IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 24, 2014 Session

LYNDLE CURTIS ET AL. v. KATHY PARCHMAN ET AL.

Appeal from the Chancery Court for Stewart County
No. CH-13-CV-37 George C. Sexton, Judge

No. M2013-01489-COA-R3-CV - Filed February 27, 2014

Plaintiffs appeal a Tenn. R. Civ. P. 12.02(6) dismissal of the complaint for failure to state a claim pursuant to the Tennessee Right to Farm Act, codified at Tennessee Code Annotated § 43-26-101 *et seq*. ("the TRFA"). Plaintiffs own an express ingress/egress easement, a gravel road, that passes through Defendants' farm. In what Plaintiffs titled a "COMPLAINT FOR ABATEMENT OF NUISANCE AND DAMAGES", they alleged, inter alia, that Defendants substantially destroyed the utility of their ingress/egress easement by driving heavy farming equipment across and allowing cattle to walk upon the easement. Plaintiffs sought injunctive relief and monetary damages. Defendants filed a Rule 12.02(6) motion to dismiss contending that Plaintiffs failed to state a claim for which relief may be granted because the nuisance claim was barred by the TRFA. More specifically, Defendants contended that Plaintiffs failed to allege that Defendants violated any "generally accepted agricultural practices" or a "statute or regulation" in the use or operation of the farm upon which the easement lies. The trial court granted the motion and dismissed the complaint in its entirety. Plaintiffs appeal. We have determined that the TRFA pertains to *nuisances* alleged to arise from a farm or farm operations but not to claims of unreasonable interference with the use of an ingress and egress easement. We, therefore, affirm the dismissal of Plaintiffs' nuisance claim, for the complaint failed to state a claim for which relief could be granted for a *nuisance* arising from a farm or farm operation. However, we have determined the complaint states a separate claim for impairment of and damage to Plaintiffs' ingress and egress easement, a claim that is not subject to the TRFA. Accordingly, we reverse the dismissal of the complaint for it states a separate and viable claim for impairment of and damage to Plaintiffs' ingress/egress easement. Further, this matter is remanded for further proceedings consistent with this opinion.

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

FRANK G. CLEMENT, JR., J., delivered the opinion of the Court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

John E. Herbison and Fletcher W. Long, Clarksville, Tennessee, for the appellants, Lyndle Curtis and Brenda Curtis.

Clifford K. McGown, Jr., Waverly, Tennessee, for the appellees, Kathy Parchman and Robert Earl Parchman.

OPINION

Lyndle and Brenda Curtis ("Plaintiffs") own a parcel of land in Stewart County, Tennessee, which they utilize for hunting and recreational purposes. Their property is land locked; thus, Plaintiffs own an ingress/egress easement, a gravel road, which they use to access their property from a public road. The easement crosses adjacent property owned by Kathy Parchman, which she leases to Robert Earl Parchman (collectively "Defendants").[1]

Robert Parchman, the lessee, farms and raises cattle on the property. His cattle roam at will over the property and they repeatedly walk upon and across the easement. Mr. Parchman also operates heavy equipment on the farm and he frequently drives his equipment across the easement. Plaintiffs maintained the easement by adding gravel as needed and making minor and routine repairs; however, as time passed, Plaintiffs became increasingly disgruntled by the damage caused by the cattle and the heavy equipment to the easement, the gravel road, which impeded their use of the easement for ingress and egress to their property. In hopes of remedying the problem, Plaintiffs proposed building, at their expense, a fence along the easement. After Defendants declined the offer, Plaintiffs filed a verified "Complaint for Abatement of Nuisance and Damages."

