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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-306

No. COA21-235

Filed 3 May 2022

Moore County, No. 19 CVS 0849

DEPARTMENT OF TRANSPORTATION, Plaintiff,

v.

MCLENDON HILLS PROPERTY OWNERS' ASSOCIATION, Defendant.

Appeal by Defendant from an order entered 22 October 2020 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 15 December 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Kelly A. Moore, for Plaintiff-Appellee.

Keenya T. Justice for Defendant-Appellant.

JACKSON, Judge.

¶ 1 Defendant-Appellant McLendon Hills Property Owners' Association ("Defendant POA") appeals the order denying its motions to add the McLendon Hills fee simple lot owners as necessary and property parties to this action and to expand the subject property to include all lots within the McLendon Hills Subdivision ("McLendon Hills"). After careful review, we affirm.

I. Factual and Procedural Background

¶ 2 McLendon Hills is an equestrian community located off N.C. Highway 211 in Moore County. The community consists of several common areas, such as stables, dressage corrals, and bridle paths, as well as individual residential lots. On 5 July 2019, Plaintiff, the state Department of Transportation (the "DOT") filed a condemnation action to take a portion of Defendant POA's property as part of DOT Project No. 50218.2.1. The DOT described the area subject to taking as an approximately half-acre tract that includes the front entrance gate and monument of McLendon Hills as well as an onsite vehicular stacking area—a designated space for vehicles and horse trailers to wait off the public road before proceeding through the gate and into the subdivision. The tract is a designated common area in McLendon Hills but title to the land is held solely by Defendant POA.

¶ 3 Project No. 50218.2.1 aims to widen Highway 211 in Moore County from Highway 73 to west of Holly Grove School Road. Prior to this action, the portion of Highway 211 running in front of McLendon Hills was a two-lane road with a designated left-hand turn lane into the subdivision. The DOT project will widen the highway into four lanes and provide a 900-foot left-hand turn lane and a 530-foot right-hand turn lane into the community.

¶ 4 Pursuant to Article I, Section 7 of the Unified Restrictive Covenants of McLendon Hills ("Restrictive Covenants"), a "lot" refers to "any plot or parcel of land

with delineated boundary lines described in the deeds of conveyance or appearing on the Maps with the exception of the Common Areas." The lots are both residential and nonresidential in nature. As of the date of taking, 91 lots had been bought and sold in McLendon Hills, and additional lots owned by the developer, Equestrian Lakes, LLC, remained for sale. There are also lots owned by McLendon Hills Equestrian Center, LLC, including the stables, pasture, and dressage areas.

¶ 5 Pursuant to Article I, Section 10 of the Restrictive Covenants, a lot "owner" refers to "the record owner, whether one or more persons or entities, according to the Moore County Registry, of a fee simple title to any [l]ot, but shall not include any person or entity having an interest merely as security for the performance of an obligation." Each individual lot owner is a member of Defendant POA according to Article VIII, Section 1 of the Restrictive Covenants. Each lot owner also has recorded easement interests to use and enjoy the common areas and for ingress and egress over the common roadways, which includes the vehicular stacking area, per Article IX, Sections 2 and 3 of the Restrictive Covenants.

¶ 6 On 1 November 2019, Defendant POA filed its answer, which included three motions: a motion pursuant to Rule 19 of the North Carolina Rules of Civil Procedure to add all fee simple lot owners in McLendon Hills as necessary parties; a motion pursuant to Rule 20 of the North Carolina Rules of Civil Procedure to add all fee simple lot owners in McLendon Hills as proper parties; and a motion pursuant to N.C.

Gen. Stat. § 136-108, requesting a hearing "for a determination of all issues raised by the pleadings . . . including, but not limited to, the land taken, the property affected by the taking, the interest taken, and the questions of necessary and proper parties to this action."

¶ 7 A section 108 hearing was held in Moore County Superior Court on 9 October 2020 before the Honorable James M. Webb. During the hearing, Defendant POA did not present any further evidence but relied on the exhibits filed with its supporting brief, which included the Restrictive Covenants. The DOT presented a PowerPoint, which included screenshots of Google Maps as well as plat maps, to illustrate the exact area being condemned. Following arguments from counsel, the trial court denied Defendant POA's motions to add the individual lot owners as necessary parties and to redefine the property subject to taking as the entire McLendon Hills subdivision, including all individual lots. The trial court entered and served a written order on 22 October 2020.

¶ 8 Defendant POA entered timely notice of appeal on 23 November 2020.

