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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-913

Filed 3 December 2024

Brunswick County, No. 22 CVD 698

BRICK LANDING PLANTATION MASTER
COMMUNITY ASSOCIATION, INC., Plaintiff,

v.

KAREN A. MEDINA, Defendant.

Appeal by Defendant from order entered 27 June 2023 by Judge C. Ashley Gore in Brunswick County District Court. Heard in the Court of Appeals 20 February 2024.

Milberg Coleman Bryson Phillips Grossman, PLLC, by Attorney James R. DeMay, for the defendant-appellant.

Marshall, Williams, & Gorham, LLP, by Attorney Charles D. Meier, for the plaintiff-appellee.

STADING, Judge.

Karen A. Medina (“Defendant”) appeals from an order granting summary judgment for Brick Landing Plantation Master Community Association (“Plaintiff”). After careful review, we affirm the trial court’s order.

I. Background

Defendant owns a parcel of land (“Lot 50”) in a residential subdivision. This matter concerns whether Plaintiff has an easement on Defendant’s property along one side of Lot 50. Plaintiff and Defendant dispute the reservation of a ten-foot easement on Defendant’s property. Plaintiff argues that its predecessor-in-interest, Carver, Williams, Tomblin, and Madison, Inc. (“Declarant”), reserved the right to this easement on one side of each lot in the residential subdivision. Defendant responds that the instrument purporting to create this deed is void for vagueness because it does not specify on which side of Lot 50 the easement exists.

In 1984, Declarant executed a “Master Declaration of Covenants, Conditions and Restrictions” (“Declaration”). The Declaration expressly reserved for Declarant and “its successors,” “easement[s] to erect, maintain and use . . . water mains and other suitable equipment for the conveyance and use of” those and other “public convenience or utilities.” Paragraph 12 of the Declaration specifies that these easements may run across “the rear ten (10) feet of each lot and ten (10) feet along one (1) side of each lot and such other areas as shown on the applicable plat.” The same instrument defines a “lot” in relevant part “as a parcel of subdivided and platted land in Brick Landing Plantation subjected to the provisions of these restrictions and shown upon a referenced recorded plat or plan.” Neither party contests the proper recordation in the Brunswick County Register of Deeds of either the Declaration or its “applicable plat” that lays out “Phase I” of Declarant’s original subdivision plans.

Around May 2020, Defendant moved into the house on Lot 50 of Brick Landing Plantation. At that time, the drainage system, involving piping between Lot 50 and an adjacent parcel (“Lot 51”), to control the flow of stormwater runoff had been in place for at least thirty years. Soon after Defendant moved onto Lot 50, Plaintiff requested that she confirm its easement over her lot’s easternmost ten feet to repair the antiquated piping. Although Defendant allowed maintenance workers to repair the piping, she declined to sign a deed of easement and further contested its validity.

On 20 April 2022, Plaintiff filed a suit seeking a declaratory judgment holding that the Declaration reserves a perpetual easement over the disputed portion of Lot 50. Thereafter, Plaintiff moved for summary judgment with several affidavits attached. Defendant did not dispute the facts contained in the motion for summary judgment—including record language contained in the Declaration, or the fact of Defendant’s purchase of the property in 2020 subject to easements of record. Instead, the parties’ disagreement centered on the legal effect of the relevant documents. On 23 June 2023, the trial court granted summary judgment for Plaintiff and entered a judgment declaring existence of the easement permitting entry onto the Lot 50 “to repair and/or replace the failing stormwater pipe within the said ten (10) foot easement[.]” Plaintiff timely appealed.

II. Jurisdiction

This Court has jurisdiction to review the trial court’s summary judgment order because it is a final judgment in a civil action. N.C. Gen. Stat. § 7A-27(b)(2) (2023).

III. Analysis

Defendant asks this Court to determine whether the trial court erred in granting summary judgment for Plaintiff because the easement is void for vagueness. Alternatively, Defendant contends that a “private” stormwater system falls outside the scope of its terms. Following review, we discern no error and affirm.

We review *de novo* a trial court’s resolution of a summary judgment motion because the ruling implicates only questions of law. *See Farley v. Holler*, 185 N.C. App. 130, 132, 647 S.E.2d 675, 677 (2007). “Under a *de novo* standard of review, this Court considers the matter anew and freely substitutes its own judgment for that of the trial court.” *Violette v. Town of Cornelius*, 283 N.C. App. 565, 569, 874 S.E.2d 217, 220 (2022) (citation omitted).

A. Initial Creation

As a preliminary matter, we must first determine whether the Declaration created a valid easement appurtenant between Plaintiff and Defendant.

“An easement is a nonpossessory interest in the real property of another for a limited purpose” *Webster’s Real Estate Law in North Carolina* § 15.01 (2024). “An easement appurtenant is a right to use the land of another, i.e., the servient estate, granted to one who also holds title to the land benefitted by the easement, i.e., the dominant estate.” *Brown v. Weaver-Rogers Assocs.*, 131 N.C. App. 120, 123, 505 S.E.2d 322, 324 (1998). That is, “[t]he easement attaches to the dominant estate and passes with the transfer of the dominant estate as an appurtenance thereof.” *Id.*

(citation and internal quotation marks omitted). And “[o]nce an easement appurtenant is properly created, it runs with the land and is not personal to the landowner.” *Id.* Among other methods not relevant here, landowners may create an express easement by deed. *See Cape Homeowners Ass’n v. S. Destiny, LLC*, 284 N.C. App. 237, 244, 876 S.E.2d 568, 573 (2022) (citing *Oliver v. Ernul*, 277 N.C. 591, 597, 178 S.E.2d 393, 396 (1971)).