In the complaint, which was filed in March of 2013, Plaintiffs stated that Robert Parchman drives heavy equipment over the easement that creates ruts and depressions where water that collects upon the easement, both of which impede Plaintiffs' ability to use their ingress/egress easement. Plaintiffs also stated that the cattle, which feed at a trough that is placed near Plaintiffs' easement, trample the easement (the gravel road) and cause "mud, manure, and attendant odors." Plaintiffs additionally stated that these and other circumstances created by Defendants "impaired and substantially destroyed the utility of the easement as

[1]Because the complaint was dismissed upon Defendants' Tenn. R. Civ. P. 12.02(6) motion to dismiss for failure to state a claim upon which relief could be granted, we assume the factual allegations stated in the complaint are true. *Webb v. Nashville Area Habitat for Humanity, Inc*., 346 S.W.3d 422, 426 (Tenn. 2011). Thus, the material facts referenced in this opinion come from the pleadings.

an access route," and that the "operation of heavy equipment which has rutted the easement property and prevented water from draining," "keeping cattle on the land across which the easement lies," and feeding livestock "along the access route, resulting in mud, manure, and attendant odors" amounted to a "private nuisance."

For their remedy, Plaintiffs sought compensatory and punitive damages for the "impairment and substantial destruction" of their ingress/egress easement as well as equitable relief in the form of an abatement of the "nuisance."

Each defendant responded to the complaint by filing an answer denying any liability to Plaintiffs and asserting, in relevant part, the affirmative defense that Plaintiffs failed to state a claim upon which relief may be granted because they failed to comply with the TRFA, at Tennessee Code Annotated § 43-26-101 *et seq*.[2]

Soon thereafter, Defendants jointly filed a "Motion to Dismiss." In support of the motion to dismiss, Defendants asserted the two affirmative defenses set forth in their respective answers to the complaint. The first ground set forth was that "Plaintiffs failed to comply with any of the terms and provisions of Tennessee Code Annotated § 43-26-103" and that "[f]ailure to comply with the Tennessee Right to Farm Act subjects the Plaintiffs to sanctions under Rule 11 of the Tennessee Rules of Civil Procedure." The second ground asserted in the motion was that the complaint failed to state a claim upon which relief can be granted.

The motion was heard on May 20, 2013. An order entered on June 19, 2013, which dismissed the complaint, states in pertinent part:

> Based upon the sworn pleadings, the Tennessee Right to Farm Act, and the representations of counsel, the Court finds as follows:
>
> > 1. The request by the Plaintiffs for a temporary injunction is denied.
> >
> > 2. The Complaint filed in this matter is dismissed for failure to state a claim upon which relief may be granted.

[2]Each defendant also included a counter-complaint asserting an abuse of process claim against Plaintiffs. The counter-complaints are not at issue in this appeal and, therefore, are not discussed.

> It is, therefore, ORDERED, . . . that this matter is dismissed for failure to state a claim upon which relief may be granted.

Thereafter, Plaintiffs timely filed this appeal.

STANDARD OF REVIEW

The standards are well established by which we are to assess a dismissal granted pursuant to a Rule 12.02(6) motion to dismiss for failure to state a claim upon which relief may be granted. As our Supreme Court stated in *Webb v. Nashville Area Habitat for Humanity, Inc*., 346 S.W.3d 422, 426 (Tenn. 2011), "[a] Rule 12.02(6) motion challenges only the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence." Commensurately, we look exclusively at the pleadings to determine the sufficiency of the complaint. *Id*.

"By filing a motion to dismiss, the defendant admits the truth of all of the relevant and material allegations contained in the complaint, but . . . asserts that the allegations fail to establish a cause of action." *Id*. (citations omitted). When a complaint is challenged by a Rule 12.02(6) motion, the complaint should not be dismissed for failure to state a claim unless it appears that the plaintiff can prove no set of facts in support of his or her claim that would warrant relief. *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn.1999) (citing *Riggs v. Burson*, 941 S.W.2d 44, 47 (Tenn.1997)). Making such a determination is a question of law. Our review of a trial court's determinations on issues of law is de novo, with no presumption of correctness. *Id*. (citing *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn.1997)).

