DA 24-0151

IN THE SUPREME COURT OF THE STATE OF MONTANA

2025 MT 24

SCOTT LARSEN AND KAREN LARSEN,

Plaintiffs and Appellants,

v.

KEITH SAYERS AND DANIELLE SAYERS,

Defendants and Appellees.

APPEAL FROM: District Court of the Second Judicial District,
In and For the County of Butte-Silver Bow, Cause No. DV-2021-217
Honorable Kurt Krueger, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Brett P. Clark, Crowley Fleck PLLP, Helena, Montana

For Appellees:

Jeffrey W. Dahood, Knight & Dahood, PLLC, Anaconda, Montana

Submitted on Briefs: November 13, 2024

Decided: February 4, 2025

Filed:

Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Scott and Karen Larsen appeal the Second Judicial District Court's ruling that their neighbors' freestyle motocross course and related activities do not violate the restrictive covenants of their residential subdivision in Silver Bow County. The Larsens contend that they are entitled to attorney's fees for their action to enforce the covenants. We conclude that the Sayerses' freestyle motocross course constitutes a breach of the covenants limiting use of the property to residential or agricultural purposes. We reverse on that basis and remand for the District Court to award the Larsens reasonable attorney's fees as the prevailing party.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In the late 1980s, Scott Larsen bought two adjoining lots in the McGuiness Tracts subdivision south of Butte. Scott decided to purchase in the subdivision because he found it quiet and peaceful, and the views were "tremendous." After Scott married Karen, they visited the properties, hoping eventually to build a house and retire there. Keith and Danielle Sayers bought a lot in the same subdivision in 2012, where they now reside. The Sayerses bought a second lot in 2016 or 2017 that adjoins their original property to the north. The Sayerses' second lot borders the Larsens' southern property.

¶3 Keith, a professional freestyle motocross rider, built a freestyle motocross course and ramp on his two lots in the McGuiness Tracts subdivision. The Larsens sent the Sayerses a cease-and-desist letter, requesting that they stop using their properties for freestyle motocross activities. The Larsens also requested that Keith stop driving golf balls

onto their property and retrieving them without license. After the cease-and-desist letter was unsuccessful, the Larsens filed suit, requesting injunctive relief for breach of restrictive covenant, nuisance, and trespass. The Sayerses filed a counterclaim for intentional infliction of emotional distress. The District Court held a bench trial on all claims.

¶4 Keith testified that he is paid to perform in stadiums around the world and receives sponsorship deals from major companies. Keith's type of freestyle motocross involves jumping a single ramp, performing a trick, riding around back to the start, then jumping again. The Sayerses' son, Gavin, who at the time of trial was nine, also rides motocross bikes and receives motocross sponsorship deals. One feature of Keith's motocross course is a "figure-8" that allows Gavin to practice cornering in two tight loops. Keith also built an eight-foot-tall metal ramp with an eleven-foot-tall dirt landing. An aerial view shows a second, meandering course with small dirt jumps.[1]

¶5 In 2017, the Larsens began building a house on their north lot. They moved onto the property in late 2019. Their south lot—bordering the Sayerses' property—remains vacant. Once they broke ground on their house, the Larsens realized that the Sayerses used their nearby properties for freestyle motocross. The noise from the motocross bikes severely disrupts the Larsens. When Keith jumps off the eight-foot ramp, the exhaust from his bike points directly towards the Larsens' house, which Scott said amplifies its "roaring, . . . thunderous" sound. Due to the noise, the Larsens decided not to complete a

[1] Keith has another motocross course nearby—on a 14-acre lot he owns in Racetrack, Montana, near Deer Lodge.

deck and living space above their garage because it was not worth sinking money into aspects of their house they could not enjoy.

¶6 The Larsens and another neighbor, Paul Iverson, testified that, in addition to Keith and Gavin, others ride dirt bikes on the Sayerses' motocross course. Iverson said he occasionally sees eight to ten people ride the course at once, but that he has "probably seen upwards of thirty people there." Karen testified that she has seen five people on the course at a time. The court admitted a video showing four people going off one of the Sayerses' motocross jumps simultaneously. Keith acknowledged that three of his subcontractors have ridden on his motocross course in the past three or four years. Iverson estimated that Keith rides bikes about two to three times per week, primarily on the weekends and in the evenings. Scott confirmed this estimate at trial, testifying that Keith rides year-round, but most frequently—roughly two to three times per week—in the summer.

