

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2021 CA 0394

CARROLL EDWARD CLARK, SR., AND
RUBY JANETTE PHILLIPS CLARK

VERSUS

DAVID FAZEKAS AND DEBORAH FAZEKAS

Judgment rendered: DEC 22 2021

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On Appeal from the
Twenty-Third Judicial District Court
In and for the Parish of Ascension
State of Louisiana
No. 125538

The Honorable Jason Verdigets, Judge Presiding

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BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

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HOLDRIDGE, J.

In this suit for declaratory judgment, the plaintiffs, Carroll Edward Clark, Sr. and Ruby Janette Phillips Clark (“the Clarks”), challenge the trial court’s judgment rendered in favor of defendants, David Fazekas and Deborah Fazekas (“the Fazekas”), regarding a servitude of passage as it relates to the parties’ properties. For the reasons that follow, we dismiss the appeal, in part, as moot and vacate the trial court’s judgment, in part, and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

The history of the property in question in this case is not in dispute. In 1995, the Clarks originally purchased 2.52 acres of land located on Bluff Road in Geismar, Louisiana, known as Lot 5-A-1. They built a home on the property, and Mr. Clark constructed a private driveway, C. Clark Lane, that provided the Clarks’ access to Bluff Road. Soon thereafter, the Clarks’ son sold them a 1.0-acre tract of land that bordered their property including to the south of C. Clark Lane, and the Clarks joined the properties together to be known as Lot 5-A-1.

In November 2005, the Clarks performed a family partition of Lot 5-A-1, dividing the land into two tracts, the 2.52 acres north of C. Clark Lane became Lot 5-A-1-A, and the 1.0-acre tract south of C. Clark Lane became Lot 5-A-1-B. According to the record, C. Clark Lane was a 20-foot wide private servitude of passage that extended 50 feet past the corner of Lot 5-A-1-B. Thereafter, also in November 2005, the Clarks sold Lot 5-A-1-A to Terry Loup and Jeanine Loup (“the Loups”) and began building a new home on Lot 5-A-1-B. The Loups subsequently sold Lot 5-A-1-A to the Fazekas in June 2008.

In 2011, the Clarks obtained permits from the parish to place a mobile home on the rear of Lot 5-A-1-B to allow their daughter to live on the property with them. Approximately one year after the placement of the mobile home on the back portion of Lot 5-A-1-B, Mr. Fazekas began expressing some concerns about the mobile home

and who would live there if the Clarks' daughter ever moved. Mr. Fazekas then approached Mr. Clark with a map showing a "private driveway" that ran along the side of Lot 5-A-1-A, beginning just past where the 50-foot extension of C. Clark Lane ended and running to the back of Lot 5-A-1-A. Mr. Fazekas asked Mr. Clark to sign an agreement stating that the "private driveway" was located on Lot 5-A-1-A and that a servitude was being granted to the family members of Lot 5-A-1-B to access the western portion of Lot 5-A-1-B. This agreement was to end either at the earlier of the termination date or until ownership of one of the lots changed. The agreement was signed twice by Mr. Clark, once on September 22, 2012, which bore the expiration date of December 30, 2015, and again on January 6, 2016, which bore an expiration date of December 30, 2020. Both agreements were filed and recorded with the clerk of court in Ascension Parish.

On May 14, 2019, the Clarks filed a petition for declaratory judgment against the Fazekas, asserting that the Clarks had "continually and consistently accessed the rear of their property at Lot 5-A-1-B via the roadway that exists on Lot 5-A-1-A" and that this unfettered access to the rear of their property had included access to the mobile home. Seeking to "solidify and maintain their right to continue to access the rear of their property," the Clarks asked for judgment declaring the continuing right of the Clarks to access the rear of their property. The matter proceeded to a hearing before the trial court on July 2, 2019. After considering the evidence and argument of the parties, the trial court rendered judgment on July 19, 2019, in favor of the Fazekas, finding that the servitude of passage to Lot 5-A-1-B extended only 50 feet on to Lot 5-A-1-B. The judgment further stated that the agreement between the parties would terminate at the earlier of December 30, 2020 or when either Lot 5-A-1-A or Lot 5-A-1-B was owned by someone other than the parties. Lastly, the judgment stated that nothing in the judgment shall be construed to deny Lot 5-A-1-B access to Bluff Road through the servitude of passage established by C. Clark

Lane. The trial court provided written reasons on July 19, 2019. Subsequently, the Clarks appealed.

