IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-755

Filed: 6 August 2019

Buncombe County, No. 17 CVD 559

VICTOR C. GARLOCK, CTA DBN Administrator of the Estate for, RALEIGH BRISCO ROLAND, Plaintiff,

v.

ERIC DALE ROLAND, Defendant.

Appeal by defendant from judgment entered 26 April 2018 by Judge Patricia K. Young in Buncombe County District Court. Heard in the Court of Appeals 12 February 2019.

Lloyd Law Office, by James Michael Lloyd, for plaintiff-appellee.

Biggers & Associates, PLLC, by William T. Biggers and Jennifer M. Turner, for defendant-appellant.

BRYANT, Judge.

Where plaintiff administrator acted within the scope of statutory authority to determine title to real property listed within the inventory of the decedent's estate, plaintiff had standing to bring an action to quiet title. Where a quit claim deed purporting to convey decedent's real property prior to the time of death contains a

street address and a property tax parcel identification/account number which may provide extrinsic evidence by which the deed's latent ambiguity can be resolved, we vacate the trial court's order granting summary judgment in favor of plaintiff and remand the matter to address the latent ambiguity in the quit claim deed.

On 3 February 2011, plaintiff Victor C. Garlock, Administrator of the Estate for Raleigh Brisco Roland, filed a verified complaint in Buncombe County District Court against defendant Eric Dale Roland in an action to quiet title and set aside a deed as void. Contemporaneous with the complaint, plaintiff filed a notice of lis pendens in the District Court to quiet title to the real property described in the 27 April 1970 warranty deed.

In the complaint, plaintiff asserts that Raleigh Brisco Roland and Betty Ann Roland acquired real property described in a warranty deed recorded on 27 April 1970 in Deed Book 1017 at page 399 in the Office of the Register of Deeds for Buncombe County. On 10 April 2007, defendant recorded a quit claim deed in the Buncombe County Register of Deeds wherein Grantor Raleigh B. Roland "hereby quitclaims and transfers all right, title, and interest" in real estate located at 153 Gashes Creek Rd. in Asheville. Betty Roland predeceased her husband, and on 29 January 2013, Raleigh Roland died. The heirs entitled to share in the estate of Raleigh Roland were his sons, Daniel Roland and defendant. On 6 February 2015, defendant verified that property located at 153 Gashes Creek Rd. was a part of the estate of Raleigh Roland.

On 23 May 2016, Victor Garlock was appointed by the Court as administrator for the estate of Raleigh Roland.

In the complaint, plaintiff also asserts that the quit claim deed filed by defendant on 10 April 2007 fails "to refer to something extrinsic by which the land may be identified with certainty." Therefore, "[t]he quit claim deed . . . is void and d[oes] not act to divest RALEIGH BRISCO ROLAND of title to that real property described in that warranty deed recorded on April 27, 1970 . . . ." Plaintiff requested that the court determine that the quit claim deed is void and that plaintiff had marketable record title.

On 28 June 2017, plaintiff filed a request for entry of default. The same day, entry of default was entered against defendant pursuant to N.C. Gen. Stat. § 1A-1, Rule 55(a), for failure to answer or make any responsive pleading to plaintiff's complaint following the service of an Alias & Pluries Summons on 21 April 2017.

On 12 February 2018, plaintiff moved for summary judgment. The matter was heard in Buncombe County District Court before the Honorable Patricia K. Young, Judge presiding. On 26 April 2018, Judge Young entered an order granting summary judgment in favor of plaintiff. Defendant appeals.

On appeal, defendant raises eight issues: did the trial court err by (I) failing to dismiss the action for lack of jurisdiction; (II) finding that Raleigh Roland was the

valid title holder of the real property described in the 27 April 1970 warranty deed (hereinafter "warranty deed"); (III) finding that the 10 April 2007 quit claim deed (hereinafter "quit claim deed") failed to contain a description of land sufficient to identify it; (IV) finding that plaintiff had been vested with an estate in the real property described in the warranty deed; (V) finding that plaintiff is the proper party to bring this action; (VI) finding that nothing appears in the public record to divest Raleigh Roland of title to the property described in the warranty deed; (VII) concluding that the quit claim deed did not act to divest Raleigh Roland of title to the real property described in the warranty deed; and (VIII) concluding that the estate of Raleigh Roland, through its administrator, has marketable record title to the real property described in the warranty deed. However, of the eight issues raised by defendant, only two are supported with argument: (III) whether a street address is a legally sufficient description of real property to support a transfer of title; and (V) whether plaintiff is the proper party to bring this action and had legal authority over the real property. All other arguments are deemed abandoned. *See* N.C. R. App. P. 28(b)(6) (2017) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.").

