

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

MIKEL R. SCARBOROUGH, Master in Equity

Appellate Case No. 2019-001289

RECEIVED
MAR 19 2020
SC Court of Appeals

Raven's Run Homeowners Association, Inc., Appellant-Respondent,

v.

Crown Point Association, Inc., Lois K. Novak as Trustee of the Lois K. Novak Living Trust dated 10/14/2013; Laurie T. Herron and Mark D. Herron; James B. Kubu and Melissa F. Kubu; Leila June Johnson; Danny Ta and Anita McCauley; Robert E. Luby, Jr., and Barbara Luby; Joshua D. Coonce; Lucius Roy Junevicius; Katherine Kinlaw; Thomas K. Kuyk and Melissa Ward; Roland Franklin Wooten, III, and Teresa Key Wooten; Michael P. Horvath; Timothy E. Moylan and Karen G. Moylan; Carl A. Counasse and Maureen Counasse; David A. Frielinghaus and Holly C. Frielinghaus; Christopher S. Finley and Holly M. Finley; Shirley D. Springer a/k/a Shirly Deanna Springer; Deirdre C. Knight; Robert Shane Johnson; Eric R. Sigman; Lamar R. Graves, Jr. and Terry W. Graves; Mary Elizabeth Gladdedn; Philip Wallace and Naomi Grad; Thomas Edwin Davis and Luis Miguel Gonzalez Melchor; John R. Funkhouser and Jennifer L. Funkhouser; Gregory S. Cooper and Jane B. Cooper; Frank C. Jones, Jr. and Elise Ubele Jones; William P. Topping and Kris B. Topping; LaRhonda S. Ptichko; Kenneth L. Tully and Anna J. Tully, Defendants,

Of Whom James B. Kubu and Melissa F. Kubu and Leila June Johnson are the Respondents.

And Katherine Kinlaw is the Respondent-Appellant.

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STATEMENT OF ISSUES ON APPEAL

- I. **DID THE MASTER ERR IN DETERMINING THAT RAVEN’S RUN OWNS THE WATER ADJACENT TO KINLAW’S LOT.**

STATEMENT OF THE CASE

In this case, Raven’s Run Homeowners Association, Inc. (“Raven’s Run”) sued Crown Pointe Association, Inc. (“Crown Pointe”) and individual lot owners in Crown Pointe claiming ownership of all property up to the individual lot lines of the lot owners. This includes a lake or drainage easement that is located between the two neighborhoods and land located on the Crown Pointe side of this body of water. As shown on the various plats discussed below, Crown Pointe lies to the northwest of this body of water and Raven’s Run to the southeast.

Raven’s Run commenced this action on January 31, 2017. Raven’s Run subsequently filed an Amended Complaint on March 9, 2018, in which they sued the defendants seeking a declaratory judgment, an injunction, damages in trespass and nuisance. Raven’s Run claimed ownership of all the land up to the lot lines of the individual lot owners of Crown Pointe, including a strip of land and bodies of water. Central to this dispute is Raven’s Run’s right to restrict the property owners of Crown Pointe from maintaining and cutting on the strip of land between their lot property line and the body of water. Raven’s Run sued the individual property owners for damages because they ventured onto this strip, removed vegetation, and allegedly created an eyesore.

Defendants disputed this. Kinlaw answered on March 16, 2017, and disputed Raven’s Run’s ownership of the disputed lands, sought proof of Raven’s Run’s ownership, and sought a

clarification as to the respective rights of the parties. Defendants also counterclaimed in abuse of process.

The Master held a hearing on August 28, 2018. The matter was set for a two-day trial. Prior to trial, the Master heard cross-Motions for Summary Judgment.

Immediately prior to the motions, Crown Pointe and Raven's Run reached a settlement agreement, leaving only the dispute between Raven's Run and the remaining individual lot owners of Crown Pointe. Katherine Kinlaw owns Lot 45-E.

The Master granted the individual lot owners' Motion for Summary Judgment by Order filed November 8, 2018. In that Order, he granted Crown Point certain ownership interests in certain bodies of water. The Master heard Raven's Run Motion for Reconsideration on January 8, 2019. By Order filed July 10, 2019, he kept the bulk of his previous Order intact, but granted Raven's Run ownership of the bodies of water. Kinlaw only appeals the ruling granting Raven's Run ownership of the bodies of water adjacent to their property.

