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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-996

Filed 2 September 2026

Macon County, No. 23CVS000766-550

LAWRENCE N. DIFABIO AND ROBIN M. DIFABIO, AS CO-TRUSTEES OF THE LAWRENCE N. DIFABIO AND ROBIN M. DIFABIO LIVING TRUST, AND MATTHEW T. NELSON, AND TRACY H. NELSON, Plaintiffs,

v.

GREGORY WAGNER, AND MELODY S. WAGNER, Defendants.

Appeal by Defendants from orders entered 11 March 2025 by Judge J. Thomas Davis in Macon County Superior Court and orders entered 8 July 2025 by Judge Nathaniel J. Poovey in Macon County Superior Court. Heard in the Court of Appeals 20 May 2026.

Melrose Law, PLLC, by Adam R. Melrose and Mark R. Melrose, for the plaintiffs-appellees.

Sloan & Vanhook, PLLC, by Stuart D. Sloan, for the defendants-appellants.

WOOD, Judge.

Gregory and Melody Wagner (collectively “Defendants”) appeal from the 11 March 2025 and 8 July 2025 orders granting Lawrence N. DiFabio and Robin M. DiFabio, as co-trustees of the Lawrence N. DiFabio Living Trust, and Matthew T.

Nelson and Tracy H. Nelson’s (collectively “Plaintiffs”) motion for summary judgment in part and granting Defendants’ motion for summary judgment in part.

I. Factual and Procedural Background

Plaintiffs and Defendants are owners of one or more parcels of land located within Ramblewood Subdivision¹ in Macon County. The Ramblewood Subdivision was created by its original landowners by an unrecorded plat dated 29 November 1978 (“Ramblewood Plat”). Land use restrictions (“restrictive covenants”) were attached to each² deed conveying a Ramblewood Subdivision parcel. The restrictive covenants state:

This conveyance is made subject to the following restrictions:

1. The land hereby conveyed shall be used for residential purposes only and no buildings shall be erected, placed or permitted to remain upon said land other than one detached single family dwelling together with a garage or carport and other usual outbuildings.
2. No temporary dwelling shall be placed upon this land and no tent, trailer, camper or mobile home shall be placed either temporarily or permanently upon this land.
3. No cattle, horses or other livestock, other than ordinary household pets, shall be kept or maintained on any part of said property.
4. No outdoor toilet shall be installed on said premises and

¹ While referred to as a subdivision, Plaintiffs contend the Ramblewood Subdivision is not a “true” subdivision due to its unrecorded plat.

² The record does not contain the deed for every parcel of land within the Ramblewood Subdivision, but it is alleged that these restrictive covenants existed in the conveyance deed for all parcels.

only a septic tank or other sewer installation meeting the requirements of the North Carolina Health Department shall be installed on said property.

5. Only a water system approved by the North Carolina State Board of Health may be installed for the residence constructed on the land described herein.

Parties of the second part hereby agree to pay a proportionate share of the upkeep of the roads serving the above described property, said share to be based on the total number of lots sold at the time of each annual assessment.

The Ramblewood Plat further identifies an “Access Road 30 FT R/W,” which is commonly referred to as Ramblewood Road.

On 12 May 2022, by quit claim deed (“Deed”) from Lois Dolin³ (“Dolin”), Defendants acquired Lot 9 of Ramblewood Subdivision (“the Subject Property”). Sometime after Defendants acquired the Subject Property, they placed a “recreational vehicle” on the property, an alleged violation of the restrictive covenants. Further, Defendants and Plaintiffs engaged in a dispute over Defendants’ right to use Ramblewood Road; portions of Ramblewood Road traverse through Plaintiffs’ parcels of Ramblewood Subdivision.

On 6 December 2023, Plaintiffs filed a complaint against Defendants seeking: (1) a declaratory judgment and permanent injunctive relief to enforce the restrictive covenants and enjoin Defendants from committing acts restricted by the restrictive

³ Defendant Gregory Wagner is Dolin’s nephew.

covenants; (2) a declaratory judgment to quiet title declaring that Defendants do not have an interest in an easement to use the roads in a manner adverse and hostile to Plaintiffs' rights; (3) a permanent injunction prohibiting Defendants from trespassing and asking for monetary damages; (4) damages for trespass to chattel against Mr. Wagner for cutting the metal wire on the road; and (5) a preliminary injunction prohibiting Defendants from having any temporary dwelling on their property.⁴

Defendants filed a counterclaim on 22 March 2024 requesting that the trial court enter a judgment permanently enjoining Plaintiffs from intentionally blocking access to any road shown on the 1976 Ramblewood Plat "including the entirety of Ramblewood Road in the Ramblewood Subdivision, for costs of this action and for such other relief that is just and proper." On the same day, Defendants filed their answer to the complaint and asserted three affirmative defenses: (1) easement by plat; (2) unenforceable and void restrictions; and (3) mitigation of damages for the cable that Defendants cut.

