2026 IL App (2d) 250502-U
No. 2-25-0502
Order filed August 18, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MARSHALL E. LOWE, JR. and DIANE M. LOWE, Plaintiffs-Appellants,

v.

JOHN R. MARKS, CHRISTOPHER J. HANSEN, and ZACHARY P. MONTOGNESE, Defendants,

(John R. Marks and Christopher J. Hansen, Defendants-Appellees).

Appeal from the Circuit Court of McHenry County.
Honorable Jennifer L. Johnson, Judge, Presiding.
No. 20-CH-291

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Kennedy and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: We reverse the circuit court's interpretation of a restrictive covenant regarding Spring Beach Way, where it incorrectly applied the covenant to land in a separate subdivision. However, we affirm the circuit court's application of *laches*. Affirmed in part and reversed in part.

¶ 2 Plaintiffs, Marshall E. Lowe, Jr., ("Marshall") and Diane M. Lowe, appeal after the circuit court entered judgment in favor of defendants, John R. Marks and Christopher J. Hansen, in a civil action for a permanent injunction to restrain defendants from maintaining piers in the Spring Beach Heights subdivision ("Spring Beach Heights") and on defendants' counterclaim seeking a preliminary injunction to prevent plaintiffs from using a driveway in the Second Addition to Spring

Beach subdivision ("Second Addition") to access Spring Beach Way. Plaintiffs contend that the court erred in denying its permanent injunction against defendants for maintaining piers in Spring Beach Heights because (1) the subdivisions' restrictive covenant prohibits structures on the lots at issue without unanimous consent of the subdivision, (2) plaintiffs established the elements required for an injunction, and (3) the court misapplied the doctrine of *laches*. As to the counterclaim, plaintiffs contend that the court erred in entering a preliminary injunction regarding their driveway because (1) the subdivision plats permit owners in the Second Addition to use Spring Beach Way, (2) defendants failed to establish the elements of an injunction, and (3) plaintiffs have an independent right to use Spring Beach Way. Additionally, plaintiffs assert that the circuit court abused its discretion by refusing to allow an amendment to the pleadings, which would show that plaintiffs established a prescriptive easement to access Spring Beach Way from their driveway. We affirm in part and reverse in part.

¶ 3 I. BACKGROUND

¶ 4 This case involves three subdivisions (Spring Beach subdivision ("Spring Beach"), Spring Beach Heights, and the Second Addition) in Cary along the Fox River. Spring Beach was surveyed, platted, and developed in 1921 along the bank of the Fox River. Just north of Spring Beach, separated by Spring Beach Way, developers recorded the plat for the Second Addition in 1926. In 1929, developers platted Spring Beach Heights to the north of Spring Beach and east of the Second Addition. Spring Beach Way continues to run between Spring Beach (on the north) and Spring Beach Heights and the Second Addition (on the south).

¶ 5 Plaintiffs own lots 39 through 43 in Spring Beach Heights and lots 11 through 33 in the neighboring Second Addition. They reside at 1021 Spring Beach Way within Spring Beach. Marks owns lot 7 in Spring Beach Heights, while Hansen owns lots 3 and 4 in the same subdivision.[1]

¶ 6 On November 8, 2020, plaintiffs filed a complaint, seeking to enjoin defendants from maintaining piers on lots 10 and 11 in Spring Beach. Both Marks and Hansen maintained piers on lot 11. Spring Beach Heights was recorded on June 15, 1929, as document No. 1929R0088651. Therein, a restrictive covenant was placed on the use of lots 10 and 11 that states:

> "Said lots 10 and 11 of said Spring Beach Subdivision are hereby dedicated to the sole and perpetual use of lot owners in said Allen and Powers' Spring Beach Heights for access to and from Fox River and for boating and recreational purposes. Said lot owners may keep boats thereon but no building or structure shall be placed on said lots 10 and 11 without consent in writing of all lot owners in said Subdivision."

Plaintiffs alleged that defendants were maintaining structures, *e.g.* the piers, in violation of the plat's restrictive covenant.

¶ 7 On January 4, 2021, defendants answered, asserted affirmative defenses, and filed a counterclaim. Defendants asserted, *inter alia*, that *laches* applied, as lots 10 and 11 have had piers on them since at least 1954, and plaintiffs personally knew about a pier since 1992. As such, availability of live testimony regarding the original owners of the pier was stale, and defendants relied on plaintiffs' inaction and, thereby, continued to maintain or develop their piers to their detriment. Additionally, in the January 4th answer and an amendment filed on June 9, 2021, defendants counterclaimed and requested a preliminary injunction, preventing plaintiffs from

[1]Zachary Montognese was dismissed as both a defendant and counter-plaintiff on October 21, 2021, as he no longer owned property in Spring Beach Heights.

using Spring Beach Way to access land not contained in Spring Beach, Spring Beach Heights, or the Second Addition. Spring Beach Way was originally shown on the plat for Spring Beach and designated as a private roadway. Defendants asserted that they reside in Spring Beach Heights and maintained the right to use Spring Beach Way; however, they opined that plaintiffs expanded Spring Beach Way, through the Second Addition, to serve as an access point to land outside Spring Beach Heights, the Second Addition, or Spring Beach, which was prohibited by a restrictive covenant. The Spring Beach covenant reads:

> "The portion of land shown on said plat and marked 'Spring Beach Way' is dedicated for a private roadway for the use and benefit of any and all persons who at any time become owner or owners of a lot or lots or any portion thereof in this subdivision and for any and all persons who may at any time become the owner or owners of any one or all lots or any portion or portions thereof that may be laid out or platted by the makers of this plat, their heirs or assigns in Sections (17) and (18) Township and Range aforesaid.
>
> No Owner of land in this subdivision except the makers of this plat or their heirs shall have the right to grant the use of said private road or roadways to any person or persons to be used as means of access to and from other land or lands not included in this subdivision, nor shall any owner or owners of a lot or lots or land in this subdivision use said private roads as a means of access to and from other lands owned by them and not included in this subdivision unless granted such right from the makers of this plat or their heirs or assigns."

