

IN THE COURT OF APPEALS OF IOWA

No. 1-867 / 11-0545
Filed February 29, 2012

**CHIPMAN'S SUBDIVISION HOMEOWNERS
ASSOCIATION, INC.,**
Plaintiff-Appellee,

vs.

**E.R. CARNEY and KATHY (MICKALSON)
CARNEY,**
Defendants-Appellants.

Appeal from the Iowa District Court for Johnson County, Paul D. Miller,
Judge.

The defendants appeal from a judgment entered in favor of the plaintiff.

REVERSED AND REMANDED.

Matthew J. Adam and Kerry A. Finley of Simmons, Perine, Moyer &
Bergman, P.L.C., Cedar Rapids, for appellants.

Kevin Watts, Chipman's Subdivision Homeowners Association, Inc., North
Liberty, for appellee.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

MULLINS, J.**I. Background Facts and Proceedings.**

In the 1960s, Carroll and Daisy Chipman developed an area of land, consisting of fifteen lots, located in rural Johnson County, which they named Chipman's Subdivision. E.R. Carney and Kathy Mickalson Carney purchased three lots located in the subdivision in December 1997. In 2010, Chipman's Subdivision Homeowners Association, Inc.¹ commenced a small claims action against the Carneys, claiming the Carneys owed association dues in the amount of \$1820 pursuant to covenants originally recorded in 1969 and revised in 1986 and 2003.

At the subsequent hearing, Kevin Watts, a member of the board of directors, appeared on behalf of the Homeowners Association. He explained he sought to recover dues under the 1969 covenants, as amended in 1986 and 2003. The document entitled "Protective Covenants and Restrictions" was recorded on April 8, 1969, and set forth restrictive covenants relating to building single family homes and required the Chipmans to approve any building plans. It specified that any change to the covenants required a majority vote by current lot owners. The document entitled "Covenant" was recorded on January 27, 1986, and stated the intent to establish a homeowners association for the express purpose of "maintenance, repair, upkeep and management of the roads within the Chipman's Subdivision." Further, it set forth a "dues structure," requiring a new resident to pay a one-time fee equal to one-half the annual dues and all

¹ The Homeowners Association filed articles of incorporation with the secretary of state in December 2001.

residents to pay ten dollars per month. Five property owners signed the document. The document entitled "Revised and Restated Covenants and Restrictions" was recorded on May 22, 2003, and stated that pursuant to the 1969 covenants the majority of homeowners adopted the revised and restated covenants set forth. One provision extended the obligation to pay dues from only the owners who had a home in the subdivision to those who owned lots in the subdivision. Watts testified the Carneys owed dues for the maintenance and repair of the common road in the subdivision.

E.R. Carney testified he purchased the lots in 1997 from a real estate attorney, who had informed him the 1969 covenants had expired and the Homeowners Association had no legal authority. Carney argued that the covenants recorded in 1969 had expired on April 8, 1990, pursuant to the twenty-one year limitations period set forth in Iowa Code section 614.24 (2011) ("No action based on any claim arising or existing by reason of the provisions of any . . . contract . . . reserving or providing for . . . use restrictions in and to the land therein described shall be maintained either at law or in equity . . . after twenty-one years from the recording of such . . . contract . . . unless the claimant shall . . . file a verified claim with the recorder of the county wherein said real estate is located within said twenty-one year period."). He further argued the 1986 covenants were inadequate to extend the limitations period, and additionally were not binding because it had been signed by only one-third of the property owners. However, he agreed that if he was liable, the amount requested was correct.

The small claims court ruled that within twenty-one years of the 1969 covenants, the “1986 covenants were recorded and were effective”; and within twenty-one years of the 1986 covenants, the 2003 covenants were recorded and effective. The court entered judgment in favor of the Homeowners Association and against the Carneys in the amount of \$1820. The Carneys sought review by the district court, which found a hearing was unnecessary, all the covenants had been recorded and required payment of the fees, and affirmed. The Carneys appeal.² As the case was tried at law, our review is for correction of errors at law. See *GE Money Bank v. Morales*, 773 N.W.2d 533, 536 (Iowa 2009) (internal citations omitted).

II. Analysis.

The Carneys contend the restrictive covenants automatically terminated in 1990, pursuant to Iowa Code section 614.24. The Carneys further contend the document filed in 1986 was ineffective to extend the duration of the 1969 covenants. They set forth multiple reasons why the 1986 document was inadequate, including that it did not identify or refer to the 1969 covenants, was not indexed or entered into the Johnson County Recorder’s claimant’s book, was not acknowledged or notarized, or verified, and was not signed by a majority of landowners.