II. Appellate Jurisdiction

¶ 9 "An order entered pursuant to N.C. Gen. Stat. § 136-108 is an interlocutory order because the trial court does not completely resolve the entire case, but instead determines all relevant issues other than damages in anticipation of a jury trial on the issue of just compensation." *DOT v. BB&R, LLC*, 242 N.C. App. 11, 14, 775 S.E.2d

8, 11 (2015) (internal marks and citation omitted). Interlocutory orders may be immediately appealed where the order affects a substantial right. N.C. Gen. Stat. § 1-277(a) (2021). Our Supreme Court has held that issues concerning necessary and proper parties and area taken are vital and preliminary in a condemnation action. *DOT v. Rowe*, 351 N.C. 172, 176-77, 521 S.E.2d 707, 709-10 (1999); *N.C. DOT v. Stagecoach Vill.*, 360 N.C. 46, 48, 619 S.E.2d 495, 496 (2005). An order that determines these issues affects a party's substantial rights and thus is immediately appealable. *N.C. State Highway Comm'n v. Nuckles*, 271 N.C. 1, 14, 155 S.E.2d 772, 784 (1967). Accordingly, we have jurisdiction to review Defendant POA's interlocutory appeal.

III. Analysis

¶ 10 As a preliminary matter, we first address Defendant POA's objection to the DOT's inclusion of an Appendix to its brief. The Deed for Highway Right of Way included as the DOT's Appendix is not part of the settled record on appeal. "The appellate courts in this State are bound by the record as certified and can judicially know only what appears of record." *Vassey v. Burch*, 301 N.C. 68, 74, 269 S.E.2d 137, 141 (1980). This deed is not in the record, nor was it apparently presented at the section 108 hearing. The deed is also not permitted to be included under Rule 28 of the North Carolina Rules of Appellate Procedure, which delineates both the content of an appellee's brief and the inclusion of an appendix to an appellee's brief. *See* N.C.

R. App. P. 28. It was improper for the DOT to attach the deed as an appendix. *See Horton v. New S. Ins. Co.*, 122 N.C. App. 265, 268, 468 S.E.2d 856, 858 (1996). Accordingly, we strike the DOT's Appendix and will not consider any arguments relating to the Appendix on appeal.

A. Standard of Review

¶ 11 An appellate court reviews a section 108 hearing order to determine whether

> there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment. As stated, unchallenged findings of fact are presumed correct and are binding on appeal. The trial court's conclusions of law are subject to *de novo* review.

DOT v. Webster, 230 N.C. App. 468, 477, 751 S.E.2d 220, 226 (2013) (cleaned up).

B. Necessary and Proper Parties

¶ 12 Defendant POA argues first that the individual lot owners in McLendon Hills should be joined to the action as necessary and proper parties.

¶ 13 Whether a claimant is a necessary or proper party is a question of law which we review *de novo*. *See State ex rel. Regan v. WASCO, LLC*, 269 N.C. App. 292, 302, 837 S.E.2d 565, 571 (2020). Where a claimant is determined to be a proper but not necessary party, we review a trial court's decision regarding whether to join that party for abuse of discretion. *See Booker v. Everhart*, 294 N.C. 146, 156, 240 S.E.2d 360, 365-66 (1978), *overruled on other grounds by M.E. v. T.J.*, 2022-NCSC-23.

¶ 14 Rule 19 of the North Carolina Rules of Civil Procedure requires the necessary

joinder of parties "who are united in interest[.]" N.C. Gen. Stat. § 1A-1, Rule 19 (2021). "A person is a necessary party to an action when he is so vitally interested in the controversy involved in the action that a valid judgment cannot be rendered in the action completely and finally determining the controversy without his presence as a party." *Booker*, 294 N.C. at 156, 240 S.E.2d at 365-66. While "[n]ecessary parties must be joined in an action[,]" the decision to join proper parties "rests within the sound discretion of the trial court." *Id.* at 156, 240 S.E.2d at 365. "Proper parties are those whose interests may be affected by a decree, but the court can proceed to adjudicate the rights of others without necessarily affecting them[.]" *Edmondson v. Henderson*, 246 N.C. 634, 636, 99 S.E.2d 869, 871 (1957) (internal citation omitted).

