NO. A-23-000836

IN THE NEBRASKA COURT OF APPEALS

HILLSBOROUGH HOMEOWNERS ASSOCIATION, INC.,
PLAINTIFF/APPELLEE

v.

PAUL KARNISH and CONNIE KARNISH,
DEFENDANTS/APPELLANTS

On Appeal from the District Court of Douglas County, Nebraska
The Honorable Leigh Ann Retelsdorf
Case Number CI 20-6962

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Treatises	**Page(s)**
20 Am. Jur. 2d Covenants, §229 at 755 (2005)	8, 16, 17
21 C.J.S. Covenants §75 (2006)	8, 14
13 Williston on Contracts §39:36 (4th ed.) (May 2021 Updated)	9, 15
17B C.J.S *Contracts §745* (July 2021 Update)	16

STATEMENT OF JURISDICTION

"A judgment rendered or final order made by the district court may be reversed, vacated, or modified for errors appearing on the record." Neb. Rev. Stat. § 25-1911 (Reissue 2016). "The proceedings to obtain a reversal, vacation, or modification of judgments and decrees rendered or final orders made by the district court, including judgments and sentences upon convictions for felonies and misdemeanors, shall be by filing in the office of the clerk of the district court in which such judgment, decree, or final order was rendered, within thirty days after the entry of such judgment, decree, or final order, a notice of intention to prosecute such appeal signed by the appellant or appellants or his, her, or their attorney of record… ." Neb. Rev. Stat. § 25-1912(1) (Cum. Supp. 2022). Final orders which may be vacated, modified, or reversed include "[a]n order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment[.]" Neb. Rev. Stat. § 25-1902(a) (Cum. Supp. 2022). "The inherent power of a district court to vacate or modify its judgments or orders during term may also be exercised after the end of the term, upon the same grounds, upon a motion filed within six months after the entry of the judgment or order." Neb. Rev. Stat. § 25-2001(1) (Reissue 2016).

The district court's August 3, 2022, Order (T66-72) denying Appellant's request for injunctive relief, and its October 6, 2022, Order (T105) denying Appellant's Motion for New Trial, along with the district court's September 26, 2023, Order (T132) denying Appellee's prior request of attorney's fees, constituted a final appealable order, as all three orders operated to resolve all issues raised in the matter.

Appellant filed its Notice of Appeal October 20, 2023, which was within thirty (30) days from the district court's September 26, 2023, order.

STATEMENT OF THE CASE

(1) The kind of action or nature of the case. The Appellees are the owners of Lot 20, Hillsborough, an Addition to the City of Omaha, as surveyed, platted and recorded in Omaha, Nebraska. (E38). Appellees' Lot is subject to Hillsborough Homeowners Association ("Association") Declaration of Covenants and Restrictions ("Covenants"), with the particular covenant at issue stating: "No

business activities of any kind whatsoever shall be conducted on any Lot; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof." (E40, p.3).

Appellant filed its Complaint for Injunctive & Declaratory Relief in the District Court of Douglas County, Nebraska, on September 1, 2020 (T1-3), seeking to enjoin Appellants from operating a daycare center out of their home in violation of the Covenants. Appellants filed their Answer and Affirmative Defenses on October 17, 2020, claiming that the Appellant had knowledge of the Covenant violation for several years without taking action to enforce same, and requested that the district court dismiss the action at Appellant's cost. (T7-8). Trial was held on May 9, 2021, and the district court entered an Order on August 3, 2022 (T66-71), wherein the Appellant's request for injunctive relief was denied. Additionally, the district court instructed the parties to set the matter for hearing regarding Appellees' request for costs to be assessed against Appellant. (T70).

The Appellant filed a Motion for New Trial on August 15, 2022 (T73-74). Prior to the hearing on Appellant's Motion for New Trial, Appellant, on September 6, 2022, filed a Notice of Appeal (T82-83) of the district court's August 3, 2022, Order denying injunctive relief. A hearing on Appellant's Motion for New Trial was held on September 19, 2022, and Appellant's motion was denied by the district court in an Order dated October 6, 2022 (T105).

On October 26, 2022, this Court summarily dismissed the Appellant's appeal filed on August 3, 2022, without an opinion. The Appellant again file a Notice of Appeal to this Court of the district court's orders of August 3, 2022, and October 6, 2022 (T109-110). On November 16, 2022, this Court issued an Order dismissing the Appellant's appeal filed on October 6, 2022, holding that because the district court's order of August 3, 2022, provided for a later hearing on the Appellee's motion for costs, it was not a final appealable order (T125).