On appeal, this Court dismissed the Clarks' appeal of the July 19, 2019 judgment because the judgment did not include the legal description of the property, with reference to landmarks such as roads, benchmarks, or other monuments, which can be located, or a survey commencing at some established point. See Clark v. Fazekas, 2019-1386 (La. App. 1 Cir. 5/11/20), 303 So.3d 1066, 1069. This Court further stated in Clark that “[w]ithout reference to an extrinsic source, such as pleadings or exhibits in the record, one would be unable to determine, with specificity, where the servitude of passage referred to in the July 19, 2019 judgment is actually located.” *Id.*

On December 14, 2020, the trial court signed an amended judgment, which included exhibit D-3, evidencing a certified copy of the family partition servitude of passage that was created by the Clarks in 2005 that described the immovable property at issue. The trial court also provided amended reasons for judgment. On December 22, 2020, the Clarks filed a Motion and Incorporated Memorandum for New Trial and Reconsideration of Judgment. In their motion, the Clarks argued that exhibit D-3 does not cure the defective judgment. The Clarks further stated in the motion that due to the agreement between the parties expiring in December 2020, they installed another driveway to access the rear of their property. The new driveway installed was between the existing disputed roadway with the Fazekas. The trial court denied the Clarks' motion. The Clarks subsequently appealed the December 14, 2020 judgment.

APPLICABLE LAW

A predial servitude is a charge on a servient estate for the benefit of a dominant estate. La. C.C. art. 646. The two estates must belong to different owners. *Id.* There must be a benefit to the dominant estate. La. C.C. art. 647. There is no predial

servitude if the charge imposed cannot be reasonably expected to benefit the dominant estate. *Id.* The owner of the servient estate is not required to do anything. La. C.C. art. 651. His obligation is to abstain from doing something on his estate or to permit something to be done on it. *Id.* He may be required by convention or by law to keep his estate in suitable condition for the exercise of the servitude due to the dominant estate. *Id.*

Predial servitudes may be natural, legal, and voluntary or conventional. Natural servitudes arise from the natural situation of estates; legal servitudes are imposed by law; and voluntary or conventional servitudes are established by juridical act, prescription, or destination of the owner. La. C.C. art. 654.

Predial servitudes may be established by an owner on his estate or acquired for its benefit. The use and extent of such servitudes are regulated by the title by which they are created. La. C.C. art. 697. In the absence of such regulation, they are governed by the rules set forth in La. C.C. arts. 698 through 774. *See* La. C.C. art. 697. It is only where the title does not specify the extent of the right and the mode of its exercise that the extent of the servitude of passage is subject to interpretation based on what is suitable for the kind of traffic necessary for the reasonable use of the dominant estate. *See* La. C.C. art. 705. Thus, when a predial servitude is created by contract, courts have found that the title by which the servitude was created regulated the use and extent of such a servitude. *See* Red River v. Noles, 406 So.2d 294, 297 (La. App. 3 Cir. 1981). Furthermore, only if the title was silent as to the extent and manner of use of the servitude have the courts resorted to an examination of the intent of the parties to determine the purpose of the servitude. *See* *Id.*; La. C.C. art. 749.

A right of passage is an example of a predial servitude. *See* La. C.C. art. 699. The servitude of passage is the right for the benefit of the dominant estate whereby persons, animals, or vehicles are permitted to pass through the servient estate.

Unless the title provides otherwise, the extent of the right and the mode of its exercise shall be suitable for the kind of traffic necessary for the reasonable use of the dominant estate. La. C.C. art. 705. The establishment of a predial servitude by title is an alienation of a part of the property to which the laws governing alienation of immovables apply. La. C.C. art. 708. Predial servitudes are established by all acts by which immovables may be transferred. La. C.C. art. 722. A predial servitude may be established on a certain part of an estate, if that part is sufficiently described. La. C.C. art. 727. Doubt as to the existence, extent, or manner of exercise of a predial servitude shall be resolved in favor of the servient estate. La. C.C. art. 730.