¶ 15 Defendant POA relies on *North Carolina Department of Transportation v. Stagecoach Village*, 174 N.C. App. 825, 622 S.E.2d 142 (2005) ("*Stagecoach Village II*"), to contend that because the individual lot owners possess recorded easement interests in the condemned property, specifically rights for use and enjoyment and for ingress and egress per the Restrictive Covenants, they are required to be added as necessary parties. In *Stagecoach Village II*, the DOT condemned common area property owned by a homeowner's association. 174 N.C. App. at 826, 622 S.E.2d at 143-44. The individual lot owners in the development possessed an easement interest in the condemned land. *Id.* The Court held that "[a] suit as to the just compensation of the condemned land cannot be resolved without the join[d]er of each lot owner in

the development who has an easement property right of record." *Id.* at 828, 622 S.E.2d at 145. In affirming the trial court's conclusion that "as a matter of law each individual record owner of a lot in the Stagecoach Village townhouse development is a necessary and proper party[,]" *id.* at 827, 622 S.E.2d at 144, the Court specifically cited the trial court's Conclusion of Law No. 7, which stated:

> Each individual lot owner's claim *is not common with the entire membership and is not shared equally*. Depending upon the lot owner's location in the development, the lot owner may be more or less damaged by the taking than other lot owners. Individualized proof on each lot owner's damages will be necessary. The proper parties to provide this proof are the individual lot owners.

Id. at 828, 622 S.E.2d at 145 (emphasis added). This absence of commonality and the need for individualized proof of damages meant we in turn affirmed the trial court's conclusion that the homeowner's association lacked "standing to pursue each individual lot owner's claim." *Id.* at 829, 622 S.E.2d at 145. *See also Creek Pointe Homeowner's Ass'n v. Happ*, 146 N.C. App. 159, 167, 552 S.E.2d 220, 226 (2001) ("An organization generally lacks standing to sue for money damages on behalf of its members if the damage claims are not common to the entire membership, nor shared equally, so that the fact and extent of injury would require individualized proof.").

¶ 16 We find it significant that the Court in *Stagecoach Village II* predicated its holding on the trial court's conclusion that each individual lot owner's claim was not common with the entire homeowner's association membership. Where individual lot

owners' claims are not common—and may differ based on location within a development—they are necessary parties, as a valid judgment on just compensation for the taking of their easement interests in a common area could not be rendered without their presence as parties. However, the outcome is not the same where individual lot owners' claims *are* common with the entire membership.

¶ 17 Here, unlike in *Stagecoach Village II*, the trial court did not find or conclude that each individual lot owner's easement interest was not common with the entire membership or was not shared equally. The trial court did not find or conclude that some lot owners may be more or less damaged by the taking of the gate, monument, and stacking area than other lot owners depending on their location within McLendon Hills. Defendant POA stated in its reply brief, "[t]he absence of the common area property and improvements affects all the lots possessing an easement interest therein." However, simply because a taking affects all lots does not mean it inherently affects each lot differently.

¶ 18 There was no evidence offered by Defendant POA at the section 108 hearing or in its supporting brief indicating that the individual lot owners' claims were not common. While Defendant POA is correct that a section 108 hearing is designed to determine "any and all issues raised by the pleadings other than the issue of damages," N.C. Gen. Stat. § 136-108 (2021), that provision does not bar parties from presenting evidence to demonstrate that claims are not common and that damages

may differ based on location. Where no such evidence is presented, then the conclusion follows that the claims are common amongst the entire membership. As the individual lot owners' claims are common with the entire membership, then Defendant POA can adequately represent the interests of the individual lot owners such that a judgment may be rendered completely and finally. Accordingly, the trial court did not err by failing to join individual lot owners in McLendon Hills as necessary parties.

¶ 19 At most, the individual lot owners are proper parties. As residents of McLendon Hills and members of Defendant POA, the individual lot owners have concerns about the outcome of this controversy, but the rights of Defendant POA can be adjudicated without necessarily affecting them. The trial court therefore had the discretion to join the individual lot owners as proper parties. Considering that Defendant POA presented no evidence at the section 108 hearing to conclude otherwise, the trial court's decision not to join the lot owners as proper parties is not manifestly unsupported by reason. Therefore, the trial court did not abuse its discretion, and we affirm the trial court's order denying Defendant POA's motion to join the individual lot owners as parties.

C. Land Subject to Taking

¶ 20 Defendant POA argues next that the trial court erred by denying its motion to define the property subject to taking as the entire McLendon Hills subdivision,

including all lots owned by the individual lot owners.