¶ 8 On January 25, 2021, plaintiffs answered defendants' affirmative defenses and moved to dismiss the counterclaim pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2020)). Within the motion to dismiss, plaintiffs asserted that they

lived in Spring Beach Heights and owned property in the Second Addition but did not own property in Spring Beach. Plaintiffs also owned property at 1307 Main Street in Cary, outside of Spring Beach, Spring Beach Heights, and the Second Addition. However, plaintiffs' Main Street property was connected to Spring Beach Way via a driveway running through his Second Addition property.

¶ 9 Plaintiffs argued that, in addition to the Spring Beach restrictive covenant, a Spring Beach Heights covenant granted owners in Spring Beach Heights and the Second Addition access to Spring Beach Way, stating:

> "The road shown on this plat as Spring Beach Way and which was originally shown on the plat of Spring Beach Subdivision as a private road shall be for the use also of lot owners in this Subdivision and lot owners in Allen and Powers' Second Addition to Spring Beach Subdivision."

The Second Addition deed does not contain any restrictive covenants related to the use or access of Spring Beach Way.

¶ 10 Plaintiffs argued that defendants lacked standing to sue regarding the enforcement of the Spring Beach restrictive covenant, as they were not Spring Beach property owners. Defendants asserted they had standing, as the Spring Beach Heights' amendment to the Spring Beach restrictive covenant was the mechanism for all parties' ability to access the roadway. After a hearing, the court dismissed defendants' counterclaim, without prejudice.

¶ 11 Defendants refiled their answer, reasserted their original affirmative defenses, and filed an amended counterclaim on June 6, 2021. As to the counterclaim, defendants sought a preliminary injunction against plaintiffs for their expansion of Spring Beach Way, through their Second Addition property, to non-subdivision property. Defendants argued that all parties' access to Spring

Beach Way was dependent on the Spring Beach Heights covenant, which amended the Spring Beach covenant and expanded roadway access to Spring Beach Heights and the Second Addition.

¶ 12 Plaintiffs answered defendants' affirmative defenses on July 7, 2021, and filed another motion to dismiss. See 735 ILCS 5/2-615(a), 2-619(a)(9) (West 2020). Plaintiffs asserted that defendants failed to state a claim upon which relief can be granted, as they can use Spring Beach Way to access their Second Addition property, and that Marshall was entitled to use Spring Beach Way to access his non-subdivision property (and allow his wife such access), as he holds the right, title, and interest in Spring Beach Way. In response to the motion to dismiss, defendants asserted that plaintiffs are bound by the original restrictive covenant, and there are facts reserved for trial that must be assessed to determine if plaintiffs maintain the rights to Spring Beach Way. The court, ultimately, denied plaintiffs' motion to dismiss.

¶ 13 Plaintiffs answered defendants' amended counterclaim and asserted affirmative defenses on December 7, 2021. Of note, plaintiffs urged that they had the right to access land outside of Spring Beach, as the Allen family's (the original subdivision owners) heirs recorded a quitclaim deed granting Marshall right, title, and interest in Spring Beach Way, and Marshall granted additional access to his wife. Defendants answered the affirmative defenses on March 14, 2021.

¶ 14 On June 10, 2024, defendants moved for summary judgment, asserting the piers were not structures located on lots 10 and 11; rather, they were portable piers located in the Fox River, a pier had been on that land since at least 1954, and defendants had permission from the Army Corp of Engineers and the McHenry County Planning and Development Department to have piers in the water. Plaintiffs responded that the piers were structures, under the word's plain meaning; the structures were located on lot 11, as the lot extended to the center of the Fox River; and the permits granted did not lend support for the application of the restrictive covenant. Defendants replied that

the ambiguous Spring Beach restrictive covenant must be interpreted in the least restrictive way. On October 7, 2024, the court denied the motion for summary judgment and found that the piers were structures within the meaning of the restrictive covenant.[2]

¶ 15 A bench trial commenced on September 8, 2025. In addition to the aforementioned covenants and plat information, Hansen testified that he lived at 609 East Main Street, lots three and four, in Spring Beach Heights. His property does not enter onto Spring Beach Way; rather, his property ingresses and egresses to Main Street. He also owned a pier off lots 10 and 11 that he installed in 2010. Two piers were installed on the lots presently, but he believed the lots could fit up to 10 piers or accommodate a community pier. Hansen agreed that lots 10 and 11 could not accommodate a pier for every lot owner in Spring Beach Heights. He did not have written permission from all the subdivision owners to install his pier.

¶ 16 In his case-in-chief, Hansen testified that he had lived in Spring Beach Heights since 2003, but he purchased his pier in 2009. The pier is 40 feet long, of which 2 feet sits on dry land when the river is low. He installed the pier in the spring or summer of 2010, and, every boating season since then, Hansen has had a pier in the water off of lots 10 and 11. For several years, Hansen removed his pier at the end of every season, although he eventually quit removing his pier, as "the water didn't move like [he] thought it would." Hansen, however, always left his shore station in the water.

¶ 17 Marks also testified for plaintiffs. He owned lot seven in Spring Beach Heights, and his driveway also did not enter onto Spring Beach Way. He maintained a walking path on his property

[2]The memorandum decision issued on October 7, 2024, does not contain the court's ruling on the question of whether the piers were *located* on lot 11 because page three (the page presumably containing that analysis) is missing from the record.

that, eventually, allowed him to access lots 10 and 11, where he owned a pier. The pier had been installed on lot 11, for all but two weeks between 2015 and 2020, since he purchased his house in 1991. Marks admitted that he did not have written permission from all subdivision owners to install or operate his pier. Marks also admitted that there was not enough room for every lot owner in Spring Beach Heights to install a pier; at most, he opined, four piers could fit on lots 10 and 11.

