

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0433

September Term, 2014

MICHAEL HARPER, et ux.

v.

TIMOTHY SMITH, et ux.

Woodward,
Hotten,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: May 13, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises out of a complaint seeking injunctive relief filed by appellants, Michael Harper (“Mr. Harper”) and Deborah Harper, against appellees, Timothy Smith and Kathleen Smith (“Ms. Smith”), in the Circuit Court for Baltimore County. Appellants lived next door to appellees and sought to remove various improvements from appellees’ property, located at 908 Crosshaven Road, Timonium, Maryland (“the property”). Appellants alleged that appellees violated the property’s restrictive covenants when they constructed a sport court, hot tub, and fence without appellants’ prior approval. A bench trial on the merits was held and the circuit court determined that the appellees did not have actual knowledge of the restrictive covenants and that laches barred appellants’ claim for relief.

Appellants noted a timely appeal and in an unreported opinion, we vacated the circuit court’s judgment and remanded the case for the circuit court to resolve appellants’ request for injunctive relief. On remand, the circuit court denied relief to appellants and indicated that the appellees were innocent for purposes of the equitable defense of comparative hardship. Appellant appealed and presented three questions for our review, which we have consolidated and rephrased for clarity:

- I. Whether the circuit court erred in failing to grant injunctive relief to appellants.¹

¹ Appellant’s original questions presented for appeal stated:

- I. Did the lower [c]ourt err by declaring that Ms. Smith’s mistake of law rendered her “innocent” for purposes of conducting a comparative hardship analysis?

(continued . . .)

For the foregoing reasons, we shall affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL HISTORY

Appellants are husband and wife who resided at 857 West Padonia Road, Cockeysville, Maryland. On July 13, 2004, appellants subdivided their 9.133 acre parcel into three lots. Thereafter, appellants recorded a Declaration of Covenants, Conditions Restrictions and Easements (“the Covenants”) among the land records of Baltimore County on June 2, 2005. The Covenants contained several restrictions including a building restriction in § 1.2, which indicated:

No building, fence, hedge, privacy enclosure wall, retaining wall, driveway, sign, swimming pool, tank, hot tub, greenhouse, free standing mailbox, gazebo, or structure of any kind (collectively called “Structures”) shall be commenced, erected, or maintained on the Property, nor shall any addition to or change or alteration therein (including alterations in exterior color or design) be made, until the plans and specifications, showing the nature, kind, shape, height, materials, color, locations, and approximate size of the Structure, addition, or alteration shall have been submitted to and approved in writing by the Declarant [appellants]. The Declarant shall consider applications for approval of plans, specifications, etc., upon the basis of conformity with this Declaration and shall be guided by the extent to which the proposed Structure, addition, or alteration will insure conformity and harmony in exterior design and appearance, based upon, among other things, the following factors: the outlook or view from adjacent or neighboring Lots, including the view of the pond from other Lots; the quality, nature and durability of proposed exterior building materials; harmony of exterior design with existing Structures; choice of colors;

(. . . continued)

- II. Did the lower [c]ourt err by declaring that Ms. Smith’s expenditure of money in violation of the recorded Declaration of Covenants outweighed the Harpers’ reserved right to approve the aesthetics of any structure sought to be built?

- III. Did the lower [c]ourt err in denying the injunction sought by the Harpers?

changes in topography, grade elevations, and/or drainage; factors of public health and safety; the effect of the proposed Structure, addition, or alteration on the use, enjoyment, and the value of other Lots; and, the suitability of the proposed Structure, addition, or alteration taking into account the aesthetic values of the surrounding area.

Additionally, §3.1 vested appellants the authority to enforce the covenants, stating:

This Declaration shall run with and bind the Property and shall be enforceable by the Declarant and by the owners of all or any portion of the Property. . . .”

