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NO. COA01-482

NORTH CAROLINA COURT OF APPEALS

Filed: 19 March 2002

GRAVES EVANS ENTERPRISES, INC.,
Plaintiff-Appellant

v.

Alamance County
No. 98 CVD 1280

CHEKEITHA GRAVES CHAMBERS;
RONNIE MCMILLIAN AND JACK CAPPS,
d/b/a PIEDMONT PLUMBING SERVICE
AND REPAIR; AND WILLIAM P.
GRAVES AND JESSIE M.J. GRAVES,
WILLIE E. GRAVES, GENEVA S.
GRAVES, and IRIS L. GRAVES,
Defendant-Appellees

Appeal by plaintiff from judgment entered 30 October 2000 by Judge Ernest J. Harviel in Alamance County District Court. Heard in the Court of Appeals 30 January 2002.

Messick, Messick & Messick, by T. Paul Messick, Jr., for plaintiff-appellant.

Vernon, Vernon, Wooten, Brown, Andrews & Garrett, P.A., by Thomas R. Peake, II, for defendants-appellees Chekeitha Graves Chambers, William P. Graves and Jessie M.J. Graves.

Willie E. Graves, Geveva S. Graves and Iris L. Graves, pro se, defendants-appellees.

WALKER, Judge.

On 26 September 1986, William P. Graves and his wife, Jessie M.J. Graves, conveyed a tract of land to themselves and L. Weldon Graves d/b/a Spring Valley Convenient Homes, a partnership. This

conveyance contained a reservation of an easement across the subject tract of land expressly stated as follows:

Excepting and reserving unto the said Grantors, their heirs and assigns and successors in title, full and free right and liberty at all times hereafter, in common with all other persons who may hereafter have the like right, to use the following perpetual roadway easement at all times and for all purposes connected with the use and occupation of the said Grantors' other lands and houses adjoining the same.

On 6 January 1998, William P. and Jessie Graves, individually and as partners in Spring Valley Convenient Homes, conveyed their interest in the subject tract of land to L. Weldon Graves again reserving the easement with the exact same language. Also on that day, L. Weldon Graves conveyed the subject tract of land to the plaintiff reserving the easement with the exact same language.

In early June 1998, William P. and Jessie Graves employed Piedmont Plumbing Service and Repair to install water and sewer lines across the subject tract of land in the reserved easement. The completed water and sewer lines are within the easement except in two locations. In one location, they run for a distance of approximately 108 feet and in another location they run for approximately 75 feet outside the bounds of the easement.

On 24 June 1998, plaintiff filed a complaint alleging trespass and asking for an injunction and damages. Because the installation of the lines had already been completed at the time of the hearing, the trial court denied the request for a preliminary injunction. After a bench trial on 30 October 2000, the trial court concluded that the language of the easement was sufficiently broad so as to

allow for the installation of the water and sewer lines within the easement. The trial court also concluded that "the water and sewer lines installed on Plaintiff's property in the two locations outside the 1.41 acre easement poses no additional burden on the servient estate and are necessary for the use and occupancy of the home located on the 1.39 acre tract." The trial court denied further injunctive relief and plaintiff's claim for damages.

Plaintiff first contends that the language of the easement does not allow for the installation of the water and sewer lines within the bounds of the easement. Our Court has held that when there is a question as to the scope and extent of an express easement, the courts must first look to whether or not the language granting the easement is ambiguous. *Swaim v. Simpson*, 120 N.C. App. 863, 864, 463 S.E.2d 785, 786 (1995), *affirmed*, 343 N.C. 298, 469 S.E.2d 553 (1996). "[T]he scope of an express easement is controlled by the terms of the conveyance if the conveyance is precise as to this issue." *Id.* (quoting I. Patrick Hetrick & James B. McLaughlin, Jr., *Webster's Real Estate Law in North Carolina* § 15-21 (4th Ed. 1994)). However, if the language is ambiguous, "the scope may be determined by reference to the attendant circumstances, the situation of the parties, and by the acts of the parties in the use of the easement immediately following the grant." *Id.*