The district court then entered an Order on September 26, 2023 (T132), denying the Appellees their prior request for attorney's fees.

(2) The issues actually tried in the court below. The Appellant contended that the Appellees violated the Covenants by operating a daycare out of their home (T1-2). The Appellees claimed that the Appellant knew for years that Appellees were operating the daycare and did nothing to enforce the Covenants until a neighbor complained. (T7-8). The sole issue before the district court was whether the Appellant's right to enforce the Covenants against Appellees, while the Appellees violated the Covenants for several years, was lost by waiver or acquiescence of the Appellees' activity (T67-68).

(3) How the issues were decided and what judgment or decree was entered by the trial court. The district court issued its August 3, 2022, Order denying the Appellant's Complaint for injunctive relief, finding that the Appellees had met their burden of showing general and multiple violations of the Covenants from 2013 to 2019 without protest (T66-71). The district court overruled Appellant's Motion for New Trial on October 6, 2022 (T105), and the district court denied the Appellees' request for attorney's fees on September 26, 2023 (T132).

(4) The scope of the appellate review. An action for injunction sounds in equity. On appeal from an equity action, an appellate court tries factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the conclusion reached by the trial court. *Lambert v. Holmberg*, 271 Neb. 443, 712 N.W.2d 268 (2006).

ASSIGNMENTS OF ERROR

(1) The district court erred in denying the Appellant's request for injunctive relief.

(2) The district court erred in admitting evidence of businesses being operated out of multiple residences within the Association's jurisdiction.

PROPOSITIONS OF LAW

(1) An action for injunction sounds in equity. On appeal from an equity action, an appellate court tries factual questions de novo on the record and,

as to questions of both fact and law, is obligated to reach a conclusion independent of the conclusion reached by the trial court. *Lambert v. Holmberg*, 271 Neb. 443, 712 N.W.2d 268 (2006).

(2) While it is true the right to enforce restrictive Covenants may be lost by waiver or acquiescence, whether there has been such a waiver or acquiescence depends upon the circumstances of each case. *Pool v. Denbeck*, 196 Neb. 27, 241 N.W.2d 503 (1976); *See also*, *Meierhenry v. Smith*, 208 Neb. 88, 302 N.W.2d 365 (1981).

(3) Plaintiff with knowledge of construction on neighboring property in violation of restrictive covenant during Plaintiff's negotiation of purchase of property held to have waived any right he had to enforce restrictive covenant. *Egan v. Catholic Bishop of Lincoln*, 219 Neb. 365, 363 N.W.2d 380 (1985).

(4) Plaintiff must show evidence of other covenant violations within the Association, which evidence is a predicate to the use of the six-criteria test for waiver under *Pool*. *Hoff v. Ajlouny*, 14 Neb. App 23, 703 Neb. App. 645 (2005).

(5) Restrictive covenants are to be construed so as to give effect to the intentions of the parties at the time they agreed to the covenants. If the language is unambiguous, the covenant shall be enforced according to its plain language, and the covenant shall not be subject to rules of interpretation or construction. *Southwind Homeowner's Association v. Burden*, 283 Neb. 522, 810 N.W.2d 714 (2012).

(6) Mere acquiescence in the violation of a restrictive covenant does not constitute an abandonment thereof, so long as the restriction remains of any value, and waiver does not result unless there have been general and multiple violations without protest. *Farmington Woods Homeowners Ass'n v. Wolf*, 284 Neb. 280, 817 N.W.2d 758 (2012), *20 Am. Jur. 2d Covenants*, §229 at 755 (2005).

(7) The enforcement of valid restrictive covenants may be denied only when the non-compliance is so general as to indicate an intention or purpose to abandon the condition." *Farmington Woods Homeowners Ass'n v. Wolf*, 284 Neb. 280, 817 N.W.2d 758 (2012), citing *21 C.J.S. Covenants §75* (2006).

(8) Injunction is a proper remedy to prevent violation of a restrictive covenant. A remedy at law may be inadequate, may result in a multiplicity of actions, and may permit the subversion of the plan of improvement and

development to continue. *Pool v. Denbeck*, 196 Neb. 27, 241 N.W.2d 503, (1976) citing *Reed v. Williamson*, 164 Neb. 99, 82 N.W.2d 18 (1957).

