

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 28, 2006 Session

BROCK D. SHORT v. CITY OF BRENTWOOD

**Direct Appeal from the Chancery Court for Williamson County
No. II-26744 Russ Heldman, Chancellor**

No. M2005-01636-COA-R3-CV - Filed on June 6, 2006

Plaintiff Brock Short (“Plaintiff”) asserted an inverse condemnation claim against Defendant City of Brentwood (“Defendant”) resulting from Defendant’s blocking of Plaintiff’s access to Meadowlake Drive in Brentwood, Tennessee. The trial court granted summary judgment in favor of Plaintiff and subsequently awarded Plaintiff damages in a separate hearing. Defendant appeals. We reverse and remand.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed; and Remanded

DAVID R. FARMER, J., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and WILLIAM C. KOCH, JR., P.J., M.S., joined.

William N. Bates, Nashville, Tennessee, for the appellant, City of Brentwood.

L. Marshall Albritton, Nashville, Tennessee, for the appellee, Brock D. Short.

OPINION

Factual Background and Procedural History

On December 6, 1989, Plaintiff Brock Short (“Plaintiff”) purchased property at 320 Granny White Pike in Brentwood, Tennessee. The property abutted Meadowlake Drive, which is a public roadway. The City of Brentwood (“Defendant”) approved the Granny White Estates Subdivision and the plat for the same was recorded in the office of the Register of Deeds for Williamson County prior to Plaintiff’s purchase of the property at issue in this case. There is no plat restriction of public record for either Meadowlake Drive or Granny White Estates that restricts Plaintiff’s access from the property to Meadowlake Drive. Subsequent to his purchase, Plaintiff constructed a home on the property and has lived there since.

In 1992, Plaintiff appeared before the City of Brentwood Planning Commission (“the Commission”) seeking approval for a driveway from the back of his property to Meadowlake Drive.¹ As reflected by the minutes of the meeting, the Commission, by a nine to one vote, granted Plaintiff’s requested access to Meadowlake Drive

on the expressed condition that the access be gated and that the gate be at all times closed except when in use; that it be expressly understood that the access will be closed by the City if the condition is not complied with; that it be further conditioned that no construction traffic is allowed to use the access; and that the plat show that this access is only for this lot. [A] further condition was that there be as much screening as possible.

Plaintiff never appealed the Commission’s decision placing conditions upon Plaintiff’s access to Meadowlake Drive. Rather, Plaintiff admitted in his deposition that he intended to comply with the restrictions and, in so complying, amended his plat to reflect that access to Meadowlake Drive was restricted solely to his lot. However, several years later, Defendant asserts that Plaintiff began leaving the gate to his Meadowlake driveway open, thus violating the conditions imposed by the Commission. Specifically, after receiving complaints from neighbors, employees of Defendant began periodically inspecting Plaintiff’s gate and found it open on October 25, 1999, October 27, 1999, and November 20, 1999. As a result, on November 22, 1999, Defendant began installing a metal barrier in Plaintiff’s driveway, thereby denying Plaintiff access from his property to Meadowlake Drive, and the installation of this barrier was completed on January 2, 2000.

Plaintiff filed a Complaint for Declaratory Judgment against Defendant in the Chancery Court for Williamson County, Tennessee, on January 6, 2000, seeking the immediate removal of the metal barrier from his Meadowlake driveway, the immediate repair of the Meadowlake driveway, a judgment declaring Plaintiff’s right of access to Meadowlake Drive, and other damages. Plaintiff subsequently filed an Amended Complaint on January 25, 2002, seeking further damages for trespass, increased transportation costs resulting from the denial of access to Meadowlake Drive, and damages for the diminution in the value of Plaintiff’s property should the “taking” of Plaintiff’s access become permanent. Plaintiff also asserted that the actions of Defendant in installing the barrier were ultra vires, improper, and arbitrary and capricious. In its responses to both complaints, Defendant asserted that Plaintiff’s injuries resulted from his own actions in failing to keep the gate to his Meadowlake Drive driveway closed in accordance with the conditions set forth by the Brentwood Planning Commission. Defendant further asserted that Plaintiff’s claim was barred by Plaintiff’s failure to appeal the 1992 action of the Brentwood Planning Commission in granting Plaintiff conditional access to Meadowlake Drive.

¹The record in this case shows that Plaintiff’s lot abuts Granny White Pike located in Brentwood, Tennessee, while the rear of Plaintiff’s lot abuts Meadowlake Drive. Although Plaintiff had access to his lot from Granny White Pike, the record shows that, for the sake of convenience, Plaintiff also sought access to Meadowlake Drive from the rear of his property.

