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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-15

No. COA21-159

Filed 4 January 2022

McDowell County, No.20-CVS-426

REVERSE MORTGAGE SOLUTIONS, INC., Plaintiff,

v.

CORY M. DUFAULT and wife, ALISON AMES-DUFAULT; and LOCAL GOVERNMENT FEDERAL CREDIT UNION, Defendants.

Appeal by Plaintiff from Order entered 13 November 2020 by Judge J. Thomas Davis in McDowell County Superior Court. Heard in the Court of Appeals 3 November 2021.

Offit Kurman, P.A., by Zipporah Basile Edwards, for Plaintiff-Appellant.

Roberson Haworth & Reese, PLLC, by Alan B. Powell and Andrew D. Irby, for Defendants-Appellees.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Reverse Mortgage Solutions, Inc. (Plaintiff) appeals from an Order entered 20 November 2020 granting Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. Because the trial court dismissed

Plaintiff's Complaint under Rule 12(b)(6), our recitation of the facts is based on Plaintiff's Complaint, filed on 22 June 2020, against Defendants to Quiet Title to Real Property and for Declaratory Judgment. The Complaint, including the documents attached thereto and referenced in the Complaint, alleged the following:

¶ 2

In October of 1962, Old Fort Golf Course, Inc. conveyed a 1.26-acre tract of land (1.26 Acre Parcel) to the Richardsons. Subsequently, on 5 October 1978, Old Fort Golf Course, Inc. conveyed two additional tracts of land, separate from but adjacent to the 1.26 Acre Parcel to Paul Richardson. The deed to these additional tracts of land was recorded on 4 December 1978 in McDowell County in Book 278, Page 822 (1978 Deed). The 1978 Deed described the first tract of land, consisting of approximately 0.181 acres (.181 Acre Parcel), using metes and bounds as follows:

TRACT I: BEGINNING on an iron pin which is the southeast corner of Paul Richardson lot and being located North 89° 23' 40' West from control monument No. 1, as shown on plats nos. 76165-01A, 76165-01D, 76165-02D, 6165-03D by Miller and Associates; thence with Richardson's line N 25° 15' 30' West 221.81 feet to a point in the north margin of Club View Road; thence with the north margin of said road. South 46° 26' 20' West 88.16 feet to the BEGINNING, containing

The second tract of land, consisting of .009 acres (.009 Acre Parcel) was also described using separate metes and bounds as follows:

TRACT II: BEGINNING on the northwest corner of the above mentioned Tract 1; thence South 25° 15' 30" East 6.21 feet to a point; thence South 58° 49' 50" West 267.81 feet to an axel found; thence North 57° 30' 40" East 268.52 feet to the point of

BEGINNING

Following the 1978 Deed, these three tracts of land (Property) were assigned to the same address, and until July 2018 had the same Tax Parcel Number (PIN).

¶ 3

On 11 June 2009, Paul Richardson and his wife, Anita S. Richardson, obtained a reverse mortgage loan in the amount of \$297,000.00 secured by a Deed of Trust to build a home on the 1.26 Acre Parcel. The Deed of Trust described the property secured by the loan as follows:

See legal description as Exhibit A attached hereto and made a part hereof for all intents and purposes

Which has the [property address assigned to the three parcels]

Attached to the Deed of Trust was Exhibit A (Exhibit A) which described the subject property using metes and bounds that corresponded with the .181 Acre Parcel and the .009 Acre Parcel—the same metes and bounds descriptors found in the 1978 Deed. The metes and bounds descriptions are accompanied by four general descriptions explaining that the property was: “a part of those certain lands described” in the 1960 Deed conveying over 100 acres to Old Fort Golf Course, Inc.; “subject to those certain restrictions” recorded in a deed dated 6 June 1978; known for “the improvements thereon being known as [located at the property address]”; and “BEING all and the same lot of ground which by Deed dated 5 October 1978, and recorded among the Land Records of McDowell County, North Carolina in Liber 278, folio 822, was

granted and conveyed by Old Fort Golf Course, Inc. unto Paul Richardson and Anita Stevens Richardson, Husband and Wife.”

¶ 4

On 9 February 2011, Paul Richardson died, and his Will devised his real property, to his wife, Anita Richardson. A few years later, on 2 February 2017, Anita Richardson passed away devising her residuary estate, including the Property, to her daughter, Donna Morgan Edmiston. Following Anita’s death, default occurred under the loan secured by the Deed of Trust and foreclosure proceedings were commenced and completed in a McDowell County Special Proceeding. On 2 April 2018, the foreclosed property, encompassing the .181 Acre Parcel and the .009 Acre Parcel, was conveyed by deed to Reverse Mortgage Solutions, Inc. The deed contains the exact same description of real property as the Deed of Trust, and expressly incorporated the description of property as set forth in Exhibit A. The deed also included the same metes and bounds description, encompassing the .181 Acre Parcel and .009 Acre Parcel, as originated in the 1978 Deed and then reappeared in the Deed of Trust. As such, the metes and bounds description did not include the 1.26 Acre Parcel. The deed also identified the Property by street address, by reference to the improvements at the address, and by the PIN.