Here, the Declaration expressly reserves an “easement to erect, maintain and use . . . water mains . . . or other public convenience or public utilities, on, in or over . . . ten (10) feet along one (1) side of each lot . . . as shown on the applicable plat” Of these lots, Defendant purchased Lot 50. Accordingly, the Declaration created a dominant easement appurtenant to Defendant’s servient Lot 50.

B. Descriptive Certainty

Defendant first argues that the trial court erred in granting summary judgment for Defendant because the easement is void for vagueness.

Although it requires no specific language, an express easement by deed must at least “identify with reasonable certainty the easement created and the dominant and servient” estates. *Oliver*, 277 N.C. at 597, 178 S.E.2d at 396. The instrument’s language must sufficiently express this reasonable certainty within the instrument’s four corners or with an extrinsically evident “*guide to the ascertainment*” of the easement’s location. *Allen v. Duvall*, 311 N.C. 245, 249, 316 S.E.2d 267, 270 (1984) (citation omitted). And “where the grant of an easement of way does not definitely

locate it, it has been consistently held that a reasonable and convenient way for all parties is thereby implied, in view of all the circumstances[.]” *Borders v. Yarbrough*, 237 N.C. 540, 542, 75 S.E.2d 541, 543 (1953) (citation omitted).

Even assuming that the description of the easement’s location in Defendant’s chain of title is patently ambiguous—as the description does not state along *which* side property line on Lot 50 was subject to an easement for maintenance of the stormwater drainage system—caselaw supports holding this easement valid based on the history of use. As our Supreme Court has noted:

It is a settled rule that where there is no express agreement with respect to the location of a way granted but not located, the practical location and use of a reasonable way by the grantee, acquiesced in by the grantor or owner of the servient estate, sufficiently locates the way, which will be deemed to be that which was intended by the grant.

Id. (citation omitted). Here, Plaintiff installed the pipes along Lot 50’s side property line that Lot 50 shares with Lot 51 and has maintained said pipes in that location for over thirty years, without any objection by Defendant’s predecessor in title. In keeping with precedent, we hold that the easement is valid and not void for vagueness.

C. Scope of the Easement

Defendant next contends that the trial court erred by declaring that Plaintiff “may use the easement to maintain a private stormwater system” because “that purpose is not included within the express scope of the easement.”

An easement's purpose "should be set forth precisely." *Swaim v. Simpson*, 120 N.C. App. 863, 864, 463 S.E.2d 785, 786 (1995) (citation omitted). When the scope of an easement is at issue, these rules apply:

First, the scope of an express easement is controlled by the terms of the conveyance if the conveyance is precise as to this issue. Second, if the conveyance speaks to the scope of the easement in less than precise terms (i.e., it is ambiguous), the scope may be determined by reference to the attendant circumstances, the situation of the parties, and by the acts of the parties in the use of the easement immediately following the grant. Third, if the conveyance is silent as to the scope of the easement, extrinsic evidence is inadmissible as to the scope or extent of the easement. However, in this latter situation, a reasonable use is implied.

Id. (citation omitted). In addition, "our Supreme Court has instructed that an easement extends to all uses directly or incidentally conducive to the advancement of the purpose for which the right of way was acquired" *Benson v. Prevost*, 277 N.C. App. 405, 412, 861 S.E.2d 343, 348 (2021) (citation and internal quotation marks omitted).

In this case, the easement states that Plaintiff "reserves unto itself a perpetual, alienable and releasable easement and right on, over, and under the ground to erect, maintain and use . . . sewers, water mains, and other suitable equipment for the conveyance and use of . . . sewer, water or other public conveyance or utilities." Although the term stormwater is not expressly included, the easement's language allows Plaintiff to repair and replace "sewers . . . and other suitable equipment," such

as a failing stormwater pipe. When looking to the attendant circumstances, the stormwater pipe was originally “erect[ed]” over thirty years before Defendant’s purchase of Lot 50. *See Swaim*, 120 N.C. App. at 864, 463 S.E.2d at 786. Plaintiff’s “maint[enance]” of the stormwater pipe at this juncture is at least “directly or incidentally conducive to the advancement of the purpose for which the right of way was acquired” *Benson*, 277 N.C. App. at 412, 861 S.E.2d at 348 (citation omitted). We therefore conclude that the scope of the easement allowed Plaintiff to repair and maintain the stormwater pipe on Defendant’s Lot.

IV. Conclusion

We hold that the trial court did not err in granting summary judgment for Plaintiff based on the history of use. *See Borders*, 237 N.C. at 542, 75 S.E.2d at 543. We further hold that the scope of the easement allowed Plaintiff to repair and maintain the stormwater pipe on Defendant’s parcel, Lot 50.

AFFIRMED.

Chief Judge DILLON and Judge STROUD concur.

Report per Rule 30(e).