

STATE OF MICHIGAN
COURT OF APPEALS

SABRENA POLE, SUSAN BELLER, CAMILLE
BUNCHECK, TONY CALIKOV, LANCE
HENDRIXSON, ROSEMARY MAHON, and
KIM MIDFELT,

UNPUBLISHED
August 7, 2012

Plaintiffs-Appellees,

and

SHAWNA GURGUL, PAUL GURGUL, and
VALENTIA IBRAHIM,

Plaintiffs,

v

No. 304001
Macomb Circuit Court
LC No. 2010-002038-CH

STERLING WOODS CONDOMINIUM
ASSOCIATION,

Defendant-Appellant.

Before: K.F. KELLY, P.J., and WILDER and BOONSTRA, JJ.

PER CURIAM.

Defendant Sterling Woods Condominium Association appeals as of right from the opinion and order granting summary disposition in favor of plaintiffs. For the reasons stated in this opinion, we vacate the trial court's order to the extent it requires the Association to: (1) hold a special election for the purpose of removing the 2010 board of directors, and (2) hold a meeting for the purpose of approving the Association's 2010 and 2011 budgets. In other respects, we affirm.

I. FACTS AND PROCEDURAL HISTORY

The dispute in this case centers on the process for approving Sterling Woods Condominium Association's (the Association) annual budget and the levying of assessments. Plaintiffs are all co-owners of condominium units within Sterling Woods Condominium. Sterling Woods Condominium was created on June 9, 2000, with the recording of the Master Deed. Recorded with the Master Deed is a document entitled "Condominium Bylaws" (2000

Bylaws) which the Master Deed describes as being the “bylaws setting forth the substantive rights and obligations of the Co-owners and required by [MCL 559.103(8)] to be recorded as part of the Master Deed.” The 2000 Bylaws provide that Sterling Woods Condominium is to be administered by an Association of co-owners, and the Association is to be governed by a board of directors.

Article II, section 3 of the 2010 Bylaws provides for the levying of assessment in accordance with an annual budget. Specifically, Article II, section 3 provides that the Association is required to “establish an annual budget in advance for each fiscal year and such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium Project. . . .” Article II, section 3(a)(2) provides, however, that the co-owners must approve the proposed budget “by an affirmative vote of at least two-thirds of all Co-owners of Units in the Project, before an annual assessment may be levied or collected by the Association.”

On February 26, 2010, the developer recorded a document entitled “Consolidating Master Deed,” which states in part: “This Consolidating Master Deed supersedes and replaces the Sterling Woods Condominium Master Deed and Exhibit A, the Condominium Bylaws” A new set of Condominium Bylaws (2010 Bylaws) was recorded with the Consolidating Master Deed. As the 2000 Bylaws did, the 2010 Bylaws provides for the levying of assessment in accordance with an annual budget. However, the 2010 Bylaws removed the requirement that co-owners approve the annual budget before the Association can levy and collect assessments.

On May 11, 2010, plaintiffs filed a complaint against the Association for injunctive relief and accounting. According to plaintiffs, a board of directors was elected in August 2009, and upon being elected, the board began making substantial changes to the way the condominium complex was operated. Specifically, plaintiffs alleged that the board failed to obtain co-owner approval of the 2010 budget, was attempting to forgo approval of the 2011 budget, and was not maintaining a ten percent reserve fund as required under the 2000 Bylaws. Despite not having a properly approved budget, the Association spent money, incurred debt, and attempted to levy assessments against the co-owners. Further, plaintiffs stated that the board continuously refused to allow plaintiffs permission to inspect the Association’s financial documents as provided for in the 2000 Bylaws. Finally, plaintiffs stated that the Association refused to hold a special meeting pursuant to a petition signed by the co-owners for the purpose of removal and replacement of the board of directors.

On February 14, 2011, the Association filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). The Association argued that the Master Deed and 2000 Bylaws were superseded by the Consolidating Master Deed and 2010 Bylaws, and that, therefore, plaintiffs’ claims were barred because they had no right to seek co-owner approval of the annual budget. Further, the Association argued that plaintiffs’ claims were moot to the extent plaintiffs sought co-owner approval of the 2010 budget and replacement of the board of directors, because the 2010 budget expired, and a new board of directors was elected in August 2010.

Plaintiffs responded and argued that Consolidated Master Deed and 2010 Bylaws were void because they were adopted in violation of the originally recorded Master Deed.

Specifically, plaintiffs argued that Article XII, section C of Master Deed only allowed the developer to make amendments to the Master Deed and 2000 Bylaws that do not materially affect the rights of any co-owner. Otherwise, the amendments had to be approved by 66 2/3 percent of all co-owners. Plaintiffs maintained that, because the Consolidated Master Deed and 2010 Bylaws materially affected the rights of all the co-owners and were not approved by 66 2/3 percent of all co-owners, they were void.