¶ 5

Thereafter, Reverse Mortgage Solutions executed and conveyed a special warranty deed to Fannie Mae recorded on 15 June 2018. This warranty deed contained the same property description as the Deed of Trust and the deed conveying

the property to Reverse Mortgage Solutions following the foreclosure action. Over one year later, on 8 November 2019, Fannie Mae executed and conveyed a quitclaim deed back to Reverse Mortgage. The quitclaim deed described the property using the PIN number, the two metes and bounds descriptions of the .181 Acre Parcel and .009 Acre Parcel, and with reference to the 1960 Deed conveying over 100 acres to Old Fort Golf Course, Inc. However, the quitclaim deed differed from the prior deeds in that it did not reference the 1978 Deed.

¶ 6 Meanwhile, on 26 July 2018, Donna Morgan Edmiston, individually and as Executrix of the Estate of Anita S. Richardson, deceased, executed and conveyed to Cory M. Dufault and Alison Ames-Dufault a deed (Dufault Deed) conveying the remaining 1.26 Acre Parcel to the Dufaults. The Dufault Deed described the 1.26 Acre Parcel using metes and bounds and expressly references the 1962 Deed. The Dufaults obtained a mortgage from the Local Government Federal Credit Union to purchase the property and secured the loan using a deed of trust.

¶ 7 Almost two years after the Dufaults bought the 1.26 Acre Parcel on 18 June 2020, Reverse Mortgage filed their Complaint seeking to quiet title on the 1.26 Acre Parcel and requested the relief of declaring Reverse Mortgage as the fee simple title holder of all three parcels. In the Complaint, Reverse Mortgage alleged at the time of the purported conveyance of the 1.26 Acre Parcel, Donna Morgan Edmiston, individually and as Executrix, did not have title to the Property because the

Richardson's Deed of Trust conveyed not only the .181 Acre Parcel and .009 Acre Parcel to the Lender, but also the 1.26 Acre Parcel. Specifically, the Complaint alleged:

14. The Exhibit A to the Deed of Trust, while again referencing the correct street address and parcel identification number with improvements thereon, included an incomplete legal description in that it only described the 0.181 acre tract and the .009 acre tract and omitted the 1.26 acre tract on which the residence is located.

15. Despite the omission of a portion of the metes and bounds description of the Property, the Deed of Trust properly and sufficiently identified the Property, which was conveyed and encumbered by same, by virtue of the numerous identifiers described above.

¶ 8

Cory and Alison Dufault together with their mortgage lender, Local Government Federal Credit Union (Defendants) filed an Answer and Motion to Dismiss on 21 September 2021. In support of their Motion to Dismiss, Defendants contended the Deed of Trust did not identify all three (3) separate tracts or “includ[e], affect[t] or describe[e] the 1.26 acre tract owned and encumbered by the Defendants.”

Defendants also contended:

The Deed of Trust, Substitute Trustee's Deed, the Fannie Mae Deed and the Reverse Mortgage Deed are all clear and unambiguous in their inclusion of metes and bounds descriptions of only two tracts, with no metes and bounds description for the 1.26 acre parcel of real property owned and encumbered by the Defendants.

Based on these grounds, Defendants requested the trial court dismiss the Complaint with prejudice. The trial court granted Defendants' Motion to Dismiss in an Order dated 13 November 2020. Plaintiff filed written Notice of Appeal from the Order on 10 December 2020.

Issue

¶ 9 The sole issue on appeal is whether the trial court erred in granting Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

Standard of Review

¶ 10 "An appellate court conducts a de novo review when considering a trial court's dismissal of a complaint under North Carolina Rule of Civil Procedure 12(b)(6)." *State Emps. Ass'n of N.C., Inc. v. N.C. Dep't of State Treasurer & Richard H. Moore*, 364 N.C. 205, 210, 695 S.E.2d 91, 95 (2010). "We determine whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory." *Id.* (citation and quotation omitted). Generally, when considering a motion to dismiss the court may not consider outside matters without converting the motion to one for summary judgment; however, "exhibits attached to a complaint do not constitute extraneous matter that convert a motion to dismiss to one for summary judgment . . . because

such documents are treated as part of the pleading pursuant to Rule 10(c).” 1 N.C. Civ. Pro. §12-3 (2020).

¶ 11 Here, as the Deed of Trust was attached to the Complaint, the trial court properly considered the document in Defendants’ Motion to Dismiss, and therefore, we review the Complaint and attached Deed of Trust when considering whether Plaintiff alleged facts sufficient to support a claim for relief.

Analysis

¶ 12 Plaintiff contends the trial court erred in granting Defendants’ Motion to Dismiss arguing Plaintiff has alleged facts which, if taken as true, establish that it holds title to the Property. Specifically, Plaintiff submits, despite the omission of a specific metes and bounds description for the 1.26 Acre Parcel, the Deed of Trust adequately described, encumbered, and conveyed the entire property as evidenced by the inclusion of the street address, the PIN, the occupancy provisions, references to the improvements on the Property, and identification of the Property as a “primary residence.” We disagree.

