

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

June 3, 2026 Session

ROBERT FULLER ET AL. v. MICHAEL E. BARNES**Appeal from the Sumner County Chancery Court**
No. 2023CV-79 Louis W. Oliver, III, Chancellor

No. M2025-00642-COA-R3-CV

This appeal arises from an easement dispute between neighbors concerning a dog pen easement/encroachment onto the adjacent property. Following the approval of a temporary injunction prohibiting the defendant from removing the plaintiffs' dog pen, the Sumner County Chancery Court granted summary judgment for the plaintiffs. The court found that the easement was valid and enforceable against the defendant even though it had not been approved or recorded by city planners. This appeal followed. Finding no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., C.J., delivered the opinion of the court, in which JOHN W. MCCLARTY, P.J., E.S., and W. NEAL MCBRAYER, J., joined.

Brandon R. Meredith and R. Colten Jones, Hendersonville, Tennessee, for the appellant, Michael E. Barnes.

James W. Cobb and David G. Goodman, Hendersonville, Tennessee, for the appellees, Robert and Patricia Fuller.

OPINION**FACTS AND PROCEDURAL HISTORY**

This case involves the Lake Park subdivision in Gallatin, Tennessee. In 2004, Lots 1, 2, and 3 of the subdivision were recorded with the Sumner County Register's office by James and Bobbie Staley (the "Staleys") as part of the Lake Park Subdivision plat. The Staleys conveyed Lot 1 ("Lot 1"), which is now known as 1244 Lock 4 Road, to the appellees, Robert and Patricia Fuller (the "Fullers"), by warranty deed in May 2017. The

deed, which was recorded in the Sumner County Register's Office, includes the following provision, referred to hereafter as the "Dog Pen Easement":

ALSO CONVEYED HERewith is an easement to the Grantee for the encroachment of the dog pen on Grantor's remaining property, further described as the "5 foot Dog Pen and Maintenance Easement" as shown on the survey attached hereto as Exhibit "A". Said Easement shall run with the land.

In September 2017, the Staleys conveyed Lot 3 ("Lot 3" or the "Boswells' Lot"), now known as 903 Lake Park Drive, to James and Joanna Boswell (the "Boswells") by warranty deed. Although Lot 3 is the servient estate to the easement purportedly created in the Fuller's deed, the Dog Pen Easement is not mentioned in the Boswells' deed.

In 2021, the Boswells listed Lot 3 for sale. The MLS listing noted that "there are 2 easements located on this property" and included an attachment showing the Dog Pen Easement. The defendant, Michael Barnes ("Mr. Barnes"), an experienced residential home builder, became interested in Lot 3. As part of his due diligence, he pulled the Boswells' deed, which did not show the Dog Pen Easement. He also visited the property and noticed the Fullers' dog pen, observing that it crossed into the Boswells' Lot. Additionally, Mr. Barnes contacted the City of Gallatin Building and Codes Office and inquired into the possibility of constructing a house, detached garage, and swimming pool on Lot 3. Mr. Barnes testified that, based on his conversations with city officials, he did not believe there were any easements or encumbrances that would prevent his plans to build the structures on the site.

In November 2021, the Boswells conveyed Lot 3 to Mr. Barnes by warranty deed. Under the "Restrictions" section, the deed stated that it was subject to "5 foot dog pen easement appearing of record in Record Book 4533, page 477, Register's Office for said County." Mr. Barnes testified that the title company had advised him of the Dog Pen Easement during closing proceedings, but he had asked that it not be included on the deed. He further testified that he did not receive the deed at closing and did not know the Dog Pen Easement was included until later.

In January 2023 Mr. Barnes obtained permits from the City of Gallatin to construct a detached garage on his lot, which was to partially cover land included in the Dog Pen Easement. He then spoke to his neighbors, the Fullers, about his plans. In response, the Fullers presented Mr. Barnes with the Dog Pen Easement provision in their deed. Mr. Barnes then pulled his own deed, which showed the corresponding easement provision allowing a dog pen to extend onto his land.

Mr. Barnes then returned to the City of Gallatin Department Building and Codes Office where he asserts he confirmed that the Dog Pen Easement would not be enforceable,

because it was not approved by the city and recorded in the subdivision plat. In May 2023, against his neighbors' objections, Mr. Barnes began removing the fence bounding the Fullers' dog pen.

