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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-526

Filed: 4 February 2020

Randolph County, No. 17 CVS 254

TONY W. SAUNDERS, JOHN FRANKLIN SAUNDERS, and wife PEGGY SAUNDERS, Plaintiffs,

v.

CRYSTAL SPRINGS PARK, INC, Defendant.

Appeal by Plaintiffs from order and judgment entered 20 July 2018 by Judge Vance Bradford Long in Randolph County Superior Court. Heard in the Court of Appeals 7 January 2020.

*Rodney C. Mason for Plaintiffs-Appellants.*

*No brief submitted for Defendant-Appellee.*

COLLINS, Judge.

Plaintiffs Tony W. Saunders, John Franklin Saunders, and Peggy Saunders appeal the trial court's order and judgment decreeing that Defendant Crystal Springs Park, Inc., has an easement appurtenant upon Plaintiffs' land in the form of a private road ("Tony's Way"), ordering Defendant to pay Plaintiffs \$1,512 for the cost of maintenance of Tony's Way for the three years prior to the filing of the underlying

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lawsuit, ordering Plaintiffs to remove boulders from beside Tony's Way, and ordering that "[m]aintenance and upkeep of the easement shall be the responsibility of the Defendant." Because Plaintiffs' arguments are either frivolous or not supported by any legal authority, we dismiss.

**I. Background**

Plaintiffs commenced this action on 6 February 2017 by filing a complaint alleging breach of implied contract in law and unjust enrichment, and seeking to recover the reasonable value of services Plaintiffs had rendered in maintaining Tony's Way. Defendant answered, denying the substantive allegations, and counterclaiming for an easement by prior use and an easement by necessity. Plaintiffs replied on 8 May 2019, denying the substantive allegations.

In an order on final pre-trial conference, the parties stipulated to the following undisputed facts:

- 1 By Deed recorded in 1967 on the public land records of Randolph County, North Carolina the Plaintiffs John Franklin Saunders and wife Peggy Saunders acquired and unimproved tract of land containing three acres more or less abutting and lying to the West of lands they owned at the time they acquired that certain tract containing three acres more or less [hereafter the Three-Acre Tract.]
- 2 Before Plaintiffs John Franklin Saunders and wife Peggy Saunders acquired the Three-Acre Tract they owned a Tract containing several acres that abutted the public road known as Henley Country Road [State Road No. 2215] hereafter referred to as the Original Saunders Tract.

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- 3     The Original Saunders Tract lay between Henley Country Road [State Road No. 2215] which it abutted on the East and the Three-Acre Tract that it abutted on the West. The Three-Acre Tract did not abut a public road and it had no access to a public road. The Original Saunders Tract and the Three-Acre Tract do not have a common ancestor Tract.
- 4     In 1978, the Plaintiffs Saunders a Private Road [sic] running from the Western line of the Three-Acre Tract across the Original Saunders Tract and intersecting with the Henley Country Road [State Road No. 2215]. The Plat titled *John Franklin Saunders and wife Peggy Saunders* dated March 23rd 2000 prepared by Roger Cagle, PLS attached hereto marked Plaintiffs' Exhibit "A" fairly and accurately illustrates the location of the Henley Country Road [State Road No. 2215], the Original Saunders Tract and the Three-Acre Tract.
- 5     The Private Road shown on Exhibit "A" is approximately nine feet [9'] wide and one thousand feet [1,000'] long and lies 4½ feet on either side of its centerline, as shown on the Plat titled Tony W. Saunders dated June 7th 2016 prepared by Roger Cagle, PLS. The location of the soil and gravel Private Road has remained in the same location with possibly only slight deviation in its course since its construction.
- 6     In 1978, Plaintiff Franklin Saunders and wife Peggy Saunders conveyed to Carolina Pools, Inc. a Deed of Trust encumbering the Three-Acre Tract as security for the payment of the Promissory Note executed by Franklin Saunders to Carolina Pools, Inc. as payment for the construction by Carolina Pools of a swimming pool on the Three-Acre Tract
- 7     The Deed of Trust did not refer to the Private Road as a part of the conveyance nor did it refer to a Plat or Map of the Private Road. The Deed of Trust did recite that the conveyance included all "appurtenances" to the Tract conveyed.