On April 21, 2011, the trial court issued an opinion and order denying the Association's motion for summary disposition and granting summary disposition in favor of plaintiffs. The trial court determined that removal of the co-owner approval requirement was a material alternation of the co-owners' rights provided for in the Master Deed and 2000 Bylaws; therefore, the amendment had to be approved by 66 2/3 percent of all co-owners. Because the developer failed to properly amend the Master Deed and 2000 Bylaws, the trial court concluded that the Consolidating Master Deed and 2010 Bylaws were invalid and void. The trial court granted the injunctive relief requested by plaintiffs and ordered the Association to: (1) hold a special meeting for the purpose of approving the 2010 and 2011 budgets, (2) hold a special meeting for the purpose of removing and replacing the board of directors elected in August 2009, (3) provide plaintiffs with a copy of the Association's financial documents for inspection, (4) provide plaintiffs with evidence that the Association was maintaining a ten percent reserve fund, and (5) provide an accounting of expenses and liabilities incurred by the Association while it operated without a properly approved budget. The Association now appeals.

II. THE CONSOLIDATING MASTER DEED AND 2010 BYLAWS

On appeal, the Association argues that the trial court erred when it determined the Consolidating Master Deed and 2010 Bylaws were void. A trial court's decision to grant summary disposition is reviewed de novo. *Coblentz v Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). Review de novo is also appropriate because the issue involves the interpretation of contractual language, which is an issue of law. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463, 469; 663 NW2d 447 (2003).

The Association argues that the trial court erred because Article IX, section D of the Master Deed allows the developer to "eliminate or modify any portions of the Condominium Documents which are inapplicable due to passage of time, change in circumstances, or other appropriate consideration."¹ Further, Article IX, section E states that all co-owners "shall be

¹ The Association also argues that Article IX, sec D is consistent with MCL 559.190(3), which provides as follows:

The developer may reserve, in the condominium documents, the right to amend materially the condominium documents to achieve specified purposes, except a purpose provided for in subsection (4). Reserved rights shall not be amended except by or with the consent of the developer. If a proper reservation is

deemed to have irrevocably and unanimously consented to such amendments to this Master Deed as may be proposed by the Developer” Therefore, even if co-owner approval was needed, the co-owners are deemed to have consented to the amendment. However, a review of the record reveals that Association never raised this argument at the trial court, nor was the issue addressed or decided by the trial court. Rather, the only argument presented by the Association was that the Master Deed’s provisions regarding amendments only applied to the Master Deed, not the Consolidating Master Deed. Because the issue was never addressed below it is unpreserved and need not be addressed on appeal. *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).

Further, a review of Article IX reveals that the Association’s argument is without merit. Article IX is titled “OPERATIVE PROVISIONS” and provides that “[a]ny expansion, contraction or exercise of the convertibility rights in the Condominium pursuant to Articles VI, VII or VIII above shall be governed by the provisions as set forth below.” The amendments to the 2000 Bylaws were not related to expansion, contraction or exercise of the convertibility rights under Articles VI, VII or VIII. Therefore, Article IX section D and E have no application. Rather, the amendment to the 2000 Bylaws is governed by Article XII of the Master Deed, which is entitled “AMENDMENT AND ASSIGNMENT.” Article XII of the Master Deed provides in relevant part:

This Master Deed and the Condominium Subdivision Plan (Exhibit “B” to said Master Deed) may be amended with the consent of sixty-six and two-thirds percent (66-2/3%) of all Co-owners, except as hereinafter set forth:

* * *

C. Pursuant to Section 90(1) of the Act, the Developer reserves the right, on behalf of itself and on behalf of the Association, to amend this Master Deed and the Plans attached as Exhibit “B”, without the consent of any Co-owner, mortgagee, or any other person, in order to correct survey or other errors made in such documents, or for any other purpose, and to make such other amendments to such instruments and to the Condominium Bylaws attached hereto as Exhibit “A” which do not materially affect the rights of any Co-owner or mortgagee in the Project, including, but not limited to, amendments for the purpose of facilitating conventional mortgage loan financing for existing or prospective Co-owners and to enable the purchase of such mortgage loans by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association and/or any other agency of the federal government or the State of Michigan or modifying the type or size of any unsold Unit. If the proposed amendment would materially alter or change the rights of a Co-owner or mortgagee, then the consent of the Co-owner and/or mortgagee shall be required as provided above. This reservation of rights to

made, the condominium documents may be amended to achieve the specified purposes without the consent of co-owners or mortgagees.

amend the Master Deed and the Plans attached as Exhibit “B” shall remain effective for two years after the end of the Development and Sales Period.^[2]

The Association argues that the amendment to the 2000 Bylaws was proper under Article XII, section C because it significantly facilitates mortgage loan financing. This argument was never raised or addressed below and is therefore unpreserved. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Further, even if we accept the Association’s argument, the amendment would still require co-owner consent if it materially alters the rights of all the co-owners.

