

NO. COA01-425

NORTH CAROLINA COURT OF APPEALS

Filed: 4 June 2002

HOWARD C. JONES, II, FRANKIE  
HAYES SOUTHARD, JIMMY ROY  
ROGERS and wife, MADILYN  
KAY ROGERS, GREGORY E. BOWERS  
and wife, NATALIE W. BOWERS  
and DANIEL RAY SAMMONS and  
wife, SHARON P. SAMMONS,  
Plaintiffs,

Surry County  
No. 99 CVS 311

v.

ROBERT WAYNE DAVIS and wife,  
GLENDA K. DAVIS, JERRY ALLAN  
ALLRED and wife, YVONNE DAVIS  
ALLRED and SURRY COUNTY,  
Defendants.

Appeal by defendants from summary judgment entered 27 December  
2000 by Judge William H. Freeman in Surry County Superior Court.  
Heard in the Court of Appeals 20 February 2002.

*Horton and Gsteiger, P.L.L.C., by Elizabeth Horton and Urs R.  
Gsteiger; Howard C. Jones, II; and Badgett and Phillips, by  
Richard G. Badgett, for plaintiffs-appellees.*

*Finger, Parker, Avram, Martin & Roemer, L.L.P., by Raymond A.  
Parker, for defendants-appellants.*

TYSON, Judge.

Robert Wayne Davis, Glenda K. Davis, Jerry Allan Allred, and  
Yvonne Davis Allred (collectively "defendants") appeal from the  
trial court's order granting Howard C. Jones, II, Frankie Hayes  
Southard, Jimmy Roy Rogers, Madilyn Kay Rogers, Gregory E. Bowers,  
Natalie W. Bowers, Daniel Ray Sammons, and Sharon P. Sammons  
(collectively "plaintiffs") partial summary judgment. Defendant

Surry County did not appeal.

I. Facts

\_\_\_\_\_ Defendants are owners of approximately 41 acres of land in Surry County, North Carolina. Plaintiffs are property owners who live in close proximity to defendants' property. Defendant, Robert Wayne Davis ("Mr. Davis"), submitted an application to the Surry County Planning Board ("Planning Board") for approval of a manufactured home park pursuant to the Surry County Manufactured Home and Manufactured Home Park Ordinance ("Manufactured Park Ordinance") in September 1997. It is stipulated that defendants took no further steps to have that application approved.

In November 1997, Mr. Davis submitted a preliminary subdivision plat of approximately 17.566 acres of defendants' property for approval as a Homeowners' Association Subdivision ("Kaye's Subdivision") to the planning board pursuant to the Surry County Subdivision Ordinance ("Subdivision Ordinance").

The Planning Board preliminarily approved section one of Kaye's Subdivision on 8 December 1997, and the Surry County Board of Commissioners ("Commissioners") voted to approve on 15 December 1997. Section one of Kaye's Subdivision contains 20 lots. The parties disagree whether the plat is properly recorded.

\_\_\_\_\_ Mr. Davis also submitted a preliminary plat for "section two" "phase one" of Kaye's Subdivision. The Planning Board preliminarily approved "section two" on 12 January 1998. Mr. Davis submitted preliminary plans for "section two" "phase two" of Kaye's Subdivision. This plan was preliminarily approved by the Planning

Board. Plaintiffs admit attending the Commissioners' hearings and assert they "repeatedly requested and were denied enforcement of the [Manufactured Park Ordinance]." Plaintiffs did not appeal the decisions of the Planning Board or the Commissioners' approval of any of the subdivision's plats.

\_\_\_\_\_ Defendants rented eleven of the twenty lots in "section one" of Kaye's Subdivision to tenants, who placed manufactured homes owned by the tenants upon the rented lots.

## II. Plaintiffs' Complaint

Plaintiffs filed an action against defendants and Surry County on or about 12 March 1999. The complaint requested three different forms of relief: (1) declaratory judgment, (2) writs of mandamus and prohibition, and (3) injunction.

### A. Declaratory Judgment

Count one requested the court issue a declaratory judgment against all defendants declaring: (a) "the individual defendants have operated and are operating an illegal mobile home park;" (b) "the individual defendants are required to obtain a permit to operate the mobile home park and install screening and comply with the other requirements of the Mobile Home Park Ordinance;" (c) "the defendant County is required to enforce the Mobile Home Park Ordinance;" (d) "Sections One and Two of the Project are not 'Subdivisions;'" (e) "Sections One and Two of the Project are not 'Homeowners' Association Subdivisions;'" (f) "the individual defendants' request for approval of Sections One and Two of the Project as a 'Homeowners' Association Subdivision' is contrary to

the Mobile Home Park Ordinance and is a sham;" (g) "defendant County is without authority to approve Sections One and Two as a 'Subdivision;'" (h) "defendant County is without authority to approve Sections One and Two as a 'Homeowners' Association Subdivision;'" (i) "all approvals of Sections One and Two of the Project as a subdivision by the Planning Board and the Surry County Commissioners prior to the institution of this lawsuit are void;" (j) "all approvals of Section One and Two of the Project as a subdivision by the Planning Board and the Surry County Commissioners after the institution of this lawsuit are void;" and (k) "that the court make such other and further declarations as are necessary to enforce the Mobile Home Park and Subdivision Ordinances."