STANDARD OF REVIEW

Appellate courts review findings of fact pertaining to servitudes under the manifest error standard of review. 1026 Conti Condominiums, LLC v. 1025 Bienville, LLC, 2019-0826 (La. App. 4 Cir. 8/5/20), 2020 WL 4499644, at *3 (unpublished), writ denied, 2020-01124 (La. 11/10/20), 303 So.3d 1044. An appellate court may not set aside a trial court's findings of fact unless they are manifestly erroneous or clearly wrong. *Id.* (citing Rosell v. ESCO, 549 So.2d 840 (La. 1989)). To reverse under the manifest error rule, an appellate court must find from the record that there is no reasonable basis for the trial court's finding and that the record shows the finding to be manifestly erroneous. *Id.* (citing Stobart v. State, Dep't of Transp. and Dev., 617 So.2d 880 (La. 1993)).

Appellate courts review a trial court's decision to grant or deny a declaratory judgment under the abuse of discretion standard of review. Goodwin v. City of Mandeville, 2018-1118 (La. App. 1 Cir. 5/31/19), 277 So.3d 822, 828, writ denied, 2019-01083 (La. 10/8/19), 319 So.3d 856.

DISCUSSION

Validity of the Agreement

The Clarks argue in their second and third assignments of error that the agreement signed by the parties in 2012 and 2016 are not valid and enforceable. Specifically, the Clarks argue that the agreement is unenforceable because it did not contain the signature of Mrs. Clark or Danette Clark, the Clarks' daughter, and the agreement did not "have the specificity of the length and breadth of the alleged servitude as required by law."

In this case, all of the relevant title documents were admitted into evidence regarding the servitude of passage. After reviewing the evidence in its entirety, the trial court determined that a servitude of passage extends only 50 feet on to lot 5-A-1-B, the Clarks' property, and that the servitude extending past the 50 feet onto lot 5-A-1-A, the Fazekas' property, would terminate at the earlier of December 30, 2020, or when either lot is owned by someone other than the parties. In its amended reasons for judgment, the trial court stated the following regarding the agreement between the parties:

A contract is formed by the consent of the parties, which is established by offer and acceptance that can be made orally, in writing, or by the actions or inactions of the parties.¹ Here, it was established that Mr. Fazekas approached Mr. Clark regarding the contract and Mr. Clark signed the agreement not once but twice. Also, there was testimony presented by Mr. Clark that he took the contract to mean that upon either party ceasing to own one of the properties or December 30, 2020, there would no longer be access to the rear of Lot 5-A-1-B. Therefore, there does not appear to be any issues related to the formation of a valid contract as it appears from the testimony that there was a meeting of the minds of the parties related to an agreement on access to the trailer at the back of Lot 5-A-1-B.

Mr. Clark also appeared to argue at the hearing that the absence of Mrs. Clark's signature on the document is of some consequence. However, there was no specific need for Mrs. Clark to sign the contract as there was no encumbrance of the Clark[s'] community property... [T]he servitude extended 50 feet on to Lot 5-A-1-B, but the agreement between [the] Fazekas[es] and Mr. Clark allowed for an extension of a servitude, the extension of which was on the Fazekas property—Lot 5-

¹ La. C.C. art. 1927.

A-1-A—and did not encumber any community property of the Clarks.² Furthermore, there has been reference to the 50-foot extension on to Lot 5-A-1-B both on the maps Mr. Fazekas had Mr. Clark sign and in the act of donation from Dorothy Clark to Mr. Clark on November 14, 2005. This specific language has been included that the servitude extends 50 feet on to Lot 5-A-1-B to give it frontage road access to Bluff Road and as such this is where the servitude ends.³ Thus, the extended portion of the servitude was never on community property so there was no need for Mrs. Clark’s signature to encumber some portion of community property.

