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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1051

Filed 18 June 2024

Alamance County, No. 21CVS2060

GARY JOEL HORNER and WANDA YORK HORNER IRREVOCABLE TRUST, by  
and through its trustee, TRACEY LOYD, Plaintiffs,

v.

IPP, LLC, Defendant.

Appeal by plaintiff from judgment entered 15 December 2022 by Judge  
Andrew H. Hanford in Alamance County Superior Court. Heard in the Court of  
Appeals 16 April 2024.

*Oertel, Koonts & Oertel, PLLC, by Geoffrey K. Oertel, for the plaintiff-appellant.*

*Pittman & Steele, PLLC, by Timothy W. Gray, for the defendant-appellee.*

TYSON, Judge.

Appeal by Gary Joel Horner and Wanda York Horner Irrevocable Trust  
("Plaintiff") from judgment entered in favor of IPP, LLC ("Defendant") following a  
bench trial. We affirm.

**I. Background**

Plaintiff owns a parcel of real property located at 614 Chapel Hill Road in

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Burlington in an irrevocable trust. Defendant is a North Carolina limited liability company, which owns the adjacent tract of real property located at 608 Chapel Hill Road. Plaintiff leases its parcel to Auto Trim Design, Inc., who operates an automotive accessory business on the parcel.

Plaintiff and Defendant's predecessors-in-title entered into an easement agreement in 1980 ("1980 Easement"). The 1980 Easement is recorded in Book 458, Page 464 of the Alamance County Registry and provides: "[I]t is mutually agreed that the parties . . . and their respective heirs and assigns shall have the perpetual right to use in common the cement loading dock for loading and unloading equipment, freight and merchandise." When the 1980 Easement was agreed to, a fence with a gate connected the building on Plaintiff's property to the building located on Defendant's property.

Plaintiff's predecessor-in-title accessed the loading dock area by entering through the gate located on Defendant's property. Plaintiff's predecessor-in-title removed the portion of the fence, which was located on their property, and installed a new driveway completely located on their property down the side of their building. Defendant's predecessor-in-title placed heavy equipment along the property line and constructed a new fence along the property line to protect its equipment. The fence was constructed on an angle, which allowed Plaintiff to access the rear door at the back of the building when using the newly-constructed driveway, but Plaintiff could no longer access Defendant's property.

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Plaintiff filed a complaint on 27 September 2021 and sought injunctive relief and a declaratory judgment holding the easement was valid, enforceable, and to prohibit Defendant from interfering with Plaintiff's access to their building. Following a bench trial, the trial court entered a judgment holding: (1) Plaintiff had failed to prove their claim for a valid easement granting access to the far right door at the back of the building; (2) Defendant has not interfered with any rights of Plaintiff; (3) any purported easement rights had been extinguished through adverse possession, abandonment, or estoppel; and, (4) the 1980 Easement was no longer valid nor enforceable. The trial court dismissed Plaintiff's claims and ordered Defendant to remove all its fencing erected on Plaintiff's property within 30 days. Plaintiff appeals.

## **II. Jurisdiction**

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7A-27(b) (2023).

## **III. Issues**

Plaintiff argues the trial court: (1) made insufficient findings of fact to support its conclusion of law Plaintiff's easement had been extinguished through adverse possession, abandonment, or estoppel; (2) made insufficient findings to support its conclusion of law Plaintiff had failed to prove their claim for a valid easement to the far rear door; (3) erred in entering judgment for Defendant; and, (4) erred by allowing testimony in violation of the parol evidence rule.

## **IV. Standard of Review**

In a bench trial without a jury, “[t]he trial judge acts as both judge and jury and considers and weighs all of the competent evidence before them. If different inferences may be drawn from the evidence, the trial judge determines which inferences shall be drawn and which shall be rejected.” *In re Estate of Trogdon*, 330 N.C. 143, 147-48, 409 S.E.2d 897, 900 (1991) (citation and emphasis omitted).

This Court has held:

In a bench trial in which the superior court sits without a jury, the standard of review is whether there was competent evidence to support the trial court’s findings of fact and whether its conclusions of law were proper in light of such facts. Findings of fact by the trial court in a nonjury trial are conclusive on appeal if there is evidence to support those findings. A trial court’s conclusions of law, however, are reviewable *de novo*.

*Hanson v. Legasus of North Carolina, LLC*, 205 N.C. App. 296, 299, 695 S.E.2d 499, 501 (2010) (citation omitted).

## **V. Extinguishment of Easement**

Plaintiff argues the trial court erred by entering a judgment concluding the easement had been extinguished by adverse possession, abandonment, or estoppel.