On 7 February 2025, Plaintiffs filed a motion for partial summary judgment alleging that there was no genuine issue of material fact as to their first claim for relief, requesting declaratory judgment and permanent injunctive relief on the

⁴ On 27 February 2025, Plaintiffs filed a voluntary dismissal without prejudice on (1) their second cause of action for declaratory judgment to quiet title, right of way to both Defendants; (2) their third cause of action for monetary damages and permanent injunction, trespass as to Mrs. Wagner only; and (3) their fourth cause of action for trespass to chattel alleged against Mr. Wagner. On 25 April 2025, Plaintiffs voluntarily dismissed the remaining claim against Mr. Wagner in the third cause of action. Accordingly, the first cause of action for declaratory judgment and permanent injunctive relief in regard to the restrictive covenants is the only claim that remains.

restrictive covenants, and alleging they were entitled to a judgment as a matter of law. Plaintiffs attached exhibits to their motion for partial summary judgment including an affidavit from an expert witness, Deborah Barker (“Barker”), who performed a title search on Plaintiffs’ and Defendants’ properties at issue. On 19 February 2025, Defendants filed a motion for summary judgment on all claims against them and the counterclaims they had asserted.

The trial court heard the motions for summary judgment on 3 March 2025 and filed separate orders on 11 March 2025. The trial court granted in part Defendants’ motion for summary judgment on their counterclaim as follows:

2. The Defendants are entitled to a private right to use the following roads for egress and ingress to their Subject Property as described in Defendants’ Subject Deed and as further described on the plat entitled “Ramblewood” by Gardner V. Holden R.L.S. Dated 11-29-1976 which is attached to the Affidavit of Debroah J. Barker as Exhibit A. The road subject to the private right of use is thirty feet in width and is shown as the “Access Road 30 Ft R/W” notated on the plat where such road traverses the lands of the Plaintiffs, which lands are described in the Plaintiffs’ Complaint and the Affidavit of Deborah Barker.

3. The Court notes that the above conclusion of law only applies to the plaintiffs in their individual capacities and should not be interpreted as a ruling as to the subservient tracts upon which the road crosses in that some owners may not be parties to this proceeding and there has been no showing to conclude which tracts the plaintiffs now own.

The trial court also granted in part Plaintiffs’ motion for summary judgment and made the following conclusion of law and additional findings:

Partial summary judgment should be granted in favor of the plaintiffs to the effect that the Restrictive Covenants described in the deed recorded at Macon County Register of Deeds Book Z-12, Page 31, are valid and apply to the Defendant's Subject Property described in the deed recorded at Macon County Register of Deeds Book V-41, Page 1371-1376. Chapter 47B, N.C.G.S. does not operate to extinguish the Restrictive Covenants.

The Court notes that at the outset of the hearing the Court was informed by counsel for the parties that the only legal issue before the court was whether or not the restrictive covenants described above were eliminated by the Marketable Title Act, NCGS Chapter 47B. The Court ruled in court that the restrictive covenants were not removed by the Marketable Title Act. The parties now, after the in court ruling, indicate that more is to be decided by further proceedings including if the defendants have violated the restrictive covenants. The Court inquired during oral arguments about what was placed on the defendants property by the defendant. Counsel for the parties indicated to the court it was a trailer. While it did not at the hearing appear to be an issue as to what the defendants did in violation of the restrictions, it appears to now be in question. *Defendants are correct that the Court only decided the legal question posed in regard to the validity of the restrictions, not whether they are valid, and this ruling is so limited.*

On 8 May 2025, Plaintiffs filed a second motion for summary judgment for their first claim of relief asking that the trial court enter judgment holding "Defendants' current use of the Defendants' Subject Property [] in violation of the Restrictive Covenants this Court previously found enforceable against the Defendants' Subject Property." Plaintiffs requested that Defendants be required to bring the Subject Property into compliance and be prohibited from further violating the restrictive

covenants in the future. Attached to the motion for summary judgment were photos of Defendants' property with a recreational vehicle parked on it.