¶ 21 Ordinarily, the issue of whether a condemned common area and the other lots in a subdivision constitute a single, unified tract of land for purposes of assessing damages is a question of law which we review *de novo*. *Barnes v. N.C. State Highway Comm'n*, 250 N.C. 378, 384, 109 S.E.2d 219, 224 (1959); *DOT v. Fernwood Hill Townhome Homeowners' Ass'n*, 185 N.C. App. 633, 638, 649 S.E.2d 433, 436 (2007).

¶ 22 "In determining whether condemned land is part of a unified tract, North Carolina courts consider three factors: (1) unity of ownership, (2) physical unity, and (3) unity of use." *DOT v. Roymac P'ship*, 158 N.C. App. 403, 407, 581 S.E.2d 770, 773 (2003). The weight of each factor is dependent on the facts of a case as "[u]nder certain circumstances the presence of all these unities is not essential." *Barnes*, 250 N.C. at 384, 109 S.E.2d at 225. However, "[a]bsent unity of ownership, [multiple] parcels of land cannot be regarded as a single tract for the purpose of determining a condemnation award." *Bd. of Transp. v. Martin*, 296 N.C. 20, 26, 249 S.E.2d 390, 395 (1978); *see also Fernwood Hill*, 185 N.C. App. at 639, 649 S.E.2d at 437 (noting that unity of use is no longer the most important unity because our Supreme Court held in *Martin* "that a unity of ownership is indispensable").

¶ 23 Regarding unity of ownership, our Supreme Court has explained:

> The parcels claimed as a single tract must be owned by the same party or parties. It is not a requisite for unity of ownership that a party have the same quantity or quality

> of interest or estate in all parts of the tract. But where there are tenants in common, one or more of the tenants must own some interest and estate in the entire tract. Under some circumstances the fact that the land is acquired in a single transaction will strengthen the claim of unity. But the fact that the land was acquired in small parcels at different times does not necessarily render the parcels separate and independent. However, there must be a substantial unity of ownership. Different owners of adjoining parcels may not unite them as one tract, nor may an owner of one tract unite with his land adjoining tracts of other owners for the purpose of showing thereby greater damages.

Barnes, 250 N.C. at 384, 109 S.E.2d at 225 (internal citations omitted).

¶ 24 "The test of substantial unity of ownership appears, then, to be whether some one of the tenants in the land taken owns some quantity and quality of interest and estate in all of the land sought to be treated as a unified tract." *City of Winston-Salem v. Tickle*, 53 N.C. App. 516, 528, 281 S.E.2d 667, 674 (1981). "[T]he significant factor is that the party who owns an interest and estate in the parcel he seeks to include in the whole for purposes of computing damages must also own an interest and estate in the tract taken[.]" *Id.* Our Court has clarified that a party is not required to show they have both "an interest *and* an estate in the entire tract[,]" but rather they can show they have "some interest *or* estate in the entire tract." *Fernwood Hill*, 185 N.C. App. at 639-40, 649 S.E.2d at 437-38.

¶ 25 Here, the common area taken by the DOT is owned by Defendant POA in fee simple. This land was granted to Defendant POA by McLendon Hills developer

Equestrian Lakes, LLC. The Restrictive Covenants provide that Defendant POA has the right to levy annual dues and special assessments on the individual lot owners. Defendant POA cites a Texas Court of Appeals case, *Harris County Flood Control District v. Glenbrook Patiohome Owners Association*, 933 S.W.2d 570 (Tex. Ct. App. 1996), to contend that the right to levy dues and assessments is an inherent property right and therefore Defendant POA has a property interest in the all the individual lots within McLendon Hills. Accordingly, Defendant POA argues that because it has an estate or interest in all the lots that comprise McLendon Hills, the entire McLendon Hills subdivision should be considered the tract affected by the taking. We are not bound by the Texas decision, however, and North Carolina currently does not recognize the right to levy dues and assessments as an inherent property right.

¶ 26 As such, Defendant POA does not have an interest or estate in the land it seeks to be included in the whole—all the individual lots, both residential and non-residential, that make up McLendon Hills—and only has an estate in the common area land taken by the DOT. While the individual lot owners *do* have a property interest in the form of an easement in the land taken and a fee simple estate in the lots that Defendant POA seeks to be included in the whole, the lot owners are not the ones seeking to have their lots included in the whole.

