

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-323

Filed: 18 December 2018

Pasquotank County, No. 16 CVS 766

WILLIAM DAVID REID, Plaintiff

v.

WILLIAM R. STERRITT and wife, MARGARET P. STERRITT, Defendants/Third-Party Plaintiffs

v.

SALLY STANTON BRUDERLE f/k/a SARAH ANDREA STANTON and PETER P. BRUDERLE, Third-Party Defendants

Appeal by plaintiff from order entered 12 October 2017 by Judge Beecher R. Gray in Pasquotank County Superior Court. Heard in the Court of Appeals 31 October 2018.

*Nexsen Pruet PLLC, by Norman W. Shearin and Lisa P. Sumner, for plaintiff-appellant.*

*Roberson Haworth & Reese, P.L.L.C., by Alan B. Powell, Christopher C. Finan, and Andrew D. Irby, for defendants/third-party plaintiff-appellees.*

*Dixon & Thompson Law, PLLC, by Paul Faison S. Winborne, for third-party defendant-appellees.*

CALABRIA, Judge.

REID V. STERRITT

*Opinion of the Court*

William Reid (“plaintiff”) brought the underlying action against William and Margaret Sterritt (“the Sterritts”) concerning the respective parties’ rights in a lane adjoining both parties’ property. The trial court entered an order granting judgment on the pleadings in favor of the Sterritts, finding that the Sterritts owned the lane in fee simple and that plaintiff possesses “no ownership interest in, or the right to occupy or use,” the lane. After careful review, we reverse the trial court’s order granting judgment on the pleadings in favor of the Sterritts and remand.

I. Factual and Procedural Background

Plaintiff and the Sterritts own parcels of real property in Elizabeth City, North Carolina. Both parties derive title to their parcels from a common owner, A.W. Stanton. A.W. Stanton’s property consisted of a large tract of approximately 624 acres and was known as the “Riddick Farm,” as shown on a recorded 1926 plat map (the “1926 map”). A.W. Stanton’s will is the common source of both parties’ chains of title and provides, in pertinent part:

I give, devise and bequeath unto my beloved son, W.R. Stanton, the following tracts of land, to wit: that certain portion of the “Riddick Farm” in which he now resides, consisting of two slipes situated on the East side of the lane leading to my home from the Simon’s Creek-Nixonton Road, and beginning at the intersection of said lane with said road and extending Northwardly up said lane to a ditch at the North end of the second slipe; thence Eastwardly along said ditch to a branch, thence following the various meanderings of said branch to my East line; thence Southerly along my East line to the said Simon’s Creek-Nixonton Road; thence Westerly up said road to the lane, the place of beginning.

REID V. STERRITT

*Opinion of the Court*

Plaintiff received his interest in his property through the following sequence of transfers: (1) A.W. Stanton's will conveyed a portion of the Riddick Farm to his son, W.R. Stanton, for life, with the remainder to W.R. Stanton's children; (2) in 1964, W.R. Stanton died without issue, and his property passed to his four siblings pursuant to A.W. Stanton's will; (3) the four siblings of W.R. Stanton individually conveyed their undivided interests to Horace G. Reid, Jr., plaintiff's father; (4) over several years, Horace G. Reid, Jr. and his wife conveyed ten deeds to plaintiff, with each deed containing a ten percent fractional interest.

The Sterritts are the owners of an 11.85-acre tract of land, which is comprised of a house portion (10.28 acres) and a flagpole portion (1.58 acres). The Sterritts obtained their interest in their property through the following sequence of transfers: (1) following the death of A.W. Stanton's widow, all 624.3 acres comprising the Riddick Farm, less and except the portion devised to W.R. Stanton in A.W. Stanton's will, were conveyed to Robert E. Stanton via a commissioner's deed; (2) in 1989, Robert E. Stanton died testate and devised his portion of the Riddick Farm to his widow, Nellie Stanton, and daughter, Sally Stanton Bruderle; (3) Nellie Stanton and Sally Stanton Bruderle conveyed a portion of their interest to the Sterritts on 26 February 2010.