On 14 May 2025, Dolin filed an affidavit stating she never had a problem using the roads during her thirty-eight years of ownership of the Subject Property. Attached to her affidavit are records of her past payments for road maintenance. On 14 May 2025, Defendants filed a second motion for summary judgment on their counterclaim. On 5 June 2025, Mr. Wagner filed an amended affidavit. In his affidavit, Mr. Wagner recounted an encounter with Mr. Nelson on 26 May 2025 when Mr. Nelson called the police on him for driving on Ramblewood Road; Mr. Wagner further recounted instances where portions of Ramblewood Road had been blocked. In regard to the recreational vehicle, Mr. Wagner stated:

12. I have placed a recreational vehicle on my lot for the purpose of working on my lot to construct a permanent single family dwelling. The recreational vehicle is properly permitted and is a place for me to store my tools and use the bathroom. There are no lots with improvements anywhere near my lot and once I travel off of the 15' easement shown on Exhibit 2 my recreational vehicle cannot be seen from anywhere in the subdivision.

In an affidavit filed 24 June 2025, Mr. Nelson stated that Defendants refused to keep a parallel lock on the gate and "[a] parallel lock would allow the [Defendants] and their guests complete access to Ramblewood Road and would not restrict their ability to use their private right of access to Ramblewood Road." Further, Mr. Nelson stated there were parallel locks on other parts of the road and the locked gate on his

property had been in place for around thirty years to keep trespassers out, including illegal hunters.

The second set of motions for summary judgment came on for hearing on 30 June 2025. On Defendants' motion for summary judgment filed 14 May 2025, the trial court denied the motion to the extent that Defendants sought additional relief over what was granted to them in the 11 March 2025 order granting their motion for summary judgment. The trial court further granted summary judgment in favor of Plaintiffs on Defendants' counterclaim and denied Defendants' motion to the extent they requested additional relief beyond what had been granted in their favor in the 11 March 2025 order granting them summary judgment in part. The order did not disturb or modify the 11 March 2025 order granting in part Defendants' motion for summary judgment.

The trial court in a separate order granted Plaintiffs' motion for summary judgment. The trial court held that Defendants' placement of a temporary dwelling (the recreational vehicle) on the Subject Property was a violation of the restrictive covenants and further granted Plaintiffs a permanent injunction enjoining Defendants from further violating the restrictive covenants. Defendants were ordered to remove the violation by 1 August 2025. Defendants filed notice of appeal on 17 July 2025.

II. Analysis

Defendants raise three arguments on appeal. First, Defendants argue that the

trial court erred by concluding the restrictive covenants are valid and enforceable because the trial court should have found the restrictive covenants at issue to be null and void under the Marketable Title Act (“the Act”). Second, Defendants argue that the trial court erred by denying Defendants’ motion for summary judgment to enjoin Plaintiffs from interfering with the easement and right of way of Ramblewood Road. Lastly, Defendants argue that the trial court erred by restricting the scope of the summary judgment order in favor of Defendants to Plaintiffs and their properties only and not to all other property owners within the Ramblewood Subdivision as well.

A. Standard of Review

We review a trial court’s order granting or denying a motion for summary judgment under a *de novo* standard of review, considering the matter anew and freely substituting our own judgment for that of the lower court. *N.C. Farm Bureau Mut. Ins. Co. v. Herring*, 385 N.C. 419, 422, 894 S.E.2d 709, 712 (2023).

“Summary judgment is proper only ‘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 judgment as a matter of law.’” *Id.* at 423, 894 S.E.2d at 712 (quoting N.C. Gen. Stat. § 1A-1, Rule 56(c)). Additionally, a “ruling on a motion for summary judgment must consider the evidence in the light most favorable to the non-movant, drawing all inferences in the non-movant’s favor.” *Id.* (quoting *Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 680, 821 S.E.2d 360, 366 (2018)).

B. Enforceability of the Restrictive Covenants

Defendants argue the trial court erred in its 11 March 2025 order granting Plaintiffs’ motion for summary judgment and declaring that the Act, N.C. Gen. Stat. § 47B, does not operate to extinguish the restrictive covenants at issue. Specifically, Defendants contend their ownership tacks onto Dolins’ more than thirty years of ownership, and because that ownership has been unaffected by “any act, title transaction, event, or omission disclosed in the public record,” the restrictive covenants are now null and void, subject only to express statutory exceptions. Defendants also assert that Dolin intended to leave out the restrictive covenants when she gifted the Subject Property to them.

