IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-182

Filed 4 November 2026

Dare County, No. 24CV001617-270

HENRY P. SKOCZALEK, JR. and NANCY U. SKOCZALEK, Plaintiffs,

v.

JAMES L. FLANIGAN, ROCHELLE N. FLANIGAN, and DECATUR PARTNERSHIP, Defendants.

Appeal by Plaintiffs from orders entered 22 August 2025 and 15 October 2025 by Judge R. Andrew Womble in Dare County Superior Court. Heard in the Court of Appeals 17 September 2026.

Gallop Law Firm, PLLC, by Benjamin M. Gallop, for Plaintiff-Appellant Nancy Skoczalek.

Hornthal, Riley, Ellis & Maland, LLP, by L. Phillip Hornthal, III, and Zachary M. Robeson, for Defendants-Appellees James and Rochelle Flanigan.

COLLINS, Judge.

This case arises from a dispute over the location of the boundary line between Plaintiffs' lot and Defendants' lot. Henry and Nancy Skoczalek ("Plaintiffs") [1] and James and Rochelle Flanigan ("Defendants") own adjacent canal-front lots in Dare County, North Carolina. Plaintiffs appeal two orders granting summary judgment to Defendants on all Plaintiff's claims. For the reasons explained below, we affirm the

[1] Although Henry Skoczalek died in May 2026, we will refer to Plaintiffs throughout.

trial court's first summary judgment order, vacate the trial court's second summary judgment order, and remand for further proceedings.

I. Background

The parties own adjacent canal-front lots in the Kitty Hawk Landing Subdivision. Plaintiffs own Lot 27 and Defendants own Lot 26. The Lots share a common boundary along the north-east side of Plaintiffs' Lot 27 and south-west side of Defendants' Lot 26. Plaintiffs purchased their lot in 2016. Plaintiffs' predecessors in title constructed a bulkhead abutting[2] Lot 27 on the Canal front and a dock attached to and extending from the bulkhead. Defendants purchased their lot in 2015. Defendants' predecessor in title, Fred Dornacker, constructed a bulkhead approximately 112 feet in length abutting Lot 26 on the Canal front. Both parties' deeds reference a recorded Plat Map of the subdivision.

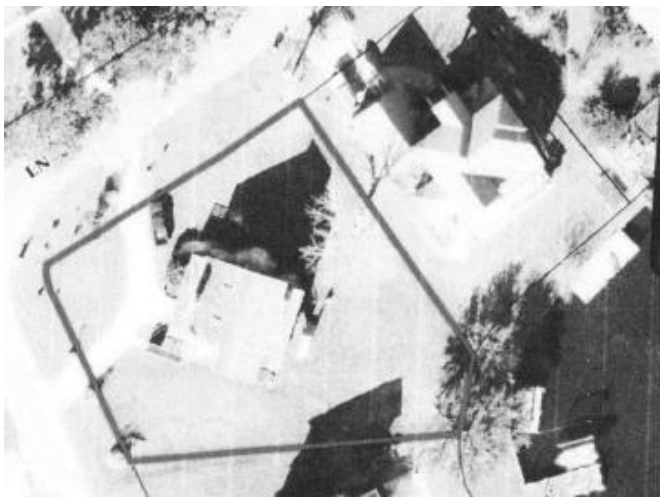


1. The Plat Map

[2] A bulkhead is a retaining wall system attached to land using tiebacks that anchor into soil. Here, both parties' lots have bulkheads attached to their Canal-front boundaries. We refer to the bulkheads as "abutting" the Lots throughout.

The Plat Map shows the Lots abutting the Canal along their eastern boundaries. The Canal, however, had not yet been constructed when the Plat Map was prepared and recorded. The written metes and bounds on the Plat Map identify 40.46 feet of Canal-front property for Plaintiffs' Lot 27 and 94.08 feet of Canal-front property for Defendants' Lot 26 for a total of 134.54 feet of Canal-front property between the two Lots.