The description of the 1.58-acre flagpole portion purports to convey a thirty-foot wide driveway leading from Simon's Creek-Nixonton Road to the Sterritts' house called the "lane." Plaintiff alleges he is the record owner of parcels adjoining the Sterritts' property and the thirty-foot lane. Plaintiff contends he has an ownership or use right in a portion of the lane by virtue of his chain of title.

On 28 October 2016, plaintiff filed a verified complaint against the Sterritts, alleging that the Sterritts claimed an adverse interest to plaintiff's in the lane situated between plaintiff's and the Sterritts' real property and seeking a determination of the respective parties' rights in the lane. After filing a motion to dismiss, answer, and counterclaims, the Sterritts filed a motion for judgment on the pleadings, arguing that plaintiff has no rights in the lane. The trial court entered judgment on the pleadings in favor of the Sterritts on 12 October 2017, concluding that plaintiff possesses "no ownership interest in, or the right to occupy or use," the lane because (1) no recorded instrument in plaintiff's chain of title included a description for any portion of the lane; (2) based on the rules of deed construction, the "[e]asternmost edge of the [l]ane constitutes the dividing line separating" plaintiff's land and the Sterritts' property; and (3) plaintiff has not established a prescriptive easement over the lane.

Plaintiff appeals.

## II. Issue on Appeal

In his sole argument on appeal, plaintiff contends that the trial court erred in granting judgment on the pleadings in favor of the Sterritts. Plaintiff argues that the pleadings before the trial court present a factual dispute between plaintiff and the Sterritts regarding the location of boundaries of their respective properties on the ground, a question of fact, which precludes judgment on the pleadings pursuant to Rule 12(c). Plaintiff asserts in the alternative that plaintiff has possessory and usage rights in the lane under the theories of an implied easement by plat, adverse possession, or prescriptive easement.

### III. Standard of Review

The Sterritts' Rule 12(c) motion asserts a review of the pleadings shows no genuine issues of material fact exist and the Sterritts are entitled to judgment as a matter of law. "Judgments on the pleadings are disfavored in law, and the trial court must view the facts and permissible inferences in the light most favorable to the non-moving party." *Groves v. Cmty. Hous. Corp.*, 144 N.C. App. 79, 87, 548 S.E.2d 535, 540 (2001) (citations and internal quotation marks omitted).

In reviewing a motion for judgment on the pleadings:

All well pleaded factual allegations in the nonmoving party's pleadings are taken as true and all contravening assertions in the movant's pleadings are taken as false. All allegations in the nonmovant's pleadings, except conclusions of law, legally impossible facts, and matters not admissible in evidence at the trial, are deemed admitted by the movant for purposes of the motion.

*Ragsdale v. Kennedy*, 286 N.C. 130, 137, 209 S.E.2d 494, 499 (1974) (citations omitted).

“A motion for judgment on the pleadings is the proper procedure when all the material allegations of fact are admitted in the pleadings and only questions of law remain.” *Id.* When the pleadings do not resolve all factual issues, judgment on the pleadings is not appropriate. *See id.* On appeal, we review a trial court's grant of a Rule 12(c) motion for judgment on the pleadings *de novo*. *Toomer v. Branch Banking & Tr. Co.*, 171 N.C. App. 58, 66, 614 S.E.2d 328, 335, *disc. rev. denied*, 360 N.C. 78, 623 S.E.2d 263 (2005).

Pursuant to Rule 10(c) of the North Carolina Rules of Civil Procedure, “any written instrument which is an exhibit to a pleading” is part of the pleadings in the case for all purposes. N.C. Gen. Stat. § 1A-1, Rule 10(c); *see also Sale v. Johnson*, 258 N.C. 749, 758, 129 S.E.2d 465, 471 (1963) (holding that an exhibit “attached to the answer, and made a part thereof, may be considered in passing upon a judgment on the pleadings” (citations omitted)).