Therefore, it is the determination of this Court that the items signed by Mr. and Mrs. Fazekas and Mr. Clark are binding and enforceable. At the earlier of December 30, 2020 or when either [l]ot ... changes ownership, the servitude extending past the 50-foot private driveway servitude of C Clark Lane will be terminated.

After reviewing the record, we agree that the trial court was not manifestly erroneous for the reasons assigned that a valid contract was entered between the parties in 2012 and 2016 regarding the servitude of passage at issue. The agreement, which was submitted into evidence, identifies the Fazekas’ “private driveway” owned exclusively by the Fazekas, which could only be used by the Clark family members to access the western portion of Lot 5-A-1-B. The agreement was valid until December 30, 2020, or until ownership of one of the lots changed. Thus, the agreement is now moot given that it has expired on its own terms.

An issue is moot when a judgment or decree on that issue has been “deprived of practical significance” or “made abstract or purely academic.” Animal Legal Defense Fund v. State, Dept. of Wildlife and Fisheries, 2012-0971 (La. App. 1 Cir. 4/25/13), 140 So.3d 8, 19, writ denied, 2013-1565 (La. 10/4/13), 122 So.3d 1025. A case is moot when a rendered judgment or decree can serve no useful purpose and give no practical relief or effect. *Id.* If the case is moot, there is no subject matter on which the judgment of the court can operate. *Id.* It is well settled that courts will not decide abstract, hypothetical, or moot controversies, or render advisory opinions

² La. C.C. art. 2347; See South Cent. Bell Telephone Co. v. Eisman, 430 So.2d 256, 258-59 (La. App. 5 Cir.), writ denied, 437 So.2d 1154 (La. 1983).

³ See White v. Durrwachter, 431 So.2d 65, 67-68 (La. App.1 Cir. 1983).

with respect to such controversies. Louisiana State Board of Nursing v. Gautreaux, 2009-1758 (La. App. 1 Cir. 6/11/10), 39 So.3d 806, 811, writ denied, 2010-1957 (La. 11/5/10), 50 So.3d 806. Accordingly, we find that all issues in this appeal relating to the agreement signed by the parties are moot, and we dismiss the parts of the appeal relative to those issues. See Animal Legal Def. Fund, 140 So.3d at 19. The Clarks' second and third assignments of error have no merit.

Discrepancy in December 14, 2020 Amended Judgment

In their first assignment of error, the Clarks argue that the trial court “erred in failing to consider the law concerning apparent servitudes, witness testimony as to the full use of the apparent servitude, and photographic evidence illustrating the length and breadth of the apparent servitude and, instead, determined that, without actual physical measurements of the servitude, it was not to be considered a viable servitude.”

After reviewing the record as a whole, it appears that the trial court's December 14, 2020 amended judgment does not accurately reflect the servitude of passage as described in the map attached to the amended judgment as exhibit D-3. The map of the property at issue in exhibit D-3 shows the servitude of passage extends 50 feet onto Lot 5-A-1-A. However, the amended judgment states “the servitude of passage to Lot 5-A-1-B ... extends ... on to Lot 5-A-1-B[.]” In light of the indeterminate nature of the judgment, we vacate the December 14, 2020 amended judgment and remand to the trial court so that it can make a proper determination as to the location of the servitude of passage as shown in exhibit D-3. In order to determine an accurate legal description of the servitude of passage, the trial court may wish to appoint a surveyor for this purpose. See La. C.C.P. art. 3692; see also Hooper v. Hero Lands Co., 2015-0929 (La. App. 4 Cir. 3/30/16), 216 So.3d 965, 981, writ denied, 2016-0971 (La. 9/16/16), 206 So.3d 205. Accordingly, we

preterm discussion of assignment of error number one and four due to our holding in this matter.

Accordingly, we vacate the December 14, 2020 amended judgment and remand to the trial court for proceedings consistent with this opinion.

CONCLUSION

For the above reasons, we dismiss the appeal, in part, as moot and we vacate, in part, and remand the December 14, 2020 judgment of the trial court. All costs of this appeal are assessed equally to the parties.

APPEAL DISMISSED IN PART AS MOOT, JUDGMENT VACATED IN PART, AND REMANDED.