¶7 The Larsens attempted to mitigate the effect of the noise on their properties. They left a large dirt berm on one lot to block the sound. Inside their house, when the Sayerses begin riding bikes, the Larsens close their windows and turn up the TV or radio to drown out the noise. Karen previously enjoyed gardening but finds that earplugs do not block the noise from the motocross bikes next door. The Larsens stopped entertaining guests for outdoor gatherings because they cannot hear each other talk over the noise. Iverson testified that when Keith first moved to the subdivision, he rode his motocross bike at 9:00 p.m., waking up Iverson's five-year-old son. Nowadays, if Iverson has friends over and Keith or Gavin start riding bikes, they go inside because it is too loud outside to hear

each other. Like the Larsens, Iverson shuts his windows because he cannot hear the TV over the sound.

¶8 The motocross activity also stirs up dirt that affects the Larsens. Scott finds that, because the bikes churn up the ground, the dust cannot settle and consequently blows around the neighborhood during windstorms. To Scott, it is like a "dirt cyclone" that blows dirt mostly across their vacant south lot. Iverson finds it necessary to take drying clothes down from the line when this happens.

¶9 At trial, the Larsens brought in a real estate broker, Eric Ossorio, who works in Big Sky with Engel & Völkers. In his experience, Ossorio testified, the Sayerses' motocross track more likely than not would materially affect the value of both the Larsens' properties.

¶10 Keith also has built motocross ramps on his property. The court admitted into evidence pictures Keith posted to Facebook showing various ramps he constructed, including one using an extended boom forklift. Scott testified that Keith builds ramps, at least in part, outdoors. In one post, Keith wrote that the ramp was headed to Calgary; in another, the ramp was going to Saudi Arabia. Scott said that from his house, when Keith is building a ramp and has the garage doors open, Scott can hear him using a metal grinder. Keith testified that he makes the ramps for his and others' use, but he does not have a business of manufacturing them for sale.

¶11 The Sayerses presented testimony from three other neighbors that the Sayerses' use of their properties does not bother them. Keith spoke to the importance of motorcycles in Butte, the support he received from the community, and the influence Evel Knievel, the

famous motorcycle daredevil who grew up in Butte, had on his career. Keith further testified that he does not have a grandstand on his property and does not charge spectators to watch riders on his motocross course. Keith also said that airplanes taking off and landing at the nearby Butte airport produce significant noise at his property. Keith did not deny that he hit golf balls onto the Larsens' property.

¶12 The District Court granted the Larsens' request to enjoin Keith from hitting golf balls onto or retrieving them from the Larsens' land. Ruling that the Sayerses' other activities did not violate the Declaration, the court denied the nuisance claim and the request for an injunction preventing the Sayerses from using their properties for a motocross course and ramp-building. The District Court also denied the Sayerses' intentional infliction of emotional distress claim.

¶13 The Larsens filed a motion for award of attorney's fees, but the District Court did not rule on the motion. They appeal the District Court's denial of their breach of restrictive covenant claims and related requests for injunctive relief and its effective denial of their attorney's fees motion. The Sayerses did not appeal the court's trespass ruling or its denial of their counterclaim.

STANDARDS OF REVIEW

¶14 We review for correctness a district court's interpretation of a restrictive covenant as a conclusion of law. *Craig Tracts Homeowners' Ass'n, Inc. v. Brown Drake, LLC*, 2020 MT 305, ¶ 7, 402 Mont. 223, 477 P.3d 283 (citation omitted). Generally, "[t]he standard of review of a grant or denial of injunctive relief is whether the court manifestly

abused its discretion." *Davis v. Westphal*, 2017 MT 276, ¶ 10, 389 Mont. 251, 405 P.3d 73 (citation omitted). "An abuse of discretion occurs if a lower court exercises granted discretion based on a clearly erroneous finding of fact, erroneous conclusion or application of law, or otherwise arbitrarily, without conscientious judgment or in excess of the bounds of reason, resulting in substantial injustice." *Meine v. Hren Ranches, Inc.*, 2020 MT 284, ¶ 13, 402 Mont. 92, 475 P.3d 748 (citation omitted). If the grant or denial of an injunction is based only on conclusions of law, "no discretion is involved and we review the district court's conclusions of law to determine whether the interpretation of the law is correct." *City of Whitefish v. Bd. of Cnty. Comm'rs of Flathead Cnty.*, 2008 MT 436, ¶ 7, 347 Mont. 490, 199 P.3d 201 (citation omitted).