¶ 18 In his case-in-chief, Marks testified that he purchased his home at 613 East Main Street in 1991. As part of that purchase, he also purchased a pier on lots 10 and 11, to which the seller of the home had installed a pathway—"there was a picture of the pier on the flier for this house[,] describing [a] very roughly hand-drawn picture of the property[,] Lots 10 and 11[,] and that I had river access." Marks believed that he purchased both his home and his pier in 1991. Marks testified that the pier and access to the Fox River was "probably one of the main reasons" he purchased his home. After purchasing his home, he alone primarily maintained lots 10 and 11. However, after Hansen added his pier, they shared the responsibility of upkeep.

¶ 19 After purchasing his home, Marks testified that he went to a homeowners association meeting, in either 1992 or 1993, to ask for a key to lot 42 in Spring Beach, so he could launch his boat from the ramp located there. At that meeting, he did not obtain a key, but he did speak to Marshall, who expressed, "he didn't think I should have a pier on that—on that lot and went on to say that I should *** probably pay some association fee." Marks did not believe that Marshall owned property in Spring Beach Heights in 1993. Since the homeowners association meeting, and until this lawsuit, no one has ever complained about Marks' pier.

¶ 20 Regarding the pier itself, Marks stated that, connected to his pier, he has a storage unit, or a shore station, that is always out in the water. Marks' pier is about 15 or 16 feet long; the pier has approximately two or three feet of wooden material sitting on the grass, while the remainder jets

out into the river. There are times, however, when Marks' pier is completely under water. He testified that he could move his pier completely into the water, if necessary, to maintain access to the pier. Without his pier, Marks testified it would be "difficult" to access his boat and shore station. He would need to swim or row a boat to his shore station.

¶ 21 Although not discussed by Marks, defendants exhibit Nos. 10 and 11 were admitted, which showed that McHenry County Department of Planning and Development granted Marks a stormwater management permit for a pier on March 3, 2022, and the Spring Beach Property Owners Association was granted a two-year stormwater permit for three piers on parcel 20-17-177-040 (lots 10 and 11).

¶ 22 Marshall testified that he and his wife lived at 1021 Spring Beach Way since 1993. His house was located on the river side (south side) of Spring Beach Way across from Spring Beach Heights. Plaintiffs also owned lots 39 through 43 in Spring Beach Heights. Plaintiffs acquired lot 43 in 2008 and lots 39 and 40 in 2021. The court clarified, "Lot 43 sits at the easternmost end of Spring Beach Way and essentially blocks passage to the adjacent land. Lot 43 is notably smaller than other lots in [Spring Beach Heights] Subdivision and is considered too small to build upon." Sometime prior to 1985, Marshall testified he was gifted lot 11 in the Second Addition for services he provided, and he purchased lot 12, shortly thereafter, from the owners of lot 11. In 1985, Marshall purchased lots 13 through 33 in the Second Addition. Marshall also owned property at 1307 East Main Street, right outside of the subdivisions. He purchased this property in 1979.

¶ 23 Marshall testified that he did not own a pier on lots 10 or 11, and he did not give permission to defendants to maintain piers on those lots. Plaintiffs did not take any action against the piers in lots 10 and 11 between 2008 and 2020, and, in that time, no one else sought the removal of the piers. Marshall did not know why he waited until 2020 to bring suit. However, he knew about the

restrictive covenant on lots 10 and 11 in Spring Beach, although he did not recall when he became aware of the covenant. Marshall believed the restrictive covenant on lots 10 and 11 precluded all structures on those plats. He also recalled that the covenant language for lots 10 and 11 was "basically the same" as the restrictive covenant for lot 42 in Spring Beach, and, there, the homeowners association successfully removed a pier. See *Morek v. Koppesch*, 325 Ill. App. 3d 1180 (2001). Marshall was at the homeowners association meeting in 1993 when the community discussed removing the pier on lot 42. Nothing was said about any pier on lots 10 and 11, even though one pier existed on those lots in 1993. Marshall opined that, like lot 42 in Spring Beach, there should not be piers located on lots 10 and 11 in Spring Beach. Rather, Spring Beach Heights residents, including defendants, should use the boat launch on lot 42 to access the river, not individual piers. He asserted that maintaining piers on lots 10 and 11 impacted homeowners' ability to use the beach for swimming and limited others from mooring their boats along the shoreline. Accordingly, Marshall wanted defendants to remove their piers, unless and until they got permission from all subdivision owners to install piers on lots 10 and 11.

¶ 24 Marshall identified Geographical Information System ("GIS") photographs between 2005 and 2018, depicting aerial views of lots 10 and 11. Within those photos, only one pier was visible in 2005, 2008, 2009, 2010, 2014, 2015, 2017, and 2018. However, in 2011, 2012, and 2013, Marshall identified two piers in the photos, and, in several other photos, Marshall identified multiple shore stations, even though only one pier was depicted. Aerial photos depicting lots 10 and 11 taken between 1939 and 1995 show one pier off the lots in 1991 and 1995, and no piers in 1986 and earlier.

¶ 25 After the summary judgment finding that the piers in lots 10 and 11 were structures, Marshall testified that he attempted to remove the piers from the lots. At that time, the sheriff was called and Marshall was told to leave the piers.