(9) A party to a written contract can waive a provision of that contract by conduct despite the existence of a so-called antiwaiver provision; that the nonwaiver provision itself, like any other term in the contract, is subject to waive by agreement or conduct. *13 Williston on Contracts §39:36* (4th ed.) (May 2021 Updated).

(10) Nebraska has recognized a strong policy favoring the freedom to contract, which is really what a covenant is: [i]t is not the province of courts to emasculate the liberty of contract by enabling parties to escape their contractual obligations. *Southwind Homeowner's Association v. Burden*, 283 Neb. 522, 810 N.W.2d 714 (2012).

(11) Whether waiver occurred depends on consideration of all relevant facts." *Farmington Woods Homeowners Ass'n v. Wolf*, 284 Neb. 280, 817 N.W.2d 758 (2012).

STATEMENT OF FACTS

The Appellees are the owners of Lot 20, Hillsborough, an Addition to the City of Omaha, as surveyed, platted and recorded in Omaha, Nebraska (E38). Appellees' Lot is subject to Hillsborough Homeowners Association ("Association") Declaration of Covenants and Restrictions ("Covenants"), with the particular covenant at issue stating: "No business activities of any kind whatsoever shall be conducted on any Lot; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof." (E40, p.3).

Appellant filed its Complaint (T1-4) on September 1, 2020, in the District Court of Douglas County requesting injunctive relief against the Appellees for operating a daycare business out of their house in violation of the Association's Covenants (E2). The Appellees filed their Answer and Affirmative Defenses on October 17, 2020 (T7), asserting as an affirmative defense that the Appellant had waived its right to enforce the Covenants against Appellees because the Appellant had on-going knowledge that Appellees were operating a daycare from 2013 until the time this action was filed. Trial was held on before the district court on May

9, 2022 (BOE 6:1-2)

The Appellees acknowledged that they received a letter from the Appellant dated June 19, 2013 (E54), informing them that they were in violation of the Association's Covenants and that they had 15 days to relocate their business (BOE 108:3-9). Despite receiving the letter, the Appellees continued to operate their home daycare after being told by their realtor that other home daycare were operating in the Association's jurisdiction for several years (BOE 109:14).

At trial, the Appellant, through the Association's president, Diane Briggs ("Briggs"), testified that she had been the Association's board president for approximately six years (BOE 8:16-18). Briggs stated she was aware of previous complaints from other homeowners in 2013 of the Appellees' daycare prior to her becoming a member of the Association's board (BOE 14-16). She testified that when the board receives a complaint about one of its homeowners, the board's policy is to contact the homeowner to address the situation (BOE 19:9-17). She further testified that if the homeowner says they have taken care of the situation, the board will assume that the matter has been taken care of (BOE 19:21-23).

Briggs said she received a complaint from a homeowner in July of 2019 that the Appellees were operating a daycare from their home (BOE 17:4-9). She further testified that she was unaware that the Appellees had continued operating a daycare since 2013 until she received the complaint in 2019 and received confirmation of such fact during a conversation with Appellant John Karnish (BOE 17:15-24; 23:7-11).

Briggs further testified that the Association sent another letter through legal counsel to the Appellees on May 22, 2020, advising again that they were in violation of the Covenants and that Appellant would take legal action if Appellees failed to come into compliance (BOE 23:22-24:1; E3).

The Appellants each testified that prior to purchasing Lot 20 they were advised of the existence of the Covenants, that the Covenants prohibited the

operation of a daycare, and acknowledged that Defendants nevertheless closed on the property intending to simply wait and see if any enforcement action was taken against them (BOE 121:14-122:2; 126:11-15; 131:13-16; 132:22-25).

SUMMARY OF THE ARGUMENT

The Appellants received two separate complaints regarding the Appellees' home daycare in violation of the Association's Covenants. The first complaint was received in 2013, and after providing Appellees with notice of the violation, Appellants received no other complaints and assumed the daycare operation had ceased. The Appellant did not receive another complaint until 2019, and again, the Appellants gave Appellees notice of the violation twice and subsequently filed this action when Appellees refused to cease their daycare operation.

