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NO. COA13-535
NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2013

TINA L. FLOWERS,
Plaintiff,

v.

Buncombe County
No. 11 CVS 4263

LATONYA B. WILLIAMS,
Defendant.

Appeal by defendant from judgment entered 12 October 2012
by Judge Marvin P. Pope, Jr., in Buncombe County Superior Court.
Heard in the Court of Appeals 24 September 2013.

*Ferikes & Bleynat, PLLC, by Joseph A. Ferikes, for
plaintiff-appellee.*

William E. Loose, for defendant-appellant.

McCULLOUGH, Judge.

Defendant Latonya B. Williams appeals the entry of
declaratory judgment in favor of plaintiff Tina L. Flowers,
concluding that plaintiff has an easement across defendant's
property. For the reasons set forth below, we affirm.

I. Background

On or about September 2006, plaintiff Tina L. Flowers
entered into a written Offer to Purchase real property as

described in Book 1492, Page 226, Buncombe County Registry (hereinafter "subject property"), which was then owned by Rowena B. Goodson and Pauline E. Brinkley. Prior to purchasing the subject property, plaintiff hired Peterson Engineering and Surveying ("Peterson") to survey the subject property, divide it into three separate parcels, and record a plat showing the subdivision.

On 5 September 2006, a plat was recorded in Book 121, Page 63, of the Buncombe County Register of Deeds office ("the plat"). The plat subdivided the subject property into three separate lots and provided access to all three lots by way of a "Proposed 12' Private Drive & Utility Easement." The plat was approved as a "Special Subdivision" by the Zoning Administrator for Buncombe County.

On 21 September 2006, plaintiff was conveyed the subject property by three separate deeds - one for each lot. Plaintiff also recorded a "Road Maintenance Agreement" which stated that the plat showed a common drive to all three lots and

THEREFORE, in consideration of ONE DOLLAR and other valuable considerations, [plaintiff] their heirs and assigns wish to give a Right of Way for ingress and utilities, and to enter into a Road Maintenance Agreement for the portion of the common drive that they use.

On 23 June 2009, plaintiff deeded Lot #2 to CMH Homes, Inc. CMH Homes, Inc., then deeded Lot #2 to defendant Latonya B. Williams on 29 September 2009. Both conveyances were by warranty deed and the only description of the property, Lot #2, was by reference to the plat. Defendant's deed also contained language that "Title to the property . . . is subject to the following exceptions: Subject to easements, restrictions and rights of way of record[.]"

On 17 August 2011, plaintiff filed a complaint for Declaratory Judgment and Temporary and Permanent Injunction against defendant. The complaint alleged that the only access to Candler Knob Road and only means of ingress and egress to her property, Lot #3, was by way of an existing easement. The easement led from Candler Knob Road, through the Owens, Brinkley, and Flowers' property, and then through defendant's property to plaintiff's property. Plaintiff further alleged that in 2010, plaintiff attempted to use the easement when she encountered a gate and a shed across the easement, preventing access to her property. Defendant advised plaintiff that plaintiff "did not have a right to cross the Defendant's property for access to the Plaintiff's property." Plaintiff argued that she was entitled to a declaration of her rights to

use the easement and an order enjoining the defendant from interfering with said rights. Plaintiff also requested that the trial court temporarily and permanently enjoin and restrain defendant from interfering with plaintiff's use of the easement.

Defendant filed an "Answer, Affirmative Defenses, Counterclaim" on 30 September 2011.

Following a hearing held on 9 October 2012, the trial court entered judgment on 12 October 2012. The trial court made the following findings of fact:

1. On or about September, 2006, Plaintiff entered into a written Offer to Purchase [the subject property] consisting of approximately 2.089 acres and which was then owned by Rowena B. Goodson and Pauline E. Brinkley[.]
2. Prior to the purchase, the Plaintiff hired Peterson Engineering and Surveying ("Peterson") to survey the property and to subdivide the property into three (3) separate lots. Peterson did subdivide the property into three (3) separate lots and prepared a plat of the property, (hereinafter, "the plat").
3. The plat described herein was submitted to the Zoning Administrator for Buncombe County, North Carolina and approved as a "special subdivision." The plat showed a proposed 12' private drive and utility easement accessing all three (3) lots. The Buncombe County Review Officer certified that the plat met all statutory requirements for recording.

4. Thereafter, the plat was recorded[.]

5. The plat was approved as a Special Subdivision by the Zoning Administrator of Buncombe County, North Carolina and the notation upon the subject plat is that the access is considered a private drive.