Next, the Association argues removing the requirement that co-owners approve the annual budget was not a material alteration or change of the co-owners’ rights. In support, Association cites to the 2000 Bylaws, Article II, section 3(c), which provides as follows:

(c) The annual assessments as so determined and levied shall constitute a lien against all Units as of the first day of the fiscal year to which the assessments relate. The minimum standard required by this Section may prove to be inadequate for this Project. The Association of Co-owners should carefully analyze the Condominium Project to determine if a greater amount should be set aside or if additional reserve funds should be established for other purposes. Upon adoption of an annual budget by the Board of Directors, copies of said budget shall be delivered to each Co-owner and the assessment for said year shall be established based upon said budget, although the failure to deliver a copy of the budget to each Co-owner shall not affect the liability of any Co-owner for any existing or future assessments, or in any way diminish the lien against the Co-owner’s Unit. *Should the Association at any time determine, in its sole discretion: (1) that the assessments levied are or may prove to be insufficient (A) to pay the costs of operation and management of the Condominium, (B) to provide*

² This provision of the Master Deed is consistent with MCL 559.190, which provides in relevant part:

(1) The condominium documents may be amended without the consent of co-owners or mortgagees if the amendment does not materially alter or change the rights of a co-owner or mortgagee and if the condominium documents contain a reservation of the right to amend for that purpose to the developer or the association of co-owners. An amendment that does not materially change the rights of a co-owner or mortgagee includes, but is not limited to, a modification of the types and sizes of unsold condominium units and their appurtenant limited common elements.

(2) Except as provided in this section, the master deed, bylaws, and condominium subdivision plan may be amended, even if the amendment will materially alter or change the rights of the co-owners or mortgagees, with the consent of not less than 2/3 of the votes of the co-owners and mortgagees.

replacements of existing Common Elements, (C) to provide additions to the Common Elements not exceeding Thirty Thousand Dollars (\$30,000.00) annually for the entire Condominium Project, or (2) that an emergency exists, the Association shall have the authority to increase the general assessment or to levy such additional assessment or assessments as it shall deem to be necessary. [Emphasis added.]

Relying on Article II, section 3(c), the Association argues that the co-owners' rights were not materially altered because the board of directors has always had the authority to levy assessments without co-owner approval. Again, this argument was never presented to the trial court and is therefore unpreserved. *Fast Air, Inc*, 235 Mich App at 549. However, because the trial court concluded that the amendment materially altered the rights of the co-owners, we consider resolution of the issue necessary to a proper determination of the case. *Laurel Woods Apts v Roumayah*, 274 Mich App 631, 640; 734 NW2d 217 (2007).

By itself, Article II, section 3(c) provides support for the Association's argument. However, the Master Deed and 2000 Bylaws are governed by the rules of contract interpretation. See *Rossow v Brentwood Farms Dev*, 251 Mich App 652, 656; 651 NW2d 458 (2002). And as a general rule, a contract will be construed as a whole. *Smith v Smith*, 292 Mich App 699, 702; ___ NW2d ___ (2011). Thus, Article II, section 3(c) must be read in conjunction with Article II, section 3(a), which requires the budget be approved by the co-owners. Section 3(a)(2) specifically states that the annual budget must be approved by the co-owners "before an annual assessment may be levied or collected by the Association." To accept the Association's interpretation would render Article II, section 3(a)(1)-(3) nugatory. Such an interoperation must be avoided. *Woodington v Shokoohi*, 288 Mich App 352, 374; 792 NW2d 63 (2010).

A more reasonable interpretation that harmonizes the competing provisions is that co-owner approval of the annual budget is required as provided for in Article II, section 3(a) of the 2000 Bylaws. If the assessments levied in accordance with the approved budget prove to be insufficient to cover the condominium project's operational costs, the Association then has the authority to levy additional assessments as necessary. The starting point; however, must be a co-owner approved budget to determine what maintenance and improvements will be undertaken by the Association. This provides a check on the Association's power and only allows it to undertake projects that were budgeted for.

By removing the requirement that the co-owners approve the annual budget, the developer took away the co-owners' check on the Association's power. The Association is free to undertake whatever projects it desires and levy assessments on the co-owners without restriction. Therefore, the amendment materially altered the rights of the co-owners and needed to be approved by two thirds of all co-owners as required by the Master Deed.

Next, the Association argues that the trial court erred when it concluded the Consolidating Master Deed was void because the 2000 Bylaws contain a severability clause. This issue; however, was never presented to or addressed by the trial court. Because the issue was never addressed below it is unpreserved and we decline to address it for the first time on appeal. *Booth Newspapers, Inc*, 444 Mich at 234.

