IN THE SUPREME COURT OF THE STATE OF NEVADA

LEISA ERIN WHITTUM, AN INDIVIDUAL,
Appellant,
vs.
DESERT PARK AT GREEN VALLEY HOMEOWNERS ASSOCIATION, INC.,
Respondent.

No. 49763

FILED

JAN 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying motions for preliminary injunctions in a homeowners' association action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Respondent Desert Park at Green Valley Homeowners' Association, Inc. (HOA) filed a complaint against proper person appellant Leisa Erin Whittum for alleged violations of the association's covenants, conditions, and restrictions (CC&Rs). The HOA asserted that, without its Architectural Committee's approval, Whittum removed the irrigation system in her front yard and replaced the grass with rock for a desert landscape, and she refused to permit the HOA's landscaping contractor to enter upon her property to replace and maintain the landscaping. The district court granted the HOA's request for a preliminary injunction, in accordance with which the HOA has installed new landscaping and maintained it at the HOA's expense.

Thereafter, on April 12, 2007, Whittum moved for a preliminary injunction to prevent the HOA's board, agents, and

representatives from holding rallies in front of her home and blocking her driveway. Whittum claimed that three "anti-Whittum" rallies had been held in front of her house and that her driveway had been deliberately blocked on September 7, 2006, September 11, 2006, and March 9, 2007. In support of her allegations regarding the March 9 incident, Whittum submitted a photograph of a white truck allegedly parked in front of her driveway.

Also on April 12, 2007, Whittum separately moved for a second preliminary injunction to prevent the HOA's board, agents, and representatives from removing or threatening to remove her exterior lights. Whittum alleged that, in 2005, she had installed exterior motion lights above her garage door as a result of vandalism to her car and that she thereafter recorded, on her surveillance system, HOA agents attempting to remove her exterior lights. Included with her second motion was a letter from the HOA's management company notifying her of an April 11, 2007 hearing regarding her alleged violation of a restrictive rule prohibiting unapproved exterior lighting that reflected on any other lot or on the common area. The letter stated that Whittum's failure to attend the hearing or make other arrangements would constitute a waiver of her right to be heard on this issue and could result in a fine.

The district court denied both motions. In its order, however, the court directed that the HOA "should not block [Whittum's] driveway in performing landscape maintenance upon [Whittum's] Property." Whittum has appealed the district court's order.

In her civil proper person case appeal statement, Whittum alleges that an HOA representative lied at a district court hearing on her motions by claiming that Whittum was fined for her exterior lighting

violations. She alleges that she never received any written notification of fines being assessed as a result of the exterior lighting that she installed in March 2005.[1]

We have previously recognized that a "party seeking the issuance of a preliminary injunction bears the burden of establishing (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy."[2] The decision whether to grant a preliminary injunction is addressed to the district court's sound discretion, and its decision will not be disturbed on appeal absent an abuse of that discretion.[3]

Here, having reviewed Whittum's civil appeal statement and the record in light of this standard, we perceive no abuse of discretion.[4]

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[1]In her civil appeal statement, Whittum also indicates that her motions should have been referred to a jury. Although we need not consider this argument because it was not raised below, Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981), we note that Whittum had no absolute right to a jury trial with respect to her motions for preliminary injunctions. See NRCP 38 (governing jury trial requests); NRCP 65(c) (explaining when a preliminary injunction hearing may be combined with a trial on the merits of a claim so as to preserve jury trial rights).

[2]S.O.C., Inc. v. The Mirage Casino-Hotel, 117 Nev. 403, 408, 23 P.3d 243, 246 (2001).

[3]Id. at 407, 23 P.3d at 246; Dangberg Holdings v. Douglas Co., 115 Nev. 129, 142-43, 978 P.2d 311, 319 (1999); Number One Rent-A-Car v. Ramada Inns, 94 Nev. 779, 587 P.2d 1329 (1978).

[4]Although the HOA failed to file a response as directed, we can identify no basis on which to disturb the district court's discretionary

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The CC&Rs prohibit homeowners from installing "spotlights, floodlights or similar type high intensity lighting" that in any way reflect light on another lot or the common area, without first obtaining the HOA Board's written authorization, which Whittum admittedly did not obtain. Additionally, as Whittum pointed out in her civil appeal statement, she has not been fined by the HOA for any alleged exterior lighting violations, and despite her allegations of past attempts by HOA agents to physically remove her exterior lights, Whittum did not demonstrate that the HOA would continue to attempt to physically remove her lights or that any such attempts would cause irreparable harm for which monetary damages would not suffice. Finally, to the extent that Whittum challenges the district court's order because it did not enjoin the HOA from imposing future fines or blocking her driveway, she has failed to show that reversal is warranted, given that no fine has been imposed and the district court directed the HOA to not block her driveway. Accordingly, as the district court did not abuse its discretion in denying Whittum's motions for preliminary injunctions, we affirm the district court's order.

It is so ORDERED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

. . . continued

decision that Whittum failed to demonstrate the need for either preliminary injunction. See S.O.C., 117 Nev. at 407, 23 P.3d at 246.

cc: Hon. Kenneth C. Cory, District Judge
Leisa Erin Whittum
Santoro, Driggs, Walch, Kearney, Holley & Thompson
Eighth District Court Clerk