Raven's Run filed their Notice of Appeal on August 1, 2019 and served it on August 1, 2019. They appealed the Orders of November 8, 2018 and July 10, 2019. Kinlaw filed her Notice of Appeal for the same Orders on August 6, 2019 and served it August 6, 2019.

FACTS

Katherine Kinlaw appeals only the ruling by the Master in the Order of July 10, 2019 that finds Raven's Run owns the bodies of water adjacent to her house. Specifically, on reconsideration, Raven's Run asserted that a deed at Book E150, page 875, recorded December 11, 1985, should be taken into account and was not mentioned in the Master's previous ruling.

At oral argument for the Motion for Reconsideration, Ravens Run relied on the following paragraph in the deed at Book E150, page 875:

1. ALL lakes, fingers, coves and other bodies of water, saving and excepting those bodies of water which are included within specific residential lot lines; as to said bodies of water which are contained within residential lot lines, the grantor does hereby give and grant, in perpetuity, a perpetual ingress-egress easement through same for the benefit and purposes of the grantee, the same not being exclusive, but held in common with any and all lot owners of record in Raven's Run Subdivision.

This deed references Plat Book BG 52, 53 and 54 in the paragraph that precedes these two.

Specifically, because this deed predates the other documents in his previous Order, the Master found that the bodies of water adjacent to Kinlaw's house was conveyed to Raven's Run by the language of that paragraph.

However, the plats do not show the water adjacent to Kinlaw's house. The plat cuts off before then. It is undisputed that Kinlaw's lot is beyond the plat, and the water adjacent to Kinlaw's house is not on Plat BG 52, 53, or 54 (Transcript 1/8/2019, p. 45, line 22 - p. 49, line 6).

Prior to his Order of July 10, 2019, the Master had found certain documents dispositive to the issue of the bodies of water. Because the deed and plats relied on by Raven's Run in their Motion for Reconsideration do not show the water next to Kinlaw's lot, the Master's previous analysis should stay intact.

A. Plat BK-2

Plat BK-2 was recorded on August 21, 1986. It is a plat entitled "Plat Showing Crown Pointe Subdivision Lots 25E-49E, Lots 67E-79E." On this plat, lakes and drainage easement are shown

immediately to the east of the lots in question. The 60 foot drainage easement extends 20 feet onto the lot owners' property and 40 feet into the lake.

RAC Enterprises Inc., the common owner of the two subdivisions, makes the following dedication:

By the recording of this plat, the green areas and lakes shown hereon are dedicated to the use of the East Crossing Subdivision and the Crown Point Subdivision Homeowners Association forever.

It further states, "By recording this plat, the easements and rights-of ways shown hereon are dedicated to the use of the public forever."

RAC subsequently deeded the properties on this plat to Spectra Development, Inc. by deed O161-258 dated January 14, 1987, and recorded January 26, 1987, with reference to this plat.

B. Deed into Raven's Run and Plat

Raven's Run claims ownership to the disputed property by deed R163-134 dated January 5, 1987 and recorded April 1, 1987. This is a deed from RAC Enterprises, Inc., the common owner, to Raven's Run Homeowners Association, Inc. This deed references Plat Book BL57. The Plat is entitled "Raven's Run" and "Plat Showing Lots 19-31, Block 'D' and Lots 1-5, Block 'F' and Lots 14-35, Block 'E.' Acreage Shown Hereon 44.507 Acres."

The plat shows no land in Crown Pointe Subdivision, and neither the deed nor the plat references Crown Pointe Subdivision, its lands, lakes, or easements. The documents neither implicitly nor explicitly convey the disputed property.

C. Quit Claim Deeds of 2001

On December 18, 2001, two quit-claim deeds were executed. The first, recorded at C392, page 756 conveyed certain property from RAC Enterprises, by Robert A. Causey, as Liquidating Trustee, to East Crossing-Crown Pointe Association, Inc. Robert Causey had previously signed the deeds out of RAC discussed above as its President/Secretary. The deed conveyed, in pertinent part:

ALL that certain common area, including any "lake" and "green area", located in Crown Point Subdivision, Christ Church Parish, Charleston County, S.C., as shown on that certain plat entitled "Plat Showing Crown Pointe Subdivision, Lots 25E - 49-E and Lots 67-E - 79-E, Portion of a 52.98 Acre Tract, Owned by RAC Enterprises, Inc., Christ Church Parish, Charleston, S.C.", dated August 3, 1986, and recorded in the RMC Office for Charleston County on August 21, 1986 in Book BK at Page 2. Such common area having such size, shape, dimensions, buttings and boundings as will by reference to such plat more fully appear. (Abstractor's Note: It the intention of this deed to convey all property set forth on the aforementioned plat, saving and excepting all platted lots and public rights of way depicted thereon).