¶ 27 This scenario, that the party moving to include additional land in the condemned tract owns an estate in the tract taken but does not possess an estate or

interest in the additional land, distinguishes the case at bar from *Department of Transportation v. Fernwood Hill Townhome Homeowners' Association*, 185 N.C. App. 633, 649 S.E.2d 433 (2007). In *Fernwood Hill*, the Court affirmed a trial court's ruling that substantial unity of ownership existed between a condemned common area and the individual townhouses in a development such that they formed a single, unified tract for purposes of assessing damages. 185 N.C. App. at 642, 649 S.E.2d at 439. The Court explained that our holding in *City of Winston-Salem v. Yarbrough*, 117 N.C. App. 340, 451 S.E.2d 358 (1994), meant "the Association was required only to show that at least one party had some interest *or* estate in the entire tract" for unity of ownership to exist. *Id.* at 640, 649 S.E.2d at 438. As the townhome owners had been joined as parties, the Court concluded that at least one party, namely the townhome owners, had an estate or an interest in the entire tract, as the townhome owners had an easement in the condemned common area and "an interest in the other individual townhouses by virtue of the restrictive covenants." *Id.* at 641, 649 S.E.2d at 438.

¶ 28 Here, the one party to the action, Defendant POA, does not have an estate or a sufficient interest in the lots owned by the individual lot owners. Accordingly, we conclude that unity of ownership does not exist between the land taken and the land Defendant POA seeks to be included in the whole. Because unity of ownership does not exist, the condemned land and all the individual lots in McLendon Hills are not

a single, unified tract of land for purposes of assessing damages. We hold therefore that the trial court did not err in denying Defendant POA's motion to redefine the property subject to taking as the entire McLendon Hills subdivision.

D. Trial Court's Order

¶ 29 Defendant POA lastly argues that the trial court erred by failing to make findings of fact that addressed necessary parties and the property subject to taking, and therefore the findings that the trial court did make do not support its conclusions of law. Relatedly, Defendant POA argues that the trial court erred in denying its motion by failing to make any applicable findings of fact and that the trial court erred by reaching conclusions of law that are unsupported by evidence, findings of fact, and the relevant caselaw. We disagree.

¶ 30 "In hearings pursuant to N.C. Gen. Stat. § 136-108, the trial court, after resolving any motions and preliminary matters, conducts a bench trial on the disputed issues except for damages." *DOT v. Byerly*, 154 N.C. App. 454, 457, 573 S.E.2d 522, 524 (2002). Bench trials are governed by Rule 52 of the North Carolina Rules of Civil Procedure, which requires the trial court to "find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (2021). Additionally, "[t]here are two kinds of facts: Ultimate facts, and evidentiary facts. Ultimate facts are the final facts required to establish the plaintiff's cause of action or the defendant's defense;

and evidentiary facts are those subsidiary facts required to prove the ultimate facts." *Woodard v. Mordecai*, 234 N.C. 463, 470, 67 S.E.2d 639, 644 (1951). The trial court is only required to include ultimate facts in its findings. *Id.*

¶ 31 Regarding finding of fact determinations,

> [w]e have previously recognized the classification of a determination as either a finding of fact or a conclusion of law is admittedly difficult. Generally, any determination requiring the exercise of judgment or the application of legal principles is more properly classified a conclusion of law. Any determination made by logical reasoning from the evidentiary facts, however, is more properly classified a finding of fact. When this Court determines that findings of fact and conclusions of law have been mislabeled by the trial court, we may reclassify them, where necessary, before applying our standard of review.

In re Foreclosure of Gilbert, 211 N.C. App. 483, 487-88, 711 S.E.2d 165, 169 (2011) (cleaned up).

¶ 32 The trial court's Findings of Fact are as follows:

> 1. The plaintiff filed this condemnation action pursuant to Chapter 136 of the North Carolina General Statutes on July 5, 2019.
>
> 2. The defendant was served, and filed an Answer on November 1, 2019, within the time permitted by law.
>
> 3. This Court has jurisdiction over the subject matter of, and the parties to this action.
>
> 4. The defendant filed motions within its answer, seeking *inter alia*, that the owners of individual lots in the Mclendon Hills Subdivision be added as necessary or proper parties to this action, and for hearing pursuant

to Section 108 regarding the areas and interests taken by the plaintiff in this action.

5. On July 5, 2019, the plaintiff acquired by eminent domain new right of way area consisting of 14,823 square feet (0.340 acre), a permanent utility easement consisting of 1,656 square feet (0.038 acre), a slope easement consisting of 282 square feet (0.006 acre), and a temporary construction easement consisting of 2,070 square feet (0.048 acre) from the "Common Area" belonging to the defendant, which consisted of 0.503 acre.