DISCUSSION

¶15 *1. Do the Sayerses' freestyle motocross activities violate the Declaration of Restrictive Covenants?*

¶16 The lots in the McGuiness Tracts subdivision—including the Larsens' and the Sayerses' properties—are subject to restrictions contained in the Declaration of Restrictive Covenants ("Declaration"). Section 12 of the Declaration provides that "all covenants . . . shall attach to the land and run with the title thereto and shall be binding on all owners of tracts in the said real property." It continues:

> All deeds shall be given and accepted upon the express understanding that the said real property has been carefully planned as a choice rural suburban tract area exclusively and to assure owners that under no pretext will there be an abandonment of the original plan to preserve the property as a choice suburban tract area.

¶17 Section 1 requires that the lots "shall be used for residential and agricultural purposes only, . . . and no business, trade, manufacture or other commercial activity shall be conducted thereon." The Declaration also provides that lots may not be used in any way that "unreasonably disturb[s] the owners of tracts located in the said real property."

¶18 "When interpreting a restrictive covenant, this Court applies the same rules as those applicable to contract interpretation." *Hillcrest Homeowners Ass'n v. Wiley*, 239 Mont. 54, 56, 778 P.2d 421, 422 (1989) (citation omitted). Like contracts, we interpret restrictive covenants to "ascertain the intention of the parties." *Craig Tracts*, ¶ 9 (citation omitted). This entails reading the restrictive covenant as a whole and giving "effect to every part if reasonably practicable." Section 28-3-202, MCA; *see also Tipton v. Bennett*, 281 Mont. 379, 381, 934 P.2d 203, 205 (1997) (quoting *Toavs v. Sayre*, 281 Mont. 243, 245, 934 P.2d 165, 166 (1997)) ("We read all covenants as a whole to ascertain their meaning."). Section 1-4-101, MCA, similarly provides that

> [i]n the construction of an instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

¶19 If the restrictive covenant's language is clear and explicit, we apply the language—using its ordinary and popular meaning—as written. *Craig Tracts*, ¶ 9 (citation omitted). "The Court will construe restrictive covenants strictly and resolve ambiguities in favor of free use of property." *Craig Tracts*, ¶ 9 (citation omitted). Language is ambiguous when it is subject to two different reasonable interpretations. *Craig Tracts*, ¶ 9 (citation omitted).

Residential Use

¶20 Weighing the Larsens' request for an injunction against the Sayerses' motocross course, the District Court started with the Declaration's requirement that McGuiness Tracts properties must be used for residential purposes only. The court reasoned that "[r]esidential use encompasses engaging in recreational activities incident to human habitation." Because the Sayerses use their motocross course for recreation, the court ruled that the course is an "appurtenance necessary to the enjoyment of a dwelling house," and therefore the course does not violate the restrictive covenants. *See Tipton*, 281 Mont. at 383, 934 P.2d at 206.

¶21 The Larsens contest the District Court's construction of "residential purposes" as used in the restrictive covenants. They contend that the Sayerses' motocross course is not, as the court held, "an appurtenance necessary to the enjoyment of a dwelling house." *Tipton*, 281 Mont. at 383, 934 P.2d at 206. The Sayerses respond that because they utilize the course for personal enjoyment and do not host spectators, it qualifies as a residential purpose under the Declaration. The Sayerses assert that the District Court correctly determined their motocross course is a residential use because it is incidental to human habitation.

¶22 Neither party argues that the Declaration is ambiguous. The Sayerses' properties may be used only for "residential or agricultural purposes." The Sayerses do not argue that freestyle motocross is an agricultural use. "Residential" we have defined as "used as a residence or by residents." *Hillcrest*, 239 Mont. at 56, 778 P.2d at 423 (quoting *Residential*,

Webster's New Collegiate Dictionary 1003 (9th ed. 1986)). "Residence," in turn, means "the act or fact of dwelling in a place for some time." *Hillcrest*, 239 Mont. at 56, 778 P.2d at 423 (quoting *Residence*, *Webster's New Collegiate Dictionary* 1003 (9th ed. 1986)).