Subsequently, by deed at H394, page 181 and re-recorded at T398, page 815, the same pertinent property was deeded from East Crossing-Crown Pointe Association, Inc. to Crown Pointe Association, Inc. with similar language:

ALL that certain common area, including any "lake" and "green area", located in Crown Point Subdivision, Christ Church Parish, Charleston County, S.C., as shown on that certain plat entitled "Plat Showing Crown Pointe Subdivision, Lots 1E-24E & Lots 50E-66E and Lots 25E-49E & Lots 67-E - 79-E, Portion of a 52.98 Acre Tract Owned by RAC Enterprises, Inc., Christ Church Parish, Charleston, S.C.", dated August 3, 1986, and recorded in the RMC Office for Charleston County on August 21, 1986 in Book BK at Pages 1 and 2. Such common area having such size, shape, dimensions, buttings and boundings as will by reference to such plat more fully appear. (Abstractor's Note: It the intention of this deed to convey all property

set forth on the aforementioned plat pages, saving and excepting all platted lots and public rights of way depicted thereon).

Both these deeds explicitly convey any lake or green area as shown on the plat. The abstractors' note explicitly states the intention of the deed:

Abstractor's Note: It the intention of this deed to convey all property set forth plat pages, saving and excepting all platted lots and public rights of way depicted thereon." Deed H394, page 181

D. Plat BP 160-161

Spectra Development, who was deeded the property by RAC, made the following dedication on Plat BP 160-161:

By the recording of this plat, the green areas and lakes shown hereon are dedicated to the use of the Crown Point Subdivision Homeowners Association forever.

The easement and road right-of-ways were dedicated to the use of the public forever.

The lakes and drainage easements on BP 161 are the same as on BK 2.

This plat was recorded December 18, 1987.

E. Plat BP 163

After BP 160-161 was recorded, a plat of Raven's Run was recorded by RAC. RAC dedicates the easements shown on the plat to the Raven's Run Homeowner's Association. The lakes are not referenced. Crown Pointe is not shown.

F. Plat of Seabrook

The unrecorded Plat of Seabrook dated December 1, 2016 depicts the 60 foot drainage easement shown on the plat of Crown Pointe at BP 161. It also depicts the 60 foot drainage easement shown on the plat of Raven's Run at BP 163. On the plat of Seabrook, those easements do not overlap.

STANDARD OF REVIEW

This Court reviews the grant of a summary judgment motion under the same standard applied by the trial court pursuant to Rule 56©, SCRPC. Woodson v. DLI Props., LLC, 406 S.C. 517, 528, 753 S.E.2d 428, 434 (2014).

Summary judgment is appropriate when "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 the moving party is entitled to a judgment as a matter of law." Rule 56©, SCRPC; see also Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997); Wells v. City of Lynchburg, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct.App.1998). Under Rule 56©, SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Trivelas v. South Carolina Dep't of Transp., 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct.App.2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rule 56©, SCRPC; SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); Peterson v. W. Am. Ins. Co., 336 S.C. 89, 94, 518 S.E.2d 608, 610

(Ct.App.1999). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998).

ARGUMENT

I. THE MASTER ERRED IN DETERMINING THAT RAVEN'S RUN OWNS THE WATER ADJACENT TO KINLAW'S LOT.

Where a deed describes land as it is shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed. Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 397, 252 S.E.2d 133, 136 (1979) Carolina Land Co., Inc. v. Bland, 265 S.C. 98, 217 S.E. (2d) 16 (1975); Lynch v. Lynch, 236 S.C. 612, 115 S.E. (2d) 301 (1960). The water adjacent to Kinlaw's lot was not shown on the plats referenced in the deed of December 11, 1985, therefore it was not conveyed to Raven's Run. Raven's Run has not shown that it owns this disputed water.

