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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-245

Filed: 15 December 2015

Davidson County, No. 13CVD1025

DONNA JEAN PHILLIPS (f/k/a BROWN), Plaintiff,

v.

ROBERT LEE HAYNES, JR. and LINDA G. HAYNES, Defendants.

Appeal by Defendants from order entered 13 August 2014 by Judge Mary F. Covington in Davidson County District Court. Heard in the Court of Appeals 10 September 2015.

*Jon W. Meyers for Plaintiff-Appellee.*

*Roberson Haworth & Reese, P.L.L.C., by Christopher C. Finan, for Defendants-Appellants.*

DILLON, Judge.

Robert Lee Haynes and Linda G. Haynes (“Defendants”) appeal from the trial court’s order permanently enjoining them from trespassing onto the property of their next door neighbor, Donna Jean Phillips (“Plaintiff”), and ordering them to pay Plaintiff nominal damages for her trespass and nuisance claims. We affirm.

I. Background

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Plaintiff owns a single family residence on a parcel of land (the “Plaintiff’s Property”). Defendants own a single family residence on a parcel of land (the “Defendants’ Property”) located next door to Plaintiff. There is a gravel driveway running between the parties’ residences. Plaintiff brought this action alleging, *inter alia*, trespass and private nuisance.

A. The Evidence At Trial

The evidence at the bench trial tended to show as follows: Over the course of many years, both Plaintiff and Defendants used the gravel driveway for ingress and egress without incident. Plaintiff testified, however, that in recent years Defendants began driving onto her yard, landscaping, and garden which were adjacent to the driveway and, at times, Defendants blocked the driveway with parked vehicles.

A surveyor testified regarding the location of the parties’ property lines and the location of the gravel driveway. Specifically, the surveyor testified that Plaintiff was conveyed the Plaintiff’s Property by her parents; that the Plaintiff’s Property and the Defendants’ Property were *not* adjacent, but, in fact, were separated by a narrow strip of land (the “Gap Parcel”); that the Gap Parcel was owned by Plaintiff’s parents at the time they conveyed the Plaintiff’s Property to Plaintiff but that the area comprising the Gap Parcel was not included in the description in the deed conveying the Plaintiff’s Property to Plaintiff; and that the gravel driveway was situated almost entirely within the boundaries of the Gap Parcel.

B. The Trial Court's Order

In its order, the trial court found that Plaintiff did not own the Gap Parcel, that Defendants had driven onto the Plaintiff's Property and had interfered with Plaintiff's enjoyment of her Property, e.g., by damaging her garden; and that Defendants had no legal right to use any portion of the Plaintiff's Property.

Based on these findings, the trial court concluded that Defendants had trespassed onto the Plaintiff's Property and that Defendant's interference with Plaintiff's enjoyment of her Property constituted a private nuisance.

Based on these conclusions, the trial court (1) ordered Defendants to pay Plaintiff nominal damages for her trespass and nuisance claims; (2) enjoined Defendants from widening the existing gravel driveway onto the Plaintiff's Property; and (3) enjoined Defendants from trespassing onto the Plaintiff's Property.

Defendants timely appealed.

II. Analysis

On appeal, Defendants make no argument regarding the decretal portion of the trial court's order, nor of the trial court's findings or conclusions described above which support the decretal portion of the trial court's order. Rather, they argue that *other* findings made by the trial court – specifically certain findings concerning Defendants' rights, or lack thereof, to use the Gap Parcel – should be stricken. Specifically, Defendants contend that the trial court lacked jurisdiction to adjudicate

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these rights, much less anyone's rights, in the Gap Parcel since the fee simple owners of the Gap Parcel were not made parties to the action. Further, they contend that the trial court erred in making these findings since they were unnecessary in the trial court's ultimate judgment, which concerns only the Plaintiff's Property.

Here, because the decretal portions of the trial court's order (the section which contains its ultimate judgment) only concern Defendants' actions as they relate to Plaintiff's Property, the only finding concerning the Gap Parcel which is relevant to the decretals is that *Plaintiff* did not own or have an easement rights to the Gap Parcel, a determination that neither party has challenged on appeal. Therefore, the trial court's order ultimately only provided redress for Defendants' actions constituting trespass and nuisance concerning the Plaintiff's Property. The trial court did not enjoin Defendants from using the Gap Parcel or award Plaintiff nominal damages for Defendants' use of the Gap Parcel.

We, therefore, agree with Defendants that the trial court's additional findings concerning the Gap Parcel, e.g., that Defendants had no easement rights in the Gap Parcel, were unnecessary and irrelevant to the trial court's ultimate judgment, which only redressed Defendants' actions on the Plaintiff's Property. However, since these additional findings are not essential, we hold that any error by the trial court in entering them is harmless. *See Widow's Fund of Sudan Temple v. Umphlett*, 246 N.C. 555, 559, 99 S.E.2d 791, 793 (1957) (holding that an error by the trial court concerning

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a finding immaterial to the trial court's decision in the order is harmless). Specifically, we hold that these additional findings have no collateral estoppel effect on Defendants' ability to assert their rights concerning the Gap Parcel, if any, in a future action. *King v. Grindstaff*, 284 N.C. 348, 358, 200 S.E.2d 799, 806 (1973) (holding that a party is not barred by collateral estoppel from re-litigating any specific issue which *was not necessary and essential* to the disposition of the prior action). Accordingly, the trial court's order is affirmed.

AFFIRMED.

Judge DIETZ concurs and Judge HUNTER, JR. concurs in result only.

Report per Rule 30(e).