¶ 26 Next, Marshall asserted that he owned all the rights to Spring Beach Way and became an assignee of Spring Beach, Spring Beach Heights, and the Second Addition. Marshall testified that he purchased Spring Beach Way and the "Power Road strip" in 2006 from Ms. Liston and Ms. Bashford, alleged heirs of the Allen family. In 2017, Marshall received another quitclaim deed from Liston and Brashford for lots 10 and 11 in Spring Beach, conveying "any and all right, title, and interest reserved by Charles T. Allen and Vera Allen, as the 'Makers', original owners and subdividers" as set forth in the Second Addition and Spring Beach Heights plats. Marshall did not locate any deeds between the Allens and Listons or the Bashfords. Nonetheless, he recorded the deeds on these properties and paid taxes on them; however, he never filed a quiet-title suit. Marshall believed that these quitclaim deeds gave him all the original owner's rights to Spring Beach Way. Regarding the subdivisions, in 2017, Marshall asserted that he became an assignee of Spring Beach, Spring Beach Heights, and the Second Addition after he received deeds conveying his rights, title, and interest in all three subdivisions. However, Marshall never took any steps to have his ownership declared—*i.e.*, he never filed suit to quiet title. Further, Marshall never located any deeds from the original subdividers after 1935, and he never contacted the original subdividers to clarify his rights, as they were all deceased by 2017.

¶ 27 Marshall further testified that he owns property with a driveway that passes through the Second Addition, connecting Spring Beach Way to East Main Street (and, ultimately, up to the property of Lowe Excavating). The driveway starts along Spring Beach Way in lot 31 of the Second Addition and runs beyond the north lot lines of the Second Addition, into property not included in

Spring Beach, Spring Beach Heights, or the Second Addition. This driveway has been there since at least 1948 and was there when he purchased the property in 1987.[3] The driveway was a part of farm owned by "Merkle." Marshall did not know if Merkle ever received permission to create the driveway. Nonetheless, Marshall has used the driveway since he purchased his Second Addition property, at least two times a day on weekdays and sporadically on weekends. Marshall asserted that he only "embellished" the driveway "a little bit." Meaning, he initially moved the entrance of the driveway to line up with lot one in the Fox River Shores subdivision, which he owned at the time, and, when he moved to his current residence, he "turned" the driveway and abandoned the old entrance. Marshall has used this driveway since 1987 without permission from anyone, and he has not provided general permission for patrons to use his driveway; however, he acknowledged, Google Maps has listed his driveway as a thoroughfare, so the public has been accessing his driveway.

¶ 28 For the defense, George Barrett, a land surveyor, testified that the deeds for Spring Beach, Spring Beach Heights, and the Second Addition needed to be read together; otherwise, one would not know that lots 10 and 11 were intended to be beach property for Spring Beach Heights. As to lots 10 and 11, Barrett reported that the south boundary lines of the lots, where the plats meet the Fox River, were ambiguous. Although not an expert in riparian rights, Barrett believed that the boundary line between the lots and the Fox River was the water's edge.

¶ 29 Barrett also testified that there was property north of the Second Addition, and not included in the subdivision, that was the location of Lowe Excavating. A driveway crossed the Second Addition to connect Spring Beach Way and Lowe Excavating. The Spring Beach deed contained

[3]Marshall Lowe conceded he originally stated he bought his property in the Second Addition in 1985. However, he later testified he misspoke, and, actually, he purchased the property in 1987.

a restrictive covenant that restricted all persons, except heirs and assigns, from connecting land outside of the subdivision to Spring Beach Way. The Spring Beach Heights deed also notes that Spring Beach Way is a private road that may be used by lot owners "in this subdivision and lot owners in Allen and Powers' Second Addition to Spring Beach Subdivision."

¶ 30 Next, Jack Schaffer, a resident of Spring Beach, testified that he was with his parents in 1954 when they were looking at homes in Spring Beach Heights. While his parents were meeting with the Hermansons, the previous owners of what would become his parents' home, he and his brother walked next door, to lots 10 and 11, and discovered four wooden piers on the lots. Schaffer recalled that he and his brother played on two of the piers, as the remaining two piers looked "a little rickety." Schaffer knows that the piers he played on in 1954 are not the same ones installed there today, as the original piers were wooden and the newer piers are metal.

¶ 31 Paul Madsen, the division president of Heritage Title Company, testified that he conducted and verified a title search for lots 10 and 11 in Spring Beach. Madsen discovered a quitclaim deed from Marie Bowman to the original subdividers in 1935. The next deed recorded was Marshall's deed in 2017. There were no deeds of conveyance dated from the original subdividers, or from an executor of any estate, to the Bachfords or the Listons. Moreover, Madsen was unable to determine whether the Bashfords and the Listons were the actual and only heirs of the original subdividers. He stated that there were no records that connected the 1935 deed to Marshall's 2017 deed, placing lots 10 and 11 in his name. In other words, Madsen indicated a break in the chain of title that could be resolved by court order, by finding the heirs of the subdividers, through probate, or via a quiet-title action. However, that was not done here. Thus, Madsen opined that the original subdividers and their heirs were considered the owners of lots 10 and 11. However, if it were shown that the

Bashfords and the Listons were the sole heirs, Madsen concluded his opinion of ownership would change.

¶ 32 On the second day of trial, September 9, 2025, plaintiffs moved to amend their affirmative defenses (adding an adverse access easement defense) and to amend their defenses to conform to the proofs pursuant to section 2-616 of the Code. 735 ILCS 5/2-616 (West 2024). Therein, plaintiffs claimed that they continuously and openly used the existing driveway to access Spring Beach Way since purchasing property in the Second Addition in 1987. In response, defendants asserted that the motion was legally deficient, as it did not list the elements of adverse possession, they were not given an opportunity to respond to the motion, and the motion was a surprise after nearly five years of trial work. Thereafter, the court heard closing arguments and took the case and motion under advisement.

