IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-44

Filed: 3 July 2018

Watauga County, No. 17 CVD 125

ANITA COOK MCGUIRE, Plaintiff,

v.

DANIEL R. OLSON and CARROLL B. OLSON, Defendants.

Appeal by plaintiff from order entered 28 August 2017 by Judge Rebecca Eggers-Gryder in Watauga County District Court. Heard in the Court of Appeals 7 June 2018.

Moffatt & Moffatt, PLLC, by Tyler R. Moffatt, for plaintiff-appellant.

Di Santi Watson Capua Wilson & Garrett, PLLC, by Chelsea Bell Garrett, for defendant-appellee.

TYSON, Judge.

Anita Cook McGuire ("Plaintiff") appeals from an order granting Daniel R. and Carroll B. Olson's ("Defendants") motion for summary judgment. We affirm the trial court's order.

I. Background

Florence Shore owned an approximately forty-acre parcel of real property situate in Watauga County. On 6 August 1976, Florence conveyed 3.304 acres from her forty-acre parcel to Stewart Cook and his wife, Betty Shore Cook, by warranty deed.

On 1 June 1984, Florence conveyed her remaining acreage in the original forty-acre lot to Betty Shore Cook and Anne Shore Dula by general warranty deed. Anne Dula conveyed her interest to Betty Cook through a quitclaim deed on 4 April 1989. All deeds were recorded in the Watauga County Registry. A plat dated 10 July 1990 and entitled "Boundary Survey of the Florence Shore Estate," which shows a 150-foot right-of-way for U.S. Highways 221 & 321, was also recorded in the Watauga County Registry.

Betty Cook died on 6 September 2016. Her will devised a life estate in her remaining interest in the original forty-acre lot to her husband, Stewart, with the remainder upon his death to her daughter, Plaintiff. On 14 December 2016, Stewart conveyed his interest in Tract I, a 0.980-acre portion of the original forty-acre lot, located between his 3.304-acre tract and the highway, to Plaintiff by a non-warranty deed. Exhibit A attached to the deed included the following language:

> BEING all of Tract I as shown on plat thereof recorded in Map Book 12, at page 162 of the Watauga County, N.C., Public Registry, reference to which plat is hereby made for a more complete description.

> RESERVED HEREIN by Grantor, their heirs, successors and assigns are non-exclusive perpetual easements shown on the above-referenced plat over Tract I and labeled as "Gravel Road" and "Gravel Drive" for ingress, egress and regress extending from U.S. Hwy No. 221 & 321 to the property of Stewart Cook.
>
> The above described property is subject to a right-of-way easement to U.S. Highway 321-221 and to the right-of-way easement, thirty feet in width, to the Earnest Shore property, and any other highway rights-of-way or utility easements of record.

Plaintiff conveyed her interest in Tract I to Defendants on 20 December 2016 by general warranty deed. Exhibit A attached to this deed contained nearly identical language to the deed that had conveyed the parcel to her:

> BEING all of Tract I as shown on plat thereof recorded in Map Book 12, at page 162 of the Watauga County, N.C., Public Registry, reference to which plat is hereby made for a more complete description.
>
> Conveyed Subject to the non-exclusive perpetual easements shown on the above-referenced plat over Tract I and labeled as "Gravel Road" and "Gravel Drive" for ingress, egress and regress extending from U.S. Hwy No. 221 & 321 to the property of Stewart Cook.
>
> The above described property is subject to a right-of-way easement to U.S. Highway 321-221 and to the right-of-way easement, thirty feet in width, to the Earnest Shore property, and any other highway rights-of-way or utility easements of record.

On 8 February 2017, Stewart conveyed the 3.304-acre tract to himself and Plaintiff as joint tenants with right of survivorship, by general warranty deed, which contained the following, relevant language:

> TOGETHER WITH the non-exclusive perpetual easements for ingress, egress and regress from U.S. Hwy No. 221 & 321 over Tract I and labeled as "Gravel Road" and "Gravel Drive" as shown on that plat recorded in Map Book 12, at page 162 of the Watauga County Public Registry, reference to which plat is hereby made for a more complete description, and as set forth in that certain deed recorded in Book of Records 1896, at page 414.

Between "Gravel Road" and "Gravel Drive" is a circular drive in front of Defendants' home, connecting the two roadways. In early 2017, Defendants parked a tow-behind trailer in the circular drive, blocking access to the circular drive between "Gravel Road" and "Gravel Drive," without traveling on the graveled shoulder of U.S. Highways 221 & 321. Plaintiff requested Defendants to cease obstructing the "easement." Defendants refused to move the trailer from the circular drive.