6. The Court Map delineates the boundaries of the Property Owners' Association property.

7. Pursuant to Article VIII, Section 1 of the Restrictive Covenants of Mclendon Hills, every owner is a member of the association.

The trial court's Conclusions of Law are as follows:

1. This court has jurisdiction over the subject of, and the parties to this action.

2. On July 5, 2019, the plaintiff acquired a permanent utility easement, a slope easement, and a temporary construction easement, from the property belonging to the defendant.

3. The plaintiff did not acquire any real property from any of the owners of the lots or houses in the Mclendon Hills Subdivision.

4. The Mclendon Hills Subdivision has a second gated entrance.

5. The acquisition of the taking by the Plaintiff has no effect on the enjoyment or use of common area, and therefore the issues in this case can be resolved without the participation of the individual lot owners and

developer in the Mclendon Hills Subdivision.

6. The individual unit owners and developer of the Mclendon Hills Subdivision are not necessary parties to this action.

7. The "Association's" property is not contiguous, or touching other individual lots, and therefore [sic] is not unity of use between the lot owners and defendant with respect to the common area.

8. The "Association's" property is a separate and distinct tract from the individual lots and homes in the Mclendon Hills Subdivision.

¶ 33 First, we note that Finding of Fact 3 and Conclusion of Law 1 are duplicates and we deem this statement a conclusion of law. Second, we reclassify the trial court's Conclusions of Law 2 – 4 as findings of fact. Each statement is better understood as the result of applying logical reasoning to evidentiary facts. Even examining Conclusion of Law 3 more closely, the trial court appears to be finding that no land owned by the individual lot owners in fee simple was condemned by the DOT and the only land condemned by the DOT was owned in fee simple by Defendant POA. This is not an exercise of legal judgment so much as the application of reason to the evidence presented by the DOT at the hearing.

¶ 34 Accordingly, we review Findings of Fact 1, 2, and 4 – 7 and Conclusions of Law 2 – 4 to determine whether each is supported by competent evidence. Defendant POA argues that Findings of Fact 1 – 6 merely recite matters contained in the pleadings. Our Court has held "that a trial court cannot find facts by merely reciting allegations

in the parties' pleadings; instead, the court must make a finding that the allegation is indeed a fact." *Scheinert v. Scheinert*, 260 N.C. App. 234, 236, 818 S.E.2d 114, 115 (2018) (holding the trial court's finding that "Defendant/Husband filed an Answer and Counterclaim alleging that he was a citizen and resident of Guilford County" was a mere recitation of an allegation). While Findings of Fact 1 – 4 are statements of procedural posture, the trial court did find each as fact and trial courts are not barred from describing the history, context, or procedural posture of a case in their findings of fact. Findings of Fact 5 – 6 are supported by the DOT's PowerPoint presentation from the section 108 hearing and the exhibits attached to the DOT's Declaration of Taking. Conclusions of Law 2 – 4 are supported by the same competent evidence.

¶ 35 The crux of Defendant POA's argument is that these findings of fact do not address the possible existence of an easement held by the individual lot owners in the condemned common area and therefore the trial court "failed to make the requisite findings to reach **any** conclusions regarding the issues before it." On appeal, however, we review whether the findings of fact that the trial court did make support its conclusions of law, and in the case at bar we hold that Conclusions of Law 5 – 8 are supported by the findings of fact.

¶ 36 Conclusions of Law 5 and 6 address the issue of necessary and proper parties. These conclusions are supported by Finding of Fact 7 and the reclassified Conclusion of Law 3. By finding that the individual lot owners were members of Defendant POA

and their land was not condemned, the trial court was able to conclude that the case can be resolved by Defendant POA and the individual lot owners are not necessary parties. Furthermore, we again note that Defendant POA did not present any evidence to suggest otherwise. Conclusions of Law 7 and 8 are supported by Finding of Fact 6. The trial court used the Court Map to conclude that the condemned land and the individual lots are not physically contiguous and therefore Defendant POA's property is a separate tract of land from the rest of McLendon Hills.

¶ 37 Accordingly, we hold that the trial court did not err in entering its section 108 order.

IV. Conclusion

¶ 38 For the foregoing reasons, we affirm the trial court's denial of Defendant POA's motions to join the individual lot owners as parties and to redefine the property subject to taking as the entire McLendon Hills subdivision.

AFFIRMED.

Judges DIETZ and COLLINS concur.

Report per Rule 30(e).