The Appellees have failed to provide sufficient evidence of any knowledge by the Appellant of a continued daycare operation after the first complaint in 2013 and the second complaint in 2019. The Appellants took action after receiving both complaints. To establish waiver, the Appellees would have to show that Appellants had knowledge of Appellees' daycare operation during the entire six-year period and did nothing about it. No such knowledge of the Appellants was established at trial.

ARGUMENT

(1) Standard of Review

An action for injunction sounds in equity. On appeal from an equity action, an appellate court tries factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the conclusion reached by the trial court. *Lambert v. Holmberg*, 271 Neb. 443, 712 N.W.2d 268 (2006).

(2) The District Court erred in denying the Appellant's request for injunctive relief.

The current Association President Diane Briggs testified as to the how the Board handles covenant violations. The Appellant does not believe that it is a good practice to actively search for covenant violators within the Association. Indeed, this approach is the same approach taken by the Plaintiff in *Farmington Woods Homeowners Ass'n v. Wolf*, 284 Neb. 280, 817 N.W.2d 758 (2012).

As soon as the Appellant here received complaints in 2013, it acted upon them. When the complaints stopped thereafter, the Appellant had no duty to continue to police the Appellees to ensure that the daycare operation had ceased as a result of the Appellant's demands. When complaints resumed in 2019, the Board President testified that the Association again became active in responding to Appellees' covenant violation. The Association sent two separate demands to the Defendants requiring that they cease operating the daycare. Both the Board President and the Appellees testified that following receipt of the two demands, Appellees met with the Board President where they acknowledged operating the daycare and the parties discussed possible solutions. The Board President testified that no agreement was reached and then this action was filed seeking injunctive relief.

The Appellees argue that the Plaintiffs are estopped from enforcing the covenant because Plaintiff's inaction between 2013 and 2019 constituted waiver and abandonment of the covenant prohibiting operation of a business. While it is true the right to enforce restrictive Covenants may be lost by waiver or acquiescence, whether there has been such a waiver or acquiescence depends upon the circumstances of each case. *Pool v. Denbeck*, 196 Neb. 27, 241 N.W.2d 503 (1976); *See also, Meierhenry v. Smith*, 208 Neb. 88, 302 N.W.2d 365 (1981).

The Appellant cannot be said to have acquiesced to the Appellees' violation without Appellees showing Appellant had knowledge the violation was ongoing. *See, Egan v. Catholic Bishop of Lincoln,* 219 Neb. 365, 363 N.W.2d 380 (1985) (Plaintiff *with knowledge of construction on neighboring property in violation of restrictive covenant* during Plaintiff's negotiation of purchase of property held to have waived any right he had to enforce restrictive covenant (Emphasis added)). It is Appellees' obligation to show Appellant had knowledge

of the operation of the daycare between 2013 and 2019 but Appellees have presented no such evidence. In fact, the Appellees each went to great lengths in their testimony to suggest the daycare operation was all but unnoticeable. The Appellees testified that vehicles park in their drive or only briefly in the street, that the children enter along the side and then into the back of the residence, that the children are not loud when outside, that the is no loud music, no signage announcing the daycare, or any other outward indication the daycare is operating.

Nevertheless, to support its affirmative defense of waiver, Appellees point to the test set forth in *Pool* as recited in *Farmington Woods Homeowners Ass'n v. Wolf*, 284 Neb. 280, 817 N.W.2d 758 (2012), however the *Pool/Farmington* test relied upon here by the Defendants is inapposite. In *Hoff v. Ajlouny*, 14 Neb. App 23, 703 Neb. App. 645 (2005) this Court had occasion to examine the applicability of *Pool* in the context of an alleged waiver of the restrictive Covenants. There the Court noted the *Pool* analysis applies only where the plaintiff has so acquiesced in *previous violations by other owners* such that plaintiff would be estopped or barred from seeking equitable relief against defendants for the same violation. See *Hoff v. Ajlouny*, supra at 30, 703 N.W.2d 651 (Plaintiff must show evidence of other covenant violations within the Association "which evidence … is a predicate to the use of the six-criteria test for waiver under *Pool*.)

It is noteworthy that *Farmington* articulated a high bar for defendant's affirmative defenses. In *Farmington* the Nebraska Supreme Court made clear that operation of a daycare under language identical to that here is unambiguous and the operation of an in-home daycare violated the Covenants. The Court found that "operation of an in-home daycare violated a covenant which provided that '[n]o business activities of any kind whatsoever shall be conducted on any Lot'". *Id.*, at 285, 817 N.W.2d at 764.