¶23 In *Tipton*, we applied a deed restriction that directed the subject property "be used strictly for residential purposes." *Tipton*, 281 Mont. at 380, 934 P.2d at 204. There, the Bennetts built a 3,200-square-foot personal storage building on their property; they did not build a residence. *Tipton*, 281 Mont. at 380-81, 934 P.2d at 204. We distinguished the Bennetts' storage building from our recognition in *Hillcrest* that "[a] private garage is a proper appurtenance necessary to the enjoyment of a dwelling house and does not violate a 'for residence purposes only' covenant" when used in conjunction with a residential dwelling. *Tipton*, 281 Mont. at 382-83, 934 P.2d at 205-06 (quoting *Hillcrest*, 239 Mont. at 57, 778 P.2d at 423). We rejected an interpretation of the covenant under which "any building used incidental to a residence is permissible," finding such a construction to be too broad. *Tipton*, 281 Mont. at 383, 934 P.2d at 206. We held that the storage building violated the covenant, "not only because it stands alone without a dwelling, but also due to the fact that a 3,200 square foot storage building is not consistent with 'residential purposes.'" *Tipton*, 281 Mont. at 383, 934 P.2d at 206. We stated, "[w]ith or without a residence, a 3,200 square foot storage building is not an appurtenance necessary to the enjoyment of a dwelling house." *Tipton*, 281 Mont. at 383, 934 P.2d at 206.

¶24 Applying *Tipton*, the appropriate inquiry is whether the Sayerses' motocross course is consistent with residential use or an appurtenance necessary to the enjoyment of their

house. *See Tipton*, 281 Mont. at 383, 934 P.2d at 206. The Sayerses do not address the language in *Tipton* or explain how a freestyle motocross course serves a residential or agricultural purpose.[2] In fact, Keith agreed at trial that a motocross course is not a residential or agricultural use of property. Likewise, Danielle admitted that motocross is not necessary to a residence. That they use the course "incidental to" their occupation of a residence in the subdivision does not render the course itself a "residential use." If a 3,200-square-foot storage building is not an appurtenance necessary to the enjoyment of a dwelling house, then the Sayerses' freestyle motocross course with its accompanying noise and dust is even less so. *See Tipton*, 281 Mont. at 383, 934 P.2d at 206.

¶25 The Declaration also prohibits any use that "unreasonably disturb[s]" other landowners in the McGuiness Tracts, and it guarantees that the McGuiness Tracts will be "preserve[d] . . . as a choice suburban tract area." These provisions too must be given effect. *See Tipton*, 281 Mont. at 381, 934 P.2d at 205 (citation omitted). As an adjective, "choice" means "selected with care" or "of high quality." *Choice*, *Merriam-Webster*, https://perma.cc/F2KR-UDCH (last visited Jan. 13, 2025). The Larsens presented extensive testimony describing how the motocross course disrupts them and their neighbor, Paul Iverson. To mitigate the effects of the noise and dust, the Larsens no longer host guests outdoors; have left planned features of their house unfinished; close their windows and turn up the TV when the Sayerses use the course; and Karen no longer gardens. *See Craig Tracts*, ¶ 18 (citation omitted) (referencing lack of evidence that use

[2] The Sayerses cite *Tipton* only for the definition of "residence."

of the defendant's property "detracts from the other neighborhood members' enjoyment of their own property or the area's 'residential' character"). The Larsens presented additional evidence indicating that the motocross course affects the value of their residential properties.

¶26 Despite citing the applicable standard, the District Court did not discuss *Tipton* or explain how the facts there compare to the facts in this case. The District Court cited no legal authority for the proposition that recreational motocross is a residential purpose simply because the Sayerses use it "incident[al] to" their residence. This reasoning contradicts our holding in *Tipton*. We conclude that the Sayerses' motocross course is not an "appurtenance necessary to the enjoyment of [their house]" and therefore does not satisfy the covenants' limitation to use for a residential purpose. *See Tipton*, 281 Mont. at 383, 934 P.2d at 206. Giving effect to the restrictions against activity that unreasonably disturbs other landowners or impacts the choice nature of the subdivision, the Sayerses' use of their properties for freestyle motocross is in breach of the Declaration. The District Court's contrary interpretation of the covenants was incorrect. *See Craig Tracts*, ¶ 7 (citation omitted).