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- 8 In 1979, Carolina Pools, Inc. foreclosed the Deed of Trust conveyed to it by Franklin Saunders and wife Peggy Saunders encumbering the Three-Acre Tract and under the Power of Sale contained in the Deed of Trust the Trustee named in the Deed of Trust sold the Three-Acre Tract to Carolina Pools, Inc.
- 9 In May of 1981, Carolina Pools, Inc. conveyed the Three-Acre Tract to Defendant Crystal Springs Park, Inc. by Deed recorded in Book 1127 Page 160 Randolph County Registry.
- 10 Defendant Crystal Spring Park, Inc. used the soil and gravel Private Road now known as Tony' [sic] Way during every year from 1981 to Date.
- 11 Defendant Crystal Spring Park, Inc. contributed some monies to the cost of the maintenance of the soil and gravel Private Road over the years following 1981 but Defendant has not paid any part cost of the maintenance of the Private Road in the three years immediately preceding the filing of the lawsuit by the Plaintiff in the year 2017.
- 12 The Plaintiffs Franklin Saunders and wife Peggy Saunders conveyed the Original Saunders Tract to their son the Plaintiff Tony Saunders, reserving a life estate to themselves.
- 13 Plaintiff Tony Saunders rents four residential structures located on the Original Saunders Tract to Tenants. His Tenants travel across the Private Road for ingress, egress and regress to and from Henley Country Road.

A bench trial took place on 26-27 March 2018. At the close of the evidence, Plaintiffs conceded that Defendant has an easement appurtenant as a result of Plaintiffs' conveyance of a deed of trust in favor of Carolina Pools. The trial court

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subsequently entered an order and judgment that ordered, adjudged, and decreed, in pertinent part,

1. The Defendant has an easement appurtenant by prior use and by necessity over and upon the lands of the Plaintiffs, to wit, the Private Road (Tony's Way), being approximately eight (8) feet wide, being four (4) feet on either side of the center line of the existing gravel drive, the location thereof being substantially the same since its construction.
2. The Defendant shall pay to Plaintiffs John Franklin Saunders and Peggy Saunders the sum of one-thousand five-hundred twelve dollars (\$1,512.00) for the cost of the maintenance of the Private Road (Tony's Way) for the three (3) years preceding the filing of the lawsuit by the Plaintiffs. The Court notes this amount already has been paid by the Defendant.
3. The Plaintiffs shall remove the boulders, at their expense, from beside the Private Road (Tony's Way) by May 15, 2018, so as to allow safe ingress and egress to the easement and safe travel along the easement.
4. Maintenance and upkeep of the easement shall be the responsibility of the Defendant. The Plaintiffs shall not be responsible for the maintenance and upkeep of the easement. . . .
5. Notwithstanding the foregoing, the Defendant shall not be responsible for maintenance of the area outside the eight (8) feet of the easement and shall not maintain the same without the consent of the Plaintiffs.

Plaintiffs timely appealed to this Court.

**II. Issues**

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Plaintiffs raise the following issues on appeal: (1) “[Defendant] as the owner of the dominant tract has a duty to pay to [Plaintiffs] as owners of the servient estate, one-half of the reasonable cost of the maintenance of the roadway easement lying on the servient tract known as Tony’s Way[;]” (2) “The trial court has no legal authority to impose upon [Plaintiffs] restrictions on the use of their lands that do not impede the use of right of way by [Defendant;]” and (3) “The trial court erred in identifying the basis for finding an easement appurtenant in [Defendant] over the right of way known as Tony’s Way” (original in all capital letters).