In contrast, Plaintiffs assert the Act does not extinguish the restrictive covenants because: (1) the Act only extinguishes rights and interests “that occurred prior to such 30-year period” as stated in N.C. Gen. Stat. § 47B-2(c), which is not the case *sub judice*, and (2) regardless, the restrictive covenants at issue fall clearly under the first exception of the Act. We agree.

“The purpose of the [Act] is to facilitate the alienability and marketability of real property.” *Hill v. Taylor*, 174 N.C. App. 415, 420, 621 S.E.2d 284, 288 (2005). The Act accomplishes this “by allowing the establishment of marketable title upon a showing of a thirty-year chain of title to real property, ‘with nothing appearing of record purporting to divest such claimant of the estate claimed.’” *Id.* (quoting N.C. Gen. Stat. § 47B-2(b)). Once marketable title is established, the Act “operates to

extinguish ‘all rights, estates, interests, claims or charges whatsoever, the existence of which depends upon any act, title transaction, event or omission that occurred prior to such 30-year period,’ except those listed in N.C. Gen. Stat. § 47B-3.” *Id.* (quoting N.C. Gen. Stat. § 47B-2(c)). Under the first exception, “[s]uch marketable record title shall not affect or extinguish:”

(1) Rights, estates, interests, claims or charges disclosed by and defects inherent in the muniments of title of which such 30-year chain of record title is formed, provided, however, that a general reference in any of such muniments to rights, estates, interests, claims or charges created prior to such 30-year period shall not be sufficient to preserve them unless *specific identification by reference to book and page of record be made therein to a recorded title transaction which imposed, transferred or continued such rights, estates, interests, claims or charges.*

N.C. Gen. Stat. § 47B-3(1) (emphasis added).

In summary, the following relevant facts are undisputed: (1) Dolin acquired the Subject Property in a deed dated 7 October 1983 (“Dolin Deed”) recorded in Macon County at book and page number K-15, 119; (2) the Dolin Deed references the original deed containing the restrictive covenants for Ramblewood Subdivision dated 19 October 1979 (“Original Deed”) recorded in Macon County at book and page number Z-12, 31; (3) the Dolin Deed clearly contains all restrictive covenants listed in the Original Deed; (4) Dolin gifted the Subject Property to Defendants by quit claim deed dated 12 May 2022, recorded in Macon County at book and page number V-41, 1371; (5) Defendants’ deed references the book and page number to the Dolin Deed, K-15,

119, and further references the book and page number to the Original Deed, Z-12, 31; and (6) Defendants' deed contains the language, "Grantor hereby quitclaims to Grantees and Grantees' heirs and assigns forever, all of Grantor's rights, titles, interests, and claims in or to the following described real estate, together with all hereditaments and appurtenances belonging thereto, located in Macon county, North Carolina, subject to any restrictions herein: K-15 119."⁵

Defendants' deed makes specific reference to the book and page number of the Dolin Deed and the Original Deed; both the Dolin Deed and the Original Deed contain the restrictive covenants at issue. Therefore, whether or not Defendants' years of ownership tacked onto Dolin's, the restrictive covenants clearly fall within the first exception to the Act because "specific identification by reference to book and page of record [is] made therein to a recorded title transaction which imposed, transferred or continued such rights, estates, interests, claims or charges." N.C. Gen. Stat. § 47B-3(1); *see Town of Winton v. Scott*, 80 N.C. App. 409, 416-17, 342 S.E.2d 560, 564-65 (1986).

C. Unreasonable Interference with Easement

Next, Defendants argue the trial court erred by granting "Plaintiffs' oral motion for summary judgment on the Defendants' counterclaim to enjoin the Plaintiffs from interfering with the easement and right of way of Ramblewood Road."

⁵ The book and page number "K-15 119" on Defendants' deed appears to be "penciled in by the person who filed the deed."

Defendants argue that a genuine issue of material fact exists precluding summary judgment and, further, the evidence showed that the locked gate, felled tree, and parked car could be found to have unreasonably blocked Defendants’ access to Ramblewood Road. This evidence, Defendants argue, supports unreasonable interference with the easement, and the disputed issue of how long the barrier had been across the road blocking access made this an issue that should have gone forth to a jury.

Our Supreme Court has explained that,

a private easement “carries with it no implication of a right to deprive the owner of the servient estate of the full enjoyment of his property” and “it is subject only to the right of passage.” Accordingly, the estate owner, “may erect gates across the way when (1) necessary to the reasonable enjoyment of his estate, (2) provided they are not of such nature as to materially impair or unreasonably interfere with the use of the lane as a private way for the purposes for which it has theretofore been used.”