We first address defendant's argument concerning jurisdiction.

Standing

Defendant argues plaintiff, the estate administrator, had no legal authority over the real property located at 153 Gashes Creek except as provided in General Statutes, sections 28A-13-3 ("Powers of a personal representative or fiduciary") and 28A-15-2 ("Title and possession of property").[1] Defendant contends that because plaintiff administrator failed to take possession and control of the real property pursuant to the procedure set forth in section 28A-13-3, plaintiff administrator lacked authority to divest legal title from the devisees of Raleigh Roland's will. Defendant contends the trial court erred by concluding that the Estate of Raleigh Roland, by and through Administrator Plaintiff, had marketable record title to the real property described in the warranty deed. We disagree.

"As a jurisdictional requirement, standing relates not to the power of the court but to the right of the party to have the court adjudicate a particular dispute." *Cherry v. Wiesner*, 245 N.C. App. 339, 346, 781 S.E.2d 871, 876 (2016).

In support of his argument that plaintiff lacked authority to institute this action, defendant cites General Statutes, section 28A-13-3.

> The personal representative has the power to take possession, custody or control of the real property of the

[1] Pursuant to General Statutes, section 28A-15-2,

> [t]he title to real property of a decedent is vested in the decedent's heirs as of the time of the decedent's death; but the title to real property of a decedent devised under a valid probated will becomes vested in the devisees and shall relate back to the decedent's death, subject to the provisions of G.S. 31-39.

N.C. Gen. Stat. § 28A-15-2(b) (2017).

> decedent if the personal representative determines such possession, custody or control is in the best interest of the administration of the estate . . . . Prior to exercising such power over real property the procedure as set out in subsection G.S. 28A-13-3(c) shall be followed . . . . If the personal representative determines that such possession, custody or control is not in the best interest of the administration of the estate such property may be left with or surrendered to the heir or devisee presumptively entitled thereto.

N.C. Gen. Stat. § 28A-13-3(a)(1) (2017).

Contrary to defendant's assertion, the record indicates that plaintiff's action is to quiet title to real property that was listed in the inventory for decedent Raleigh Roland's estate. This is within the statutory authority of an administrator.

"The public administrator shall have, in respect to the several estates in the public administrator's hands, all the rights and powers and shall be subject to all the duties and liabilities of other personal representatives." *Id.* § 28A-12-5(a).

> (a) . . . [A] personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the . . . preservation . . . of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:
>
> . . . .
>
> (24) To maintain any appropriate action or proceeding to recover possession of any property of the decedent, or to determine the title thereto . . . .

Id. § 28A-13-3(a)(24).

We hold that plaintiff acted within the scope of his statutory authority as an administrator in bringing an action to quiet title to real property listed in the inventory of Raleigh Roland's estate. Accordingly, we overrule defendant's argument.

Description of Real Property

Defendant argues that listing a street address as a description of real property is a legally sufficient description to support the conveyance of marketable title. Defendant contends that the trial court erred by concluding the description of real property by the street address 153 Gashes Creek Rd, Asheville, in a quit claim deed was not a legally sufficient description, rendering the quit claim deed void.

Standard of Review

Pursuant to our General Statutes, "judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." *Id.* § 1A-1, Rule 56(c) ("Summary judgment").

> The standard of review on appeal from summary judgment is whether there is any genuine issue of material fact and whether the moving party is entitled to a judgment as a matter of law. A trial court's decision to grant a summary judgment motion is reviewed on a *de novo* basis.

Austin Maint. & Constr., Inc. v. Crowder Constr. Co., 224 N.C. App. 401, 408, 742 S.E.2d 535, 541 (2012) (citations omitted).

Analysis

> It is . . . a general rule that the deed must be upheld, if possible, and the terms and phraseology of description will be interpreted with that view, and to that end, if this can reasonably be done. The courts will effectuate the lawful purpose of deeds and other instruments, if this can be done consistently with the principles and rules of law applicable.

Self Help Corp. v. Brinkley, 215 N.C. 615, 619, 2 S.E.2d 889, 892 (1939) (citation omitted).

> A deed, to be valid on its face, requires not only a grantor and a grantee, but a thing granted. If the description is too indefinite to convey anything, then the paper *on its face* lacks one of the essential elements of a conveyance. A deed cannot be color of title to land in general, but must attach to some particular tract.