6. The "proposed 12-foot private drive and utility easement" as shown on the plat extends from the Owen Hollow Road along the entire southern portion of Lot #1 to Lot #2 and thereafter continues along the western portion of Lot #2 to Lot #3.

7. The Plaintiff acquired title to the property by virtue of three (3) deeds[.]

. . .

The property descriptions contained in each deed made reference to the plat and each stated that the real property described in the Deed is subject to easements, restrictions and rights of way of record.

8. Thereafter, the Plaintiff conveyed Lot #2 as shown on the plat to CMH Homes, Inc. This Deed was recorded . . . and also contains the notation that the real property described in the Deed is "subject to easements, restrictions and rights of way of record".

9. Thereafter, CMH Homes, Inc. conveyed Lot #2 as shown on the plat to the Defendant. This Deed was recorded . . . and also contains . . . the notation that the real property described in the Deed is "subject to easements, restrictions and rights of way".

10. The Court specifically finds that the words "proposed 12-foot private drive and

utility easement" as shown on the plat is in fact a right of way and easement of record for access and utility purposes (hereinafter, "right of way" or "easement"), and that Lot #2 of the plat and it's owner and all future owners, their heirs, successors and assigns, are subject to said easement for the benefit of Lot #3 of Plat Book 121, Page 63, Buncombe County Registry.

11. The Court further finds that the Defendant has placed certain obstructions within the 12' easement located on Lot #2 including a wooden picket fence and a wooden shed which would prevent the Plaintiff and/or any future owners of Lot #3 from accessing Lot #3, and which would need to be removed to allow the Plaintiff full and complete access to Lot #3.

Based on the foregoing findings of fact, the trial court concluded that plaintiff was

entitled to declaratory judgment declaring the full and unrestricted right of way, easement and access for purposes of ingress, egress, and regress to and from Owen Hollow Road and installation and maintenance of utilities benefitting Lot #3 over and across Lot #2 as shown on the plat[.]

The trial court ordered that

The Plaintiff, her heirs, successors and assigns, as owner(s) of Lot #3 . . . has a full and unrestricted 12 foot right of way and easement for the purposes of ingress, egress, and regress to and from Owen Hollow Road and for installation and maintenance of utilities over and across Lot #2 This right of way and easement shall run with and be appurtenant to Lot #3 of the plat.

Within ninety days, defendant was ordered to remove all obstructions located on Lot #2 which would prevent "unrestricted vehicular and utility access over and across said 12' right of way."

Defendant appeals.

II. Standard of Review

"The standard of review in declaratory judgment actions where the trial court decides questions of fact is whether the trial court's findings are supported by any competent evidence. Where the findings are supported by competent evidence, the trial court's findings of fact are conclusive on appeal." *Danny's Towing 2, Inc. v. N.C. Dep't of Crime Control & Pub. Safety*, 213 N.C. App. 375, 382, 715 S.E.2d 176, 182 (2011) (citation omitted).

"Once it has been determined that the findings of fact are supported by the evidence, we must then determine whether those findings of fact support the conclusions of law." *Dep't of Transp. v. Elm Land Co.*, 163 N.C. App. 257, 264, 593 S.E.2d 131, 136 (2004) (citation omitted). "We review the trial court's conclusions of law *de novo*." *Ferguson v. Coffey*, 180 N.C. App. 322, 324, 637 S.E.2d 241, 242 (2006) (citation omitted). We note that "[f]indings of fact which are essentially conclusions

of law will be treated as such upon review." *Cody v. Snider Lumber Co.*, 328 N.C. 67, 70, 399 S.E.2d 104, 106 (1991) (citation omitted).

III. Discussion

On appeal, defendant argues that the trial court erred by entering finding of fact number 10, by granting a declaratory judgment in favor of plaintiff, and by ordering defendant to remove all obstructions from the right of way and easement.

First, defendant argues that the trial court erred by entering finding of fact number 10 which stated the following:

10. The Court specifically finds that the words "proposed 12-foot private drive and utility easement" as shown on the plat is in fact a right of way and easement of record for access and utility purposes (hereinafter, "right of way" or "easement"), and that Lot #2 of the plat and it's owner and all future owners, their heirs, successors and assigns, are subject to said easement for the benefit of Lot #3 of Plat Book 121, Page 63, Buncombe County Registry.

Specifically, defendant argues that finding of fact number 10 is more appropriately classified as a conclusion of law and that the language, "proposed 12' private drive and utility easement[,]" is insufficient to create an easement. Based on the foregoing, defendant asserts that the trial court erred by

granting declaratory judgment in favor of plaintiff. We disagree.

