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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-515

Filed 5 March 2024

Carteret County, No. 22 CVS 504

C.J. CHADWICK & ASSOCIATES, LLC, Plaintiff,

v.

JAMES DANIEL CHADWICK, SR. d/b/a CHADWICK BOATWORKS, HAZEL G. BEACHAM and husband, EDWARD FORREST BEACHAM, JR., JAMES W. GILLIKIN, and JOHN DOE BOATOWNERS, Defendants.

Appeal by defendants from orders entered 19 December 2022 and 22 March 2023 by Judges Thomas Wilson and R. Kent Harrell, respectively, in Superior Court, Carteret County. Heard in the Court of Appeals 7 February 2024.

*Chestnutt & Clemmons, P.A., by Gary H. Clemmons, and The Pike Law Firm, PLLC, by Robert B. Pike, II, for plaintiff-appellee.*

*Law Office of John W. King, Jr. PLLC, by John W. Moss and John W. King Jr., for defendants-appellants.*

ARROWOOD, Judge.

James Daniel Chadwick Sr. d/b/a Chadwick Boatworks, Hazel G. Beacham and husband Edward Forrest Beacham, Jr., James W. Gillikin, and John Doe Boatowners (“defendants”) appeal from orders granting C.J. Chadwick & Associates, LLC’s

(“plaintiff”) motion for a preliminary injunction and denying defendants’ motion to reconsider the earlier motion. For the following reasons, we affirm the trial court’s order granting the preliminary injunction.

I. Background

In April 2016, plaintiff became the owner by deed of the property located at 184 Fulford Drive on Harker’s Island, North Carolina (“subject property”).<sup>1</sup> Defendant Hazel Beacham (“defendant Beacham”) and defendant James Gillikin (“defendant Gillikin”) own three separate parcels that adjoin the subject property (“adjoining property 1, adjoining property 2, and adjoining property 3”).

The subject property shares borders with adjoining property 1 to the west, adjoining property 2 to the north, and adjoining property 3 to the east. All four properties sit south of a canal running northwest into West Mouth Bay. One way of accessing adjoining property 2 is through the subject property via Fulford Drive, which can be accessed from the subject property’s southern border.

Before plaintiff and defendants owned the properties, Wallace Garner (“Garner”) owned all the land that is the subject of this action. In 1969, Garner conveyed a portion of the land—specifically, adjoining property 2—to William and Beatrice Joseph. In addition, Garner granted them an express easement. The easement provided the Josephs—the then-owners of adjoining property 2—access to

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<sup>1</sup> Plaintiff claimed a clean chain of title to the subject property based on the chain of title deeds, and defendants stipulated to such during the 31 October 2022 hearing.

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the subject property via Fulford Drive. The easement’s language provided for “a perpetual easement” that runs “across” the subject property on Harker’s Island and was granted to its grantees and their “successors in title forever[.]” The easement is limited to adjoining property 2; therefore, defendants do not have easement rights to access the subject property from adjoining properties 1 or 3. Defendants thus presently have an easement that runs along Fulford Drive from the southern end of the subject property to the northern end with access to adjoining property 2.

Vance Gillikin obtained ownership interests in adjoining property 2 in 1972,<sup>2</sup> adjoining property 3 in 1985, and adjoining property 1 in 1989.<sup>3</sup> Defendants Beacham and Gillikin inherited their ownership interests in adjoining properties 1, 2, and 3 when their father, Vance Gillikin, passed away in 2019. For years, defendants—and previously Vance Gillikin—have operated boat building and repair businesses on adjoining properties 1, 2, and 3. They have also, at times, leased the properties to others to operate boat businesses.<sup>4</sup> However, boats were not placed on the properties until 1981.

According to defendant Gillikin, “the [subject property] has been claimed by my father adversely since 1989 and continues to be claimed by [defendant Beacham]

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<sup>2</sup> Vance Gillikin and Mervin Rose purchased adjoining property 2 from the Josephs in 1972. Vance Gillikin purchased Mervin Rose’s ownership interest in adjoining property 2 in 1981.

<sup>3</sup> Vance Gillikin purchased adjoining properties 1 and 3 from Garner.