Appellants continued to reside on one of the three lots and sold the other two to Pat Gill (“Mr. Gill”), a real estate investor. Appellants approved Mr. Gill’s proposed plans to construct two houses on the lots and a potential pool next to the patio, which was never constructed. Thereafter, Mr. Gill sold both houses, including the subject property. Mr. Harper testified about the discussions with Mr. Gill regarding the swimming pool stating:

During the construction of 908, I went down there several times. [Mr. Gill] and I became somewhat friendly over the course of this subdivision. Towards the end of the building process he was there and I walked down and he took me for a tour through the house, and we were out on the back patio and he told me that he had a plan that he wanted to put a swimming pool in that area right outside the patio. I told him that was a great idea. That was fine. I had no problem with that.

* * *

I had previously agreed to it with [Mr. Gill], and I had no problem with where the pool was and I, you know, to me that was a binding agreement with [Mr. Gill].

On June 1, 2011, appellees acquired 908 Crosshaven Road, Timonium, Maryland, (“Lot 1”) via deed for \$1,300,000 from Sidney Gottlieb and Sheila Gottlieb.² At the time,

² Dr. Sidney Gottlieb and his wife, Sheila Gottlieb were the originally owners of the property and while residing there did not construct a pool.

appellees were separated, however Ms. Smith testified that they worked together “to provide stability for [their] kids.”³ Additionally, Ms. Smith stated that the primary reason they purchased the property was because she was informed that it was not subject to any restrictions or covenants. During the search for a new home, appellees focused on a residence that either had a pool and sport court, or that the location permitted the construction of one for their two sons and their friends.

At closing, Ms. Smith received a title insurance policy, which contained, *inter alia*, a schedule of title exceptions, including the Covenants. Ms. Smith testified that they glanced at the exceptions. Thereafter, appellants’ counsel inquired whether she asked the title agent about them and she responded:

I asked, Mr. Miller was his name, and he was in my kitchen during the closing, and when we were going through all of the closing documents we got to this one and he said to me, “Here’s the exceptions. They all relate to the subdivision that was done on this property a while ago.”

At the same time he was not joking but, you know, making it clear how happy we all were that we didn’t have to comply with restrictions that a homeowner’s association might enforce with us. So, yeah, I mean —

In early 2012, appellees began to implement their construction plans to improve the property with a pool, patio, and sport court. Without submitting any plans to appellants, appellees entered into the following contracts with: Sunset Group for a pool and deck totaling \$187,898; Chesapeake Court Builders, Inc. for the sport court and associated fencing totaling \$35,630; Regina Pools and Spas for a hot tub totaling \$11,107; Mid-Atlantic Deck & Fence Co. for a perimeter fence totaling \$12,807; and the Appliance

³ Appellees are now divorced and Mr. Smith did not testify at trial.

Source, Inc., for a grill and other assorted outdoor kitchen items totaling \$10,306.38. The grand total for these improvements was \$257,748.38.

On February 7, 2012, construction commenced with the pool/patio portion of the improvements. The construction included using a jackhammer for several days to demolish and remove an existing brick patio and using large moving equipment to dig the hole for the swimming pool and to bring in large amounts of rock and other raw material to construct the improvements. Mr. Harper testified that he saw piles of dirt and construction signs on the property in late February or early March. However, he assumed appellees were building a pool and voiced no objection because of his previous approval of Mr. Gill's request to build a pool. The sport court installation began on or about March 15, 2012 and was finished by March 30, 2012. Thereafter, the hot tub was delivered and then installed on April 16, 2012 and soon after, construction of the perimeter fence began.

Mr. Harper sent a letter to Ms. Smith, which was received on May 2, 2012, stating that the property was subject to the Covenants, and that Ms. Smith should have submitted her construction plans to Mr. Harper in advance for his approval. Additionally, he requested that the fences be removed because they were not approved. Ms. Smith testified that she contacted the selling agent, the title company, and Mr. Gill regarding the Covenants. She was under the impression that the exceptions related to the subdivision that was created and was told "Oh, that's so cool. You're not in a homeowners association. You don't need to get approvals and deal with that process." When she spoke with Mr. Gill and asked whether he was aware of the exceptions, she testified that he said, "don't worry about it, it's all about the pond view. Don't worry, you're fine."

