

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA10-1177

NORTH CAROLINA COURT OF APPEALS

Filed: 1 March 2011

DANIEL H. HUTSON and wife,
ROBERTA J. HUTSON,
Plaintiffs,

v.

Union County
No. 09-CVS-00938

KEVIN R. THALACKER and wife,
DENISE A. THALACKER,
Defendants.

Appeal by defendants from judgment entered 25 June 2010 by Judge Tanya T. Wallace in Union County Superior Court. Heard in the Court of Appeals 10 February 2011.

K&L Gates LLP, by Roy H. Michaux, Jr., for plaintiff appellees.

Helms, Henderson & Associates, P.A., by H. Parks Helms, for defendant appellants.

McCULLOUGH, Judge.

Defendants appeal from summary judgment granted by the trial court permanently enjoining defendants from using the twenty-foot easement which is the subject of this action. We affirm.

I. Background

Prior to 10 September 1981, Ellen Garrison owned a 78.23-acre tract of land abutting Crane Road in Union County, North Carolina. By deed dated 10 September 1981, Ellen Garrison conveyed a five-

acre parcel of her land to her son, James Garrison, and his wife, together with a twenty-foot driveway easement across Ellen Garrison's property, extending from Crane Road to the southeast corner of the five-acre parcel. Also by deed dated 10 September 1981, Ellen Garrison conveyed to another son, William Garrison, and his wife a parcel located northwest of the five-acre James Garrison parcel, together with a right to use the twenty-foot driveway easement across Ellen Garrison's property. By a subsequent conveyance, Ellen Garrison also conveyed to William Garrison and his wife other property abutting Crane Road that adjoined the previously conveyed parcel.

On 30 December 1982, James Garrison and his wife; William Garrison and his wife; and Ellen Garrison created and recorded a Deed of Easement providing for a twenty-foot driveway easement extending from Crane Road to the southeast corner and through the James Garrison parcel, which was to be maintained by James and William Garrison equally. The Deed of Easement then included an additional twenty-foot easement extending from the James Garrison parcel through Ellen Garrison's other property to the William Garrison parcel. William Garrison was solely responsible for maintaining the additional portion of the easement. By its terms, the Deed of Easement provided unobstructed ingress, egress and regress to Crane Road from the parcels owned by James and William Garrison.

By deeds dated 30 June 1988, William Garrison and his wife conveyed their properties to plaintiffs Daniel H. Hutson and his

wife, Roberta A. Hutson ("plaintiffs"), "[t]ogether with all easement rights of ingress and egress" granted in William Garrison's deed from his mother and in the Deed of Easement.

On 11 August 1999, William J. Nolan, III and his wife (the "Nolans") acquired by deed a 52-acre parcel that included the five-acre parcel previously owned by James Garrison and his wife, subject to all easements that may cross or border the property. The Nolans subdivided the 52-acre parcel into residential building lots and recorded a subdivision plat map for Providence Downs Subdivision. The twenty-foot driveway easement to Crane Road extends through and along the rear of Lots 301-303 and 305-311 in Providence Downs Subdivision as shown on the recorded subdivision plat map. The recorded subdivision plat map also contains two notes:

Note: Lots 301-303 and 305-306 have a 20' permanent access easement across the rear for the benefit of Daniel and wife Roberta Hutson as recorded in Deed Book 350 page 683.

9. No direct vehicular access from common area or individual lots onto Crane or New Town Roads.

By deed dated 8 August 2005, defendants Kevin R. Thalacker and wife Denise A. Thalacker ("defendants") became the owners of Lot 302 of Providence Downs Subdivision. Defendants' deed provides that the conveyance is subject to any easements of record, including the twenty-foot driveway easement running across the rear of their property as depicted on the recorded subdivision plat map referenced in their deed. Defendants' deed contains no granting of rights in and to the twenty-foot easement directly accessing Crane

Road. However, defendants do have access to Crane Road from the front of their property via a subdivision street called Silver Charm Lane.

Defendants commenced construction of an addition at the rear of their property, and as of December 2008, defendants' contractor was using the twenty-foot driveway easement for construction vehicles to access the rear of Lot 302 directly from Crane Road. Defendants indicated through correspondence with plaintiffs their intention to continue to use the driveway easement, albeit minimally, to directly access the addition constructed on their property from Crane Road. Lot 301 of Providence Downs Subdivision and a common area adjoining Lot 301 separate defendants' Lot 302 from Crane Road. The record reveals no evidence that the adjoining landowners have ever granted defendants any easement rights over their property to access Crane Road.

On 3 March 2009, plaintiffs filed a complaint for declaratory judgment to determine that defendants do not have a legal right to use the driveway easement to access Crane Road from their Lot 302 and seeking injunctive relief. The parties filed cross-motions for summary judgment, and on 25 June 2010, the trial court awarded plaintiffs summary judgment permanently enjoining defendants from using the twenty-foot driveway easement for ingress and egress from Crane Road to their Lot 302 and further enjoining defendants from interfering or in any way impeding the use of the twenty-foot easement crossing their Lot 302 for ingress and egress to Crane

Road by plaintiffs. Defendants' motion for summary judgment was denied. Defendants appeal.