¶ 33 On October 28, 2025, the court issued a detailed order, denying plaintiffs' requests for injunctive relief and granting defendants' requests for injunctive relief. On plaintiffs' request for an injunction and to remove defendants' piers, the court found that plaintiffs met their initial burden by showing irreparable and continuous harm and no adequate remedy at law. However, the court determined that the affirmative defense of *laches* applied. The court noted that plaintiffs waited 12 years, after becoming Spring Beach Heights lot owners to act, and Marshall "did not know" why he waited to file suit earlier, despite not being a "neophyte in understanding restrictions on property." Additionally, Marshall knew about the piers in lots 10 and 11 even before becoming a Spring Beach Heights lot owner, and he expressed to Marks in either 1992 or 1993 that Marks could not have a pier on lot 11. The court noted that Marshall's "relative expertise" regarding land rights stood in "rather sharp contrast" to his delay for no apparent reason. Moreover, the court determined that Marks would suffer prejudice, from plaintiffs' delay in filing suit, as removal of

his pier 29 years after its purchase left him with no recourse against his predecessor in title. Regarding Hansen, prejudice was established because he never would have installed his pier had Marshall not unreasonably delayed in filing suit. In sum, the court found that plaintiffs unreasonably slept on their rights.

¶ 34 As to the counterclaim enjoining plaintiffs' use of a roadway, the court found that about half of plaintiffs' road crossed through the Second Addition and egressed onto land that was not a part of any subdivision developed by the makers of Spring Beach Way. The court determined that defendants had an ascertainable right to enforce the restrictive covenant limiting the usage of Spring Beach Way, plaintiffs' use of the roadway had been continuous for decades, and plaintiffs had no adequate remedy at law to address this issue. Accordingly, the court found that defendants met their initial burden for injunctive relief. Considering plaintiffs' affirmative defenses, the court determined, *inter alia*, that plaintiffs did not establish a right, predicated on various quitclaim deeds, to access land outside of the subdivisions at issue. Primarily, the court noted that plaintiffs failed to submit any probate evidence establishing a chain of custody between the quitclaim-deed grantors and the original subdivision owners. As such, the court rejected plaintiffs' affirmative defense as "wholly unsatisfactory."

¶ 35 Finally, the court addressed plaintiffs' motion to add an additional affirmative defense and motion to amend the affirmative defenses to conform to the proofs. The court considered defendants' surprise, as this defense was filed mid-trial; that the amendment, in a way, cured a defective pleading; the untimeliness of the motion, as litigation had been ongoing for five years; and that this new defense—for an "adverse access easement"—could not be found in caselaw, and the elements of a prescriptive easement had not been proven up. Ultimately, the court denied plaintiffs' motions.

¶ 36 On November 2, 2025, plaintiffs timely appealed.

¶ 37 II. ANALYSIS

¶ 38 On appeal, plaintiffs contend that the court erred in entering a permanent injunction prohibiting them from using their driveway to access Spring Beach Way, where (1) the subdivision plats permit owners in the Second Addition to use Spring Beach Way, (2) defendants failed to establish the elements for injunctive relief, (3)plaintiffs established an independent right to use Spring Beach Way, and (4) the injunction is overbroad. Additionally, plaintiffs assert that the court abused its discretion in denying their motions to add an affirmative defense and that they properly established the elements of a prescriptive easement. Finally, plaintiffs argue that the court erred in denying their request for injunctive relief, relating to the presence of piers on lots 10 and 11, as (1) the Spring Beach Heights plat prohibits structures on lots 10 and 11 without consent of all lot owners, (2) plaintiffs established the elements for injunctive relief, and (3) the court misapplied the doctrine of *laches*. We affirm.

¶ 39 A court's decision following a bench trial will not be reversed unless it is based on facts that are against the manifest weight of the evidence. *Cincinnati Insurance Co. v. Pritchett*, 2018 IL App (3d) 170577, ¶ 16. However, both parties here also contend that the enforceability of a restrictive covenant is a question of law, reviewed *de novo. Taylor v. Police Board of City of Chicago*, 2011 IL App (1st) 101156, ¶ 47. In the case at bar, the circuit court held a bench trial to determine whether injunctive relief was appropriate based on multiple restrictive covenants. To the extent that any covenant at issue was ambiguous, the court's construction of a restrictive covenant is reviewed *de novo. Id.* However, whether a violation of a restrictive covenant occurred or whether the court's order is supported by sufficient evidence involves questions of fact we will not disturb unless those findings are against the manifest weight of the evidence. *Reliable Fire*

Equip. Co. v. Arredondo, 2011 IL 111871, ¶ 13. Additionally, we will not disturb the court's application of *laches*, unless the court abuses its discretion. *Gacki v. Bartels*, 369 Ill. App. 3d 284, 293 (2006). A judgment is against the manifest weight of the evidence if the opposite conclusion is apparent, or the findings are unreasonable, arbitrary, or not based on the evidence. *Pritchett*, 2018 IL App (3d) 170577, ¶ 16. "A trial court abuses its discretion when its decision is 'arbitrary, fanciful, or unreasonable, or where no reasonable person would adopt the court's view.' " *Emrikson v. Morfin*, 2012 IL App (1st) 111687, ¶ 14 (quoting *Evitts v. DaimlerChrysler Motors Corp*., 359 Ill. App. 3d 504, 513 (2005)). Given the court's superior position to weigh witnesses' credibility, observe witnesses' demeanor, and resolve conflicts in testimony, we afford the court great deference. *Pritchett*, 2018 IL App (3d) 170577, ¶ 16.

¶ 40 A. Permanent Injunction—Spring Beach Way

¶ 41 Plaintiffs first argue that the court's issuance of an injunction prohibiting them from using their driveway was improper, because the subdivision plats expressly permitted Second Addition owners unrestricted usage of Spring Beach Way.

¶ 42 A restrictive covenant is, typically, intended to implement a general scheme of improvement or development of real property, and it may be personal or run with the land. *Punzak v. De Lano*, 11 Ill. 2d 117, 119 (1957); *La Salle National Trust, N.A. v. Village of Westmont*, 264 Ill. App. 3d 43, 71 (1994). A covenant runs with the land where (1) the covenanting parties intended for it to run with the land, (2)it touches and concerns the land, and (3) there is a privity of estate between the covenanting parties. *Standlee*, 2019 IL App (2d) 180325, ¶ 52. Subsequent property owners may be bound by covenants that run with the land. *Id*. Here, the parties do not dispute that the covenants at issue run with the land.