Our Supreme Court held: “An easement may be abandoned by unequivocal acts showing a clear intention to abandon and terminate the right or [easement].” *Combs v. Brickhouse*, 201 N.C. 366, 369, 160 S.E. 355, 356 (1931) (quotation marks omitted). “The essential acts of abandonment are the intent to abandon and the unequivocal external act by the owner of the dominant tenement by which the intention is carried

to effect.” *Skvarla v. Park*, 62 N.C. App. 482, 486-87, 303 S.E.2d 354, 357 (1983) (citation omitted). A “lapse of time in asserting one’s claim to an easement, unaccompanied by acts or conduct inconsistent with one’s rights, does not constitute waiver or abandonment of the easement.” *Id.*

The trial court found Plaintiff’s predecessors-in-title had previously accessed the rear loading dock area by entering the front gate of a fence located on Defendant’s property, as a fence connected the front of Plaintiff’s building to Defendant’s building. The trial court further found Plaintiff’s predecessors-in-title had removed the fence on its property and installed a new driveway down the side of the building completely situated on their property. This new driveway allowed Plaintiff to access the rear door of the building. Defendant’s predecessor-in-title placed heavy equipment on its property across the property line and constructed a new fence along its property line. The trial court found: “That the lapse of time and delay in asserting rights under the easement accompanied by construction of a new driveway demonstrate an unequivocal intention to abandon the easement.”

The labels “finding of fact” and “conclusion of law” by a trial court in a written judgment do not determine the nature of our standard of appellate review. *See Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011). “[A]ny determination requiring the exercise of judgment, or the application of legal principles, is more properly classified a conclusion of law. Any determination reached through logical reasoning from the evidentiary facts is more properly classified a finding of fact.” *In*

*re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (internal citations and quotation marks omitted). This finding of fact is actually a conclusion of law.

Here, Plaintiff's predecessor-in-title took affirmative actions to demonstrate their intent to abandon the easement by removing the fence and installing the driveway located completely on their own property. This action satisfies both prongs of *Skvarla*, which requires both "the intent to abandon and the unequivocal external act" by the owner of the dominant estate. *Skvarla*, 62 N.C. App. at 486-87, 303 S.E.2d at 357. As the trial court correctly concluded the easement has been abandoned, it is unnecessary to address Plaintiff's remaining estoppel and adverse possession arguments.

#### **VI. Sufficient Findings of Fact**

Plaintiff challenges Conclusion of Law #2, which states: "That Plaintiff has failed to prove their claim for a valid easement granting access to the far rear door at the back of building and that Defendant has interfered with any rights of the Plaintiff by the greater weight of the evidence." However, the trial court found the "far rear door" was not the loading dock or door referenced in the 1980 Easement Agreement. Plaintiff further failed to introduce evidence to show any historic use of the door. Plaintiff's argument is overruled.

#### **VII. Dan Stafford Testimony**

Plaintiff argues the trial court erred by admitting the testimony of Dan Stafford over their objection in violation of the parol evidence rule. The testimony of

Dan Stafford was referred to in finding of fact 8, which provides: “That according to testimony from Dan Stafford, a grantor of the 1980 easement agreement, this side door was commonly referred to as the ‘rear door’ by the predecessors in title (sic) at the time of the execution of the 1980 easement.”

Plaintiff asserts the meaning and location of “back door” is clear and unambiguous to prohibit Stafford’s parol evidence. “Where the parties have put their agreement in writing, it is presumed that the writing embodies their entire agreement.” *Dellinger v. Lamb*, 79 N.C. App. 404, 408, 339 S.E.2d 480, 482 (1986). The parol evidence rule provides “that, in the absence of fraud or mistake or allegation thereof, parol testimony of prior or contemporaneous negotiations or conversations inconsistent with the writing, or which tend to substitute a new or different contract from the one evidenced by the writing, is incompetent.” *Phelps v. Spivey*, 126 N.C. App. 693, 697, 486 S.E.2d 226, 229 (1997) (citation and quotation marks omitted).

“[A] contract is to be interpreted as written, as if there is no dispute with respect to the terms of the contract and they are plain and unambiguous, there is no room for construction.” *Lowe’s v. Hunt*, 30 N.C. App. 84, 86, 226 S.E.2d 232, 234 (1976) (citation and quotation marks omitted). “The parol evidence rule prohibits the admission of parol evidence to vary, add to, or contradict a written instrument intended to be the final integration of the transaction.” *Lassiter v. Bank of N.C.*, 146 N.C. App. 264, 269, 551 S.E.2d 920, 923 (2001) (citation and quotation marks

omitted).

Parol evidence is admissible to explain or interpret an ambiguous term. *See Drake v. Hance*, 195 N.C. App. 588, 591, 673 S.E.2d 411, 413 (2009); *Vestal v. Vestal*, 49 N.C. App. 263, 266-67, 271 S.E.2d 306, 309 (1980) (an “ambiguous term may be explained or construed with the aid of parol evidence” (citation omitted)).

Stafford’s challenged testimony offers context to the parties’ agreement on the easement rather than varying, adding to, or contradicting the express terms. Stafford’s testimony identified which door the parties had referred to as the “back door” in the 1980 Easement, which was not apparent from the document. Plaintiff’s argument is overruled.

### **VIII. Conclusion**

Sufficient evidence and findings of fact support the trial court’s conclusion of law Plaintiff’s easement was extinguished through abandonment by its predecessors-in-title. The trial court entered evidentiary-supported findings to support its conclusion of law that Plaintiff failed to prove their claim asserting a valid easement exists to access the far rear door.

Dan Stafford’s testimony did not violate the parol evidence rule and was properly admitted. The trial court did not err in entering judgment for the Defendant. The judgment of the trial court is affirmed. *It is so ordered.*

**AFFIRMED.**

Chief Judge DILLON and Judge GRIFFIN concur.



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Report per Rule 30(e).