<sup>4</sup> Defendant James Chadwick (“Defendant Chadwick”) operates a boat business on the properties as a tenant. Defendant Chadwick’s tenancy began in 2016.

and myself having inherited my father's rights to the land." For boat business purposes, defendants have crossed the subject property when they pulled or launched boats from the canal from adjoining property 3. Defendants have also stored boats on the subject property while they "are waiting for repair." Further, around 1989, defendants allege Vance Gillikin erected a fence across the southern border of adjoining property 1, the subject property, and adjoining property 3, "which blocked off access by others to and from the boat yard and the [subject property]."

William Dupree ("Dupree"), who operated a boatbuilding and repair business on adjoining properties 1, 2, and 3 from the late 1990s until 2016,<sup>5</sup> testified via affidavit that he remembered the fence existing during the late 1990s but "that the gate was usually kept open during the day and usually closed at night for security purposes."

Dupree's affidavit also states that during the late 1990s, the subject property

was then-owned by Wallace Garner, and was not owned by Vance or [defendant] Gillikin. I came to know and understand this because *Wallace Garner was frequently on the Subject Property, supervising activities on the Subject Property, and . . . exerting his ownership on the Subject Property by directing Vance and [defendant] Gillikin to clean up the Subject Property and keep it clear for his use.* I observed that Vance and [defendant] Gillikin complied with his directions by cleaning up the Subject Property. (emphasis added).

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<sup>5</sup> Dupree's affidavit states that he never worked for defendants as an employee, but he did perform "jointly on several boat projects with [defendant] Gillikin."

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Dupree's affidavit further states that during the same period, he never observed Vance or defendant Gillikin (1) deny Garner access to the subject property, (2) state or represent to anyone that they owned the subject property, (3) post any signage designating the subject property as theirs, or (4) maintain the subject property, except to clean it up as demanded by Garner.

After plaintiff acquired title to the subject property in April 2016, plaintiff observed several boats and boating equipment associated with the three adjoining properties placed on the subject property. According to plaintiff, during a meeting with Vance Gillikin around June 2016, plaintiff told Vance Gillikin that boats and equipment associated with businesses located on the adjoining properties were encroaching on the subject property. Plaintiff also stated that there were "no immediate plans or need to use the Subject Property, and granted [Vance Gillikin] permission to continue—for the near future and until [plaintiff] advised him otherwise—to store boats, boat-related accessories, and boatyard equipment temporarily on the Subject Property."

According to plaintiff's affidavit, plaintiff needed to access and make use of the subject property around late 2019 and early 2020. Further, plaintiff received a Coastal Area Management Act ("CAMA") permit to dredge the harbor next to the subject property but alleged that the dredging could not be performed because of defendants' encroachments. Similarly, after obtaining a certificate of exemption to replace a portion of the existing bulkhead on the subject property in June 2021,

plaintiff's affidavit alleged the replacement work could not be performed because the encroachments "tied up to the bulkhead . . . are blocking access."<sup>6</sup>

Plaintiff alleged learning around the same time that defendant Chadwick "was performing (and/or was allowing others to perform) highly dangerous" work on boats located on the subject property, which "exposed [p]laintiff . . . to potential legal and environmental liability."<sup>7</sup> Specifically, plaintiff alleged "observ[ing] instances where boat bottom blasting/painting was being conducted on windy days and/or without the use of tarpaulins or other protective measures, which allow[ed] toxins to contaminate the grounds and the surrounding waters of the Subject Property."

Around late 2019 and early 2020, plaintiff orally communicated to defendants that they needed to remove the encroachments on the subject property and that their permission to use the property was revoked. In October 2020, plaintiff's counsel sent defendant Beacham a letter stating its intention to dredge the harbor pursuant to the CAMA permit but that the encroaching boats were preventing the dredging work. The demand letter alleged that if the boats prevent plaintiff from exercising the rights under the permit, plaintiff would "incur large damages" and that the boats were "creat[ing] environmental issues." In March 2021, Plaintiff's counsel also sent letters

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<sup>6</sup> Plaintiff's affidavit alleged that the current condition of the bulkhead (1) devalues the subject property and (2) poses an extreme safety hazard—e.g., if "a portion of the bulkhead washed away and with broken boards having exposed nails[.]"

<sup>7</sup> According to plaintiff, the dangerous work included "boat bottom blasting/painting, hull construction/repair, and engine servicing/repair[.]"