Barker v. R. R., 125 N.C. 596, 598 (125 N.C. 422, 423), 34 S.E. 701, 702 (1899). "To constitute color of title a deed must contain a description identifying the land or referring to something that will identify it with certainty." *McDaris v. "T" Corp.*, 265 N.C. 298, 300, 144 S.E.2d 59, 61 (1965) (citing *Carrow v. Davis*, 248 N.C. 740, 105 S.E.2d 60; *Powell v. Mills*, 237 N.C. 582, 75 S.E.2d 759). "A deed purporting to convey an interest in land is void unless it contains a description of the land sufficient to identify it or refers to something extrinsic by which the land may be identified with certainty." *Overton v. Boyce*, 289 N.C. 291, 293, 221 S.E.2d 347, 349 (1976) (citing

State v. Brooks, 279 N.C. 45, 181 S.E.2d 553; *Carlton v. Anderson*, 276 N.C. 564, 173 S.E.2d 783; *Lane v. Coe*, 262 N.C. 8, 136 S.E.2d 269; *Deans v. Deans*, 241 N.C. 1, 84 S.E.2d 321; *Searcy v. Logan*, 226 N.C. 562, 39 S.E.2d 593; Strong, N.C. Index 2d, Boundaries, § 10).

> Where property either real or personal has a known and commonly used and recognized name, the use of this name to describe and identify the property sold is an adequate description, that is, it is sufficient to permit the introduction of evidence to show that the property claimed is in fact the property named.

Light Co. v. Waters, 260 N.C. 667, 669, 133 S.E.2d 450, 452 (1963); *see also Stewart v. Cary*, 220 N.C. 214, 225, 17 S.E.2d 29, 35–36 (1941) ("Designating land by the name it is called is a sufficient description to enable its location to be determined by parol proof." (citing *Euliss v. McAdams*, 108 N.C. 507, 13 S.E. 162; *Perry v. Scott*, 109 N.C. 374, 14 S.E. 294; *Hinton v. Moore*, 139 N.C. 44, 51 S.E. 787; *Bateman v. Hopkins*, 157 N.C. 470, 73 S.E. 133; *Gaylord v. McCoy*, 158 N.C. 325, 74 S.E. 321; *Norton v. Smith*, 179 N.C. 553, 103 S.E. 14)); *Maurice v. Motel Corp.*, 38 N.C. App. 588, 591, 248 S.E.2d 430, 432 (1978).

> Descriptions such as these have been held to be sufficiently definite to admit of parol proof to identify the land: "My house and lot in the town of Jefferson, N. C."—*Carson v. Ray*, 52 N. C. 609 [1860]; "Her house and lot north of Kinston"—*Phillips v. Hooker*, 62 N. C. 193 [1867]; "My farm"—*Sessoms v. Bazemore*, 180 N. C. 102, 104 S. E. 70 [1920]. On the other hand, "One house and lot in the town of Hillsborough" is held insufficient. *Murdock v. Anderson*, [57 N.C. 77 1858].

Self Help Corp., 215 N.C. at 620, 2 S.E.2d at 893.

> [However,] [w]hen it is apparent upon the face of the deed, itself, that there is uncertainty as to the land intended to be conveyed and the deed, itself, refers to nothing extrinsic by which such uncertainty can be resolved, the description is said to be patently ambiguous. *Carlton v. Anderson*, [276 N.C. 564, 173 S.E.2d 783]; Strong, N.C. Index 2d, Boundaries, § 10. As Justice Barnhill, later Chief Justice, speaking for the Court, said in *Thompson v. Umberger*, 221 N.C. 178, 19 S.E.2d 484, "[A] patent ambiguity is such an uncertainty appearing on the face of the instrument that the Court, reading the language in the light of all the facts and circumstances *referred to in the instrument*, is unable to derive *therefrom* the intention of the parties as to what land was to be conveyed." (Emphasis added.) Parol evidence may not be introduced to remove a patent ambiguity since to do so would not be a use of such evidence to fit the description to the land but a use of such evidence to create a description by adding to the words of the instrument.

Overton, 289 N.C. at 294, 221 S.E.2d at 349 (citations omitted).