When the Plat Map's metes and bounds descriptions are plotted on the ground, however, a strip of land approximately twenty feet wide by 115.38 feet long ("Intervening Parcel") lies between the Lots' eastern boundaries and the Canal.



2. GIS Image of Plotted Metes and Bounds

The discrepancy between the Plat Map's plotted metes and bounds and the Plat Map creates a deficit of 19.16 feet of Canal-front property between the two Lots. Both parties acknowledge the discrepancy between the plotted metes and bounds and the Plat Map.

In 2024, Defendants notified Plaintiffs that Plaintiffs' dock and boat were interfering with Defendants' riparian access to the Canal. In November 2024, Defendants applied for North Carolina Division of Coastal Management ("CAMA") permits to build a 105-foot-long bulkhead that would cross onto Canal-front property Plaintiffs allege they own. CAMA sent Plaintiffs a notification and waiver form as property owners adjacent to Defendants. Upon investigating Defendants' claim of ownership and riparian access rights, Plaintiffs discovered the discrepancy between the Plat Map's plotted metes and bounds descriptions and the Plat Map.

Plaintiffs filed this action in November 2024 against Defendants and Decatur Partnership. Plaintiffs alleged that the Intervening Parcel was conveyed to Decatur Partnership in 1980 and asserted three claims: (1) reformation of their deed to include a portion of the Intervening Parcel, allowing their lot 40.46 feet of Canal-front property in conformity with the written metes and bounds on the Plat Map; (2) imposition of a constructive trust against Decatur Partnership; and (3) quiet title and declaratory judgment. Plaintiffs attached the Plat Map to their complaint.

In March 2025, Defendants obtained a non-warranty deed from heirs of the Estate of Fred Dornacker, from whom they purchased Lot 26, purporting to convey any interest the grantors had in the Intervening Parcel. In April 2025, Defendants filed an answer and counterclaims for declaratory judgment and quiet title to a portion of the Intervening Parcel, allowing their lot 112 feet of Canal-front property, the length of the bulkhead abutting Lot 26. Defendants also sought a permanent

injunction against Plaintiffs' alleged interference with the Defendants' riparian access to the Canal. Defendants attached the non-warranty deed, a CAMA permit for the Dornackers' 112-foot bulkhead, and a survey of Lot 26 from Jason Mizelle ("First Mizelle Survey"), a licensed North Carolina land surveyor. The First Mizelle Survey depicts the boundaries of Defendants' lot in accordance with the non-warranty deed.



3. First Mizelle Survey

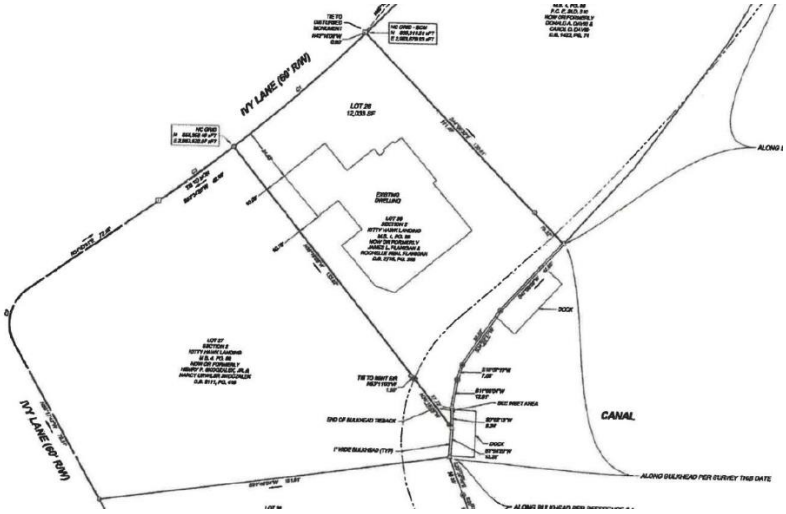
In June 2025, Defendants moved for summary judgment and submitted supporting affidavits from themselves, Fred Dornackers' daughter, and Jason Mizzelle. Defendants averred that they used a portion of the Intervening Parcel they identified as the "Waterfront Strip," but did not provide the dimensions of the Waterfront Strip. Fred Dornackers' daughter averred that she witnessed her parents use and maintain the "Waterfront Strip" when they owned Lot 26. Defendants asserted in their memorandum in support of their motion for summary judgment that