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to the owners of the boats being stored on the subject property—also defendants in the case—demanding that the boats be removed. The boats, equipment, and debris associated with defendants’ businesses remain on the subject property, and defendants continue to use the subject property for business operations.

Plaintiff filed a complaint against defendants on 9 June 2022, alleging trespass to real property and seeking a judicial declaration to quiet title. On 15 August 2022, defendants filed their answer and counterclaims, alleging adverse possession and, in the alternative, easement rights. Plaintiff filed a motion for preliminary injunction on 19 August 2022, asking that the trial court to (1) enjoin defendants from trespassing and continuing to trespass on the subject property, (2) remove all encroachments on the subject property, and (3) order defendants “not to place any future boats,” boating equipment, or other personal property items on the subject property.

The motion was heard in Superior Court, Carteret County on 31 October 2022, and the trial court granted the motion by order on 19 December 2022. The order states in relevant part:

6. The Plaintiff has shown a likelihood of success on the merits of its claims, and in particular, its claims for ongoing or continuing trespass by Defendants, in that: (a) Plaintiff is the record owner of and holds good and marketable title . . . to the Subject Property; (b) Defendants have no ownership interest in the Subject Property by adverse possession or otherwise; (c) except for the express easement . . . which . . . is appurtenant to and

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benefits only [adjoining property 2] and grants only to the fee simple owner of [adjoining property 2] a right of access (ingress/egress) from the northern terminus of Fulford Drive across the Subject Property to [adjoining property 2], . . . and (d) the Encroachments existing on and the Boatwork performed on the Subject Property are unauthorized and have interfered with the Plaintiff's lawful ownership and possession of the Subject Property and constitute trespasses and continuing trespasses by the Defendants.

7. Further, as to likelihood of success on the merits, the Defendants have failed to overcome the presumption of permissive use, and the Plaintiff's testimonial and documentary evidence demonstrates, that any prior periods of use of the Subject Property, by the Defendants (or their predecessors-in-title) to store the Encroachments or to perform the Boatwork have been by express consent or permission of the Plaintiff (or its predecessors-in-title), which permission was rescinded and revoked by Plaintiff in or around late 2019/early 2020.
8. The Plaintiff has shown that it is likely to sustain immediate and irreparable harm and injury unless an injunction is issued and, in any event, that issuance of an injunction is necessary for the protection of the Plaintiff's rights during the pendency of this litigation, in that: (a) the Defendants' trespasses . . . expose the Plaintiff to significant risk of liability for personal injury/death occurring on the Subject Property; and (b) the Defendants' trespasses . . . not only have caused (or pose an immediate threat to cause) irreparable environmental harm and damage to the Subject Property, but expose the Plaintiff to significant legal liability for violations of applicable federal and state environmental laws and regulations.
9. Further, as to irreparable harm and protection of the



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Plaintiff's rights during this litigation, the Defendants' trespasses . . . have prevented the Plaintiff . . . from making reasonable and beneficial use of the Subject Property, including but not limited to (a) repairing/replacing damaged sections of the bulk heading on the Subject Property for which the Plaintiff received a CAMA "Certification of Exemption" and which, in its current state of disrepair, poses a significant safety hazard and risk of potential liability to the Plaintiff for personal injury/death occurring on the Subject Property; and (b) dredging the harbor surrounding the Subject Property for which the Plaintiff has obtained a Major CAMA Permit. . . .

10. The Court has balanced the relative harms to the Plaintiff and the Defendants of the requested preliminary injunctive relief, and finds that the immediate and irreparable harm to the Plaintiff if the preliminary injunction is not issued outweighs the asserted hardships alleged by the Defendants if the preliminary injunction is issued.

Defendants filed a motion to reconsider, or in the alternative, a motion to stay the order the following day. On 17 January 2023, defendants filed a notice of appeal from the 19 December 2022 order. Defendants' motion to reconsider was heard on 20 March 2023 and denied by the trial court on 22 March 2023.

On 24 March 2023, defendants filed a notice of appeal and a petition for temporary stay and writ of supersedeas, requesting this Court issue a stay from the 19 December 2022 order granting plaintiff the preliminary injunction. The stay and later a supersedeas was granted pending disposition of appeal. Defendants' motion for consolidation of appeals was granted on 6 June 2023.