On May 10, 2012, Mr. Harper and Ms. Smith met at the property and discussed the contents of the letter. When Ms. Smith inquired about why Mr. Harper did not say anything during construction, he stated “I had no problems with anything until you put up the perimeter fence.” Thereafter, Ms. Smith spoke with the contractor to modify the fence so as not to disturb Mr. Harper’s view. Not too long after, Mr. Harper and Ms. Smith spoke on the phone regarding the sport court because Mr. Harper claimed to have received complaints from neighbors.⁴ Ms. Smith also received an anonymous letter regarding the homeowner’s association’s covenants and restrictions. This was of concern to Mr. Harper and he did not want to be sued if he allowed the sport court to remain.

On May 16, 2012, Mr. Harper and Ms. Smith met to discuss a proposed modification for the perimeter fence. Mr. Harper requested that the fence be modified prior to discussing the sport court. Ms. Smith testified that she was uncomfortable modifying the fence without an agreement concerning the sport court and Mr. Harper responded that he was not happy with the sport court and wanted it removed. Thereafter, Mr. Harper’s counsel contacted Ms. Smith and told her that she needed to remove the improvements. Subsequently, she removed a portion of the perimeter fence.

On August 29, 2012, appellants filed a complaint for injunctive relief in the Circuit Court for Baltimore County, which requested that the court,

⁴ The neighbors were from a subdivision known as Waterford Preserve, which surrounds appellants’ and appellees’ properties. It is undisputed that appellants and appellees were not subject to the declaration and covenants, which apply to the Waterford Preserve Homeowners’ Association.

- A. Order the [appellees] to remove all [s]tructures from their property which were constructed in violation of the Declaration, including the fence, the sports court [s]tructures and the hot tub;
- B. Enter an Order enjoining the Smiths from constructing any additional [s]tructures as defined in the Declaration unless and until they have submitted plans and specification of same and have obtained approval of same by the Declarants. . . .

On February 14, 2013, the circuit court held a bench trial and denied appellants’ relief.⁵ The court concluded that the Covenants were valid and applicable to the property. However, it determined that appellees did not have knowledge of the Covenants and that appellants’ relief was barred by laches because Mr. Harper withheld his objection to the improvements for about three months. Appellants noted a timely appeal.

On appeal,⁶ we reviewed whether the circuit court erred in applying laches against appellants and whether the circuit court erred in failing to grant injunctive relief to appellants. We determined that the circuit court erred when it applied laches to the case because “the length of the appellant’s delay in complaining about a covenant violation must be measured from the point in time when the [appellants’] were first on notice that the [appellees] were constructing a structure which was objectionable to the [appellants].” We also determined that “the initial determination for injunction relief rests with the circuit court[,]” so we declined to rule on it. We vacated the judgment of the circuit court and remanded the case for further proceedings.

⁵ At trial, Mr. Harper testified that Ms. Harper had been diagnosed with cancer and was suffering from chronic Lyme’s disease. Ms. Harper did not testify at trial.

⁶ The unreported opinion, Michael Harper, et ux. v. Timothy Smith, et ux., was filed on January 27, 2014.

During a hearing on May 9, 2014, the circuit court denied injunctive relief to appellants, indicated that the equitable doctrine of comparative hardship applied and that an injunction would result in great disproportionate harm. Subsequently, appellants noted a timely appeal. Additional facts shall be provided, *infra*, to the extent they prove relevant in addressing the issues presented.

STANDARD OF REVIEW

Generally, the grant or denial of a request for injunctive relief rests within the sound discretion of the circuit court and therefore, appellate courts review these decisions under an “abuse of discretion” standard. *Colandrea v. Wilde Lake Cmty. Ass’n, Inc.*, 361 Md. 371, 394 (2000) (citations omitted). “[I]t is a rare instance in which a trial court’s discretionary decision to grant or to deny a preliminary injunction will be disturbed by this Court.” *State Dept. of Health & Mental Hygiene v. Baltimore County*, 281 Md. 548, 549 (1977). “Such a decision will not be disturbed on appeal unless that discretion has been abused.” *Schade v. Maryland State Bd. of Elections*, 401 Md. 1, 34 (2007) (citations omitted). The abuse of discretion standard has been described as “*discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.*” *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003) (quoting *Goodman v. Commercial Credit Corp.*, 364 Md. 483, 491–92 (2001) (citations omitted) (emphasis in original)). Furthermore, an abuse of discretion occurs when “no reasonable person would take the view adopted by the [trial] court[.]” *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312, (1997) (brackets in original)).