¶ 43 It is well-settled that a restrictive covenant found in a deed "must be decided upon its own facts so as to give effect to the actual intent of the parties at the time the covenant was made." *Lakeland Property Owners Ass'n v. Larson*, 121 Ill. App. 3d 805, 810 (1984). However, restrictive covenants must also be construed strictly against the covenantor, "with all doubts and ambiguities resolved in favor of natural rights and against restrictions." *Id*. Accordingly, restrictive covenants must be "enforced according to their plain and unambiguous language where reasonable, clear, and definite." *Id*.

¶ 44 The evidence showed that the original Spring Beach plat, dated 1921, labeled Spring Beach Way as a private road and granted landowners within that subdivision access to the roadway. The Spring Beach deed's restrictive covenant stated,

> "The portion of land shown on said plat and marked 'Spring Beach Way' is dedicated for a private roadway for the use and benefit of any and all persons who at any time become owner or owners of a lot or lots or any portions thereof in this subdivision and for any and all persons who may at any time become the owner or owners of any one or all lots or any portion or portions thereof that may be laid out, or platted by the makers of this plat their heirs or assigns in sections (17) and (18) Township and Range aforesaid.
>
> No Owner of land in this subdivision except the makers of this plat or their heirs shall have the right to grant the use of said private road or roadways to any person or persons to be used as means of access to and from other land or lands not included in this subdivision, nor shall any owner or owners of a lot or lots or land in this subdivision use said private roads as a means of access to and from other lands owned by them and not included in this subdivision unless granted such right from the makers of this plat or their heirs or assigns."

¶ 45 In the later created (1929) Spring Beach Heights plat, landowners from both Spring Beach Heights and the Second Addition, created in 1926, were also granted use of Spring Beach Way through the Spring Beach Heights deed, which stated,

> "The road shown on this plat as Spring Beach Way and which was originally shown on the plat of Spring Beach Subdivision as a private road shall be for the use also of lot owners in this Subdivision and lot owners in Allen and Powers Second Addition to Spring Beach Subdivision."

Both the 1926 deed for the Second Addition and the 1929 deed for Spring Beach Heights are silent as to further incorporation of the 1921 Spring Beach deed and its restrictive covenant.

¶ 46 Further evidence showed that plaintiffs were landowners in the Second Addition and in Spring Beach Heights, and their residence fronted Spring Beach Way in Spring Beach, which is on the south side of Spring Beach Way. The driveway at issue was directly north of Spring Beach Way; egressed onto Spring Beach Way at lot 31 of the Second Addition; proceeded through several lots within the Second Addition; and terminated at 1307 E. Main Street, which is property outside of the relevant subdivisions.

¶ 47 Throughout its order, the court referred to plaintiffs' driveway as a "roadway." The court, reading the above covenants in tandem, found that plaintiffs' roadway violated the restrictive covenant, as it "runs from land that is not part of the [Spring Beach] Subdivision" and "connects to Spring Beach Way, the private roadway."

¶ 48 We now consider whether the restrictive covenant included in the Spring Beach deed applies to and binds the Second Addition and Spring Beach Heights subdivisions. Plaintiffs' Second Addition lots, through which their driveway runs, are not subject to the restrictive covenant contained in the Spring Beach deed. The Spring Beach Heights deed, through which plaintiffs

lawfully gained access to Spring Beach Way, allows both Second Addition and Spring Beach Heights landowners *use* of Spring Beach Way. The use of Spring Beach Way for Second Addition and Spring Beach Heights landowners is not limited in the same ways that Spring Beach landowners are. There is nothing in the Spring Beach Heights deed that incorporates the restrictions outlined in the Spring Beach deed, nor does the Spring Beach Heights deed separately outline restrictions like those found in the Spring Beach deed. If the original subdividers wished to include or incorporate the restrictions found in the earlier-executed Spring Beach deed, they were free to do so. However, their failure to do so is controlling, and we will not read into the deed restrictions that were not stated or incorporated by reference.

¶ 49 Next, we address defendants' implicit request that the restrictions included in the Spring Beach deed be imposed on the separate subdivisions—Spring Beach Heights and the Second Addition. Defendants have cited no authority supporting their position that a restrictive covenant included in an initial subdivision's deed should be applied to adjacent subdivisions' deeds.

¶ 50 The court may impose an implicit restrictive covenant on a property, "when it can be shown, expressly or by fair implication from the circumstances, that the restriction or covenant is part of a general scheme or plan for the mutual benefit of the owners of all lots in the particular tract." *Wallace v. Hoffman*, 336 Ill. App. 3d 545, 548-49 (1949); see also *Krueger v. Oberto*, 309 Ill. App. 3d 358, 370 (1999). In determining whether a general scheme or plan exists, the court must consider the following four factors: (1) are the restrictions included in all the deeds to the subdivision, (2) have the restrictions been previously violated, (3) are the burdens imposed equal and for the mutual benefit of all lot owners, and (4) was notice of the restriction given in the plat record. *Krueger*, 309 Ill. App. 3d at 370-71.

¶ 51 We find *Crites v. Vojodich*, 2026 IL App (5th) 241253-U, persuasive. In *Crites*, the plaintiff owned a home in a residential subdivision that was divided into two plats—Blackberry Hills and Blackberry Hills Second Plat. The plaintiff's property was in Blackberry Hills Second Plat. The defendants purchased property across the street from the plaintiff in the same plat, and they intended to install a mobile home. Around the time when Blackberry Hills was recorded, a restrictive covenant was filed disallowing mobile homes. Later, Blackberry Hills Second Plat was recorded, but it did not reiterate the restrictive covenant, amend the original covenant, or incorporate the Blackberry Hills covenant by reference. The court considered whether an implicit restrictive covenant was appropriate and concluded that it was not. The court concluded that the second plat's lack of reference to the restrictive covenant failed to put those homeowners on notice that they were subject to the covenants included in the Blackberry Hills plat.

