

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored but may be permitted in accordance with the provisions of Rule 30(e)(3) of the *North Carolina Rules of Appellate Procedure*.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-354

Filed 2 April 2025

Durham County, No. 22 CVS 3267

LILLIAN C. ROBERTS, Plaintiff,

v.

LORETTA D. ROBERTS AND WILLIE M. ROBERTS, JR., Defendants.

Appeal by Defendants from judgment entered 13 December 2022 by Judge Orlando F. Hudson in Durham County Superior Court. Heard in the Court of Appeals 25 September 2024.

*Richberg Law, PLLC, by Attorney Shayla C. Richberg, for defendants-appellants.*

*Davis Hartman & Wright, LLP, by Attorney R. Daniel Gibson, for plaintiff-appellee.*

STADING, Judge.

Loretta and Willie Roberts Jr. (“Defendants”) appeal from an order granting summary judgment for Lillian Robert’s (“Plaintiff”) on her quiet title claim. After careful consideration, we affirm.

**I. Background**

Willie M. Roberts (“Decedent”) passed away intestate on or around 22 May 1999. At the time of his death, Decedent was survived by his wife (“Plaintiff”), and his two children (“Defendants”). Included in Decedent’s estate were three parcels of land located in Durham County (collectively, the “Property”).<sup>1</sup>

Following Decedent’s passing, Plaintiff, with the assistance of counsel, filed an application with the Durham County Clerk of Superior Court to administer Decedent’s estate. On 21 July 1999, Plaintiff’s application was approved. Under the Intestate Succession Act, Plaintiff and each Defendant received a one-third interest in the Property. *See* N.C. Gen. Stat. § 29-15 (2023).

About four years later, Plaintiff reached out to Defendants and asked that they contribute to the taxes on the Property. Plaintiff had paid the taxes on the Property since Decedent’s passing. In the alternative, Plaintiff “offered to convey some of the lots to them. . . . [but] advised Defendants that the tax burden and other expenses of the [P]roperty would be their obligation once conveyed.” Defendants declined Plaintiff’s request to share in the tax burden and also turned down her offer of conveyance. Instead, Defendants “requested to convey their interest in the [P]roper[t]y . . . to [P]laintiff.” In response, Plaintiff’s attorney drafted a general

---

<sup>1</sup> The three parcels of land are as follows: (1) a 1.53-acre tract of land on 5214 Ephesus Church Road; (2) a .5-acre tract of land on 5221 Ephesus Road; and (3) a 1.61-acre tract of land on 4820 Farrington Road.

warranty deed conveying Defendants’ interests in the Property to her. On 19 September 2003, Defendants signed the general warranty deed, granting Plaintiff ownership of the Property in fee simple.

In 2022, Plaintiff contracted with a purchaser to sell the Property. However, before the closing, Plaintiff learned that “the [general warranty deed] . . . incorrectly omitted [Defendants’] marital status, as well as incorrectly described the plat showing the parcels referenced thereon.”<sup>2</sup> As a result, Plaintiff’s closing attorney wrote a letter to Defendants requesting they each sign a quitclaim deed in exchange for \$2,500.00. Defendants refused to sign the quitclaim deed and filed an action requesting judgment declaring they owned “an equal one-third share in the legal title of the subject properties.” The trial court dismissed Defendants’ declaratory judgment complaint, and on appeal, this Court affirmed noting that Defendants’ complaint was barred by the statute of limitations.<sup>3</sup>

On 16 August 2022, Plaintiff filed suit for quiet title and slander of title. In response, Defendants moved for summary judgment but failed to provide any supporting affidavits. Plaintiff then served Defendants with a request for admission, to which they admitted that they did not “pay any portion of the property taxes owed for the Property” between 27 May 1999 and 19 September 2003. Defendants also

---

<sup>2</sup> The general warranty deed referred to Plat Book 59, Page 61 of the Durham County Registry. When looking to that book and page number, only one of three parcels appears.

<sup>3</sup> *Roberts v. Roberts*, No. COA23-54, 2023 N.C. App. LEXIS 514, at \*10 – \*11 (Sept. 5, 2023).

“acknowledged the due execution of the [general warranty deed] for the purposes therein expressed to a North Carolina notary public on [19 September 2003].”

At the conclusion of the summary judgment motion hearing, the trial court announced its ruling:

THE COURT: All right. The Court in its discretion will deny [Defendants'] motion for summary judgment and grant [Plaintiff's] motions for partial summary judgment, and there was one for full summary judgment.

[PLAINTIFF'S ATTORNEY]: Yes, full summary judgment on quiet title, Your Honor.

THE COURT: Right . . . if you will prepare the appropriate order.

On 12 December 2022, the trial court entered its order, which: (1) denied Defendants' motion for summary judgment; (2) granted Plaintiff judgment as a matter of law on her quiet title claim; (3) granted Plaintiff judgment as a matter of law as to the question of the liability of Defendants, jointly and severally, on her slander of title claim; and (4) reserved the question of damages on her slander of title claim for trial.