In response, the Fullers sought a temporary restraining order in the Sumner County Chancery Court, which was granted May 23, 2023. A temporary injunction was granted July 3, 2023 via an order stating that Mr. Barnes was "restrained from removing the fence surrounding the dog pen easement in question and/or constructing a structure of any sort upon such easement until this cause of action has been fully resolved."

In July 2024, the parties filed competing motions for summary judgment. The chancery court ruled in favor of the Fullers on April 16, 2025. In its order, the court found that the warranty deed from the Staleys to the Fullers created an express easement allowing a fenced enclosure to maintain a dog. The court also noted that Mr. Barnes, "an experienced contractor," had personally observed the encroachment before his purchase "which put him on actual notice of the potential encumbrance." The order then noted that, despite Mr. Barnes's knowledge of the encroachment and his request that the closing attorney not include the easement in the closing documents, the Dog Pen Easement was identified in Mr. Barnes's deed as an encroachment.

The order addressed Mr. Barnes's argument before the court that the Dog Pen Easement was noncompliant with Gallatin Subdivision Regulations Chapter 1-109.1, which requires changes to subdivision plats affecting street layouts, areas reserved for public use, or lot lines to be approved by the planning commission following the same procedure as regulations for a subdivision. The court found that the Dog Pen Easement was only for the use of the owner of Lot 1 and thus would not affect any street layout or areas reserved for public use as described in the local regulation.

Further, the trial court reasoned that the grant of the Dog Pen Easement did not require changes to roads, utilities, or other local infrastructure, so Tennessee Code Annotated § 13-4-303(b)(1) was not implicated. Consequently, the Dog Pen Easement did not violate state statutes regarding approval of easements.

The court concluded as follows:

[T]he grant of the [Dog Pen Easement] was a valid easement, sufficiently described, for adequate consideration involving property owned and conveyed by Staley as a then common property owner. The conveyance of the Easement did not involve or affect any street layout; any areas reserved for public use; or any lot line, and was granted solely for a specific use.

Accordingly, Summary judgment was entered for the Fullers.

This appeal followed.

ISSUES

Mr. Barnes presents the following issues for appeal:

1. Whether the trial court erred in failing to find the subject easement was void ab initio for failure to comply with the requirements of Tennessee Code Annotated §§ 13-3-402 and 13-4-302 as well as the Subdivision Regulations of the City of Gallatin and the Gallatin Planning Region, Section 1-109.
2. Whether the trial court erred in finding Mr. Barnes had sufficient legal notice of the subject easement and therefore took the estate subject to said easement.

The Fullers present the following issues for appeal:

1. Whether trial court correctly granted summary judgment where the material facts were undisputed and the only questions presented were matters of law as to the validity and enforceability of the subject easement against subsequent purchasers of the servient estate.
2. Whether the trial court correctly ruled that the subject easement was not void ab initio for a purported failure to comply with the requirements of Tennessee Code Annotated §§ 13-3-402 and 13-4-302 as well as the Subdivision Regulations of the City of Gallatin and the Gallatin Planning Region, Section 1-109.1.
3. Whether the trial court correctly ruled that Mr. Barnes had sufficient legal notice of the subject easement and therefore took the servient estate subject to said easement.

STANDARD OF REVIEW

A party is entitled to summary judgment 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.” Tenn. R. Civ. P. 56.04. The resolution of a motion for summary judgment is a matter of law, which is reviewed de novo with no presumption of correctness. *Tinsley Properties, LLC v. Grundy Cnty.*, No. M2022-01562-SC-R11-CV, 2026 WL 515396, at *2 (Tenn. Feb. 25, 2026).

Issues related to the interpretation of written instruments are also matters of law. *Cellco P’ship v. Shelby Cnty.*, 172 S.W.3d 574, 586 (Tenn. Ct. App. 2005) (citing *The Pointe, LLC v. Lake Mgmt. Ass’n, Inc.*, 50 S.W.3d 471, 474 (Tenn. Ct. App. 2000)). Likewise, statutory construction is a matter of law which is reviewed under the de novo

standard on appeal. *Johnson v. Hopkins*, 432 S.W.3d 840, 844 (Tenn. 2013) (citing *In re Estate of Trigg*, 368 S.W.3d 483, 489).