On 13 March 2017, Plaintiff filed an action to quiet title and for injunctive relief, and sought to reaffirm her interests in the easements over Defendants' property and obtain a permanent injunction to prohibit Defendants from obstructing or interfering with her use of the "easement." On 23 June 2017, Plaintiff filed a motion for partial summary judgment, seeking summary judgment on the claim to quiet title. On 11 August 2017, Defendants filed a motion for summary judgment on both of Plaintiff's claims.

After a hearing, the trial court granted Defendants' motion for summary judgment. Plaintiff filed timely notice of appeal.

II. Jurisdiction

The order entered 28 August 2017 is a final judgment of a district court in a civil action, from which an appeal of right may be taken to this Court. N.C. Gen. Stat. § 7A-27(b)(2) (2017).

III. Issue

Plaintiff argues the trial court erred by granting summary judgment in favor of Defendants on both of her claims.

IV. Analysis

The trial court found Plaintiff's easement claim only extends to "those areas specifically labeled as 'Gravel Road' and 'Gravel Drive' as shown in the plat recorded in Plat Book 12, Page 162 of the Watauga County Public Registry, for ingress, egress and regress extending from U.S. Hwy No. 221 & 321 to the property of Stewart Cook." Plaintiff argues her easement also includes the circular driveway and this easement prevents Defendants from blocking or impeding her access to and across the connecting circular drive between "Gravel Road" and "Gravel Drive."

A. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2017).

> A defendant may show entitlement to summary judgment by (1) proving that an essential element of the plaintiff's

> case is non-existent, or (2) showing through discovery that the plaintiff cannot produce evidence to support an essential element of his or her claim, or (3) showing that the plaintiff cannot surmount an affirmative defense.

Draughon v. Harnett Cty. Bd. of Educ., 158 N.C. App. 705, 708, 582 S.E.2d 343, 345 (2003) (citation and internal quotation marks omitted), *aff'd per curiam*, 358 N.C. 131, 591 S.E.2d 521 (2004).

"We review a trial court's order granting summary judgment *de novo*, viewing the evidence in the light most favorable to the nonmoving party[.]" *Adkins v. Stanly Cty. Bd. of Educ.*, 203 N.C. App. 642, 644, 692 S.E.2d 470, 472 (2010) (citation and internal quotation marks omitted).

B. Location and Purpose of Easements

In North Carolina, easements may be created by an express reservation or grant in a deed. *Woodlief v. Johnson*, 75 N.C. App. 49, 54, 330 S.E.2d 265, 268 (1985). An easement created by a deed becomes a contract. *Weyerhaeuser Co. v. Carolina Power & Light Co.*, 257 N.C. 717, 719, 127 S.E.2d 539, 541 (1962). As with construing all contracts, "[w]hen the language of a contract is clear and unambiguous, effect must be given to its terms, and the court, under the guise of constructions, cannot reject what the parties inserted or insert what the parties elected to omit." *Id.* "Ambiguities in written instruments are to be strictly construed against the drafting party." *Station Assocs., Inc. v. Dare Cty.,* 130 N.C. App. 56, 62, 501 S.E.2d 705, 708 (1998) *rev'd on other grounds*, 350 N.C. 367, 513 S.E.2d 789 (1999).

Plaintiff argues the trial court ignored the plain language of the deeds and "essentially created a new easement . . . which did not previously exist" by ruling the easements did not extend across the circular driveway in front of Defendants' home that connects "Gravel Road" and "Gravel Drive." In both the deed from Stewart Cook to Plaintiff and the deed from Plaintiff to Defendants, the language outlining the location of the easements across Tract I is clear: the easements were titled "Gravel Road" and "Gravel Drive" as is shown and labeled on the recorded plat.

On the recorded plat, the delineation, boundaries, and scope of the easements are not quite as clear. "Gravel Drive" is labeled, described, and clearly delineated. The length and width of the easement, which is a named road used in the street address for Defendants' property, are indicated. Conversely, "Gravel Road" is less defined. No markings on the plat describe the length or width of this easement. Because of the lack of markings and scope, "Gravel Road" could feasibly include all or part of the circular drive. However, any ambiguities in the beginning and end points or description of "Gravel Road" must be construed against Plaintiff as grantor. *Id.*

Both Stewart Cook and Plaintiff knew how to and provided specific locations for the easements across Tract I. If the grantor in either deed had intended for the easement to include the circular driveway between and connecting "Gravel Road" and "Gravel Drive," it should have been included in the language of the deed or clearly

shown and described on the plat. *See Carolina & N. W. R. Co. v. Carpenter*, 165 N.C. 465, 469, 81 S.E. 682, 684 (1914). Plaintiff attempts to enlarge the easement by implication.