> [W]hen the terms used in the deed leave it uncertain what property is intended to be embraced in it [but the deed, itself, refers to extrinsic evidence by which such uncertainty can be resolved], parol evidence is admissible to fit the description to the land. . . . The deed itself must point to the source from which evidence *aliunde* to make the description complete is to be sought. Thompson on Real Property, Vol. 4, Sec. 3088, *et seq*. *Murdock v. Anderson*, 57 N. C., 77; *Capps v. Holt*, 58 N. C. 153; *Robeson v. Lewis*, 64 N. C. 734; *Edwards v. Bowden*, [99 N. C., 80, 5 S. E., 283]; *Blow v. Vaughan*, 105 N. C., 198, 10 S. E. 891; *Cathey v. Lumber Co.*, [151 N. C., 592, 66 S. E., 580]; *Alston v. Savage*, 173 N. C. 213, 91 S. E., 842; *Green v. Harshaw*, 187 N. C., 213, 121 S. E. 456.

Self Help Corp., 215 N.C. at 620, 2 S.E.2d at 892–93; *see also Cherry v. Warehouse Co.*, 237 N.C. 362, 367, 75 S.E.2d 124, 128 (1953); *Linder v. Horne*, 237 N.C. 129, 134–35, 74 S.E.2d 227, 231 (1953); *Stewart*, 220 N.C. at 224–25, 17 S.E.2d at 35.

In support of his argument, defendant cites *Bank of Am., N.A. v. Charlotte Prop. Investments, LLC*, No. COA14-42, 2014 WL 2795915, at *3 (N.C. Ct. App. Jun. 17, 2014) (unpublished), an appeal of a summary judgment order in an action to quiet title. "The physical address for the property was designated in the Warranty Deed as 2816 Oasis Lane, Charlotte, North Carolina 28214, the brief description for the real estate index listing was 'Lot 39 of Belmeade Green,' and the parcel ID number was '053–074–33.' " *Id.* at *1. This Court reasoned as follows:

> [T]he record indicates that the Deed of Trust contained the correct physical address and parcel ID number, thereby referring to extrinsic sources from which the land could be identified with certainty. . . . For this reason, we conclude the Deed of Trust, by referring to the correct physical address and parcel ID number, was sufficient to identify the parcel with certainty . . . .

Id. at *3.

Here, the record on appeal contains the quit claim deed filed with the Buncombe County Register of Deeds. The quit claim deed contains the following information:

> *Property Tax Parcel/Account Number: 5294600*
>
> **QUITCLAIM DEED**

> This Quitclaim Deed is made on Apr. 16, 2007, between Raleigh B. Roland, Grantor of 153 Gashes Ck. Rd. City of Asheville, State of North Carolina, and Eric D. Roland, Grantee of 153 Gashes Ck. Rd., City of Asheville, State of North Carolina.
>
> For valuable consideration, the Grantor hereby quitclaims and transfers all right, title, and interest held by the Grantor to the following described real estate and improvements to the Grantee, and his or her heirs and assigns, to have and hold forever, located at 153 Gashes Creek Rd., City of Asheville, State of North Carolina.

(emphasis added).

In its 26 April 2018 summary judgment order, the trial court made the following findings of fact:

> 14. On or about April 10, 2007, Defendant ERIC DALE ROLAND caused to be created and recorded that Quit Claim Deed recorded in Consolidated Book 4392 at page 538 in the Office of the Register of Deeds for Buncombe County, North Carolina.
>
> . . . .
>
> 16. The Quit Claim deed referenced . . . fails to contain a description of the land sufficient to identify it or to refer to something extrinsic by which the land may be identified with certainty

But we note that the quit claim deed in the record describes the land by a street address and a property tax parcel/account number. As defendant acknowledges on appeal, our Courts have never held that a street address, standing alone, is a description of real property legally sufficient to support the conveyance of record

marketable title, and we do not do so now. We hold the face of the deed leaves uncertain what tract of real property was intended to be embraced by the quit claim deed but refers to extrinsic evidence by which such uncertainty may be resolved. As such, parol evidence is admissible to fit the description to the land. *See Self Help Corp.*, 215 N.C. at 620, 2 S.E.2d at 892 ("[W]hen the terms used in the deed leave it uncertain what property is intended to be embraced in it, parol evidence is admissible to fit the description to the land. . . . The deed itself must point to the source from which evidence *aliunde* to make the description complete is to be sought." (citations omitted)). Accordingly, we vacate the trial court's 26 April 2018 summary judgment order and remand this matter to address what appears to be a latent ambiguity in the deed.

VACATED AND REMANDED.

Judges DIETZ and HAMPSON concur.

Report per Rule 30(e).