On November 27, 2002, Plaintiff filed a motion for summary judgment asserting that he was entitled to judgment as a matter of law for damages arising from inverse condemnation on the part of Defendant. Defendant subsequently responded by also filing a motion for summary judgment. On March 4, 2003, the trial court granted Plaintiff's motion for summary judgment and denied that of Defendant. As a result, Defendant was ordered to immediately remove all improvements blocking Plaintiff's access to Meadowlake Drive. The trial court reserved the issue of damages for further hearing.

A trial on damages was held on June 6, 2005. After hearing the evidence presented at trial, the court entered an order providing, in pertinent part, as follows:

5. Plaintiff Brock Short has proven damages and is hereby awarded a judgment for damages for the following elements in the following amounts:
 - a. \$1,000.00 - cost to repair driveway
 - b. \$7,153.27 - value of loss of access easement for 3.25 years
 - c. \$2,877.00 - loss of use of gate, driveway and other improvements to property for 3.25 years
 - d. \$24,000.00 - attorneys' fees

\$35,030.27 - TOTAL
6. Plaintiff is not awarded the cost for valuation / appraisal expert witness fees incurred in connection with the employment and testimony of Real Estate Broker Shannon Wheeler and Appraiser John Catignani.
7. Plaintiff is not awarded prejudgment interest.

Defendant appeals. We reverse and remand.

Issues Presented

On appeal, Defendant raises the issue of whether the trial court erred in granting Plaintiff's motion for summary judgment and denying Defendant's motion for summary judgment. In turn, Plaintiff raises the issues of whether the trial court erred in failing to award

(1) all attorney's fees and costs incurred by Plaintiff in this action, (2) the expert witness fees incurred in this action, and (3) prejudgment interest from January 2, 2000 until April 15, 2003.

Standard of Review

Liability of the Defendants in this case was decided by summary judgment. Summary judgment is appropriate only when the moving party can demonstrate that there are no disputed issues of material fact and that it is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993). Specifically, the moving party must affirmatively negate an essential element of the nonmoving party's claim or conclusively establish an affirmative defense. *McCarley v. West Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn.1998). When a party makes a properly supported motion for summary judgment, the burden shifts to the nonmoving party to establish the existence of disputed material facts. *Id.*

A mere assertion that the nonmoving party has no evidence does not suffice to entitle the moving party to summary judgment. *Id.* Rather, in determining whether to award summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *Staples v. CBL & Assocs.*, 15 S.W.3d 83, 89 (Tenn.2000). The court should award summary judgment only when a reasonable person could reach only one conclusion based on the facts and the inferences drawn from those facts. *Id.* Summary judgment is not appropriate if there is any doubt about whether a genuine issue of material fact exists. *McCarley*, 960 S.W.2d at 588. We review an award of summary judgment de novo, with no presumption of correctness afforded to the trial court. *Guy v. Mut. of Omaha Ins. Co.*, 79 S.W.3d 528, 534 (Tenn.2002).

Analysis

In its brief to this Court, Defendant asserts that the trial court erred in granting Plaintiff's motion for summary judgment while denying Defendant's motion for summary judgment. Specifically, Defendant argues that the undisputed facts show that Plaintiff is precluded from pursuing his cause of action because he consented to the restriction of his abutter's easement "when on May 4, 1992, the Brentwood Planning Commission granted Plaintiff only conditional access to the public street, and Plaintiff did not appeal the action of the Brentwood Planning Commission." In turn, Plaintiff argues that the trial court correctly granted summary judgment because the undisputed facts show that the Brentwood Planning Commission did not restrict his abutter's easement and, thus, Defendant's blocking of Plaintiff's access to Meadowlake Drive constituted a "taking," resulting in inverse condemnation, of his access for which he is entitled to both monetary and injunctive relief. For the reasons presented below, we reverse the trial court and remand this case for further proceedings.

"In Tennessee, the rights of abutting property owners to unobstructed access to the public way have been repeatedly recognized." *Speight v. Lockhart*, 524 S.W.2d 249, 252 (Tenn. Ct. App. 1975). Such a right constitutes "a natural easement and one of the incidents of the

ownership or occupancy of land abutting thereon.” *Id.* at 254. While some courts have held that an abutting owner “has a right of access to the full width of the highway or street, and over its entirety to every part of his land,” the general rule accepted by Tennessee courts “is that an abutting owner or occupant is not entitled to access to his land at every point between it and the highway but only to reasonable and convenient access to his property and the improvements on it.” *Id.* at 254; *see also State of Tenn. ex rel. Shaw v. Gorman*, 596 S.W.2d 796, 798 (Tenn. 1980) (Fones, J., dissenting). These rights, commonly referred to as “abutter’s easements,” constitute property of which an owner “may not be deprived *without his consent*, except on full compensation and by due process of law.” *Id.* at 254 (emphasis added); *see Anderson v. Turbeville*, 46 Tenn. 150 (Tenn. 1868) (holding that a person may waive both constitutional and statutory provisions for her benefit).

