

**Fannon v. Estate of June Scheele, Opinion No. 7332 (February 8, 2019)**

This case deals with the interpretation of property restrictions, one found in a subdivision declaration and the other in a deed's greenbelt covenant. Between 1984 and 1986 the Scheele Solid Subdivision was developed in Wasilla. It consisted of seven lots with Lot 1, Block 1 having a water well historically supplying the other lots through a subdivision water system.

Covenants were adopted for the subdivision which prohibited using the lots for: (1) residential housing; (2) the sale of alcoholic beverages; (3) junkyards, dumps, or rubbish disposal or storage; and (4) churches or places of worship. In 1998 Lot 1, Block 1 was conveyed to a new owner who signed an agreement assuming responsibility for the well and water system. The quitclaim deed for the lot was signed by the buyer and made subject to assumption of the water system obligations and the following restrictive greenbelt covenant:

**Allowed Uses.** Lot 1, Block 1 Schelle Solid Subdivision may not be used for any purpose other than use as a greenbelt and use for continued maintenance and operation of the water system located thereon. For the purposes of this covenant, "Greenbelt" means maintenance of trees and natural cover in those areas and of the kind, as presently exist. In interpreting this covenant, a court should resolve doubts in meaning against the free use of land, rather than in favor of the free use of land.

In 2014 Link Fannon acquired the lot, along with the well and water system, from an owner subsequent to the 1998 transaction. The deed to Fannon made no mention of the Greenbelt Covenant. Fannon intended to increase the well's production to service at least another ten acres of neighboring commercial property and to sell "bulk water" to the Department of Transportation for a Parks Highway upgrade. Fannon then began clear-cutting trees on the lot.

The estate brought suit against Fannon for violating the Greenbelt Covenant's terms; the estate sought damages, a preliminary injunction against further clear-cutting, and an affirmative injunction to restore trees. The superior court entered a preliminary injunction barring further tree clearing but required the estate to post a \$60,000 bond before the injunction took effect. When the estate was unable to do so, the preliminary injunction was lifted and Fannon resumed clear-cutting trees on the lot.

The parties filed cross motions for summary judgment. The superior court granted the estate's motion for partial summary judgment and denied Fannon's. Finding that

neither covenant presented any ambiguity, the court limited its inquiry to the plain language of the restrictive covenants. The court also found that the Declaration was not intended to be “the exclusive source of restrictions on the lots” and thus did not prohibit lot owners from imposing subsequent restrictions upon their land and that the Declaration and the Greenbelt Covenant did not conflict. The court found that Fannon had violated the Greenbelt Covenant and entered a permanent injunction preventing Fannon from conducting activities outside of its scope.

The partial summary judgment ruling narrowed the issues, and the resulting trial focused almost entirely on damages and affirmative injunctive relief. The superior court found that the estate “failed to establish damages” or to provide a reason “why the greenbelt should be restored.” It confirmed the permanent injunction prohibiting violation of the Greenbelt Covenant.

In review, the Supreme Court points out that the interpretation of a covenant is a question of law to which it applies its independent judgment. As authority, it cites HP Ltd. Partnership v. Kenai River Airpark, LLC, 270 P.3d 719 (Alaska 2012). Although for procedural issues it finds that Fannon did not preserve the argument that the Greenbelt Covenant is ambiguous, it approves the determination by the superior court that neither the declaration or the Greenbelt Covenant are ambiguous. It further states that where a covenant is unambiguous, a court is limited to applying the words of the agreement and is prohibited from considering extrinsic evidence regarding the parties’ intent. (This is contrary to the rule in contract cases where a court could look to relevant extrinsic evidence without determining that it was ambiguous. Miller v. Fowler, 424 P.3d 306 (Alaska 2018).

The Supreme Court further determines that the Declaration does not delineate an express intent to limit the subdivision to commercial use only as Fannon contended. The declaration makes it clear that the subdivision is non-residential, but does not prohibit a lot’s use as a greenbelt. Nor does it address the water system on Lot 1, Block 1. By its plain language, the Greenbelt Covenant merely adds a new restriction on Lot 1, Block 1 - a restriction on which the Declaration is silent. The superior court’s summary judgment is affirmed.