Then, on 14 March 2023, Plaintiff moved for summary judgment “as to all remaining claims” in the action. The trial court denied Plaintiff's motion on 3 November 2023. On 13 November 2023, Plaintiff filed a voluntary dismissal for her slander of title claim. On 21 February 2024, the remaining matters in the case were dismissed and the trial court's order for summary judgment became a final judgment. Defendants entered their notice of appeal.

## **II. Jurisdiction**

This Court has jurisdiction over Defendants’ appeal under N.C. Gen. Stat. § 7A-27(b)(1) (2023) (“From any final judgment of a superior court . . .”).

## **III. Analysis**

Defendants ask us to consider whether the trial court erred by granting summary judgment in favor of Plaintiff on her quiet title claim. Defendants maintain the trial court committed error because: (1) the general warranty deed’s failure to adequately describe the three parcels of land renders it patently ambiguous and void; and (2) in the alternative, Plaintiff cannot satisfy the actual possession and hostility elements required for adverse possession. After careful review, we hold the general warranty deed contains a latent ambiguity clarified through extrinsic evidence. The general warranty deed is therefore not void, and the trial court did not commit error by granting summary judgment in favor of Plaintiff on this claim. Since the trial court properly granted summary judgment on Plaintiff’s quiet title claim, we need not consider the parties’ adverse possession argument. *See Law Offices of Peter H. Priest, PLLC v. Coch*, 244 N.C. App. 53, 780 S.E.2d 163 (2015) (declining to reach other arguments where one issue was dispositive.)

“Summary judgment is proper ‘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 any party is entitled to a judgment as a matter of law.’” *Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 680, 821

S.E.2d 360, 366 (2018) (citation omitted). “When considering a motion for summary judgment, the trial judge must view the presented evidence in a light most favorable to the nonmoving party.” *Dalton v. Camp*, 353 N.C. 647, 651, 548 S.E.2d 704, 707 (2001) (citation omitted). “Our standard of review of an appeal from summary judgment is de novo [.] . . .” *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (citation omitted). “Likewise, whether the language of a contract is ambiguous is a question of law to be reviewed de novo.” *Morrell*, 371 N.C. at 680, 821 S.E.2d at 366. “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the [lower tribunal].” *In re Greens of Pine Glen*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003).

In an action to quiet title, a plaintiff must prove “two essential elements. The first is that the plaintiff must own the land in controversy, or have some estate or interest in it; and the second is that the defendant must assert some claim to such land adverse to the plaintiff’s title, estate or interest.” *Wells v. Clayton*, 236 N.C. 102, 107, 72 S.E.2d 16, 20 (1952) (internal citation omitted); *see also* N.C. Gen. Stat. § 41-10 (2023) (“Titles quieted.”). “In order to be valid, a deed or deed of trust must contain a legal description of the land ‘sufficient to identify it’ or refer ‘to something extrinsic by which the land may be identified with certainty.’” *MTGLQ Inv’rs, L.P. v. Curnin*, 263 N.C. App. 193, 195, 823 S.E.2d 409, 411 (2018) (citation omitted). “The entire deed should be considered when determining the identity of the land conveyed.” *Id.*

ROBERTS V. ROBERTS

*Opinion of the Court*

“When it is apparent upon the face of the deed, itself, that there is uncertainty as to the land intended to be conveyed and the deed, itself, refers to nothing extrinsic by which such uncertainty can be resolved, the description is said to be patently ambiguous.” *Overton v. Boyce*, 289 N.C. 291, 294, 221 S.E.2d 347, 349 (1976). Essentially, a “patent ambiguity is such an uncertainty appearing on the face of the instrument that the Court, reading the language in the light of all the facts and circumstances *referred to in the instrument*, is unable to derive *therefrom* the intention of the parties as to what land was to be conveyed.” *Id.* (citation omitted). Conversely, “[l]atent ambiguities arise when there is confusion as to how to apply the words of an instrument to the object or subject which they describe. While an instrument containing a latent ambiguity is still enforceable (if extrinsic evidence exists to clarify the ambiguity), a patently ambiguous instrument is void.” *Thomco Realty, Inc. v. Helms*, 107 N.C. App. 224, 227, 418 S.E.2d 834, 836 (1992).

That said, “[i]t has been long established that a mistake or apparent inconsistency in a deed description shall not be permitted to defeat the intent of the parties if the intent appears in the deed.” *Miller v. Miller*, 34 N.C. App. 209, 211, 237 S.E.2d 552, 554 (1977). When interpreting “the provisions of a deed, the intention of the grantor must be gathered from the whole instrument and every part thereof given effect, unless it contains conflicting provisions which are irreconcilable, or a provision which is contrary to public policy or runs counter to some rule of law.” *Ellis v. Barnes*, 231 N.C. 543, 544–45, 57 S.E.2d 772, 773 (1950) (citation omitted). Put another way,