After finding identical language restricting business operations to be unambiguous, *Farmington* Court relied heavily upon and rearticulated the Court's holdings and analysis in *Southwind Homeowner's Association v. Burden*, 283 Neb. 522, 810 N.W.2d 714 (2012). The *Southwind* Court held:

> [r]estrictive covenants are to be construed so as to give effect to the intentions of the parties at the time they agreed to the covenants. If the language is unambiguous, the covenant shall be enforced according to its plain language, and the covenant shall not be subject to rules of interpretation or construction. *Id.*, at 525, 810 N.W.2d at 717 (internal citations omitted).

The Supreme Court in *Farmington* went on to make clear that "mere acquiescence in the violation of a restrictive covenant does not constitute an abandonment thereof, so long as the restriction remains of any value, and…a waiver does not result unless there have been general and multiple violations without protest." *Farmington,* supra, at 286, 817 N.W.2d at 765 citing *20 Am. Jur. 2d Covenants*, §229 at 755 (2005). It remains the Appellees' obligation to establish its affirmative defense of waiver. Here, Appellees have shown no evidence of "general and multiple violations without protest" and points only to the passage of time between the first complaints purportedly received in 2013 and the subsequent complaints received in 2019.

In every instance the Association responded to complaints by demanding Appellees comply with the Covenants. *Farmington* makes clear a waiver requires "substantial and general noncompliance" and "[t]he enforcement of valid restrictive covenants may be denied only when the non-compliance is so general as to indicate an intention or purpose to abandon the condition." *Id.*, citing *21 C.J.S. Covenants §75* (2006). Further, following the 2019 complaints and upon Appellees' acknowledgement that the daycare was operating in violation of the Covenants, the Association brought appropriate legal action seeking to enjoin the Appellees' noncompliance. See *Pool v. Denbeck,* 196 Neb. 27, 30, 241 N.W.2d 503, 506 (1976) citing *Reed v. Williamson,* 164 Neb. 99, 82 N.W.2d 18 (1957) (Injunction is a proper remedy to prevent violation of a restrictive covenant. A remedy at law may be inadequate, may result in a multiplicity of actions, and may permit the subversion of the plan of improvement and development to continue.) See also, *Whipps Land & Cattle Co. v. Level 3 Communications*, 265 Neb. 472, 658 N.W.2d 258 (2003) (an action for injunction sounds in equity).

The Appellant here took action in response to Appellees' violation each time it received a complaint and makes clear Appellant had no "intention or

purpose to abandon the condition". *Farmington*, supra at 284 Neb. at 286, 817 N.W.2d at 765.

To allow the Association to enforce violations when complaints are received rather than be required to actively police homeowners to ensure the preservation of the Covenants, the Association has specifically reserved its right to enforce violations which come to its attention or to forbear on such enforcement without waiving its ability to do so later. The Covenants provide that "[f]ailure by the [association]…to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter (E40).

Plaintiff recognizes the general rule "that a party to a written contract can waive a provision of that contract by conduct despite the existence of a so-called antiwaiver provision." *13 Williston on Contracts §39:36* (4th ed.) (May 2021 Updated). The general rule recognizes "that the nonwaiver provision itself, like any other term in the contract, is subject to waive by agreement or conduct." *Id.* Even so, such a waiver would require "express declarations manifesting the intent not to claim the advantage or by so neglecting and failing to act as to induce the belief that it was the intention to waive." *Davenport Ltd. Partnership v. 75th & Dodge I, LP*, 279 Neb. 615, 780 N.W.2d 416 (2010).

The high standard necessary for a waiver of an antiwaiver provision articulated by *Davenport* was further and expressly underscored by *Southwind*:

> Nebraska has consistently enforced restrictive covenants so long as they are unambiguous. And we have recognized a strong policy favoring the freedom to contract, which is really what a covenant is: [i]t is not the province of courts to emasculate the liberty of contract by enabling parties to escape their contractual obligations. *Southwind*, supra at 529, 810 N.W.2d at 719. (Internal citations omitted).