**III. Discussion**

Plaintiffs have failed to cite any legal authority to support their arguments in issues two and three. Accordingly, these issues are deemed abandoned. *See* N.C. R. App. P. 28(b)(6) (“Assignments of error not set out in the appellant’s brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned.”); *N.C. State Bar v. Ethridge*, 188 N.C. App. 653, 668, 657 S.E.2d 378, 387 (2008) (holding that because “defendant fail[ed] to cite any authority” for certain assignments of error, those “assignments of error are deemed abandoned pursuant to N.C. R. App. P. 28(b)(6)”). Moreover, we note that Plaintiffs’ third argument, that the trial court “erred in identifying the basis for finding an easement appurtenant” is frivolous as Plaintiffs conceded that Defendant has an easement appurtenant. *See* N.C. R. App. P. 34(a)(1) (an appeal may be frivolous where “the appeal was not well-

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grounded in fact and was not warranted by existing law . . . .”) We thus limit our discussion to the first issue.

In the first issue, Plaintiffs argue, “[Defendant] as the owner of the dominant tract has a duty to pay to the [Plaintiffs] as owners of the servient tract, one-half of the reasonable cost of the maintenance of the roadway easement lying on the servient tract known as Tony’s Way” (original in all capital letters). Plaintiffs specifically assert that while the trial court correctly “found [Defendant] owed one-half the [c]ost of maintaining Tony’s Way arising over the three-year period immediately before [Plaintiffs] filed suit[,]” “the Trial Court committed reversible error when it then relieved [Defendant] in its Judgment of the duty to pay its one-half share of the reasonable cost of maintenance going forward into the future.”

However, the trial court did not relieve Defendant of its duty to pay for maintenance. To the contrary, the trial court ordered, “Maintenance and upkeep of the easement shall be the responsibility of the Defendant. The Plaintiffs shall not be responsible for the maintenance and upkeep of the easement. . . .”<sup>1</sup>

In their conclusion, Plaintiffs then

pray the Court of Appeals reverse the Judgment finding that Defendant-Appellee is solely liable for the costs of the reasonable maintenance of Tony’s Way following the filing

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<sup>1</sup> We note that from the bench, the trial court announced that Defendants were “primarily responsible for keeping up this road. The cost is to be split.” Nonetheless, “[t]he general rule is that the trial court’s written order controls over the trial judge’s comments during the hearing[.]” *Durham Hosiery Mill Ltd. P’ship v. Morris*, 217 N.C. App. 590, 593, 720 S.E.2d 426, 428 (2011), and Plaintiffs advance no argument otherwise.

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of the subject Complaint and remand the case to the Superior Court with instructions to modify the Judgment entered to set forth the joint obligation of the Parties to share equally the cost of the reasonable maintenance of Tony's Way going forward from the filing of the action *sub judice* for so long as the Parties hereto hold title to their respective Tracts.

Plaintiffs appear to be operating under a misapprehension of the plain language and effect of the trial court's order, and Plaintiffs' brief is internally inconsistent.<sup>2</sup> Plaintiffs' argument is thus frivolous and is dismissed. *See* N.C. R. App. P. 34(a)(1) (an appeal may be frivolous where "the appeal was not well-grounded in fact and was not warranted by existing law . . . ; [or] a . . . brief . . . was grossly lacking in the requirements of propriety [or] grossly violated appellate court rules . . . ."); N.C. R. App. P. 34(a)(3).

### **III. Conclusion**

Plaintiffs' argument in the first issue is frivolous. Plaintiffs abandoned issues two and three for failure to cite any legal authority to support their arguments. This appeal is thus dismissed. *See* N.C. R. App. P. 25(b) and 34(b)(1).

DISMISSED.

Judges BRYANT and ZACHARY concur.

Report per Rule 30(e).

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<sup>2</sup> Defendant neither responded to Plaintiffs' Proposed Record on Appeal nor filed an appellate brief.