II. Rights in appurtenant easement

Defendants argue that the trial court erred in awarding plaintiffs summary judgment and contend that they are entitled to summary judgment with respect to plaintiffs' claims. "Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, show that there is no genuine issue of material fact and a party is entitled to judgment as a matter of law." *Woodring v. Swieter*, 180 N.C. App. 362, 369, 637 S.E.2d 269, 276 (2006). We review a trial court's grant or denial of summary judgment *de novo*. *Town of Oriental v. Henry*, ___ N.C. App. ___, ___, 678 S.E.2d 703, 707 (2009), *disc. review denied*, 363 N.C. 813, 693 S.E.2d 353 (2010).

Both plaintiffs and defendants in the present case agree that the twenty-foot driveway easement accessing Crane Road is appurtenant to plaintiffs' property. "An appurtenant easement is an easement created for the purpose of benefitting particular land. This easement attaches to, passes with and is an incident of ownership of the particular land." *Nelms v. Davis*, 179 N.C. App. 206, 209, 632 S.E.2d 823, 825-26 (2006) (internal quotation marks and citations omitted). As a general matter, use of an appurtenant easement is limited to the particular land for which the benefit of the easement was granted. *Z.A. Sneed's Sons, Inc. v. ZP No. 116, L.L.C.*, 190 N.C. App. 90, 98, 660 S.E.2d 204, 210 (2008). "An easement appurtenant 'adheres to the land, cannot exist separate

from it, and can be conveyed only by conveying the land involved; its use is limited to the land it was created to serve and cannot be extended to other land or other landowners without the consent of all owners of the easement.'" *Connolly v. Robertson*, 151 N.C. App. 613, 616-17, 567 S.E.2d 193, 196 (2002) (quoting *Frost v. Robinson*, 76 N.C. App. 399, 400, 333 S.E.2d 319, 320 (1985)).

In the present case, the twenty-foot driveway easement was created expressly by deed for the benefit of the William Garrison property, now owned by plaintiffs, and the five-acre James Garrison parcel, now part of the Providence Downs Subdivision. The subdivision plat map recorded by the Nolans, a direct assignee of the five-acre James Garrison parcel, restricts use of the easement by the subdivision lot owners. The subdivision plat map expressly notes there is no vehicular access from the common area or individual lots onto Crane Road. Therefore, defendants' Lot 302 is not a part of the properties intended to benefit from the use of the appurtenant driveway easement. As such, plaintiffs have a right to ensure that the appurtenant driveway easement is not extended to other lands or used by other landowners, such as defendants, without plaintiffs' consent.

Defendants contend that, although the twenty-foot driveway easement is appurtenant to plaintiffs' property, plaintiffs do not have the power or authority to deny defendants the right to access Crane Road by crossing over property belonging to third parties which is subject to plaintiffs' easement. While we agree with defendants' contention, such is not the case here.

"An easement is an interest in land and is generally created by deed." *Shingleton v. State*, 260 N.C. 451, 458, 133 S.E.2d 183, 189 (1963). Because easements are interests in land, an express easement must be in writing pursuant to the Statute of Frauds. *Singleton v. Haywood Elec. Membership Corp.*, 151 N.C. App. 197, 202, 565 S.E.2d 234, 238 (2002), *aff'd*, 357 N.C. 623, 588 S.E.2d 871 (2003). When an express easement is granted, the owner of the servient tenement retains fee title to the soil, subject to the burden the easement imposes. *Johnson v. Skyline Telephone Membership Corp.*, 89 N.C. App. 132, 134, 365 S.E.2d 164, 165 (1988). "Consequently, the fee holder may use the land or convey additional easements over it so long as the use or conveyance does not interfere with the original easement." *Id.* Accordingly, the owners of both Lot 301 and the common area of Providence Downs Subdivision may grant defendants an express easement to cross their properties to access Crane Road. If the adjoining property owners grant defendants such an express easement, defendants would have the right to use the newly granted driveway easement to access Crane Road from their Lot 302, as long as defendants do not diminish or interfere with plaintiffs' rights of ingress, egress and regress to and from Crane Road.

However, the record contains no evidence that the adjoining property owners have granted defendants any easement rights to cross their properties or that defendants have sought such rights from the adjoining property owners. As such, defendants have no easement rights to access Crane Road from their Lot 302. Thus, the

trial court's order granting summary judgment to plaintiffs and enjoining defendants' use of the easement should be affirmed.

III. Conclusion

Plaintiffs have an easement appurtenant in the driveway accessing Crane Road which was intended to benefit their land. Because defendants' property was not intended to benefit from the appurtenant driveway easement and because defendants have not been given any easement rights to cross the lands of the adjoining property owners to access Crane Road, defendants have no right to use the driveway easement to access Crane Road from their subdivision lot. The trial court's order granting summary judgment to plaintiffs and enjoining defendants' use of the easement is therefore affirmed.

Affirmed.

Judges GEER and STEPHENS concur.

Report per Rule 30(e).