DISCUSSION

Appellants contend that the circuit court erred when it barred injunctive relief. Specifically, appellants argue that the appellees’ willful failure to learn about the exceptions in the Covenants bars the doctrine of comparative hardship from applying because appellees were not innocent. “Maryland courts have held that injunctive relief is entirely appropriate for violations of private covenants.” *Colandrea*, 361 Md. at 396 (citations omitted). An injunction is defined as “a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience.” *Id.* at 394 (quoting *Maryland Comm’n on Human Relations v. Downey Communications, Inc.*, 110 Md. App. 493, 515 (1996) (citation omitted)). Injunctive relief is “prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury . . . [g]enerally it is a preventive and protective remedy, *aimed at future acts*, and it is not intended to redress past wrongs.” *Carroll County Ethics Comm’n v. Lennon*, 119 Md. App. 49, 58 (1998) (quoting Black’s Law Dictionary 784 (6th ed.1990) (emphasis in original)).

As an equitable remedy, an injunction “allows for consideration of a variety of factors, including the relative inconvenience or comparative hardship to the parties.” *Falls Rd. Cmty. Ass’n, Inc. v. Baltimore County*, 437 Md. 115, 150 (2014). The doctrine of comparative hardship is available as an equitable remedy when considering injunctive relief in actions involving private covenants. *Colandrea*, 361 Md. at 396 (citations omitted). The Court of Appeals explained the doctrine of comparative hardship in *Dundalk Holding Co. v. Easter*, 215 Md. 549, 555-56 (1958), stating:

Thus it is an accepted rule that where a landowner, by innocent mistake, erects a building which encroaches on adjoining land, and an injunction is sought by the owner of the land encroached upon, the court will balance the benefit of an injunction to the complainant against the inconvenience and damage to the defendant, and where the occupation does no damage to the complainant except the mere occupancy of a comparatively insignificant part of his lot, or the building does not interfere with the value or use of the rest of his lot, the court may decline to order the removal of the building and leave the adjoining landowner to his remedy at law.

(quoting *Easter v. Dundalk Holding Co.*, 199 Md. 303, 305 (1952)). Furthermore, the Court of Appeals noted:

Firmly established are the doctrine of comparative hardship and the right to refuse a mandatory injunction to the invaded owner, if the mistake is innocent and the damages to the offender tip the equitable scales unduly against him because the invasion and the benefit to the injured owner are slight.

Dundalk, 215 Md. at 556.

In the case at bar, the validity of the Covenants were never contested and it is undisputed that the terms are unambiguous. Ms. Smith has admitted that the Covenants were valid and applied to her property. However, at the hearing on remand, she sought the equitable remedy of comparative hardship. Appellants contend that our prior decision in this case prevails and that the misunderstanding of the law did not relieve Ms. Smith from the duty to comply with the Covenants. However, we did not resolve the merits of the request for injunctive relief or whether other equitable doctrines may apply in our prior decision. At trial, Ms. Smith testified about her reaction to receiving the letter from Mr. Harper on May 2nd and stated, “I read through it, and my initial reaction was [‘]how could this be?[’] I didn’t know you could have a document that wasn’t signed by two parties that would actually restrict you. I didn’t know that.” We determined that this misunderstanding

of the law was not a defense to the enforcement of the Covenants. Thereafter, we discussed the discovery of the Covenants and what would be considered an error in the circuit court’s ruling, stating:

Moreover, the Covenants were actually discovered by the title agent who searched the title on behalf of the [appellees] at the time they purchased the property, and the existence of the Covenants was specifically brought to the attention of the [appellees] at the closing. The law does not permit property owners to avoid enforcement of restrictive covenants in their chain of title by simply failing to become fully aware of the content and legal effect of such documents.

