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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-181

No. COA21-131

Filed 15 March 2022

Brunswick County, No. 19 CVS 1430

OCEAN ISLE WEST HOMEOWNERS ASSOCIATION, INC., Plaintiff,

v.

OCEAN POINT UNIT OWNERS ASSOCIATION, INC., Defendant.

Appeal by Plaintiff from order entered 19 August 2020 by Judge Jason Disbrow in Brunswick County Superior Court. Heard in the Court of Appeals 1 December 2021.

Michael R. Porter for Plaintiff-Appellant.

Watts Phanco Law Group PLLC, by Joshua Phanco and S. Denise Watts, for the Defendant-Appellee.

DILLON, Judge.

¶ 1 This case involves the interpretation of a recorded declaration of easement and its effect on a prior recorded easement. We affirm the trial court's grant of summary judgment, concluding that the subsequent declaration does not alter the parties' rights under the prior easement.

I. Background

¶ 2 In 2019, we filed an opinion resolving a dispute between these parties concerning the interpretation of an easement recorded in 1991, discussed below. This present action involves the interpretation of a declaration of easement that was filed after the prior matter was pending before our Court. The facts necessary for the understanding of this present appeal are set forth below. However, many background facts can be found in our prior opinion, *Ocean Point Unit Owners Ass'n v. Ocean Isle West Homeowners Ass'n*, 262 N.C. App. 603, 822 S.E.2d 512 (2018) (hereinafter "*Ocean Point I*")

¶ 3 Plaintiff (the "Homeowners HOA") governs a neighborhood at the end of The Town of Ocean Isle Beach. The Defendant (the "Condo UOA") owns land adjacent to the Homeowners HOA's neighborhood. The homeowners in the Homeowners HOA neighborhood access their property from a private road which extends across the Condo UOA's property.

¶ 4 In 1991, the Condo UOA's predecessor in title granted to the Homeowners HOA an easement to install a gate on the road leading into the Homeowners HOA's neighborhood, specifically, a "perpetual, non-exclusive easement for the purpose of maintenance of the Card Gate Facilities on and over a portion of the Property[.]" (the "1991 Easement"). The "Card Gate Facilities" include a card gate and related improvements to landscaping.

¶ 5 In June 2014, the Homeowners HOA changed the location of the Card Gate Facilities on the Condo UOA's land. The Condo UOA opposed the change, and the first lawsuit between these parties ensued. The Condo UOA was granted a preliminary injunction by the trial court, followed by summary judgment ordering the Homeowners HOA to "repair all disturbed areas to their original condition."

¶ 6 On appeal in *Ocean Point I*, our Court affirmed the trial court's holding that found the Homeowners HOA liable for altering the facilities. We noted, quoting from the Homeowners HOA's brief, that "the Homeowners HOA 'abandons any issue in this appeal as to whether it had the right to move the card gate to a different location within the easement,' essentially conceding that it did not have the right to do so under the terms of the Easement." *Id.* at 606, 822 S.E.2d at 515.

¶ 7 After the matter in *Ocean Point I* became pending before our Court, a new document was recorded entitled "Declaration of Easement and Covenant to Share Costs: Ocean Isle West Boulevard" (the "2018 Declaration"). Based on the 2018 Declaration, the Homeowners HOA commenced this present action, seeking a declaratory judgment that the 2018 Declaration now gives them the right to relocate their gate on another part of the Condo UOA's property.

¶ 8 After a hearing on the matter, the trial court entered summary judgment for the Condo UOA, not citing the legal theory upon which its judgment was based. The Homeowners HOA timely appealed.

II. Standard of Review

¶ 9 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 [a] party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2018); *Summey v. Barker*, 357 N.C. 492, 496, 586 S.E.2d 247, 249 (2003). Our standard of review is *de novo*. *Forbis v. Neal*, 361 N.C. 519, 523, 649 S.E.2d 382, 385 (2007).