II. Discussion

On appeal, defendants contend that the trial court’s preliminary injunction order affects a substantial right and that the trial court erred in granting the injunction because plaintiff failed to (1) show a likelihood of success on the merits and (2) prove that it would sustain irreparable harm absent the injunction. We disagree. Even assuming *arguendo* that the trial court’s order deprives defendants of a substantial right that they would lose if the order were not reviewed before final judgment, defendants’ contentions fail because there is ample competent evidence to support the trial court’s order.

A. Standard of Review

Preliminary injunctions are interlocutory in nature; consequently, such order cannot be appealed unless it “deprives the appellant of a substantial right which he would lose absent a review prior to final determination.” *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 400 (1983). The threshold question is therefore “‘whether the appellant has been deprived of any substantial right which might be lost should the order escape appellate review before final judgment.’” *DaimlerChrysler Corp. v. Kirkhart*, 148 N.C. App. 572, 577 (2002) (quoting *State v. Fayetteville St. Christian School*, 299 N.C. 351, 358 (1980)).

“To receive a preliminary injunction, plaintiff must show a likelihood of success on the merits and some type of irreparable harm.” *Wrightsville Winds Townhouses Homeowners’ Ass’n v. Miller*, 100 N.C. App. 531, 535 (1990) (citation omitted).

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However, to show irreparable injury, it is not essential that the injury be “beyond the possibility of repair or possible compensation in damages”; rather, the injury needs to be “of such continuous and frequent recurrence that no reasonable redress can be had in a court of law.” *A.E.P. Indus., Inc.*, 308 N.C. at 407 (cleaned up).

On appeal, this Court is “not bound by the findings or ruling of the court below in injunction cases, but may review the evidence on appeal. However, there is a presumption that the judgment entered below is correct, and the burden is upon appellant to assign and show error.” *State ex rel. Edmisten v. Challenge, Inc.*, 54 N.C. App. 513, 516 (1981) (citations omitted). Therefore, the lower court’s decision “to issue or deny an injunction will be upheld if there is ample competent evidence to support the decision, even though the evidence may be conflicting and the appellate court could substitute its own findings.” *Wrightsville Winds Townhouses Homeowners’ Ass’n*, 100 N.C. App. at 535 (citation omitted).

B. Likelihood of Success on the Merits

Defendants contend that plaintiff failed to show a likelihood of success on the merits because plaintiff could not overcome defendants’ claim of adverse possession. Specifically, defendant contends “[t]he trial court had no evidence of express permission before 2016 and erred by making such a finding.”

“Adverse possession ‘is not favored in the law.’” *Hinman v. Cornett*, 290 N.C. App. 30, 39 (2023) (quoting *Potts v. Burnette*, 301 N.C. 663, 667 (1981)). “The possessor’s use of the land, therefore, ‘is presumed to be permissive.’” *Id.* (quoting

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*Potts*, 301 N.C. at 666). To acquire title to land by adverse possession in North Carolina, “the claimant must show actual, open, hostile, exclusive, and continuous possession of the land claimed for the prescriptive period under known and visible lines and boundaries.” *Jones v. Miles*, 189 N.C. App. 289, 292 (2008) (cleaned up). The prescriptive period for a person claiming adverse possession without color of title is twenty years. N.C.G.S. § 1-40 (2023).

The hostility requirement mandates that the use of the land be “exercised under such circumstances as to manifest and give notice that the use is being made under claim of right.” *Id.* (cleaned up). Such requirement, however, “is not met if the possessor’s use of the disputed land is permissive.” *Id.* (citing *New Covenant Worship Ctr. v. Wright*, 166 N.C. App. 96, 103 (2004) (holding that the hostility requirement was not met because the claimant had acknowledged the continuing rights of the another party with regards to the disputed property “by asking for and receiving consent from” that party to remove items from the property)); *see also Lackey v. City of Burlington*, 287 N.C. App. 151, 159 (2022) (“Plaintiffs’ acknowledgement of the other lot owners’ continuing rights in the property defeats any hostility of Plaintiffs’ possession.”).