ANALYSIS

I. THE TENNESSEE RIGHT TO FARM ACT

Right-to-farm laws are a product of the perception that as urban and residential development increased amidst rural areas, *nuisance* lawsuits often followed, "levied by individuals . . . who then objected to noises, odors, dust, chemical use, and slow-moving machinery associated with agricultural uses of the land." *Shore v. Maple Lane Farms, LLC*, No. E2011-00158-SC-R11-CV, 2013 WL 4428904, at *8 (Tenn. August 19, 2013) (quoting Patricia Norris *et al*., When Urban Agriculture Meets Michigan's Right to Farm Act: The Pig's in the Parlor, 2011 Mich. St. L. Rev. 365, 367). These statutory enactments offered a legislative solution to the concern that *nuisance* lawsuits prompted by this urban encroachment would result in the loss of valuable farmland. *Id*.

In an effort to safeguard this state's farmland, in 1982, the Tennessee General Assembly enacted a right-to-farm law in the form of the TRFA, stating "[m]any prime agricultural and forest lands in Tennessee, valuable for producing food and fiber for a hungry world, are being permanently lost for any agricultural purposes;" the legislature felt that these lands warranted protection as they "constitute important economic, physical, social, and esthetic assets to the surrounding lands and to the people of Tennessee." *Shore*, 2013 WL 4428904, at *9 (citing Act of Mar. 10, 1982, ch. 609, 1982 Tenn. Pub. Acts 92 (as codified and amended at Tenn. Code Ann. § § 43-26-101 to 43-26-104)). Thus, the TRFA operates to protect farms and farm operations from *nuisance* claims by creating a rebuttable presumption that a nuisance alleged under the statute is not a nuisance. *Id.*; Tenn. Code Ann. § 43-26-103.

The TRFA defines a "farm" as "the land, buildings, and *machinery* used in the commercial production of farm products and nursery stock as defined in § 70-8-303." Tenn. Code Ann. § 43-26-102(1) (emphasis added).

The Act further specifies that a "farm operation" is:

> [A] condition or activity that occurs on a farm in connection with the commercial production of farm products or nursery stock as defined in § 70-8-303, and includes, but is not limited to: marketed produce at roadside stands or farm markets; noise; *odors*; dust; *fumes*; *operation of machinery* and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.

Tenn. Code Ann. § 43-26-102(2) (emphasis added).

Moreover, the TRFA defines "farm products," as referenced within both the definition of "farm" and "farm operation," above as:

> [T]hose plants and animals useful to man and includes, but is not limited to, forages and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; *livestock, including breeding and grazing*; fruits; vegetables; flowers; seeds; grasses; trees; fish; apiaries; equine and other similar products or any other product that incorporates the use of food, feed, fiber or fur.

Tenn. Code Ann. § 43-26-102(3) (emphasis added).

Once the applicability of the TRFA is triggered, Tennessee Code Annotated § 43-26-103 provides:

> (a) *It is a rebuttable presumption that a farm or farm operation*, except a new type of farming operation as described in subsection (b), *is not a* public or private *nuisance*. The presumption created by this subsection (a) may be overcome only if the person claiming a public or private nuisance establishes by preponderance of the evidence that either:
>
> (1) The farm operation, based on expert testimony, does not conform to generally accepted agricultural practices; or
>
> (2) The farm or farm operation alleged to cause the nuisance does not comply with any applicable statute or regulation, including without limitation statutes and regulations administered by the department of agriculture or the department of environment and conservation.
>
> (b) With regard to the initiation of a new type of farming operation, there is a rebuttable presumption that the new type of farm operation is not a public or private nuisance, if the new type of farming operation exists for one (1) year or more on the land that is the subject of an action for nuisance before the action is initiated. The presumption created by this subsection (b) may be overcome only if the person claiming a public or private nuisance establishes by a preponderance of the evidence that either:
>
> (1) The new type of farm operation, based on expert testimony, does not conform to generally accepted agricultural practices; or
>
> (2) The new type of farm operation alleged to cause the nuisance does not comply with any applicable statute or regulation, including without limitation statutes and regulations administered by the department of agriculture or the department of environment and conservation.
>
> (c) As used in this section, "new type of farming operation" means a farm operation that is materially different in character and nature from previous farming operations and that is initiated subsequent to the date that the person alleging nuisance became the owner or lessee of the land, the use or enjoyment of which is alleged to be affected by the farming operation; "new type of farming operation" does not include the expansion or addition of facilities for a type of farming operation that existed on the land that is the subject of an