Here, in interpreting the language of the easement, the trial court concluded that the language of the easement does not specifically restrict defendants' use of the easement to ingress or

egress and is broad enough to allow for the installation of the water and sewer lines within the boundaries of the easement. We agree. The language of the easement provided "at all times and *for all purposes* connected with the use and occupation of the said Grantors' other lands and houses adjoining the same." (emphasis added). This language is sufficiently broad to extend beyond merely ingress and egress as contended by the plaintiff. The installation and use of the water and sewer lines are purposes "connected with the use and occupation" of the lands of William P. and Jessie Graves. Thus, the language of the easement allows for the installation and use of water and sewer lines within its bounds. The trial court did not err in denying injunctive relief or plaintiff's claim for damages with regard to the water and sewer lines running within the bounds of the easement.

Plaintiff also contends that the trial court erred in denying injunctive relief and plaintiff's claim for damages for the installation and continued existence of the water and sewer lines in the two locations outside the bounds of the easement. The trial court found that the encroachment onto plaintiff's property at the two locations was authorized by the defendants' necessity and the lack of a forecast of damages or increased burden to the plaintiff's property.

An easement by necessity generally gives the owner of the dominant tract a right of ingress and egress over the servient tract to provide access to landlocked tracts of land. See *Tedder v. Alford*, 128 N.C. App. 27, 33, 493 S.E.2d 487, 491 (1997), *disc.*

rev. denied, 348 N.C. 290, 501 S.E.2d 917 (1998). An easement by necessity can be implied when it is the grantor who is landlocked and the only access to his lands is across the lands of the grantee. *Cieszko v. Clark*, 92 N.C. App. 290, 296, 374 S.E.2d 456, 460 (1988). Here, to prove an easement by necessity, the plaintiff must show "(i) the claimed dominant tract and the claimed subservient tract were once held in common ownership that was severed by a conveyance and (ii) the necessity for the easement arose out of the conveyance." *Id.* (citing *Harris v. Greco*, 69 N.C. App. 739, 745, 318 S.E.2d 335, 339 (1984)).

Contrary to the order of the trial court, the evidence does not establish that defendants are entitled to an implied easement by necessity in the two locations outside the bounds of the easement. In the absence of evidence to the contrary, we decline to extend the doctrine of easement by necessity to the facts in this situation.

The trial court further found the following:

17. There is no forecast of evidence of any financial loss or damages that will actually be suffered by Plaintiff as a result of the installation of the said water and sewer lines which are the subject of this suit.

Since the plaintiff presented evidence of damages, it was error for the trial court to find there was no forecast of evidence of any damages at least to the extent of the encroachment in the two locations outside the bounds of the express easement. Plaintiff is entitled to at least nominal damages for the continuing trespass of the water and sewer lines installed outside the bounds of the

express easement. See *Smith v. VonCannon*, 283 N.C. 656, 660, 197 S.E.2d 524, 528 (1973); *Lee v. Stewart*, 218 N.C. 287, 288, 10 S.E.2d 804,805 (1940); *Taha v. Thompson*, 120 N.C. App. 697, 704, 463 S.E.2d 553, 557 (1995), *disc. rev. denied*, 344 N.C. 443, 476 S.E.2d 130 (1996).

Defendants Willie E. Graves, Geneva S. Graves and Iris L. Graves filed a brief *pro se* asserting that the conveyances on 6 January 1998 were defective. This issue is not properly before this Court. Because the trial court did not rule on this issue, we decline to address it on appeal.

Thus, we find no error in the trial court's determination that the language of the easement was sufficiently broad to permit the installation of the water and sewer lines within the bounds of the express easement. However, we remand the case to the trial court for a determination of damages due the plaintiff for the installation of the water and sewer lines in the two locations outside the bounds of the express easement.

Affirmed in part, reversed in part and remanded.

Judges McGEE and BIGGS concur.

Report per Rule 30(e).