Here, ample competent evidence supports that defendants’ use of the subject

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property was permissive and thus not hostile for the required prescriptive period.<sup>8</sup> Dupree, who operated his boat business on defendants' adjoining properties, states Garner directed Vance Gillikin and defendant Gillikin during the late 1990s "to clean up the Subject Property and keep it clear for his use." Dupree's affidavit further states that he "observed Vance and [defendant] Gillikin acknowledging [ ] Garner's ownership" of the subject property on more than one occasion "by moving boats and other equipment out of [Garner's] way and cleaning up" the area. Such statements indicate that Vance Gillikin and defendant Gillikin's use of the subject property was not only permissive during the late 1990s but also conditioned on a promise to keep it clean and clear for Garner's use.

Further, around June 2016, plaintiff's affidavit states that during a meeting, plaintiff permitted Vance Gillikin "to store boats, boat-related accessories, and boatyard equipment" on the subject property "for the near future and until [plaintiff] advised him otherwise." Similarly, plaintiff granted Dupree, who was using the subject property for business operations, the same limited permission.<sup>9</sup> Such evidence shows that during the late 1990s, and then again from 2016 until plaintiff revoked permissions around late 2019 and early 2020, Vance Gillikin and defendants' use of the subject property was permissive at crucial times as it relates to the

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<sup>8</sup> According to defendant Gillikin's affidavit, the subject property "has been claimed by [his] father adversely since 1989"; therefore, the twenty-year period for adverse possession began to run in 1989 at the earliest.

<sup>9</sup> Dupree's affidavit corroborates the conversation between him and plaintiff.

prescriptive period for adverse possession.

Competent evidence also suggests that defendants' use of the subject property was not exclusive for a sufficient time. Specifically, Dupree's affidavit states that during the late 1990s, Garner was not only seen frequently on the subject property but also "supervising activities" on the property. Dupree also recalled that the gate in question "was usually kept open during the day and usually closed at night for security purposes." Moreover, plaintiff's affidavit states that, on at least one occasion between 2018 and 2019, plaintiff told defendant Gillikin that "the area closest to the bulkhead [needed] to be kept clear . . . so that [plaintiff] could *access, use, and repair* the bulkhead and immediately surrounding areas." (emphasis added). Such evidence suggests that plaintiff's predecessor-in-title and later plaintiff were using and sharing the subject property at key times, which rebuts defendants' claims of exclusive use. *See McManus v. Kluttz*, 165 N.C App. 564, 574 (2004) (explaining that for property possession to be exclusive, "other people must not make similar use of the land during the required statutory period." (citation omitted)).

Accordingly, the trial court did not err in finding that plaintiff was likely to succeed on the merits because competent evidence indicates defendants' use of the subject property was neither hostile nor exclusive for the required prescriptive period.

### C. Irreparable Harm

Defendants contend that plaintiff failed to show that it would likely sustain irreparable harm and that the trial court failed to properly balance the equities vis-

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à-vis plaintiff and defendants. To receive a preliminary injunction, a plaintiff must show it is “likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.” *A.E.P. Indus., Inc.*, 308 N.C. at 401. Determining whether one is likely to sustain irreparable loss is “discretionary and requires the trial court to weigh the equities.” *Redlee/SCS, Inc. v. Pieper*, 153 N.C. App. 421, 427 (2002). “Injury is irreparable where the damages are estimable only by conjecture, and not by any accurate standard.” *A.E.P. Indus., Inc.*, 308 N.C. at 407.

Here, ample competent evidence shows plaintiff’s likelihood of irreparable harm if the injunction were not issued and that issuance is necessary to protect plaintiff’s rights. Such harm includes plaintiff’s inability to (1) restore the bulkhead on the subject property pursuant to a CAMA exemption that otherwise creates significant safety hazards and exposes plaintiff to risk of liability; (2) avoid environmental harms on the subject property and surrounding waters and the associated risk of liability; and (3) make reasonable and beneficial use of the subject property. Accordingly, after balancing the relative harms, the trial court did not err in finding that the immediate and irreparable harm plaintiff would likely sustain if the injunction were not issued outweighed the hardships alleged by defendants if the injunction was issued.

III. Conclusion

For the foregoing reasons, we affirm the trial court’s order granting the

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preliminary injunction and dissolve the writ of supersedeas previously entered.

AFFIRMED.

Judges MURPHY and HAMPSON concur.

Report per Rule 30(e).