ANALYSIS

I. VALIDITY OF THE EASEMENT

Mr. Barnes contests the trial court's ruling upholding the validity of the Dog Pen Easement. "An easement is a right an owner has to some lawful use of the real property of another." *Coolidge v. Keene*, 614 S.W.3d 106, 116 (Tenn. Ct. App. 2020) (citing *Pevear v. Hunt*, 924 S.W.2d 114, 115 (Tenn. Ct. App. 1996)). In Tennessee, easements may be created by: (1) express grant, (2) reservation, (3) implication, (4) prescription, (5) estoppel, and (6) eminent domain. *Cellco P'ship v. Shelby County*, 172 S.W.3d at 588 (quoting *Pevear v. Hunt*, 924 S.W.2d at 588). The Dog Pen Easement was purportedly created by express grant.

Mr. Barnes first argues that the trial court failed to consider the enabling statutes, Tennessee Code Annotated §§ 13-3-402 and 13-4-302. The enabling statute regarding regional planning commissions is as follows:

(b) A county register shall not receive, file, or record a plat of a subdivision, or an amendment, modification, or correction to a recorded plat of a subdivision, without the approval of the regional planning commission, or the planning staff of the regional planning commission if this responsibility has been delegated to the planning staff pursuant to subsection Notwithstanding this subsection (b), an easement or survey attached to an easement granted to the state, a county, municipality, metropolitan government, or entity of the state, county, municipality or metropolitan government, shall not constitute an amendment, modification, or correction of a recorded plat of a subdivision.

Tenn. Code Ann. § 13-3-402.

Tennessee Code Annotated § 13-4-302(c), which applies to subdivisions within a municipality and requires the approval of the municipal planning commission, uses similar language. Stated more succinctly, these two statutes "require[] all subdivision plats to be approved by a municipal or regional planning commission." *Hudson v. Metro. Gov't of Nashville & Davidson Cnty.*, No. M2019-01081-COA-R3-CV, 2020 WL 7255807, at *1 (Tenn. Ct. App. Dec. 8, 2020).

Pursuant to its authority granted by the state, the city of Gallatin enacted the following regulations:

Procedures for Resubdivision – If any change in an approved or recorded subdivision plat would affect any street layout shown on such plat or areas reserved thereon for public use or any lot line or if it would affect any map, plan, or plat legally recorded before the adoption of any Subdivision Regulations, such amendment must be approved by the Planning Commission by the same procedure, rules, and regulations as for a subdivision.

GALLATIN, TENN., Subdivision Regulations ch. 1-109.1 (2008).

Self-imposed Restrictions – If the Owner places restrictions on any of the land contained in the subdivision greater than those required by the Zoning Ordinance or these Regulations, such restrictions or reference thereto shall be required to be recorded, along with the Final Plat with the Register on a separate form and referenced on said plat.

GALLATIN, TENN., Subdivision Regulations ch. 2-101.7 (2008).

Taking the state and local regulations together, Mr. Barnes concludes that a deed creating an easement in a platted subdivision must first be approved by the regional or municipal planning commission. And, within Gallatin, Mr. Barnes argues that if the easement affects an area reserved for public use or any lot line or places restrictions on the subdivision greater than those required by the Zoning Ordinance or the Subdivision Regulations, then the easement must be recorded with the register of deeds and referenced on the plat.

Mr. Barnes relies on a series of cases, asserting that because zoning ordinances are analogous to easements, it follows that easements should adhere to a similar approval process with local planning authorities where there are enabling statutes. In *Edwards v. Allen*, 216 S.W.3d 278 (Tenn. 2007), our Supreme Court held that a zoning resolution was invalid due to a failure to follow procedural requirements, including holding a proper hearing with notice and resubmitting the proposed change to the planning commission. Mr. Barnes also raises *Metro. Gov't of Nashville & Davidson Cnty. v. Barry Const. Co., Inc.*, 240 S.W.3d 840 (Tenn. Ct. App. 2007), which emphasizes the power of zoning ordinances, even when countervailing plans have been approved by a planning commission. Thus, Mr. Barnes contends, even though the easement was recorded by the Register of Deeds, it was invalid for failure to go through the prescribed approval process.