Commercial Activity

¶27 Section 1 of the Declaration prohibits any "business, trade, manufacture or other commercial activity." Analyzing the Larsens' request for injunctive relief against Keith's ramp-construction activities, the District Court relied on *State v. Hennessy Company*, in which we defined "manufacture" as

> [t]he operation of making goods or wares of any kind; the production of articles for use from raw or prepared materials by giving to those materials new forms, qualities, properties or combinations, whether by hand labor or by machinery; used more especially of production in a large way by machinery or by many hands working collectively.

State v. Hennessy Co., 71 Mont. 301, 304, 230 P. 64, 65 (1924) (quoting Century Dictionary). The District Court reasoned that the terms "goods" and "wares" imply selling a manufactured product. Relying on Keith's testimony that he does not sell the ramps he makes, the District Court concluded that his ramp-building is not a breach of the Declaration.

¶28 The Larsens assert that the Declaration's express inclusion of "manufacture" means that the drafters were not solely concerned with the sale of goods manufactured in the subdivision. The Larsens also point to Keith's recognition at trial that building ramps is manufacturing. Finally, the Larsens contend that our definition of "manufacture" in *Hennessy* focuses on the production of goods, not on the sale. *See Hennessy Co.*, 71 Mont. at 301, 230 P. at 65. The Sayerses respond that the Declaration does not prohibit their ramp construction because they build the ramps for personal use and sometimes rent them to friends.

¶29 *Noscitur a sociis* is a canon of construction "meaning that a word is known by the company it keeps." *Matter of Estate of Dower*, 2021 MT 245, ¶ 10, 405 Mont. 443, 495 P.3d 1083 (citing *Yates v. United States*, 574 U.S. 528, 543, 135 S. Ct. 1074, 1085 (2015)). This canon is "a test of construction of a single word: Where there is a string of words and the meaning of one of them is doubtful that meaning is given to it which it shares with the other words." *Barnes v. Mont. Lumber & Hardware Co.*, 67 Mont. 481, 486, 216

P. 335, 336 (1923) (quoting Wharton's Law Lexicon). This canon is used in the construction of terms in a written instrument "to apply to them the meaning naturally attaching to them from their context." *See Barnes*, 67 Mont. at 486, 216 P. at 336. It "aids courts to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words." *Estate of Dower*, ¶ 10 (internal quotation and citation omitted). Here, the word "manufacture" is embedded in a list of other words, including "business, trade, . . . or other commercial activity." These surrounding terms inform our understanding of the Declaration's prohibition on manufacturing. *See Estate of Dower*, ¶ 10 (citation omitted); *Barnes*, 67 Mont. at 481, 216 P. at 336.

¶30 "Business" means "a usually commercial or mercantile activity engaged in as a means of livelihood" or "dealings or transactions especially of an economic nature." *Business*, *Merriam-Webster*, https://perma.cc/FXE7-G86U (last visited Jan. 14, 2025); *see also Business*, *Black's Law Dictionary* (12th ed. 2024) ("A commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain."). "Trade" means "the business of buying and selling or bartering commodities." *Trade*, *Merriam-Webster*, https://perma.cc/7YRP-K3GV (last visited Jan. 14, 2025); *see also Trade*, *Black's Law Dictionary* (12th ed. 2024) ("The business of buying and selling or bartering goods or services."). Last, "commerce" means "the exchange or buying and selling of commodities on a large scale involving transportation from place to place." *Commerce*, *Merriam-Webster*, https://perma.cc/U2VP-XX5J (last visited Jan. 14, 2025); *see also Commercial*, *Black's Law Dictionary* (12th ed. 2024) ("Of, relating to, or

involving the selling of goods or services for profit."). The definitions of these terms surrounding "manufacture" all include the action of selling goods or commodities. Employing the *noscitur a sociis* canon, these terms imply that the Declaration's manufacturing prohibition is specific to manufacturing for sale. *See also Myers v. Kleinhans*, 2024 MT 208, ¶ 15, 418 Mont. 113, 556 P.3d 529 (concluding that a restrictive covenant's prohibition against "commercial business" unambiguously barred "for-profit business use on subdivision property").