#### IV. Analysis

##### *A. Notice of Appeal*

Although the Sterritts do not raise this issue, we address the validity of plaintiff's notice of appeal *sua sponte*. Plaintiff failed to include a certificate of service with his notice of appeal within the record on appeal.

Rule 3(c) of the North Carolina Rules of Appellate Procedure provides that:

In civil actions and special proceedings, a party must file and serve a notice of appeal:

(1) within thirty days after entry of judgment if the party has been served with a copy of the judgment within the three-day period prescribed by Rule 58 of the Rules of Civil Procedure; or

(2) within thirty days after service upon the party of a copy of the judgment if service was not made within that three-day period[.]

N.C. R. App. P. 3(c)(1)-(2).

Here, the trial court entered its order on 12 October 2017. Plaintiff's notice of appeal was dated 13 November 2017 and filed 16 November 2017. Had Plaintiff been served within three days, his notice of appeal would be untimely. *See* N.C. R. App. P. 3(c)(1). However, according to plaintiff's notice of appeal, the trial court's order was served on 18 October 2017, more than three days after the order was filed. If the notice of appeal is accurate, then plaintiff timely filed the notice of appeal on 16 November 2017. *See* N.C. R. App. P. 3(c)(2).

According to this Court's recent case of *Brown v. Swarn*: "[W]here . . . there is no certificate of service in the record showing *when* appellant was served with the trial court judgment, *appellee* must show that appellant received actual notice of the judgment more than thirty days before filing notice of appeal in order to warrant dismissal of the appeal." \_\_ N.C. App. \_\_, \_\_, 810 S.E.2d 237, 240 (2018) (emphasis added). Under *Brown*, unless the appellee argues that the appeal is untimely, and

offers proof of actual notice, we may not dismiss. The appellee-Sterritts have not argued plaintiff's appeal is untimely. Under *Brown*, plaintiff's notice of appeal is deemed timely filed. *See id.*

*B. Location of Plaintiff's Boundary*

Plaintiff contends the trial court erred in granting the Sterritts' motion for judgment on the pleadings because the pleadings present a factual dispute between plaintiff and the Sterritts regarding the location of boundaries of their respective properties on the ground, a question of fact, which precludes judgment on the pleadings pursuant to Rule 12(c). Further, plaintiff alleges the description of his property contained in A.W. Stanton's will, and subsequent conveyances, includes a portion of the lane and that his western boundary line is the middle of the lane. We agree.

Both parties agree A.W. Stanton was their common predecessor-in-title. However, the parties disagree regarding which documents created their respective interests and constitute their respective chains of title. Plaintiff asserts that he owns tracts five and six as shown on the 1926 map, while the Sterritts argue plaintiff only owns the land as described in A.W. Stanton's will.

When A.W. Stanton bought the Riddick Farm in fee simple, his deed incorporated the recorded 1926 map, which divided the property into eighteen individual tracts. However, the property at issue was conveyed by a metes and



bounds description in A.W. Stanton’s will, which failed to include any reference to the 1926 map. A.W. Stanton’s will gave W.R. Stanton a life estate in the property, with the remainder to his children, which failed without issue and reverted to his four siblings in equal parts. The four siblings individually conveyed their undivided interests to plaintiff’s father by deeds that referenced the 1926 map, and plaintiff’s father conveyed his interest to plaintiff. As the above illustrates, plaintiff’s chain of title originates from and includes the description found in A.W. Stanton’s will.

Although the latter deeds from W.R. Stanton’s siblings referenced the 1926 map, the original grant, found in A.W. Stanton’s will, creating plaintiff’s property contains no reference to the 1926 map. Therefore, whatever interest plaintiff now claims can be no greater than the grant in A.W. Stanton’s will, and subsequent devises cannot expand the scope of this initial conveyance to include the 1926 map. *See Shober v. Hauser*, 20 N.C. 222, 235 (1838) (“[A] mere derivative title cannot be better than that from which it is derived[.]”).