Taylor v. Hiatt, 279 N.C. App. 506, 508, 865 S.E.2d 331, 333 (2021) (quoting *Chesson v. Jordan*, 224 N.C. 289, 293, 29 S.E.2d 906, 909 (1944)). Importantly, our “Supreme Court has instructed that when ‘the question of unreasonable obstruction is at issue, it should be determined by the jury.’” *Id.* While the trial court initially stated it would not rule on whether the gate lock was an unreasonable interference or not, it ultimately ruled on the issue in favor of Plaintiffs. Accordingly, we reverse the trial court’s 8 July 2025 order on Defendants’ motion for summary judgment and remand the issue of unreasonable interference to the trial court for further proceedings not

inconsistent with this opinion.

D. Restriction in Scope of 11 March 2025 Partial Summary Judgment Order

Defendants argue the trial court erred by limiting the scope of their 11 March 2025 summary judgment order in favor of Defendants because there was evidence to support what tracts Plaintiffs owned and there “was no contention that such access road was not intended for the access of all the numbered lots of Ramblewood.” Specifically, Defendants argue “the trial court’s order should be overruled and replaced by an order declaring Ramblewood Road an easement appurtenant to all of the lots in Ramblewood Subdivision and affecting the Plaintiff Matthew Nelson’s unnumbered property as a servient parcel.”

In contrast, Plaintiffs argue that the trial court did not err because not all necessary parties were present and that Defendants “obtained the relief their pleadings sought: recognition of their right to use Ramblewood Road for ingress and egress to Lot 9 as between the parties to this action.” The contested 11 March 2025 order states:

2. The Defendants are entitled to a private right to use the following roads for egress and ingress to their Subject Property as described in Defendants’ Subject Deed and as further described on the plat entitled “Ramblewood” by Gardner V. Holden R.L.S. Dated 11-29-1976 which is attached to the Affidavit of Deborah J. Barker as Exhibit A. The road subject to the private right of use is thirty feet in width and is shown as the “Assess Road 30 Ft R/W” notated on the plat where such roads traverse the lands of the Plaintiffs’ Complaint and the Affidavit of Debrah

Barker.

3. The Court notes that the above conclusion of law only applies to the plaintiffs in their individual capacities and should not be interpreted as a ruling as to the subservient tracts upon which the roads crosses in that some owners may not be parties to this proceeding and there has been no showing to conclude which tracts the plaintiffs now own.

After a thorough review of the record, we conclude the trial court did not err by limiting the scope of its order because the necessary information and parties were not included in the action in order to grant the relief Defendants seek. The unrecorded Ramblewood Plat includes thirty-one numbered parcels; while Plaintiffs own several of these parcels, and deeds to several of such parcels are included in the record, the record is ultimately devoid of the deeds and chain of title information for *all* parcels and there are an unspecified number of non-party parcel owners whose property rights are at stake. Thus, we are unable to conclude that Defendants are entitled to access of Ramblewood Road beyond what the trial court has granted.

Additionally, we note that in support of their argument, Defendants rely on this Court's opinion in *Craig v. Neal*. In *Craig v. Neal*, this Court looked at a similar issue regarding a dispute over the parties' rights to use "the Country Lane right-of-way." 279 N.C. App. 148, 150, 864 S.E.2d 802, 805 (2021). Defendants argue, "[d]espite the fact that there was one plaintiff in *Craig*, the other lots were declared to be servient based on their position relative to the land showing on the plat." However, Defendants have failed to recognize that along with the plaintiffs and the

main defendants discussed in *Craig*, also party in that action were additional nominal defendants that “own the other lots that Country Lane crosses.” *Id.* at 151 n.2, 864 S.E.2d at 806. Thus, under the court’s precedent in *Craig*, Defendants’ argument fails.

III. Conclusion

For the reasons stated herein, we hold the trial court did not err in determining the restrictive covenants to be valid and enforceable against Defendants and limiting the scope of its order. However, we hold the trial court did err by entering judgment on whether Plaintiffs had unreasonably interfered with Defendants’ use of Ramblewood Road. Accordingly, we affirm both of the trial court’s 11 March 2025 orders and reverse and remand to the trial court the 8 July 2025 order on Defendants’ motion for summary judgment for further proceedings in regard to the issue of unreasonable interference.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Judges COLLINS and FLOOD concur.

Report per Rule 30(e).