> action for nuisance prior to the date that the person alleging nuisance became the owner or lessee of the land, the use or enjoyment of which is alleged to be affected by the farming operation.
>
> (d) Nothing in this section shall be construed as limiting the ability of the trier of fact to determine whether a particular farming activity is either a new type of farming operation as defined in this section, or is an expansion of or addition to an existing type of farming operation.

(Emphasis added).

The foregoing reveals that the TRFA generally operates to protect farms and farm operations from unfounded *nuisance* claims. More specifically, and pertinent to the complaint at issue, the TRFA affords the owner or operator of the farm or farm operation the rebuttable presumption that the farm or farm operation is not a nuisance unless there is expert evidence the farm operation does not conform to generally accepted agricultural practices or that the farm or farm operation does not comply with applicable statutes or regulations. Tennessee Code Annotated § 43-26-103(a)(1)-(2).[3]

Having considered the purview of the TRFA, we now look to the nature and substance of the claim or claims asserted in the complaint.

II. PLAINTIFFS' *NUISANCE* CLAIM

The TRFA states that a farming operation does not constitute a *nuisance* unless it is established by competent expert proof that the farm operation "does not conform to generally accepted agricultural practices" or the farm or farm operation "does not comply with any applicable statute or regulation, including without limitation statutes and regulations administered by the department of agriculture or the department of environment and conservation." Tenn. Code Ann. § 43-26-102(a). Thus, to prevail in a *nuisance* action arising from or pertaining to a farm or farming operation, the plaintiff must prove, inter alia, the

[3]If the nuisance pertains to a "new type of farming operation," which is not alleged here, then Tennessee Code Annotated § 43-26-103(b) applies. A "new type of farming operation" is defined as a farm operation which is "materially different in character and nature from previous farming operations." Tenn. Code Ann. § 43-26-103(c). Nevertheless, even if a "new type of farming operation" is at issue, a cognizable action under the TRFA requires proof that the "farm," "farm operation," or the "new type of farming operation" does not conform to generally accepted agricultural practices or failed to comply with any applicable statute or regulation, such as those administered by the department of agriculture or the department of environment and conservation. See Tenn. Code Ann. § 43-26-103(a)(1)-(2) and § 43-26-103(b).

following elements: the farming operating does not comply with "generally accepted agricultural practices" or the farming operation violates an applicable "statute or regulation."[4] The complaint challenged here contains no such averments. Further, when confronted with the TRFA affirmative defense, Plaintiffs did not seek to amend the complaint, which the trial court should have freely granted had such a motion been timely filed. Thus, as Defendants contend and as the trial court correctly determined, the complaint does not state a viable *nuisance* claim. Accordingly, the complaint fails to state a *nuisance* claim for which relief can be granted that arises from Defendants' farming operations.

Nevertheless, as the following discussion reveals, our affirmance of the ruling that the complaint fails to state a viable *nuisance* claim does not preclude a finding that the complaint states a different claim for which relief may be granted, specifically, a claim of unreasonable interference with the use of Plaintiffs' easement across Defendants' farm.