¶31 The District Court found that Keith is not engaged in making ramps for sale to the public or operating a retail business out of his garage. The Larsens have not demonstrated clear error in that finding of fact.

¶32 The Larsens presented minimal evidence regarding Keith's ramp construction. Scott offered his own opinion that this activity "depreciates the value of your property, and it makes your neighborhood not as stable." Scott said that he can hear Keith build a ramp when "the garage doors are open and he happens to be grinding out there with his grinder." On cross-examination, however, Scott admitted that "it's fine if they use a grinder." The Larsens' evidence concerning the effects of Keith's ramp-building ended there.

¶33 Giving effect to the Declaration's other relevant provisions—namely that land use cannot unreasonably disturb landowners and the McGuiness Tracts must remain a choice suburban subdivision—the Larsens failed to demonstrate that Keith's ramp-building unreasonably disturbs them or upsets the goal of maintaining McGuiness Tracts as a residential area. *See Craig Tracts*, ¶ 7 (citation omitted). Nor does the definition of

manufacturing we have used in the past cover Keith's small-scale operation. *Hennessy Co.*, 71 Mont. at 301, 230 P. at 65 ("especially of production in a large way by machinery or by many hands working collectively"). Finally, the terms joined in a list with "manufacture" do not suggest that the drafters intended to prohibit small-scale construction for personal or rental use. To the extent "manufacture" could have a broader meaning, we resolve any ambiguity "in favor of free use of property." *Craig Tracts*, ¶ 9 (citation omitted). The District Court did not err when it denied the Larsens' request to enjoin Keith's ramp-building activity on the record presented. *See City of Whitefish*, ¶ 7 (citation omitted).

¶34 *2. Are the Larsens the prevailing party entitled to attorney's fees?*

¶35 The Declaration provides that "[u]pon the breach of any of the said covenants and restrictions, anyone owning any land in the . . . [subdivision] may bring a proper action in the proper court to enjoin and restrain said violation or to collect damages or other dues on account thereof." The Declaration entitles the prevailing party to reasonable attorney's fees for such an action.

¶36 The Larsens assert that the District Court erred when it failed to rule on their motion for attorney's fees, effectively denying the request. The District Court ruled that Keith's practice of driving golf balls onto the Larsens' property was a breach of the restrictive covenants, granting their request for an injunction. Thus, the Larsens argue that they are

the prevailing party for purposes of attorney's fees. The Sayerses respond that the Larsens are not entitled to fees because they are not the "sole, prevailing party" in the action.[3]

¶37 The "prevailing party is the one who has an affirmative judgment rendered in his favor at the conclusion of the entire case." *Avanta Fed. Credit Union v. Shupak*, 2009 MT 458, ¶ 49, 354 Mont. 372, 223 P.3d 863 (quoting *Schmidt v. Colonial Terrace Assocs.*, 215 Mont. 62, 68, 694 P.2d 1340, 1344 (1985)). Because the Larsens prevailed on their trespassing claim and we reverse the District Court's ruling on their claims relating to the motocross course, they have secured an affirmative judgment in their favor and are the prevailing party entitled to attorney's fees.

CONCLUSION

¶38 We reverse the District Court's denial of the Larsens' claim for breach of the restrictive covenants and request for injunctive relief against the motocross course, as it does not meet the definition of "residential" purpose. We affirm on the record presented the court's determination that Keith's ramp-building does not violate the covenants' restriction against commercial activity. We reverse the District Court's denial of attorney's fees to the Larsens and remand for further proceedings to determine a reasonable award of fees consistent with this Opinion.

[3] The Sayerses further contend that the Larsens' failure to file a reply brief violated the Second Judicial District's Local Rule 19(A), which provides that "[e]xcept for summary judgment motions, when all briefs have been filed, or the time for filing briefs has expired, either party may file a request with the presiding Judge indicating whether oral argument is necessary or if the motion is deemed to be submitted on the briefs." This rule does not foreclose the Larsens' claim.

/S/ BETH BAKER

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ JIM RICE