Few restrictive covenants would have a chance of retaining any vitality after their recordation if enforceability was dependent upon subsequent purchasers of the restricted property gaining subjective awareness of the substantive language contained in the recorded documents. The typical property owner probably does not read every document in the chain of title, but the failure to do so does not provide a basis for a property owner to avoid enforcement of restrictions of record.

The circuit court, therefore, erred in finding that the [appellees] “absolutely had no knowledge of the covenants,” and to the extent the circuit court denied the appellants’ claims for relief because of the [appellees’] lack of subjective knowledge, that ruling was an error of law.

The circuit court resolved the case by applying laches and failed to exercise its discretion to grant an alternative equitable remedy to address the violation of the Covenants. Therefore, in our first opinion, we concluded that the initial determination of injunctive relief “rests within the sound discretion of the trial court.” *Schade*, 401 Md. at 331. The Court of Appeals addressed the granting of equitable remedies, stating:

It is true that in the administration of remedies and relief, courts of equity are solicitous to work out the equities and justice of a cause. The courts aim to avoid the granting of injunctions when they would produce injustice, great hardship or public or private mischief.

Easter, 199 Md. at 305 (citations omitted). When exercising the doctrine of comparative hardship, the Court of Appeals explained:

[It] is appropriate only when the violation is committed innocently or mistakenly and enforcement of the covenant would visit much greater harm on the violator compared to the slight amount of harm the beneficiary of the covenant would experience if the covenant was not enforced.

City of Bowie v. MIE Properties, Inc., 398 Md. 657, 688 (2007) (citing *Easter*, 199 Md. at 305) (footnote omitted)).

In the case at bar, the circuit court made its ruling on the bench and first considered whether the violation of the Covenants was innocent stating:

This [c]ourt does find, based on the evidence presented, the credibility of the witnesses, the facts presented and the exhibits presented, that she was—I will find that she is innocent. I do find that she did not begin her construction and violate the restrictive covenants knowingly and that it was not a willful—her violation was not a willful ignorance. In looking at the Court of Special Appeals’ Opinion . . . they clearly stated that she was on constructive notice of the existence and had constructive notice of the covenants, which I agree. However, they also stated that her—that she clearly had a misunderstanding of the law when she indicated in her testimony, that I recall, that she thought in order to be bound by a contract both sides had to apply—had to sign off. And the Court specifically, at page 13 of the Opinion stated, her misunderstanding of the law on that point is not a defense to the enforcement of the subject covenant. So, the Court of Appeals recognized that it was a misunderstanding, although not a defense to the enforcement. The question is whether or not it is supportive of her—the first prong of comparative hardship, which is innocence and this [c]ourt finds that it is. That she innocently and mistakenly violated the restrictive covenants. So I believe that that prong has been met by [Ms. Smith] in this case. . . .

The term “innocent” has been defined by the Court of Appeals as “acting in good faith.” *Urban Site Venture II Ltd. P’ship v. Levering Assocs. Ltd. P’ship*, 340 Md. 223, 232 (1995). In *Urban Site*, 340 Md. at 226, the plaintiff landowner filed suit against defendant landowners alleging a permanent encroachment by defendants’ parking garage

and sought an injunction and damages. *Id.* The circuit court awarded damages to the plaintiff and denied the injunction. *Id.* at 227. On appeal, this Court vacated and remanded. *Id.* On remand, the circuit court determined that the encroachment resulted from an innocent mistake and again did not grant plaintiff’s injunction and reduced the damages award. *Id.* Therefore, we reversed that judgment and granted the injunction. *Id.* The Court of Appeals reversed the judgment of our Court. *Id.* It referred to a string of cases where an encroachment would not be innocent and therefore, the defendants were not acting in good faith:

Usually, the defendants had notice of the location of the plaintiff’s easement and encroached despite such knowledge. *E.g.*, *Amabile v. Winkles*, 276 Md. 234 (1975) (constructive and actual notice); *Columbia Hills v. Mercantile–Safe Deposit & Trust Co.*, 231 Md. 379 (actual notice); *Hanley v. Stulman*, 216 Md. 461 (1958) (notice from prior declaration); *Lichtenberg v. Sachs*, 213 Md. 147 (1957) (notice from prior injunction); *cf.* *Chevy Chase Village v. Jagers*, 261 Md. 309 (1971); *Grubb v. Guilford Ass’n*, 228 Md. 135 (1962).