III. THE NATURE AND SUBSTANCE OF PLAINTIFFS' CLAIM(S)

The title Plaintiffs placed on their complaint reads "COMPLAINT FOR ABATEMENT OF NUISANCE AND DAMAGES." Moreover, the complaint asserts, inter alia, that Defendants' farm equipment and cattle impeded the utility of and destroyed their ingress/egress easement constituting a "nuisance" for which they seek damages and injunctive relief. Based upon the title of the complaint and allegations in the complaint such as "nuisance" and "farm equipment and cattle," Defendants understandably asserted an affirmative defense and filed a Rule 12.02(6) motion to dismiss based upon the TRFA.

Defendants' view of the nature and substance of the claim or claims asserted in the complaint notwithstanding, it is the court's responsibility to ascertain the fundamental nature and substance of a claim. *Estate of French v. Stratford House*, 333 S.W.3d 546, 557 (Tenn. 2011). In assessing same, we are not limited by the manner in which the parties have designated the claims, but make our own independent determinations of the nature and substance of claims asserted. *Id*. In other words, it is within our authority to peer behind labels to identify the true nature and substance of Plaintiffs' claim or claims. In reviewing Plaintiffs' complaint and allegations, we have determined that Plaintiffs have asserted two separate claims: one for nuisance and one for interfering with and damaging an ingress/egress easement.

---

[4]In *Mathes v. Lane*, No. E2013-01457-COA-R3-CV, 2014 WL 346676, at * 9 (Tenn. Ct. App. Jan. 30, 2014), when called upon to review a Tenn. R. Civ. P. 12.02(6) dismissal, we considered the essential elements of claims for common law negligence and medical malpractice to determine whether the averments in the challenged complaint stated a claim or claims for which relief could be granted.

Tenn R. Civ. P. 8.01 states that a pleading which sets forth *a claim for relief* "shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks." To be fair to Defendants, Plaintiffs' complaint is not a good example of the minimal requisites of Rule 8.01. Although the nature and substance of Plaintiffs' claim or claims are inartfully stated, we believe the complaint attempts to set forth a general claim of *nuisance* and a specific claim of *unreasonable interference with the use of their ingress/egress easement*. In the opening paragraph of the complaint, Plaintiffs state they are seeking, inter alia, "damages for impairment of the Plaintiffs' use of land belonging to him [sic]," referring to the ingress/egress easement, the gravel road. Plaintiffs additionally allege the following:

> 8. "The easement . . . is the only route of access between the Plaintiffs' land and Gunnison Ridge Road. Without the free and unimpeded use of this easement, the Plaintiffs' property is landlocked."
> . . . .
>
> 10. The Defendants have impeded the Plaintiffs' use of their easement . . . . the Defendant Robert Earl Parchman has damaged the easement by operation of heavy equipment which has rutted the easement property and prevented water from draining.
> . . . .
>
> 12. The conduct of the Defendants has impaired and substantially destroyed the utility of the easement as an access route to the Plaintiffs' adjoining property, the dominant estate.
> . . . .
>
> 16. The Plaintiffs aver that the impairment or substantial destruction of an easement for access to property is actionable in damages. . . .
>
> 17. The plaintiffs aver that, absent the intervention of this Court, he [sic] will continue to suffer damages to his [sic] property.
>
> In the complaint's prayer for relief, Plaintiffs seek, inter alia:
>
> c. That the Court issue a temporary injunction prohibiting the Defendants from impeding or impairing the Plaintiffs' use and enjoyment of the subject easement pending further proceedings;
> . . . .

e. That they be awarded compensatory damages in an amount appropriate according to the proof in this cause.

As Defendants contend and we agree, Plaintiffs' complaint clearly asserts that Defendants farming operations created a *nuisance.* A closer examination of the complaint, however, reveals that it also contains specific factual assertions that Defendants' cattle and heavy equipment damaged the gravel road Plaintiffs use for ingress and egress, which impairs Plaintiffs' use of their ingress/egress easement across Defendants' property.