While we acknowledge Mr. Barnes's arguments regarding the state, we are not persuaded that the statutes preclude private owners from agreeing to easements that only affect their lots and have no bearing on public uses or interests. Respectfully, we do not find zoning ordinances analogous to an easement created by agreement between two private landowners regarding use of their adjacent land. Zoning laws are an exercise of the

state's police power to legislate for public health, safety, and morals. *Mobile Home City of Chattanooga v. Hamilton Cnty.*, 552 S.W.2d 86, 87 (Tenn. Ct. App. 1976); *see also SNPCO, Inc. v. City of Jefferson City*, 363 S.W.3d 467, 472–473 (Tenn. 2012); *Tinsley Properties, LLC v. Grundy Cnty.*, 2026 WL 515396, at *3. As such, they are “largely divorced in concept, creation, enforcement, and administration from restrictions arising out of agreements between private parties who, in the exercise of their constitutional right of freedom of contract, can impose whatever lawful restrictions upon the use of their lands that they deem advantageous or desirable.” 4 *Rathkopf's The Law of Zoning & Planning* § 82:2 (4th ed. 2026). Accordingly, the holdings of the cases concerning zoning ordinances above are not instructive.

Case law and statutes are clear that subdivision plats, resubdivisions, and zoning ordinances must be approved by a regional planning commission, but an easement of this type, between two private landowners, and requiring no new lot lines, is distinct from the foregoing changes to land. We have held that “purchasers of lots by a plat reference can acquire easement rights independent of recordation of a plat or public dedication.” *Moore v. Queener*, 464 S.W.2d 296, 301 (Tenn. Ct. App. 1970). Thus, we do not find that the Dog Pen Easement required approval by the regional planning commission. Finally, while apparently not recorded on the subdivision plat, the easement was recorded on deeds filed with the local Register of Deeds, fulfilling the requirements of an easement by express grant. (“To create an easement by express grant, there must be a writing containing plain and direct language evincing the grantor’s intent to create a right in the nature of an easement rather than a license.” *Smith v. Evans*, No. M2007-02855-COA-R3-CV, 2008 WL 3983117, at *2 (Tenn. Ct. App. Aug. 27, 2008) (quoting 25 Am. Jur. 2d *Easements and Licenses* § 15 (2008)).

Mr. Barnes next argues that the trial court did not properly interpret the term “affect” as it is used in the Gallatin regulation. The Gallatin regulation on “Resubdivision” sets forth the types of changes that must receive planning commission approval. One is changes affecting any lot line, requiring approval of “any change in an approved or recorded subdivision plat” that “would affect any street layout shown on such plat or areas reserved thereon for public use or any lot line.” GALLATIN, TENN., Subdivision Regulations ch. 2-101.7 (2008). The trial court ruled that “the distinct lot line between Lots 1 and 3 is not affected in that Lot 3 remains the property of [Mr. Barnes] subject only to the specific use granted by the [Dog Pen Easement] and no other.” Mr. Barnes counters that the easement affects the lot line because it produced an effect on the boundary between his and the Fullers’ property; thus, approval by local authorities was required.

In construing the meaning of the word “affect,” both parties cite *Eastman Chemical Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004) which instructs courts to apply the plain meaning and normal accepted use of words and terms. Our Administrative Code defines a boundary line as “an adequately dimensioned and described line or curve bounding an area or dividing separate properties.” Tenn. Comp. R. & Regs. 0820-03-.09(1)(c). “An easement

is an interest in property that confers on its holder a legally enforceable right to use another's property for a specific purpose.” *Holder v. Serodino*, No. M2014-00533-COA-R3-CV, 2015 WL 5458377, at *7 (Tenn. Ct. App. Sept. 16, 2015). Yet the grant of an easement does not convey title or ownership interest in the servient estate. *Lillard v. Southern Ry. Co.*, 337 S.W.2d 335 (Tenn. 1959); 28A C.J.S. Easements § 193. Accordingly, an easement on an adjacent property does not affect the boundary line. Therefore, the Dog Pen Easement was not subject to the approval of the local authorities on this ground.

Under the Gallatin regulations, changes to areas affecting public use also require planning commission approval. In its ruling, the trial court correctly found that the Dog Pen Easement did not affect any street layout or areas reserved for public use, opining that “the grant of the [Dog Pen Easement] required no road construction or improvement; no water, sewer, or other utility mains, piping or connections to be constructed or installed; nor other infrastructure or other utilities to be constructed[.]” As such, the easement had no effect on any area reserved for public use. We agree with the trial court’s well-reasoned conclusion that the regulations do not apply because the Dog Pen Easement does not affect the lot line, nor public use or utilities.