Id. at 233. The Court of Appeals noted that the circuit court, as the finder of fact, found that the defendant was unaware of the exact location of the property line and hired a surveyor to make that determination and relied on the surveyor’s work “reasonably and in good faith.” *Id.* Upon notice of the plaintiff’s objection, the defendants halted the work and rechecked the survey and placement of the building on the lot. *Id.* at 234. The circuit court determined that these actions demonstrated the defendants’ “good faith and ‘appreciable caution.’” *Id.* at 233-34. Therefore, the Court of Appeals held, “that where an encroachment results from reasonable, good faith reliance on the mistaken work of competent surveyors, the encroachment is innocent.” *Id.*

The Court of Appeals defined the term “innocent mistake” indicating:

[It] will be found that if the defendant’s act is wil[1]fully tortious or is committed with knowledge of plaintiff’s right, the courts will refuse to balance the equities or conveniences and will grant the equitable relief sought.

Amabile, 276 Md. at 242 (quotations and citations omitted). In that case, the plaintiffs instituted an action against the defendants to enjoin them from interfering with a right of way claimed to be appurtenant to the plaintiffs’ land. *Id.* at 235. The Court determined that the defendants had actual knowledge of the location of the easement and indicated:

The only opinion that would have justified them in obliterating the roadway constructed by the Winkles would have been a definite opinion as to a specific location of the easement elsewhere. In this state of uncertainty they proceeded to obstruct the route claimed by the Winkles, an act found by the chancellor to have been no innocent mistake.

Id. at 243. Thus, the doctrine of comparative hardship was not applicable because the defendants’ actions were not consistent with that of good faith or innocence. *Id.* at 244.

In *Griffin v. Red Run Lodge*, 610 F.2d 1198, 1202 (4th Cir. 1979), the United States Court of Appeals for the Fourth Circuit, applied Maryland law and discussed when a defendant is considered to be acting in good faith. *Id.* In that case, Ms. Griffin sought an injunction against the Red Lodge when it built tennis courts over the Griffins’ right of way through the Lodge’s property. *Id.* at 1200. The case was ultimately vacated and remanded to the lower court with guidance on the meaning of innocence:

To establish “innocence” defendant would have to show it reasonably had no notice of the Griffins’ rights, or that, with knowledge of those rights, it made a good faith effort to locate an improved road exactly on the path of the

easement, but strayed from that path because of a good faith error by an independent surveyor as to the boundaries of the easement.

Id. at 1202.

In the case at bar, Ms. Smith did not have actual knowledge about the Covenants but she did have constructive knowledge because she received the title insurance policy, including the Covenants, at closing. However, Ms. Smith asked her title agent about the exceptions and was informed that she did not have to comply with the restrictions because they related to a previous subdivision regarding the property. Ms. Smith expressed her desire for a property with no restrictions or covenants and that is why she agreed to purchase the property. She began construction on February 7, 2012 and did not receive the letter from Mr. Harper regarding the Covenants until May 2, 2012. Once she received the letter and spoke with Mr. Harper, all construction halted. Thus, Ms. Smith's behavior was consistent with acting in good faith.

Contrary to the appellees' assertion, the circuit court acknowledged our previous ruling and that its decision was not predicated on Ms. Smith's misunderstanding of the law.

The court addressed the second issue and stated:

The second issue to determine whether or not this [c]ourt will apply comparative hardship as an equitable remedy is to look at the comparative harm and that this [c]ourt must basically do—look at the evidence presented and determine whether or not greater harm on the violator—there's a—greater enforcement of the covenant would visit greater harm on the violator compared to the harm on the beneficiary. So, it does require a comparative analysis, not this [c]ourt stepping into the shoes of either parties, so I do it based on the evidence presented by both, Ms. Smith and M[r.] Harper, both the economic evidence and the esthetic evidence; because basically, what this [c]ourt is balancing is economics versus esthetics. That is what the analysis is. Because the testimony of—in terms of the harm to [Ms. Smith] is economic primarily. And that [the] evidence was in terms of what would

have to be done to—if this [c]ourt granted injunctive relief, which would be tearing up the sport court, tearing down the fence and tearing up the hot tub in an area where the pool is located. The other side of the scale for this [c]ourt to analyze is the esthetic factor, which is the harm to Mr. Harper, based on his testimony that . . . he wanted to be able to see the pond and that it was an [a]esthetic. There was no testimony about noise. There was no testimony about any environmental damage. There was not testimony about—it was really purely [a]esthetic and I do believe he testified that he didn’t want an urban look. And that the sports court offended him. . . . And that was the basis for his objection to the—not to the pool, not the patio, not to some fence around the pool, but to the sports court and the fencing around the sports court. And I don’t recall if he objected specifically to what he didn’t like about the hot tub, but its irrelevant for the purpose of this [c]ourt’s analysis. So, in considering the testimony of the witnesses, the photographs, the exhibits presented, and in using its discretion in determining whether an equitable remedy applies in this case as an alternative relief, this [c]ourt has done the second prong of the comparative hardship analysis, which is evaluating the hardship to both parties in terms of enforcing the injunction versus the harm to the beneficiary of the covenant. And based on the evidence presented, this [c]ourt finds that there would be greater harm to the [appellees] than to the [appellants] based on the testimony and evidence presented, and considering the entire record that this [c]ourt has reviewed and therefore will deny the Motion for Injunctive Relief, and will absolve [Ms. Smith] of violating the restrictive covenant and will not enjoin her from—and . . . I will refuse to enjoin the use or require her to remove the structures requested based on the equitable doctrine of comparative hardship, all right?

Appellants contend “[t]here is no basis in the law to say that where one party would suffer economic consequences and the other would suffer a loss of aesthetic preferences, the party standing to have economic consequences wins.” Additionally, they cite to case law in which comparative hardship has been raised as a defense because the violator spent money, the covenant holder was seeking to maintain an aesthetic quality to the development, and the court granted the covenant holder relief. However, the cases appellants’ cite are different from the case at bar.

For example, in *Chevy Chase Village*, 261 Md. at 312, the appellants, the Village, a landowner, and municipal corporation filed a complaint for injunctive relief to enjoin a resident in the subdivision from using his property as an office for the practice of medicine in violation of the covenants. At trial, the resident argued that “if he must return to his former home or remove his office to comply with the covenants, he [would] suffer great hardship and inconvenience when he has only caused negligible harm to his neighbors.” *Id.* at 320. The Court of Appeals concluded that the resident could not invoke the doctrine of comparative hardship “by characterizing the potential harm that might result to his neighbors’ homes as comparatively negligible.” *Id.* Therefore, based on the facts of the case, the resident could not invoke the doctrine of comparative hardship. *Id.* at 321.

In *Lui v. Dunnigan*, 25 Md. App. 178, 193 (1975), we granted injunctive relief in favor of the property owners because the resident, who was a doctor, testified that he spent an additional amount of money to establish a home office after he was aware that the property owners were opposed to his home practice because of the restrictive covenants. Therefore we concluded, that “[t]he appellees’ substantial interest in preserving the residential integrity of their community is not outweighed by appellants’ desire to establish a practice in his home.” *Id.* at 193-94.

In *Namleb Corp. v. Garrett*, 149 Md. App. 163, 167 (2002), subdivision lot owners filed a complaint for injunctive relief against a neighbor to enjoin construction of an access road. We held that the doctrine of comparative hardship did not apply because the neighbor was aware of the lot owners objection to the propose construction. *Id.* at 175.

In the case at bar, the circuit court indicated it reviewed the entire record and that based on the testimony and evidence, the appellees were innocent and mistaken when they constructed the improvements and that they would suffer a greater hardship by the injunction. It reviewed and weighed several facts in rendering its determination, including the appellants' desire to have a view of the pond and the amount of money it would cost for appellees' to remove the improvements. Accordingly, we perceive no error in the circuit court's ruling.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE
COUNTY IS AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**