² On June 6, 2010, the supreme court entered an order explaining “although the appeal is taken from a small claims judgment, the case involves an interest in real estate. Consequently, pursuant to appellate rule 6.105 defendants have a right of appeal from the district court ruling.” We additionally note the Homeowners Association did not file a brief on appeal.

Section 614.24 was enacted to simplify land transfers in Iowa by limiting the title-search period. *Fjords N., Inc. v. Hahn*, 710 N.W.2d 731, 735 (Iowa 2006); *Compiano v. Kuntz*, 226 N.W.2d 245, 248 (Iowa 1975). Relevant to this appeal, the section imposes a twenty-one-year limit on the life of land-use restrictions “by providing for automatic termination of the covenants in the absence of affirmative actions to continue them.” *Compiano v. Jones*, 269 N.W.2d 459, 461 (Iowa 1978). In order to avoid automatic termination of restrictive covenants, a claimant may file a verified claim to extend the limit for an additional twenty-one years. Iowa Code § 614.25; *Fjords N., Inc.*, 710 N.W.2d at 735 (explaining that restrictive covenants are contracts covered by section 614.24).

A verified claim filed in the county recorder’s office

must set forth the nature of the interest (identify whether it is a reversionary, reverted, or use-restriction interest), the manner the interest was acquired (identify the deed, conveyance, contract, or will) and the time the deed, conveyance, or contract was recorded or if acquired by will, the time the will was probated.

Fjords N., Inc., 710 N.W.2d at 740. Further, the verified claim

shall be indexed under the description of the real estate involved in a book set apart and specially designed for that purpose to be known as the ‘claimant’s book’ and kept in the office of the recorder of the county where such real estate is situated, and said statement, when so indexed, shall be recorded as other instruments affecting real estate.

Iowa Code § 614.18 (1985);³ see Iowa Code § 614.26 (“The provisions of section 614.18 are made applicable to the provisions of sections 614.24 to 614.28.”); see

³ This code section was applicable when the claim was filed in 1986, but has since been amended. See 2007 Iowa Acts ch. 101, § 6. It currently states:

also Jones, 269 N.W.2d at 462 (“It is necessary that a verified claim be filed and indexed in the claimant’s book. Only part of the filing was done. It is vital that one who searches the records should know where to look and should know, too, when he need look no further.”).

We agree that the 1986 document was inadequate to extend the limitations period. Because it did not even reference the 1969 covenant, the 1986 document clearly did not comply with section 614.24. It did not set forth the nature of the interest as a use restriction previously created, nor did it identify the 1969 covenants that created the use restriction or the date the 1969 covenants were recorded. See *Fjords N., Inc.*, 710 N.W.2d at 739. The claim, i.e. the 1986 covenants, was not indexed in the claimant’s book. See *Jones*, 269 N.W.2d at 462 (holding that where a claim was filed but not properly indexed in the claimant’s book, the limitations period of section 614.24 was not extended). Finally, the 1986 covenants were not acknowledged or notarized. See Iowa Code § 558.42 (“A document shall not be deemed lawfully recorded, unless it has been previously acknowledged or proved in the manner prescribed in chapter 9E [Iowa Law on Notarial Acts] . . .”).⁴

The district court found that because the documents were recorded, they were enforceable. However, the recording of a document does not demonstrate

Any such claim so filed shall be recorded, and the entries required in section 614.17A and any applicable entries specified in sections 558.49 and 558.52 indexed, in the office of the recorder of the county where such real estate is situated.

Iowa Code § 614.18 (2011).

⁴ There is no evidence the Carneys or the predecessor owners of their lots were parties to the 1986 or 2003 documents. We need not decide whether those documents created obligations for any of the parties to those documents or to their successors.

its validity, and it is “no help to [the Homeowners Association] in attempting to avoid a limitations statute.” *Jones*, 269 N.W.2d at 462. The 1969 covenants expired in 1990, and the 1986 document did not extend the limitations period. As the covenants had previously expired, the 2003 covenants could not extend the limitations period. The Homeowners Association cannot recover from defendants the dues it claims are owed pursuant to the 1969 covenants and subsequent purported revisions. We reverse and remand.

REVERSED AND REMANDED.