they and their predecessors in title adversely possessed for twenty-six years the "Waterfront Strip," which they define there as "a strip of waterfront property between [Lot 26] and the [C]anal which was not conveyed to [Defendants] by and through the Flanigan Deed."

Plaintiffs submitted affidavits from themselves in opposition to the summary judgment motion, averring that they had used and maintained the "disputed area," since purchasing their lot in 2016.

In August 2025, the trial court granted summary judgment to Defendants on Plaintiffs' claims for deed reformation and constructive trust and denied summary judgment on Plaintiffs' quiet-title claim ("First Summary Judgment Order"). The trial court concluded that the edge of the Canal is the eastern boundary of the Lots but that a bona fide dispute remained concerning the length and location of the common boundary between the Lots.

Defendants filed a second summary judgment motion on the length and location of the common boundary between the Lots. In support, they submitted a second affidavit and survey from Jason Mizelle ("Second Mizelle Survey") which depicted the Lots' common boundary in a different location from the First Mizelle Survey.



4. Second Mizelle Survey

Plaintiffs opposed Defendants' second summary judgment motion and moved for improper venue or change of venue and Rule 11 sanctions. Plaintiffs relied on their previously-submitted pleadings and affidavits in support of their opposition to the second motion.

In October 2025, the trial court entered a second order granting summary judgment to Defendants on Plaintiffs' quiet title and declaratory judgment claims and denying Plaintiffs' motion for improper venue or change of venue and Rule 11 sanctions ("Second Summary Judgment Order"). The trial court found that Plaintiffs presented no evidence in opposition to Defendants' second summary judgment motion and that the length and location of the common boundary was as depicted on the Second Mizelle Survey.

Plaintiffs timely appealed the trial court's summary judgment orders.[3]

II. Discussion

Plaintiffs argue that the trial court erred by granting Defendants summary judgment on Plaintiffs' claims and holding that the boundaries of the Lots are as depicted on the Second Mizelle Survey.

Summary judgment is appropriate "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 [a] party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2025). "A genuine issue of material fact is one that can be maintained by substantial evidence." *Daughtridge v. Tanager Land, LLC*, 373 N.C. 182, 186-87 (2019) (quotation marks and citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]" *Id.* at 187. We view the evidence in the light most favorable to the nonmoving party, drawing all reasonable inferences in that party's favor. *Hardin v. KCS Int'l., Inc.*, 199 N.C. App. 687, 695 (2009). We review a trial court's grant of summary judgment de novo. *In re Will of Jones*, 362 N.C. 569, 573 (2008).

[3] Defendants filed a motion to strike Plaintiffs-Appellants' reply brief pursuant to Rule 28(h) of the North Carolina Rules of Appellate Procedure with this Court on 13 July 2026. To the extent that Plaintiffs' reply brief introduces new arguments, we allow Defendants' motion to strike and do not consider such arguments.

A. First Summary Judgment Order

Plaintiffs first argue that the trial court erred by granting summary judgment to Defendants on Plaintiffs' deed reformation and constructive trust claims and concluding as a matter of law that the Canal is the eastern boundary of both Lots 26 and 27.

A deed may be reformed to express the parties' true intent "[w]here a deed fails to express the true intention of the parties, and that failure is due to the mutual mistake of the parties, or to the mistake of one party induced by fraud of the other, or to mistake of the draftsman[.]" *Durham v. Creech*, 32 N.C. App. 55, 58-59 (1977).