Although Plaintiff asserts in his brief that he had, and continues to have, an unfettered right of access to Meadowlake Drive pursuant to his abutter’s easement, the undisputed facts in the record show that he nonetheless appeared before the Brentwood Planning Commission on May 4, 1992, in order to obtain permission to build a driveway at the back of his property accessing Meadowlake Drive. The Commission subsequently granted Plaintiff’s request. However, in doing so, the Commission restricted Plaintiff’s access to Meadowlake Drive by requiring him to, among other things, gate his driveway and keep the gate closed at all times except when in use. The Commission further held that failure by Plaintiff to adhere to these conditions would result in the closing of Plaintiff’s access by Defendant. Though Plaintiff now appears to contend otherwise, the record undisputedly shows that he consented to these conditions. In his deposition, Plaintiff testified that he agreed with the conditions set forth by the Commission and further admitted that he took no steps to appeal the imposition of the conditions. Furthermore, the undisputed facts also show that Plaintiff drafted and filed a plat amendment for his property in order to expressly comply with the conditions placed by the Commission. Based on the above, we find that Plaintiff consented to the restriction of his abutter’s easement by the Brentwood Planning Commission and, thus, as a matter of law, Plaintiff’s abutter’s easement is subject to the said conditions imposed.

Having found that Plaintiff’s abutter’s easement is subject to the conditions imposed by the Brentwood Planning Commission, we now address the issue of what effect these conditions have on the facts presented in this case. In light of the above facts, we find that Plaintiff had a right of access to Meadowlake Drive so long as 1) he gated his access and kept the gate closed at all times except when in use, 2) he allowed no construction traffic to use the access, 3) he amended his plat to show that the Meadowlake Drive access only applied to Plaintiff’s lot, and 4) that Plaintiff provide as much screening as possible. In closing Plaintiff’s access to Meadowlake Drive, Defendant asserts that Plaintiff failed to keep his gate closed as required. Specifically, Defendant asserts that its employees found Plaintiff’s gate open on October 25 and 27, and November 20 of 1999. Although Plaintiff did not dispute that Defendant’s employees claimed to find his gate open on the dates stated, Plaintiff did dispute whether Defendant could show why the gate was open. Specifically, Plaintiff asserted that Defendant had no proof showing whether the gate was open as a result of vandalism or while Plaintiff was using the gate in anticipation of

leaving or receiving guests to his property.² Furthermore, Plaintiff disputed whether the fact that the gate was open on those occasions constituted a violation of the Brentwood Planning Commission's conditions, thus entitling Defendant to close Plaintiff's access to Meadowlake Drive.

Upon review of the record, we find that a disputed issue of material fact exists as to whether Plaintiff breached the conditions imposed by the Brentwood Planning Commission in granting Plaintiff driveway access to Meadowlake Drive. If Plaintiff did breach the conditions by improperly leaving his gate open, then Defendant was entitled to close Plaintiff's access and no "taking" resulted. However, if Plaintiff did not breach the conditions, then Plaintiff may be entitled to damages. As a result, we reverse the trial court's grant of summary judgment in favor of Plaintiff and remand this case for further proceedings consistent with this opinion. In light of our ruling, we find the issue of damages pretermitted and accordingly find it unnecessary to address the remaining assertions of error raised in this appeal.

Conclusion

Based upon the foregoing, we reverse the trial court's grant of summary judgment in favor of Plaintiff and remand this case for further proceedings consistent with this opinion. Costs of this appeal are taxed against appellee, Brock Short, and his surety, for which execution may issue if necessary.

DAVID R. FARMER, JUDGE

²In his deposition, Plaintiff stated that he opened the gate for between fifteen to twenty-five minutes on October 25, 1999, in anticipation of a friend driving Plaintiff's daughter home. Plaintiff further claimed that on October 27, 1999, the gate was open as a result of vandalism. In regard to November 20, 1999, Plaintiff asserted that he had no knowledge of why the gate would have been open, but did state that he might have opened it in order to ride his bicycle or take a walk around the neighborhood surrounding Meadowlake Drive and not closed it until his return.