¶ 52 We find this rationale persuasive. Here, there is no reference in the Spring Beach deed that future properties would be subject to the restrictive covenants included therein. Moreover, the restrictions on Spring Beach Way were not included in the deeds to either Spring Beach Heights or the Second Addition. Instead, Spring Beach Heights and the Second Addition were granted comprehensive use of the roadway without reference to, or incorporation of, any covenant. Like *Crites*, there was no explained process to put homeowners in Spring Beach Heights or the Second Addition on notice that these restrictions in the Spring Beach deed were also imposed on them. Additionally, as to the second and third factors, the burdens imposed on the lot owners would be equal and for their mutual benefit, and there is no indication that the restrictions regarding Spring Beach Way had been previously violated. Nonetheless, the weight of the factors above and the persuasive authority lead us to conclude that the restrictive covenant in the Spring Beach deed is not implicit and cannot be lawfully imposed on plaintiffs here.

¶ 53 As the circuit court misconstrued the restrictive covenant, we will not address the remainder of plaintiffs' arguments and, instead, we reverse the court's judgment regarding Spring Beach Way.

¶ 54 B. Permanent Injunction—Piers

¶ 55 Next, we turn to plaintiffs' arguments that they established the elements necessary to enjoin defendants from continuing to operate piers on lots 10 and 11 and that the court erred in applying the doctrine of *laches*.

¶ 56 *Laches* is an equitable doctrine that bars relief where, because of a party's delay in asserting his or her rights, the opposing party has been misled or prejudiced. *Wabash County v. Illinois Municipal Retirement Fund*, 408 Ill. App. 3d 924, 933 (2011). There are no fixed rules regarding the application of laches. *Ole, Ole, Inc. v. Kozubowski*, 187 Ill. App. 3d 277, 286 (1989). "*Laches* is 'grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on his right to the detriment of the opposing party.' " *Wabash County*, 408 Ill. App. 3d at 933 (quoting *Tully v. State*, 143 Ill. 2d 425, 432 (1991)). To establish the defense of *laches*, a litigant must show: (1) the opposing party exhibited unreasonable delay in asserting a claim and (2) the litigant suffered prejudice because of this delay. *Id.* Regarding unreasonable delay, statutes of limitation are "convenient measures for determining the length of time that ought to operate as a bar to an equitable cause of action," but are not controlling. *Sundance Homes, Inc. v. County of Du Page*, 195 Ill. 2d 257, 270 (2001). *Laches* may still apply within the statute-of-limitations period where some other element exists that would make it inequitable to allow the owner to assert his or her delayed title. *Hagerman v. Schulte*, 349 Ill. 11, 31 (1932). Overall, the application of *laches* is within the discretion of the circuit court; thus, the court must consider the

particular circumstances of each case to determine if relief is appropriate, even though the time fixed by the statute of limitations has not expired. *Id*.; *Wabash County*, 408 Ill. App. 3d at 933.

¶ 57 The court found that the elements of an injunction were satisfied; however, the defense of *laches* still applied. Specifically, the court determined that plaintiffs were sophisticated landowners and, yet, waited 12 years after becoming Spring Beach Heights residents before targeting defendants' piers. "From 2008 to 2020, [Marshall] took no action, did not ask the [Homeowner's] Association to take action, and did not ask anyone else to take action concerning piers on Lots 10-11. [Marshall] testified he 'did not know' why he waited until November 2020 to file suit." As to Marks' pier, the court found that Marshall knew about the pier long before he was a lot owner in Spring Beach Heights (as early as 1992), yet took no action then or promptly after becoming a Spring Beach Heights landowner. Despite plaintiffs' argument that *laches* did not apply because the statute of limitations for adverse possession had not run, the court determined that Marks had met the requirements for adverse possession, as no landowner had disputed Marks' pier prior to this suit and his pier had been present on lot 11 since at least 1991 (more than 20 years before filing suit). As to Hansen's pier, the court found that *laches* was still appropriate, as defendants installed and maintained their piers with support from the homeowner's association and plaintiffs delayed filing suit for "no apparent reason."

¶ 58 Regarding prejudice, the court determined that Marks was prejudiced, as it was undisputed that he was motivated to purchase his property because it included a pier on the Fox River, and removal of the pier 29 years later left him with no recourse against his predecessor in title. As to Hansen, prejudice was established because he never would have installed his pier, had Marshall not unreasonably delayed in filing suit. The court recounted that Hansen considered that no one had attempted to enforce this 1929 covenant against Marks, whose pier had been installed since at

least 1991, when he installed his pier. Accordingly, the court found that plaintiffs "knowingly and unreasonably slept on their rights and acquiesced for a great length of time."

¶ 59 We find that the court was not unreasonable in applying *laches.* Initially, the crux of plaintiffs' argument on appeal is that the court erred in applying *laches* because the 20-year statute of limitations for adverse possession had not yet run. We find this argument unavailing, as the statute of limitations does not control *laches*, and the special circumstances here do not render the court's determination unreasonable. Generally, in a continuing trespass case, the statute of limitations and *laches* begin to run when the injured party discovers the injury. See *Meyer v. Kissner*, 149 Ill. 2d 1, 12-13 (1992) (regarding *laches*, the time for adverse possession began at the time the levees were constructed and flooding occurred); *Sheppard v. Robards*, 2020 IL App (4th) 190207-U, ¶¶ 16-20 (examining *Meyer* and finding that the statute of limitations began at the discovery of the injury, not at the inception of the trespass). Here, Marks has maintained his pier, and lots 10 and 11, since he purchased his property in 1991. Marshall was aware of and voiced his opinion that Marks should remove his pier or pay a fee as early as 1992. After this time, Marshall did not take steps individually, or through his homeowner's association, to remove Marks' pier, despite participating in another homeowner's association meeting in 1993 to remove piers from lot 42 in the same subdivision. In fact, the court found, "[Marshall] took no action, did not ask the Association to take action and did not ask anyone else to take action concerning piers on Lots 10-11." See Robert Kratovil & Raymond J. Werner, Real Estate Law § 826 (7th ed. 1979) (stating, "it is suggested that the association is acting as agent of the property owners" (Citation.); "[i]n any land development where both a home association and a declaration exist, the right of enforcement of restrictions, liens, and covenants is transferred by the declaration to the home association." (Citation.)). Although Marshall did not have standing to sue for the removal of the piers until 2008