III. Analysis

¶ 10 The Homeowners HOA assumes that summary judgment was based on *res judicata* according to our resolution in *Ocean Point I*, which established that the Homeowners HOA has no right to relocate the gate from its original location based on the 1991 Easement. We agree that summary judgment in this present matter could *not* be based on *res judicata*, as this present matter concerns the interpretation of the 2018 Declaration—a document not at issue in *Ocean Point I*.

¶ 11 However, we have reviewed the 2018 Declaration and conclude that this document does not grant the Homeowners HOA the right to relocate its gate from its

original location. We, therefore, affirm the trial court's summary judgment order based on this reason, as explained below.

¶ 12 The 2018 Declaration establishes a new association whose purpose is to maintain the private road that runs through, and provides access to, several residential developments on Ocean Isle Beach (each governed by a separate HOA). The road terminates at the entrance to the Homeowners HOA's neighborhood. The members of this new association (hereinafter the "Road Association") include the parties to this lawsuit as well as several other homeowner associations.

¶ 13 We have reviewed this 2018 Declaration and conclude that there is no grant of a new easement in favor of the Homeowners HOA concerning the location of their gate at the entrance to their neighborhood. Rather, the sole purpose of the 2018 Declaration is to divide the expenses of maintaining the road itself among the various homeowner associations in the Road Association. The Road Association was not set up to decide where on the Condo UOA's property that the Homeowners HOA could install its gate. Indeed, the 2018 Declaration recognizes that certain homeowner associations may have prior easement rights to maintain improvements in parts of the road. And the 2018 Declaration states that it does not affect any prior easements of record and "[s]tructures and landscaping located within the [road] right of way [ ]

shall be maintained by the specific [HOA that erects and benefits from said] structures, landscaping, and/or systems[.]"

¶ 14 Further, the Homeowners HOA argues that the reference in the 2018 Declaration to a prior-recorded plat constitutes a grant of new easement rights to relocate the gate. Specifically, the 2018 Declaration references a number of plats in describing the 60-foot right of way, including the road, subject to the Road Association. For instance, in one section, the road is described as:

> BEING all of Ocean Isle West Boulevard as it extends from the state maintained portion of Ocean Isle West Boulevard in a westerly direction to the westernmost property line of Lot 21 as shown on plat entitled "Map of Ocean Isle West, Town of Ocean Isle Beach" recorded in **Map Cabinet M, Page 192**, in the Office of the Brunswick County Registrar of Deeds. A Map of Ocean Isle West Boulevard is recorded in **Map Cabinet 105 Page 93** in the Office of the Brunswick County Register of Deeds (the "Road.").

(Emphasis added). In another section, the Road is defined as follows:

> "'Road' shall mean the 60 foot right of way . . . as depicted and recorded on Survey of Revised Access Road to the End of Ocean Isle West in **Map Cabinet 105, pages 91 and 92**.

(Emphasis added). Defendant notes that the map recorded at Map Cabinet 105 Page 93 depicts the Homeowners HOA's Card Gate Facilities in the location where they had relocated it in 2014. The other maps referenced in the 2018 Declaration, however, do not show the relocated gate. In any event, the Homeowners HOA

essentially contends that the reference to this map, in identifying the road's location, constitutes a grant of a new easement by the Condo UOA to the Homeowners HOA for the relocation of their card gate. However, this map is only referenced to identify the 60-foot right of way that was being granted as an easement to all the homeowner association members who were parties to the 2018 Easement.

¶ 15 Based on our reading of the 2018 Declaration, there is no intent expressed in that document to grant the Homeowners HOA an easement to use a different section of the road on the Condo UOA property to relocate their gate facility. There is no granting language to that effect. Rather, the plat relied upon by the Homeowners HOA was simply referenced in the 2018 Declaration to depict the location of the road itself. There is no language indicating that the plat was referenced to depict the location of a new easement in favor of the Homeowners HOA for its gate.

III. Conclusion

¶ 16 We conclude that summary judgment was properly granted by the trial court, not on *res judicata* grounds, but because the 2018 Declaration bares no effect on the 1991 Easement.

AFFIRMED.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).