As a preliminary matter, because we deem finding of fact number 10 as a conclusion of law, we will review it as such.

An easement is an interest in land, and is generally created by deed. . . . An easement deed, such as the one in the case at bar, is, of course, a contract. The controlling purpose of the court in construing a contract is to ascertain the intention of the parties as of the time the contract was made. . . . The intention of the parties is to be gathered from the entire instrument and not from detached portions.

Higdon v. Davis, 315 N.C. 208, 215, 337 S.E.2d 543, 547 (1985) (citation omitted). "When such contracts are plain and unambiguous, their construction is a matter of law for the courts." *Lovin v. Crisp*, 36 N.C. App. 185, 188, 243 S.E.2d 406, 409 (1978) (citation omitted).

Defendant argues that the inclusion of the word "proposed" to describe the easement at issue is insufficient to create an easement. In interpreting a contract, "[i]f no definition is given, non-technical words are to be given their meaning in ordinary speech, unless the context clearly indicates another meaning was intended." *Reaves v. Hayes*, 174 N.C. App. 341, 345, 620 S.E.2d 726, 729 (2005) (citation omitted).

In the case *sub judice*, it is clear that the parties intended for the conveyance of Lot #2 to be made subject to the easement despite the use of the word "proposed." The trial court's unchallenged findings of fact, which are deemed binding on appeal, establish that plaintiff hired Peterson to subdivide the subject property into three separate lots and to prepare a plat of the subject property. See *Mussa v. Palmer-Mussa*, 366 N.C. 185, 191, 731 S.E.2d 404, 409 (2012) (citation omitted) (stating that unchallenged findings of fact are "presumed to be supported by competent evidence and [are] binding on appeal"). The plat showed a 12' private drive and utility easement accessing all three lots and was subsequently recorded in the Buncombe County, North Carolina Registry. The plat was approved as a special subdivision by the Zoning Administrator of Buncombe County and had a notation that "the access is considered a private drive."

When plaintiff acquired title to the property by three separate deeds, each deed made reference to the plat in its property descriptions and stated that the property described in the deed was subject to easements, restrictions, and the rights of way of record. Both of the conveyances of Lot #2 from plaintiff to CMH Homes, Inc. and the conveyance from CMH Homes,

Inc. to defendant make reference to the plat and contains the notation that the real property described in the deed is "subject to the easements, restrictions and rights of way." Furthermore, plaintiff's 22 September 2006 "Road Maintenance Agreement" specifically stated that plaintiff wished to "give a Right of Way for ingress and utilities, and to enter into a Road Maintenance Agreement for the portion of the common drive that they use." Based on the foregoing, we hold that it was clearly plaintiff's intention to create an easement prior to her purchase of the subject property, that the applicable deeds contain language specifying that the real property is "subject to easements[,]" and that the applicable deeds and Road Maintenance Agreement reference the plat which includes the easement. Therefore, defendant was put on notice of this easement and her arguments must fail. See *Reed v. Elmore*, 246 N.C. 221, 231, 98 S.E.2d 360, 367 (1957) (citation omitted) (stating that "if a deed or a contract for the conveyance of one parcel of land, with a . . . easement affecting another parcel of land owned by the same grantor, is duly recorded, the record is constructive notice to a subsequent purchaser of the latter parcel"). Because we hold that the trial court did not err by concluding that there was an "easement of record for access and

utility purposes . . . and that Lot #2 of the plat and it's [SIC] owners and all future owners, their heirs, successors and assigns, are subject to said easement for the benefit of Lot #3" of the plat, we affirm the trial court's granting of a declaratory judgment in favor of plaintiff.

Lastly, defendant argues that the trial court erred by ordering her

to remove any and all obstructions located on Lot #2 of the plat . . . which would prevent the free and unrestricted vehicular and utility access over and across [the easement]. The removal shall include, but not be limited to, the removal of the wooden picket fence and wooden shed currently located within said right of way.

We disagree.

Defendant's placement of a gate and shed across the easement, preventing plaintiff's access to her property, took away plaintiff's rights to the easement. "In North Carolina, it is an established principle that the possessor of an easement has all rights that are necessary to the reasonable and proper enjoyment of that easement." *Intermount Distrib., Inc. v. Public Serv. Co. of N.C.*, 150 N.C. App. 539, 542, 563 S.E.2d 626, 629 (2002) (citation omitted). Accordingly, we hold that the trial court did not err in ordering the removal of the fence

and shed and the 12 October 2012 order of the trial court is affirmed.

Affirmed.

Judges McGEE and DILLON concur.

Report per Rule 30(e).