B. Writ of Mandamus and Prohibition

Count two requested the court issue a writ of mandamus and prohibition against the county compelling defendant to: (a) "enforce the Mobile Home Park Ordinance as applicable to Sections One and Two of the Project;" (b) "require defendants to comply with the application, permitting, screening, refuse plan, maintenance and other provisions of the Mobile Home Park Ordinance;" (c) "deny the application for approval of Sections One and Two of the Project as Subdivisions;" (d) "deny the application for approval of Sections One and Two as 'Homeowners' Association Subdivisions;'" (e) cease issuance of any permits for hook-up or location of mobile homes at Sections One and Two of the Project;" and (f) "cease any actions with regard to Sections One and Two of the Project without

notice to plaintiffs."

### C. Injunction

Count three sought an injunction against the individual defendants requiring they: (a) "cease all renting or leasing of lots to mobile homes at Sections One and Two of the Project;" (b) "cease locating mobile homes at Section One and Two of the project;" (c) "remove all mobile homes from Sections One and Two of the project;" and (d) "comply with the Mobile Home Park Ordinance, including but not limited to the screening, refuse, maintenance and permit requirements."

Plaintiffs also sought damages against the individual defendants in count four.

Defendants answered and cross-claimed against Surry County on 12 April 1999. Surry County filed an answer to plaintiffs' complaint and moved to dismiss defendants' cross-claim on 19 April 1999. Plaintiffs moved for partial summary judgment on counts one, two, and three of their complaint. Plaintiffs moved to voluntarily dismiss count four, damages, of their complaint during the hearing for summary judgment. Defendants did not move for summary judgment.

### III. The Trial Court's Order

The trial court granted plaintiffs' motion for partial summary judgment and dismissed count four without prejudice on 27 December 2000. The order stated that:

1. Plaintiffs' motion for partial summary judgment as to counts one, two and three of the complaint is allowed;

2. All orders of the Surry County Planning Board and county commissioners approving any plat, plan or development of the property of the individual defendants subject to this action pursuant to the Subdivision Regulations of Surry County are disallowed and declared void as being improvidently entered;
- 3 The individual defendants are ordered to bring all of their property in suit into compliance with the Manufactured Home and Manufactured Home Park Ordinance of Surry County forthwith within thirty (30) days of entry of this order;
4. Plaintiffs having stated in open court their intention to take a voluntary dismissal of count four of the complaint, that count is dismissed without prejudice; and
5. The court shall retain jurisdiction of this matter for the purpose of enforcing compliance with the above order.

The order was a final order as to all issues before the trial court. Individual defendants appeal.

#### IV. Summary Judgment

\_\_\_\_Summary judgment is appropriate in a declaratory judgment action when there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972). "An issue is material if the facts alleged are such as to constitute a legal defense or are of such nature as to affect the result of the action, or if the resolution of the issue is so essential that the party against whom it is resolved may not prevail." *Mecklenburg County v. Westbery*, 32 N.C. App. 630, 634, 233 S.E.2d 658, 660 (1977) (citing *Zimmerman v. Hogg & Allen*, 286 N.C. 24, 209 S.E.2d

795 (1974); *McNair v. Boyette*, 282 N.C. 230, 192 S.E.2d 457 (1972)).

"The trial court's declaratory judgment need not be in any particular form so long as it actually decides the issues in controversy." *Poor Richard's, Inc. v. Stone*, 86 N.C. App. 137, 139, 356 S.E.2d 828, 830 (1987) (citing 26 C.J.S. Declaratory Judgments, §§ 158, 161 (1956), *rev'd on other grounds*, 322 N.C. 61, 366 S.E.2d 697 (1988)). The trial court's judgment should clearly declare the rights of the parties and effectively dispose of the dispute. *Id.* "In awarding declaratory relief, the court generally should make a full and complete declaration . . . ." 26 C.J.S. Declaratory Judgments § 158, at 262 (2001).

The moving party has the burden to show that no genuine issue of material fact exists, and that they are entitled to judgment as a matter of law. *Moore v. City of Creedmoor*, 120 N.C. App. 27, 36, 460 S.E.2d 899, 904 (1995). We review the record in the light most favorable to the non-moving party, giving them the benefit of all reasonable inferences. *Id.*

The trial court disallowed and declared void all orders of the Planning Board and the Commissioners *vis-a-via* defendants' subdivision plats. The trial court made no findings of fact and no conclusions of law in its order. We are unable to determine from the underdeveloped record before us the basis for the trial court's determination that the Planning Board's and the Commissioners' decision to approve defendants' subdivision was "improvidently entered."

Plaintiffs requested eleven wide-ranging declarations, six directives pursuant to a writ of mandamus and prohibition, and six directives pursuant to injunctive relief. The legal issues and respective rights and duties of the parties before the trial court were numerous. The trial court did not segregate the twenty-six different requests according to the three separate equitable theories.

There are numerous disputed issues of material fact in the record. The parties did not stipulate to the facts. Their respective pleadings deny certain facts raised in the opposing parties' pleadings. The parties disagree about which property owner holds title to the lands in question. Plaintiffs claim that "the individual defendants are operating a mobile home park." Defendants deny this allegation. Defendants claim that their subdivision plats were properly recorded. Plaintiffs contend that defendants' plats are not properly recorded. If defendants' lands were, in fact and in law, properly subdivided, a plain reading of the Manufactured Park Ordinance shows that it applies only to "a tract of *unsubdivided* land occupied or proposed to be occupied by *two or more* manufactured homes." (Emphasis supplied).

We hold that the trial court erred in granting summary judgment. The order of the trial court is reversed, and this cause is remanded to the trial court for further proceedings.

Reversed and Remanded.

Judges WYNN and TIMMONS-GOODSON concur.

Report per Rule 30(e).