Plaintiff also argues there is no way to travel between "Gravel Road" and "Gravel Drive" other than using the connecting circular drive. It is unclear why Plaintiff would need to access the area between the two labeled easements. The purpose of the two created easements is clearly and expressly stated in both deeds: "for ingress, egress and regress extending from U.S. Hwy No. 221 & 321 to the property of Stewart Cook." The circular drive connecting "Gravel Road" and "Gravel Drive" does not provide access from the highways "to the property of Stewart Cook."

In *Swain v. Simpson*, the plaintiff was granted an express easement "of right of way for ingress and egress" across the defendants' property in order to access the state road. 120 N.C. App. 863, 864, 463 S.E.2d 785, 787 (1995). The plaintiff sought to install utilities within this easement. *Id.* This Court found that allowing the installation and maintenance of the utilities on the easement "increased the use of the easement and the burden on the servient estate" and "[h]ad the grantors intended a greater use, such use should have been specified." *Id.* at 864-65, 463 S.E.2d at 787 (citing *Weyerhaeuser*, 257 N.C. at 719, 127 S.E.2d at 541).

As in *Swain*, Plaintiff was granted or reserved easements for access to the state roads. The circular driveway between the two access points to U.S. Highways 221 &

321 does not promote "ingress, egress [or] regress" from Plaintiff's lot to the state road. Extending the easement to include the circular driveway would increase the burdens upon Defendants' property. *See id.*

The recorded plat included in the record clearly indicates a 150-foot right-of-way for U.S. Highways 221 & 321, which encompasses parts of both "Gravel Drive" and "Gravel Road" and apparently the entirety of the circular driveway located between the labeled easements. It is a misdemeanor to obstruct a highway right-of-way, and is unlawful to leave debris or obstructions within the right-of-way. N.C. Gen. Stat. § 136-90 (2017) ("If any person shall willfully . . . obstruct any highway, cartway, mill road or road leading to and from any church or other place of public worship . . . such person shall be guilty of a Class 1 misdemeanor."); 19A NCAC 2E.0402 (2016) ("It shall be unlawful to pile, place or leave. . . any trash, refuse, garbage, lumber . . . scrapped automobile, scrapped truck or part thereof, or any other material upon any road or highway or the shoulders thereof, or within the right of way or over the ditches or drainways of any road or highway of the state highway system.")

V. Conclusion

The language of the easements reserved and conveyed by the deeds is clear and unambiguous. All easements are expressly subject to the right-of-way of U.S. Highways 221 & 321. As such we "cannot reject what the parties inserted or insert

what the parties elected to omit" by implication. *Weyerhaeuser*, 257 N.C. at 719, 127 S.E.2d at 541. The easements over Defendants' property, as described by the deeds and shown on the recorded plat, are labeled "Gravel Drive" and "Gravel Road." Any ambiguities or lack of precise descriptions, boundaries, or scope of the easements on the deeds or plat are construed against Plaintiff. *See Station Assocs., Inc.*, 130 N.C. App. at 62, 501 S.E.2d at 708. The only stated purpose of these easements is for the access to and from the "Stewart Cook" property to the state highways, as labeled on the 1990 plat and identified in the deeds creating the easements.

Both Stewart Cook and Plaintiff included the language creating and identifying these easements on each of their respective deeds. If either grantor had wanted to also include the circular drive as part of the easements, such language should have been expressly included in the deeds or be expressly shown and described on the plat. *See Swain* 120 N.C. App. at 865, 463 S.E.2d at 787.

Defendants should determine their responsibilities and liability concerning parking a trailer, or any other vehicle or obstructions, within the right-of-way of U.S. Highways 221 & 321. *See* N.C. Gen. Stat. § 136-90; 19A NCAC 2E.0402.

Because of the language in the deeds creating the easements and as shown on the recorded plat, no genuine issue of material fact exists to preclude summary judgment for Defendants. The order of the trial court granting summary judgment in favor of Defendants is affirmed. *It is so ordered.*

AFFIRMED.

Judges Dietz and Berger concur.

Report per Rule 30(e).