III. INJUNCTIVE RELIEF

The Association argues that the order for injunctive relief was inappropriate in this case. This Court reviews a trial court's decision to grant or deny an injunction for an abuse of discretion. *Kernen v Homestead Development Co*, 232 Mich App 503, 509-510; 591 NW2d 369 (1998). An abuse of discretion exists when the decision is outside the range of principled outcomes. *Detroit Fire Fighters Ass'n v Detroit*, 482 Mich 18, 28; 753 NW2d 579 (2008).

First, the Association argues that injunctive relief was inappropriate because the relief requested was moot. We agree in part. An issue is moot when an event occurs that renders it impossible for the reviewing court to grant relief. *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 472; 761 NW2d 846 (2008). Plaintiffs filed their complaint on May 11, 2010, and requested that the trial court issue an order requiring the Association to hold a special election for the purpose of removing the board of the directors. On August 3, 2010; however, the Association held its annual meeting and a new board was elected. The election of a new board rendered it impossible for the trial court to grant the relief requested by plaintiffs.

Plaintiffs also requested that the trial court issue an order requiring the Association to hold a meeting for the purpose of approving the 2010 and 2011 budgets. On August 3, 2010, the Association held its annual meeting and adopted the 2011 budget. Thus, by the time the trial court granted summary disposition, the Association was no longer operating under the 2010 budget. Expiration of the 2010 budget renders the matter moot as no useful declaration or relief can be made. See *Bishop v Governor of Maryland*, 281 Md 521, 524-525; 380 A2d 220 (1977); see also *Sullivan v Town of Hampton Bd of Selectmen*, 153 NH 690; 692; 917 A2d 188 (2006).

Next, the Association argues that injunctive relief was inappropriate because the trial court failed to hold an evidentiary hearing. The Association concedes that a trial court is not required to hold an evidentiary hearing “[i]f a party’s entitlement to the injunction can be established in a particular case by argument, brief, affidavits or other forms of nontestamentary evidence” *Campau v McMath*, 185 Mich App 724, 724; 463 NW2d 186 (1990). According to the Association, an evidentiary hearing was necessary due to the complexities of the allegations in plaintiffs’ unverified complaint. The Association never requested an evidentiary hearing at the trial court. Therefore the issue is unpreserved. *Fast Air, Inc*, 235 Mich App at 549. Further, the Association makes no reference to the specific complexities would require an evidentiary hearing. Nor does the Association present any other argument or authority to support its position. A party may not merely announce his position and leave it to the court to discover and rationalize the basis for his claims, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), nor may he give issues cursory treatment with little or no citation of supporting authority. *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). The Association’s failure to properly address the merits of the asserted error constitutes an abandonment of the issue. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626; 750 NW2d 228 (2008).

The Associations’ final argument in regards to the injunctive order is that it does not meet the requirement of MCR 3.310(C). We agree. MCR 3.310(C) provides in relevant part: “An order granting an injunction or restraining order (1) must set forth the reasons for its issuance; (2)

must be specific in terms; (3) must describe in reasonable detail, and not by reference to the complaint or other document, the acts restrained; . . .” In its order, the trial court discusses the allegations contained in plaintiffs’ complaint and simply states “plaintiffs have demonstrated they are entitled to the injunctive relief requested.” Thus, without reference to plaintiffs’ complaint, is it difficult to ascertain the specific injunctive relief that was granted. Nonetheless, any error in referencing the complaint is harmless and does not warrant relief from this Court. MCR 2.613(A).

IV. ACCOUNTING

The Association’s final argument is that the trial court erred when the trial court order the Association to provide an accounting of all expenses and liabilities incurred while the Association operated without a properly approved budget. The Association argues that the trial court should have dismissed plaintiffs’ action for accounting because plaintiffs failed to state a cause of action in their complaint, and because plaintiffs could have obtained the information through discovery. These arguments were never presented to or addressed by the trial court.³ Because the issues were never addressed below, they are unpreserved and we decline to address them for the first time on appeal. *Booth Newspapers, Inc*, 444 Mich at 234.

V. CONCLUSION

For the reasons set forth in this opinion, we conclude that removing the requirement that co-owners approve the annual budget was a material alteration or change of the co-owners’ rights. Therefore, the trial court properly granted summary disposition in favor of plaintiffs. However, we vacate the trial court’s order to the extent that it requires the Association to: (1) hold a meeting for the purpose of approving the 2010 and 2011 budget, and (2) hold a special election for the purpose of removing the board of directors elected in August 2009; as the requested relief is moot. We affirm in all other respects. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Mark T. Boonstra

³ The Association did argue that accounting was inappropriate at the trial court. However, the basis for its argument was that plaintiffs were provided with a financial statement before the 2010 annual meeting, and Association’s books were open to inspection upon reasonable notice.