"A constructive trust is a duty, or relationship, imposed by courts of equity to prevent the unjust enrichment of the holder of title to, or of an interest in, property which such holder acquired through fraud, breach of duty or some other circumstance making it inequitable for him to retain it against the claim of the beneficiary of the constructive trust." *Roper v. Edwards*, 323 N.C. 461, 464 (1988) (citation omitted).

"Interpreting a deed is a matter of law for the court." *Daughtridge*, 373 N.C. at 187. "[A] map or plat, referred to in a deed, becomes a part of the deed as if it were written therein[.]" *Collins v. Land Co.*, 128 N.C. 563, 565 (1901). Where a deed "contains two descriptions, one by metes and bounds and the other by lot and block according to a certain plot or map, the controlling description is the lot according to the plan, rather than the one by metes and bounds." *Hayden v Hayden*, 178 N.C. 259, 261 (1919). Furthermore, our courts have long recognized that "[w]here there is a

conflict between course and distance and a fixed monument, the call for the monument will control." *Cutts v. Casey*, 271 N.C. 165, 170 (1967); *see also N.C. State Highway Comm'n v. Gamble*, 9 N.C. App. 618, 623-24 (1970); *In re Boundary Dispute of Bost Estate*, 199 N.C. App. 522, 530 (2009) ("In deciding the location of a disputed boundary line, 'the general rule is that natural objects and artificial monuments control courses and distances.'" (quoting *Newkirk v. Porter*, 237 N.C. 115, 120 (1953))).

Here, the Plat Map incorporated in the parties' deeds became part of the deed and depicts the Canal bordering the Lots to their east. The record contains no evidence creating a genuine issue regarding the Canal's location nor its identification as the water feature shown on the Plat Map. Accordingly, the trial court correctly concluded that the Canal serves as the Lots' controlling eastern boundary monument.

Plaintiffs' deed reformation and constructive trust claims are predicated on the existence of the Intervening Parcel. Because the Lots' eastern boundary is the Canal, the Intervening Parcel does not exist and is not held by a third party. Thus, there is no property subject to Plaintiffs' deed reformation and constructive trust claims. Accordingly, we affirm the trial court's First Summary Judgment Order.

B. Second Summary Judgment Order

Plaintiffs argue that the trial court erred by granting summary judgment to Defendants on Plaintiffs' quiet title and declaratory judgment claims and concluding that the Lots' boundaries are as depicted on the Second Mizelle Survey.

"*What* are the boundaries is a matter of law to be determined by the court from

the description set out in the conveyance. *Where* those boundaries may be located on the ground is a factual question to be resolved by the jury." *Daughtridge*, 373 N.C. at 187 (quoting *Batson v. Bell*, 249 N.C. 718, 719 (1959)).

Here, Plaintiffs allege that the Canal-front boundary of their lot should be 40.46 feet in length and support their allegation with the Plat Map, which shows the length of their Canal-front boundary as 40.46 feet. The alleged length of the Canal-front boundary, if found accurate, could determine the length and location of the disputed portion of the Lots' common boundary.

With their first motion for summary judgment, Defendants alleged that the length and location of their lot's Canal-front and common boundaries are as shown on the First Mizelle Survey. With their second motion for summary judgment, they allege that the length and location of their lot's Canal-front and common boundaries are as shown on the Second Mizelle Survey.

Defendants' own evidence of the length and location of the shared boundary conflicts with itself and with Plaintiffs' evidence. This conflicting evidence creates a genuine issue of material fact as to the location of the Lots' common boundary. Accordingly, we vacate the trial court's Second Summary Judgment Order and remand for further proceedings consistent with this opinion.

III. Conclusion

The Canal is the eastern boundary of the Lots as a matter of law. We therefore affirm the First Summary Judgment Order.

The record contains conflicting evidence as to the length and location of the Lots' common boundary. As this creates a genuine issue of material fact as to the length and location of the common boundary, we vacate the Second Summary Judgment Order and remand to the trial court for further proceedings.

AFFIRMED IN PART; VACATED AND REMANDED IN PART.

Judges STADING and MURRY concur.