Even if Appellees could otherwise establish a waiver of the antiwaiver provision, such waiver would only preclude the Appellant from invoking the antiwaiver provision retrospectively after manifesting an intent to waive compliance in a particular instance. See *Wren v. West*, Douglas County District Court Case No. CI18-7731 (order of July 7, 2021, Note 3) ("The Court finds that

the non-waiver provision in the Agreement applied prospectively, meaning a failure to insist upon compliance with a contractual obligation in one instance would not prevent a party from requiring compliance in the future.") citing 17B C.J.S *Contracts §745* (July 2021 Update) ("it is possible for a party to inoculate itself against *future* claims that it has waived a contractual right by including a valid antiwaiver provision in the contract") (Emphasis added by Court).

Finally, the Appellants testified they would be prejudiced if the daycare were shut down by losing the income generated by their business activities. Likewise, the district court inquired into and articulated its concern about enjoining a business operation that Appellees appeared to rely upon. *Farmington* considered and promptly disregarded this precise argument holding:

> this argument focuses on what prejudice would occur in the future if the covenant were enforced, which is not the appropriate legal timeframe…Laches does not result from the mere passage of time, but from the fact that during the lapse of time, circumstances changed such that to enforce the claim would work inequitably to the disadvantage or prejudice of another. Here, there is no evidence that in the 12 years preceding enforcement of the covenant, circumstances changed such that to enforce the covenant would prejudice the [Defendants]. Rather, the [Defendants] benefitted from the long period of nonenforcement. *Id.* at 290, 817 N.W.2d at 767.

The covenant in issue in *Farmington* is word-for-word identical to the Covenant at issue here. The *Farmington* Court found that despite the Defendants' in-home daycare having operated for 12 years prior to the Plaintiff seeking to enjoin the business activity, the prejudice to the Defendants was not an appropriate consideration for the Court.

(3) The district court erred in admitting evidence of businesses being operated out of multiple residences within the Association's jurisdiction.

The district court receive numerous exhibits offered by Appellees, over the relevance objections of Appellant (BOE 112:4-119:19; E37, E43, E44, E45, E46, E47, E48, E49, E5, E51), to establish that several addresses within the

Association's jurisdiction had registered businesses.

The Appellees testified that they were unaware of any other businesses registered or operated out of any other homeowners in the Association. Even if the Appellees were aware of such businesses, knowledge of such businesses would have no relevance to establish that the Appellants waived their right to enforce the Covenants against the Appellees for operating their daycare. Therefore, the district court erred in allowing evidence of the existence of other businesses within the Association because such evidence is irrelevant to the issue of whether or not the Appellant actions constituted a waiver of the Covenants. As was stated in *Farmington, supra,* "[w]hether waiver occurred depends on consideration of all these relevant facts." *Id.*, at 287, 817 N.W.2d at 766.

CONCLUSION

The Covenant language adopted by Hillsborough has been found to be unambiguous and "shall be enforced according to its plain language." *Southwind, supra*. The *Southwind* Court found the language adopted by Hillsborough to preclude the operation of a daycare within the association. Appellees cannot show the Association knew about and acquiesced to the operation of the daycare between 2013 and 2019. Further, even if Appellant acquiesced, "mere acquiescence" is insufficient to establish a waiver "unless there have been general and multiple violations without protest." *Farmington,* supra, at 286, 817 N.W.2d at 766, citing *20 Am. Jur. 2d Covenants*, §229 at 755 (2005).

This Court should enter judgment in favor of the Appellant and enjoin Appellees from conducting a business activity of its in-home daycare in the Association.

Dated this 22nd day of January 2024.

HILLSBOROUGH HOMEOWNERS ASSOCIATION, INC., Plaintiff

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CERTIFICATE OF BRIEF WORD COUNT

The undersigned hereby certifies that the foregoing brief complies with the word count as required by this rule. The brief was prepared using Microsoft Office Word. The brief complies with the typeface requirements of Neb. Ct. R. App. § 2-103, and the total number of words in the brief is 5,204.

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 22nd day of January 2024, a copy of the foregoing instrument was delivered to the parties listed below pursuant to Neb. Ct. R. § 2-205.

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Certificate of Service

I hereby certify that on Monday, January 22, 2024 I provided a true and correct copy of this *Brief of Appellant Paul/Connie Karnish* to the following:

Connie Karnish represented by Thomas Joseph Anderson (22779) service method: Electronic Service to **lawyers@cox.net**

Paul Karnish represented by Thomas Joseph Anderson (22779) service method: Electronic Service to **lawyers@cox.net**

Signature: /s/ Aaron Smeall (22756)