For the same reason we are unpersuaded by Mr. Barnes’s contention that, under the doctrine of *expressio unius exclusio alterius*, the fact that the enabling statutes exclude government easements from mandatory approval by the regional planning commissions means that, by implication, other types of easements must be submitted for approval. This doctrine holds that “[o]missions are significant when statutes are express in certain categories but not in others.” *Richards v. Vanderbilt Univ. Med. Ctr.*, 706 S.W.3d 319 (Tenn. 2025) (quoting *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn. 1997)). Yet “the *expressio unius* canon should be applied flexibly; ‘[c]anons of construction, though helpful, should always be tested against the other interpretive tools at a court’s disposal.’” *In re Estate of Davis*, 308 S.W.3d 832, 842 (Tenn. 2010) (quoting *In re Estate of Tanner*, 295 S.W.3d 610, 625 n. 13 (Tenn. 2009)). Nevertheless, we find this argument unpersuasive because the Dog Pen Easement does not affect the lot line, nor public use or utilities.

For the reasons stated above, we affirm the trial court’s ruling that the easement was not subject to the local regulations mandating approval and recordation on the plat.

II. NOTICE OF THE EASEMENT

Mr. Barnes also argues that he was not given sufficient legal notice of the easement.

“A person who purchases land with knowledge or with actual, constructive, or implied notice that it is burdened with an easement in favor of other property ordinarily takes the estate subject to the easement,” affirming the importance of notice in transactions

involving easements. *Riegel v. Wilkerson*, No. W2013-01391-COA-R3CV, 2014 WL 546113, at *5 (Tenn. Ct. App. Feb. 11, 2014). Yet “a bona fide purchaser of land without knowledge or actual or constructive notice of the existence of an easement in such land generally takes title free from the burden of the easement.” *Id.*

Mr. Barnes notes that the Dog Pen Easement was not noted on the Boswells’ deed, as well as the fact that city officials allegedly told him there were no easements preventing his planned construction on the lot. This, he asserts, means he did not have constructive notice. “Constructive notice is notice implied or imputed by operation of law and arises as a result of the legal act of recording an instrument under a statute by which recordation has the effect of constructive notice.” *Blevins v. Johnson Cnty.*, 746 S.W.2d 678, 682–83 (Tenn. 1988). When “no facts appear either from the circumstances surrounding the transaction or on the face of the instrument itself that would give rise to actual or inquiry notice . . . then the party can be bound *only* by what can be shown by the constructive notice provided by the recorded instruments in the chain of title.” *Id.* at 684 (emphasis added).

However, as the trial court opined, Mr. Barnes

did personally observe the encroachment when he physically viewed Lot 3, with the dog pen and fence thereon, prior to his prospective purchase which put him on actual notice of the potential encumbrance. Further, knowing of the encroachment, [Mr. Barnes] instructed the closing attorney at the time he purchased Lot 3 to exclude reference to the [Dog Pen Easement] on the closing documents. That instruction to exclude the easement was to no avail, and the Warranty Deed to the Respondent included reference to the [Dog Pen Easement] as a Restriction.

As our Supreme Court explained, “inquiry notice means that ‘whatever is sufficient to put a person on inquiry’ is ‘notice of all the facts to which that inquiry will lead,’ when pursued ‘with reasonable diligence and good faith.’” *Hughes v. New Life Dev. Corp.*, 387 S.W.3d 453, 485 (Tenn. 2012) (citing *Blevins v. Johnson Cnty.*, 746 S.W.2d at 683). Further, “one who purchases land burdened with an open, visible easement is ordinarily charged with notice that he or she is purchasing a servient estate.” *Butler v. Pitts*, No. W2015-01124-COA-R3-CV, 2016 WL 561078, at *4 (Tenn. Ct. App. Feb. 12, 2016).

Considering the foregoing, Mr. Barnes had “knowledge of facts and circumstances sufficiently pertinent in character to enable reasonably cautious and prudent persons to investigate and ascertain as to the ultimate facts,” amounting to inquiry notice, a form of actual notice. *Hughes v. New Life Dev. Corp.*, 387 S.W.3d at 485.

IN CONCLUSION

The judgment of the trial court is affirmed, and this case is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against the appellant, Michael E. Barnes.

FRANK G. CLEMENT JR., C.J.