“[t]he intention of the parties is to be given effect whenever that can be done consistently with rational construction.” *Robertson v. Hunsinger*, 132 N.C. App. 495, 499, 512 S.E.2d 480, 483 (1999). “It is the trial judge’s role to determine the intent of the parties.” *Id.* With respect to the construction of a deed, “the division of the deed into formal parts is not permitted to prevail against such intention; for substance, not form, is the object sought.” *Mattox v. State*, 280 N.C. 471, 476, 186 S.E.2d 378, 382 (1972) (citation omitted) (emphasis added). Moreover, “[i]f possible, effect must be given to every part of a deed, and no clause, if reasonable intendment can be found, shall be construed as meaningless.” *Id.* To that end, our Supreme Court determined:

If the effort is doomed to failure by reason of uncertainty or repugnancy, so that we cannot ascertain the meaning by any fair rule of construction, or by reason of its ambiguity of expression, so that we are unable to understand, from the language of the deed, who are the parties or what is the subject-matter, or, if they be known, what estate is conveyed, or any other matter essential to its validity, the instrument, of necessity, must fail.

*Troy & N. C. Gold Mining Co. v. Snow Lumber Co.*, 170 N.C. 273, 276, 87 S.E. 40, 42 (1915).

Here, Defendants contend that the general warranty deed’s reference to the wrong plat book and page number is a patent ambiguity that renders the entire instrument void. Defendants also contend that the specific descriptions couched in the attached exhibit supersede any general descriptions contained on page one of the general warranty deed. In sum, because of these ambiguities, Defendants maintain



the trial court committed error by granting summary judgment in favor of Plaintiff on her quiet title action. These contentions, however, lack merit because the general warranty deed “refer[s] ‘to something extrinsic by which the land may be identified with certainty.’” *Curnin*, 263 N.C. App. at 195, 823 S.E.2d at 411 (citation omitted); *see also Overton*, 289 N.C. at 294, 221 S.E.2d at 349 (an ambiguity is patent only if “the deed, itself, refers to nothing extrinsic by which such uncertainty can be resolved . . . .”); *see also Carney v. Edwards*, 256 N.C. 20, 24, 122 S.E.2d 786, 788–89 (1961) (“[A] general description will not enlarge a specific description when the latter is in fact sufficient to identify the land which it purports to convey. Only when the attempted specific description is ambiguous and uncertain will the general prevail.”).

The general warranty deed describes the Property in an attached exhibit:

Tract 1:

BEING all of the “Property of Willie M. Roberts” designated as 0.5A+ along King Road SR #1113 as recorded in Plat Book 59, Page 61, of the Durham County Registry, to which plat reference is hereby made for a more particular description of same.

Tract 2:

BEING all of the “Property of Willie M. Roberts” designated as 1.53A+ along King Road SR #1113 as recorded in Plat Book 59, Page 61, of the Durham County Registry, to which plat reference is hereby made for a more particular description of same.

Tract 3:

BEING all of the “Property of Willie M. Roberts” designated as 1.61A+ along Farrington Road SR #1110 as recorded in Plat Book 59, Page 61, of the Durham County

Registry, to which plat reference is hereby made for a more particular description of same.

A review of the plat book and page referenced above shows only one of the three tracts described in the conveyance appears. However, the first page of the general warranty deed noted that the Property “hereinabove described was acquired by Grantor by instrument recorded in Book 369, page 446–447.” Turning to Book 369, page 446, Decedent’s 1970 deed to the property refers to a different plat map found in Plat Book 66, page 54. And when looking to Plat Book 66, page 54, all three tracts of land appear and precisely match the description contained in the attached exhibit.

The general warranty deed refers to “something extrinsic”—the 1970 Deed—“by which the land may be identified with certainty.” *Curnin*, 263 N.C. App. at 195, 823 S.E.2d at 411. And contrary to Defendants’ urging, “[t]he entire deed should be considered when determining the identity of the land conveyed[,]” not just the description attached in the exhibit. *Id.* Our caselaw and the result of this matter align with common sense, rendering the parties’ agreement enforceable because their “intent . . . can be determined from the language used, construed with reference to the circumstances surrounding the making of the contract thereby reducing the terms to a reasonable certainty.” *Thomco Realty*, 107 N.C. App. at 227, 418 S.E.2d at 836 (citation omitted).

The parties’ intent controls over the claimed errors. *See Miller*, 34 N.C. App. 209, 211, 237 S.E.2d 552, 554 (“[A] mistake or apparent inconsistency in a deed

description shall not be permitted to defeat the intent of the parties if the intent appears in the deed.”). Our result is firmly grounded in the parties’ intent combined with the Property’s description in the general warranty deed. After the description of each tract, the following language appears: “this plat reference is hereby made for a more particular description of same.” By including this language, the parties clarified which tracts of land were intended, and that reference to the plat book was for “a more particular description of the same.” Although the plat reference revealed only one tract, “the division of the deed into formal parts is not permitted to prevail against such intention; for substance, not form, is the object sought.” *Mattox*, 280 N.C. at 476, 186 S.E.2d at 382 (citation omitted). We therefore overrule Defendants’ assignments of error.

#### **IV. Conclusion**

After careful review, we affirm the trial court’s order, granting Plaintiff summary judgment on her quiet title claim, since the error in the plat map reference is a latent ambiguity that can be resolved by looking to extrinsic evidence.

**AFFIRMED.**

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).