id. At trial, the Jacksons presented evidence that several other people in the neighborhood were violating the restrictive covenants. Id. They presented evidence of instances where neighbors worked from their homes: four other daycare homes, a salesman that worked from his home, a woman who taught piano lessons in her home, a woman that sold crafts from her home, and a man who ran a

computer consulting business from his home. Id. The Jacksons also presented evidence that the Stewarts themselves had operated as a toy manufacturer and wholesaler from their home, and that Mr. Stewart operated his contracting construction company from his home. Id.

A panel of this court concluded that the unclean hands doctrine was one of the theories used by the trial court when it denied the Stewarts' request for injunctive relief. Id. at 189. But we also held that Indiana recognizes the ability of a party to purge itself of wrongdoing, which restores that party's right to seek equitable relief. Id. at 189-90. We then concluded that, because the Stewarts were no longer operating businesses from their home, they had purged themselves of unclean hands, and, therefore, their claim against the Jacksons could not be defeated based upon the unclean hands doctrine. Id. at 190. Additionally, in a footnote, we found that even though there was evidence that the Stewarts were in violation of other restrictive covenants for fence heights and commercial vehicle parking, such violations did not support an unclean hands finding because the violations were merely "incidental to the issues" in the case. Id. at 190 n.1.

Stewart is instructive in the instant appeal. Here, as in Stewart, one property owner is seeking to enforce a restrictive covenant against his neighbors. Again, in order to be able to seek the equitable relief of an injunction, Schmidt must "be free of wrongdoing in the matter before the court." Galloway, 881 N.E.2d at 678. But the trial court found that Schmidt himself had repeatedly violated the same restrictive covenant he sought to enforce against the Kochs. The trial court's finding is based on the Kochs' photographic evidence and Schmidt's own testimony. As such, neither that finding nor

the court's conclusions relying on that finding are clearly erroneous. See Yanoff, 688 N.E.2d at 1262. And Schmidt's failure to abide by the terms of the same restrictive covenant he sought to enforce against others was not "incidental" to the matter being litigated but, rather, had "an immediate and necessary relation to the matter." See Galloway, 881 N.E.2d at 678; Stewart, 635 N.E.2d at 190 n.1. Further, unlike Stewart, Schmidt presents neither argument nor evidence to demonstrate that he had "purged" himself of his unclean hands. See App. R. 46(A)(8)(a); Stewart, 635 N.E.2d at 190.

In sum, Schmidt is unable to establish that the trial court's judgment is contrary to law. See Curley, 896 N.E.2d at 32. Neither the trial court's findings nor its conclusions are clearly erroneous. See Yanoff, 688 N.E.2d at 1262. Thus, we must affirm the trial court's denial of Schmidt's request for injunctive relief.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.