(when he became a lot owner in Spring Beach Heights), Marshall failed to bring suit upon obtaining standing or when Hansen installed his pier in 2010 (when plaintiffs undoubtedly had standing). Rather, plaintiffs sat on their rights without explanation for nearly 12 years after obtaining standing and 28 years after first questioning Marks' ability to operate his pier on lot 11. Accordingly, under these circumstances, the court reasonably applied *laches*.

¶ 60 Additionally, as to Hansen, the 10-year delay between installing his pier and the inception of the suit was reasonable because, as the court found, plaintiffs sat on their rights for no apparent reason, even as defendants obtained approval from the homeowner's association for their piers. Here, the court reasonably found that plaintiffs failed to judicially enforce their rights since at least 2008 but also failed to participate in non-litigation remedies since 1992, despite Marshall's participation in an association meeting that led to the removal of the piers on lot 42. The court reasonably recognized that Hansen installed his pier in the face of Marks' pier having never been disputed. Moreover, after Hansen installed his pier in 2010, no one admonished him for installing the pier or sought the removal of his pier for an additional decade. Rather, Marshall testified, "I don't know. I can't give you an answer to that. I don't know," when asked why he delayed filing suit. Finally, the court reasonably noted that plaintiffs failed to act in the face of the McHenry County Department of Planning and Development issuing a stormwater permit for three piers on lots 10 and 11. Under the foregoing circumstances, we cannot say that *no* reasonable person would adopt the court's view that plaintiffs unreasonably delayed filing suit.

¶ 61 Next, plaintiffs assert that the court erred in applying *laches*, as defendants failed to establish prejudice. To assert *laches*, a party must show that the opposing party's delay prejudiced or injured the moving party, misled the moving party, or otherwise placed the moving party in a worse position because the opposing party failed to file the complaint earlier. *Pyle v. Ferrell*, 12

Ill. 2d 547, 552 (1958) (noting prejudice as an adverse change in position); *City of Marengo v. Pollack*, 335 Ill. App. 3d 981, 988 (2002) (indicating prejudice as being misled or detrimental reliance); *Mistler v. Mancini*, 111 Ill. App. 3d 228, 230 (1982) (describing prejudice as injury).

¶ 62 Here, the court reasonably found that plaintiffs' delay prejudiced Marks and Hansen. As to Marks, the court found that his uncontroverted testimony showed he purchased his property *because* it had pier access to the Fox River. The court reasonably determined that plaintiffs' lack of promptness in filing suit injured Marks, as he could no longer file suit to recover damages from his predecessor in title, Mr. Mynin (for the loss in value and enjoyment of his property) if he were required to remove his pier. Here, the court reasonably credited the defense's argument that Mr. Mynin was "long gone" and that any evidence from him was "gone," as "the ability to locate Mr. Mynin has been futile." The court also reasonably found that Marks was prejudiced because nearly 29 years had passed between the purchase of his home (with pier access) and the filing of this suit—too much time had now passed to unwind his real estate transaction. See *Schroeder v. Schlueter*, 85 Ill. App. 3d 574, 576 (1980) (finding "a marked appreciation or depreciation in the value of the property[,] which is the object of controversy, such that the granting of relief would itself work an inequity, is evidence of injury or prejudice justifying the invocation of *laches*"). Finally, Marks was prejudiced by the delay in filing suit because, for years, he continued to maintain lots 10 and 11 by cleaning up brush, mowing the lots, and blowing the leaves, which he presumably would not have completed had his pier not located on those lots.

¶ 63 Regarding Hansen, the court reasonably credited Hansen's actions, installing a pier in 2010, in the face of plaintiffs' prolonged inaction and the subdivision's apparent acceptance of Marks' pier for nearly 20 years. The court reasonably determined that Hansen detrimentally relied on the homeowner's association's inaction and plaintiffs' failure to enforce the restrictive covenant

against Marks when he decided to install his own pier. As Hansen testified, he would not have installed a pier on lot 11 had he known that plaintiffs would eventually attempt to enforce the 1929 restriction that had previously never been enforced. Presumably, like Marks, he also would not have maintained lots 10 and 11 for years had his pier not been located on those lots. Overall, the court's application of *laches* based on its finding that Hansen incurred unnecessary expense due to plaintiffs' delay in filing suit was not unreasonable. See *Pyle*, 12 Ill. 2d at 555 (considering that "a party is guilty of *laches*[,] which ordinarily bars the enforcement of his right[,] where he remains passive while an adverse claimant incurs risk, enters into obligations, or makes expenditures for improvements or taxes"). Accordingly, based on the foregoing, we cannot say that *no* reasonable person would adopt the court's view that plaintiffs unreasonably delayed in filing suit. Accordingly, based on the circumstances here, we find that the court did not abuse its discretion in applying the doctrine of *laches* to plaintiffs.

¶ 64 III. CONCLUSION

¶ 65 For the reasons stated, we reverse the judgment of the circuit court of McHenry County, regarding its interpretation of the restrictive covenant pertaining to Spring Beach Way. However, we affirm the court's application of *laches*, precluding the removal of defendants' piers in Spring Beach.

¶ 66 Affirmed in part and reversed in part.