If a determination of ownership in an entity other than Raven's Run is necessary, the Master's reasoning in his Order of November 8, 2018 holds sway, as summarized below.

RAC dedicated the lakes and green areas on Plat BK-2 recorded August 21, 1986 to Crown Pointe. This dedication predates the conveyance into the deed into Raven's Run relied on by Raven's Run at the original summary judgment hearing on August 28, 2018. As between the private parties, this dedication is complete when made. See e.g. Outlaw v. Moise, 222 S.C. 24, 71 S.E.2d 509 (1952). This dedication effectively conveys the portion of Plat BK-2 that shows the 60 foot drainage easement on the lot lines to Crown Pointe. This land extends 20 feet onto the lot owners

property and 40 feet into the lake. The dedication on a plat and the subsequent conveyance conveys to Crown Pointe as a non-exclusive easement.

Further, the deeds into Raven's Run, R163, page 134 and the referenced plat BL-57 do not attempt to convey any part of Crown Pointe. Crown Pointe, the disputed property and its bordering easement are neither described nor platted. Raven's Run is bound by that Plat. Germany v. Kelley, 96 S.E. 959 (S.C. 1918).

Additionally, the subsequent quit claim deeds of 2001 shows the intent of RAC to convey everything on the plat pages of BK-2 to Crown Pointe. This undoubtedly includes the portion of the 60 foot easement that extends 40 feet into the lake. The language is clear and unmistakable. This intent is further confirmed by Plat BP 160-161, which follows BK-2.

Therefore the Master originally, in his Order of November 8, 2018, found that Raven's Run does not own all property up to the individual lot lines of the Crown Pointe owners. Raven's Run does not own the disputed property immediately to the east of the lots in question: the portion of land and water depicted as the 60 foot drainage easement that extends 20 feet onto the lot owners property and 40 feet into the lake. Crown Pointe has ownership and a non-exclusive right to use this 40 foot wide area as depicted on Plat BK-2, and has a non-exclusive drainage easement of 20 feet.

CONCLUSION

Crown Pointe has ownership of the portion of land and water depicted as the 40 foot portion of the 60 foot drainage easement to the east of the lots in question. Crown Pointe has ownership and a non-exclusive right to use this 40 foot wide area, and has a drainage easement on the 20 foot portion of the lots. The Master's Ruling that Raven's Run owns the water adjacent to Kinlaw's lot should be reversed.

Respectfully submitted,



March 17, 2020

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APPEAL FROM CHARLESTON COUNTY
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Of Whom James B. Kubu and Melissa F. Kubu and Leila June Johnson are the Respondents.


And Katherine Kinlaw is the Respondent-Appellant.

PROOF OF DELIVERY

I certify that I have served the Appellant's Initial Brief of Respondent-Appellant, Katherine Kinlaw, by depositing one copy of it in the United States Mail, postage prepaid, on March 17, 2020, addressed to Appellant-Respondent's attorneys of record, William W. Wilkins and Kirsten Elena Smalls, Nexsen Pruet, LLC, 55 E. Camperdown Way, Greenville, SC 29601 and Geoge Hamlin O'Kelley, III, Buist, Byars & Taylor, LLC, 652 Coleman Boulevard, Suite 200, Mt. Pleasant, SC

29464 and Respondent, James B. Kubu and Melissa F. Kubu's attorney of record, Edward K. Pritchard, Jr., P. O. Box 639, Sullivan's Island, SC 29482 and Respondent, Leila June Johnson's attorney of record, Jeffrey T. Spell, 1721 Ashley River Road, Charleston, SC 29407.

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RE: Raven's Run Homeowners Associations, Inc. Appellant-Respondent v. Crown Point Association, Inc., et al.; Of Which Crown Point Association, Inc. Is the Respondent and Katherine Kinlaw is the Respondent-Appellant
Case No. 2017-CP-10-00473
Appellant Case No. 2019-001289

Dear Ms. Allen:

I enclose the original and one (1) copy of the Appellant's Initial Brief of Respondent-Appellant and Designation of Matter To Be Included in the Record on Appeal, along with the Proofs of Service, with regard to the above-captioned matter.

Upon filing, please return a clocked-in copy of each to our office in the enclosed self-addressed, stamped envelope.

With warmest personal regards, I remain

Yours very truly,



Harold A. Oberman

HAO/shb
Enclosures

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