IV. UNREASONABLE INTERFERENCE WITH THE USE OF AN EASEMENT

An easement is a property right, it is "an interest in property that confers on its holder a legally enforceable right to use another's property for a specific purpose." *Shell v. Williams*, No. M2013-00711-COA-R3-CV, 2014 WL 118376, at *4 (Tenn. Ct. App. Jan. 14, 2014) (quoting *Hall v. Pippin*, 984 S.W.2d 617, 620 (Tenn. Ct. App. 1998)). In Tennessee, the rights of the owner of the easement are paramount to those of the landowner, at least to the extent of the easement.[5] *Cox v. East Tennessee Natural Gas Co.*, 136 S.W.3d 626, 627-28 (Tenn. Ct. App. 2003).

The owners of the land which is subject to an easement have no legal right to unreasonably interfere with an easement holder's enjoyment or use of the easement. *Id.*; *Shell*, 2014 WL 118376, at *9 (citing *Charles v. Latham*, No. E2003-00852-COA-R3-CV, 2004 WL 1898261 (Tenn. Ct. App. Aug. 25, 2004). The type of injury that may be sustained from the wrongful interference with the easement, includes, but is not limited to, "injury to the land itself and diminution of the easement holder's use and enjoyment of his own property, or the use of the easement." *Rogers v. Roach*, No. M2011-00794-COA-R3-CV, 2012 WL 2337616, at *12 (Tenn. Ct. App. June 19, 2012) (citing *Rector v. Halliburton*, 2003 WL 535924, at *10 (Tenn. Ct. App. Feb. 26, 2003).

To prevail in an action for unreasonable interference with the use of an easement, the owner of the easement must prove the following elements: (1) the existence of the easement,

---

[5]The owner of "a right of way may take the necessary steps in preparing an easement for proper use, including grading, graveling and paving." *Schmutzer v. Smith*, 679 S.W.2d 453, 455 (Tenn. Ct. App. 1984). Accordingly, "[t]he owner of an easement cannot materially increase the burden of it upon the servient estate; but he may make repairs and improvements that do not, in substance, affect its character." *Mize v. Ownby,* 225 S.W.2d 33, 35 (Tenn. 1949) (quoting JONES ON EASEMENTS, § 827, p. 665). When weighing the rights of holders of an easement and owners of the property under or around the easement, the guiding principle is that the rights of each party to the use of the easement may be limited by the effect the exercise of those rights has on the other party's ability to exercise his own rights. *Cox v. East Tennessee Natural Gas Co.*, 136 S.W.3d 626, 627-28 (Tenn. Ct. App. 2003); *Cooper v. Polos*, 898 S.W.2d 237 (Tenn. Ct. App. 1995).

(2) unreasonable interference with a legitimate use or purpose of the easement; and (3) actual damage to the easement holder's use. *Shell*, 2014 WL 118376, at *9.

The portions of the complaint quoted in the previous section reveal that Plaintiffs have asserted that they own an ingress/egress easement through Defendants' property, the easement is the only route of access between Plaintiffs' property and the public road, and Defendants have impaired and substantially destroyed the utility of the easement as an access route. Plaintiffs also asserted that the impairment or substantial destruction of their easement

is actionable in damages, and absent the intervention of the court, they will continue to suffer damages.

Based upon these and other factual assertions in the complaint, we have concluded that the complaint sufficiently identifies these elements. Therefore, because the essential elements of a claim for unreasonable interference with the use of an easement has been stated, the complaint states a claim for which relief can be granted, that being a claim for unreasonable interference with the use of an easement.

IN CONCLUSION

We affirm the dismissal of Plaintiffs' *nuisance* claims to the extent they are subject to the TRFA; however, we reverse the dismissal of the complaint for Plaintiffs' stated a claim for unreasonable interference with the use of their ingress/egress easement. Therefore, this matter is remanded for further proceedings consistent with this opinion.

Costs of appeal assessed equally against the appellants and the appellees.

_____
FRANK G. CLEMENT, JR., JUDGE