¶ 13 In the Complaint, Plaintiff brought two claims: a claim to Quiet Title to the 1.26 Acre Parcel and a claim seeking Declaratory Judgment that it is the sole fee owner of the 1.26 Acre Parcel. “In order to establish a prima facie case for removing a cloud on title, a plaintiff must meet two requirements: (1) plaintiff must own the land in controversy, or have some estate or interest in it; and (2) defendant must

assert some claim in the land which is adverse to plaintiff's title, estate, or interest.” *Chicago Title Ins. Co., v. Wetherington*, 127 N.C. App. 457, 461, 490 S.E.2d 593, 597 (1997) (citation omitted). To prove plaintiff has an ownership interest in the land, plaintiff “may offer a connected chain of title or a grant direct from the State to himself.” *Heath v. Turner*, 309 N.C. 483, 489, 308 S.E.2d 244, 247 (1983). Whether such instrument exists is an issue of fact; however, “[t]he interpretation of documents including deeds and wills, is generally an issue of law . . . and, as such, is also reviewable de novo.” *Duke Energy Progress, Inc. v. Kane*, 265 N.C. App. 1, 6, 827 S.E.2d 312, 316 (2019) (citation and quotation omitted).

¶ 14 “In construing the deed, although discerning the intent of the parties is the ultimate goal . . . , we look to the language of the deed for evidence of this intent.” *County of Moore v. Humane Soc’y of Moore County, Inc.*, 157 N.C. App. 293, 298, 578 S.E.2d 682, 685 (2003) (citation and quotation omitted). “The grantor’s intent must be understood as that expressed in the language of the deed and not necessarily such as may have existed in his mind if inconsistent with the legal import of the words he has used.” *Id.* Thus, “[t]he 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.” *Id.* When considering the terms used in deeds, generally, “[t]he rule is that where there is a particular and a general description in a deed, the

particular description prevails over the general.” *Lewis v. Furr*, 228 N.C. 89, 93, 44 S.E.2d 604, 6060 (1947). Indeed,

Where there is a specific description of land, other words intended to describe generally the same lands, will not be allowed to vary or enlarge the specific description. This rule is derived from the proposition that an additional general description, such as a reference to the source of title, when contrasted with the specific description can only be considered as an identification of the land described in the boundary, or as a further means of locating the property.

Board of Transp. v. Pelletier, 38 N.C. App. 533, 537, 248 S.E.2d 413, 415 (1978) (quotations and citations omitted). “It is only when the specific description is ambiguous, or insufficient, or there is a reference to a fuller or more accurate description, that the general description is allowed to control.” *Lee v. McDonald*, 230 N.C. 517, 521, 53 S.E.2d 845, 848 (1949).

¶ 15 For example, in *Bank of America, N.A. v. Schmitt*, the Schmitts owned two contiguous tracts of land, Tract B and Tract C, with two separate addresses and obtained a construction loan from the bank to build a home on Tract B. *Bank of Am., N.A., v. Schmitt*, 263 N.C. App. 19, 20, 823 S.E.2d 396, 397 (2018). The bank secured the construction loan with a deed of trust that described the property using the physical street address for Tract B and the tax parcel identification number and full legal description for Tract C. *Id.* This Court held the description in the Deed of Trust was sufficient to encumber both tracts because “even though the legal description

referenced is that of Tract C only, the reference to the address for Tract B and the provisions indicating that the collateral include the tract where the Schmitts lived is evidence of the intention that Tract B also be included.” *Id.* at 23, 823 S.E.2d at 399.

¶ 16 Here, unlike in *Bank of America, N.A.*, the general description of property does not describe a completely different property from the property described in the specific legal description. Indeed, in this case, since the tracts of land all shared the same address and PIN, the general description is consistent with the specific description as they describe the same property. As such, since the general description does not create an inconsistency or ambiguity, the general rule applies and we must conclude the particular description, identifying the .181 Acre Parcel and .009 Acre Parcel using metes and bounds, controls and the general description does not enlarge the conveyed property, but rather operates as another method of identifying the particular property described within the specific metes and bounds boundaries. Moreover, because the particular description of the encumbered property is clear and unequivocal, we may not speculate the grantor intended to convey the 1.26 Acre Parcel by inclusion of the occupancy provisions, references to the improvements on the Property, and identification of the Property as a “primary residence” in the Deed of Trust. *See County of Moore*, 157 N.C. App. at 298, 578 S.E.2d at 685. Thus, the Deed of Trust did not describe, encumber, or convey the 1.26 Acre Parcel.

¶ 17 Furthermore, Plaintiff failed to allege any other facts in its Complaint showing it had an ownership interest in the 1.26 Acre Parcel, and thereby, supporting its claims to Quiet Title and for Declaratory Relief in another fashion. Consequently, Plaintiff failed to state a claim for relief, and, in turn, the trial court did not err in granting Defendants' Motion to Dismiss.

Conclusion

¶ 18 Accordingly, for the foregoing reasons, we conclude the trial court did not err in granting Defendants' Motion to Dismiss and affirm the Order.

AFFIRMED.

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).