Having concluded the terms of A.W. Stanton’s will control, we turn to plaintiff’s next argument—that the boundary established by A.W. Stanton’s will includes half of the lane. “What are the boundaries is a matter of law to be determined by the court from the description set out in the conveyance. Where those boundaries may be located on the ground is a factual question to be resolved by the jury.” *Batson v. Bell*, 249 N.C. 718, 719, 107 S.E.2d 562, 563 (1959) (citations omitted); *see also Sherrod v.*

*Battle*, 154 N.C. 345, 352, 70 S.E. 834, 837 (1911) (“What are the termini or boundaries of [a tract of land,] a grant[,] or deed is a matter of law; where those boundaries or termini are is a matter of fact.” (citations and internal quotation marks omitted)).

When interpreting the language in a conveyance of property, “[t]he general rule is that a call for a monument as a boundary line in a deed will convey the title of the land to the center of the monument if it has width.” *McDonald's Corp. v. Dwyer*, 338 N.C. 445, 448, 450 S.E.2d 888, 890 (1994) (citations and internal quotation marks omitted). In *White v. Woodard*, our Supreme Court explained this rule and its application as follows:

It is generally accepted that where a line is run to a stream or to “a stake on a stream” and thence with the stream, the intention is to extend the line to the middle of the stream as the true boundary, unless by the language employed the contrary appears.

227 N.C. 332, 333, 42 S.E.2d 94, 95 (1947) (citations omitted).

The metes and bounds description in A.W. Stanton’s will begins with the following call: “beginning at the intersection of said lane with [Simon’s Creek-Nixonton Road] and extending Northwardly up said lane to a ditch at the North end of the second slipe[.]” The lane referenced in this call is a monument. See *Highway Comm’n v. Gamble*, 9 N.C. App. 618, 624, 177 S.E.2d 434, 438 (1970) (holding a roadway is “of such permanent character as to become a monument of boundary”

(citation omitted)). Because the devise calls to a monument, the grantor intended to extend the boundary line to the middle of the lane. *See McDonald's Corp.*, 338 N.C. at 448, 450 S.E.2d at 890 (“The general rule is that a call for a monument as a boundary line in a deed will convey the title of the land to the center of the monument if it has width.” (citations and internal quotation marks omitted)); *White*, 227 N.C. at 333, 42 S.E.2d at 95; *see also Cty. of Moore v. Humane Soc’y of Moore Cty., Inc.*, 157 N.C. App. 293, 298, 578 S.E.2d 682, 685 (2003) (“The language of the deed being clear and unequivocal, it must be given effect according to its terms, and we may not speculate that the grantor intended otherwise.” (citations and internal quotation marks omitted)).

Because plaintiff derives his title from the grant in A.W. Stanton’s will, plaintiff’s boundary line is the middle of the lane. The only issue in this case is what constituted the boundary lines described in A.W. Stanton’s will. Because the description in A.W. Stanton’s will calls for the boundary to begin at the lane, a monument, the trial court erred in finding that plaintiff’s boundary was the easternmost edge of the lane. We therefore reverse the judgment of the trial court and remand.

Because we reverse the trial court’s judgment on the pleadings and remand, we need not address plaintiff’s remaining arguments.

#### V. Conclusion

REID V. STERRITT

*Opinion of the Court*

The trial court correctly concluded the grant in A.W. Stanton's will created plaintiff's interest in his property. However, the trial court erred in construing the conveyance in A.W. Stanton's will to exclude all portions of the lane. Because the devise calls for the boundary to begin and run up the lane, the express language of the conveyance unequivocally established the center of the lane as the boundary of plaintiff's predecessor-in-title's land. Therefore, plaintiff's boundary is the centerline of the lane, and plaintiff is entitled to judgment as a matter of law. We reverse the trial court's order granting judgment on the pleadings in favor of the Sterritts and remand.

REVERSED AND REMANDED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).