

FILED

08/11/2026

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs March 5, 2026

FRED ANDREWS ET AL. v. JOEL BROWN ET AL.

Appeal from the Chancery Court for Dickson County
No. 22CH1-2021-CV-179 Adrienne Gilliam Fry, Chancellor

No. M2025-01207-COA-R3-CV

The trial court dismissed this private condemnation action, brought pursuant to Tenn. Code Ann. § 54-14-102, on summary judgment based upon its conclusion that the plaintiffs already had lawful access to their property. We have determined that the trial court erred in finding that the plaintiffs had express easements giving them access to their property. Further, genuine issues of material fact exist regarding whether the plaintiffs could have lawful access under another theory. Therefore, we reverse and remand.

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

ANDY D. BENNETT, J., delivered the opinion of the Court, in which STEVEN W. MARONEY and WILLIAM E. PHILLIPS II, JJ., joined.

Thomas G. Kirkpatrick, Manchester, Tennessee, for the appellants, David A. Wilder, Earle A. Wilder, and Valerie M. Wilder.

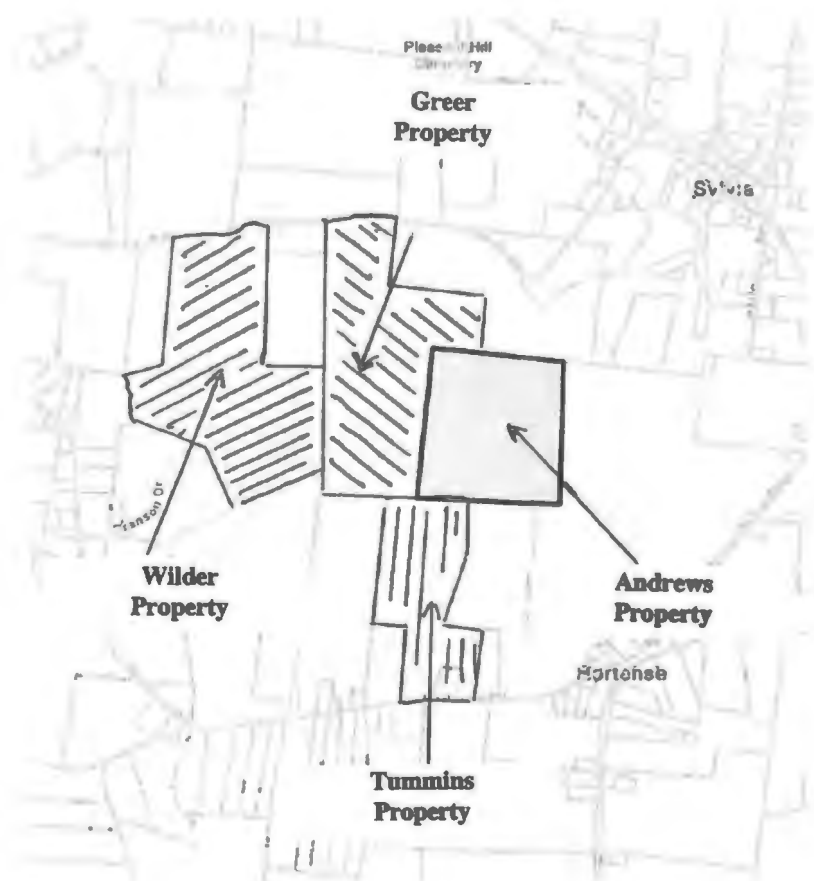
Brian Linkowski and Elizabeth B. Padgett, Brookhaven, Georgia, for the appellees, Fred Andrews and Amy Andrews.

Benjamin C. Regen, Dickson, Tennessee, for the appellees, Justin Tummins and Susan Tummins.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

In November 2011, Fred and Amy Andrews, who reside in Ohio, purchased property located at 1000 Nels Adams Road¹ in Dickson County (“the Andrews Property”) from Charles and Elizabeth Hudson (“the Hudsons”). As indicated in the following tax map, the Andrews Property is located between two county roads, Dowdy Road and Hortense Road, but does not touch either road.

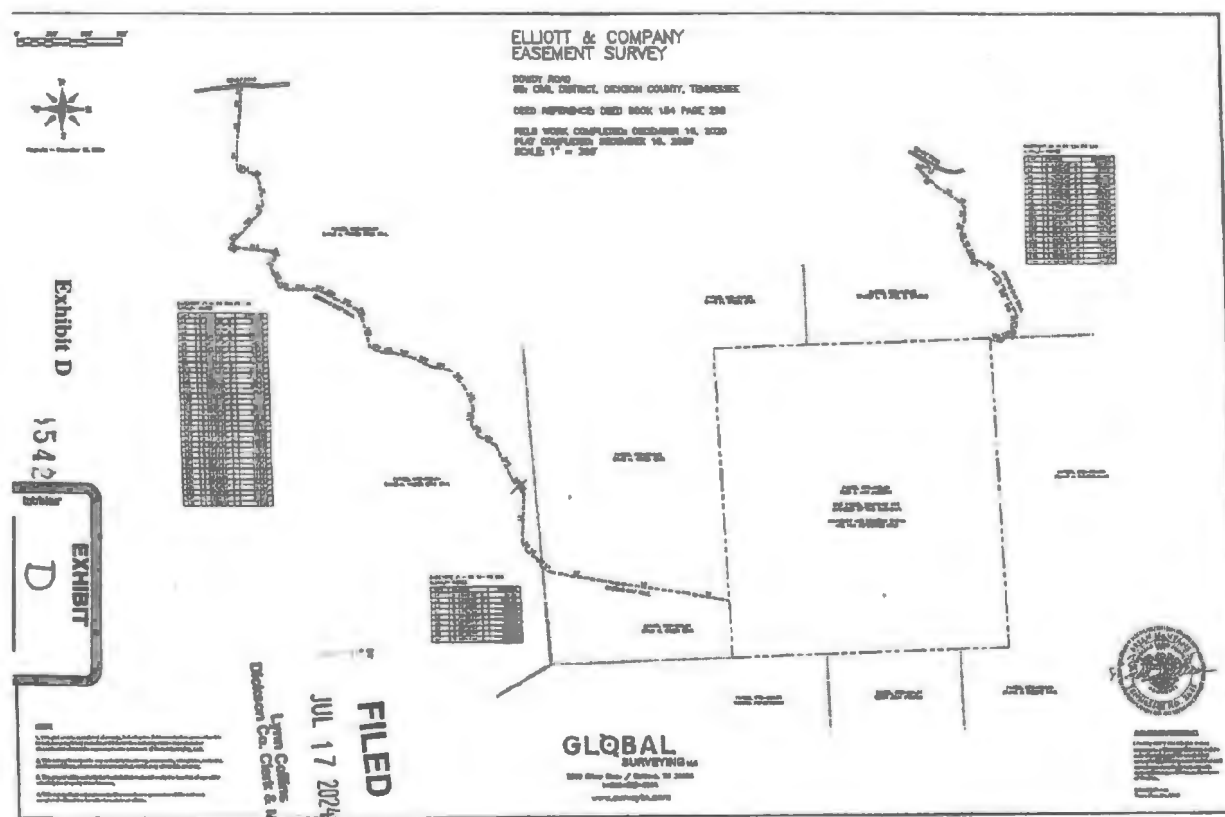


Unfortunately, an apparent mistake in the chain of title for the Andrews Property resulted in the current controversy as to how the Andrewses can legally access their property. The Hudsons purchased the Andrews Property from Warren Hill, Warren Thomas Hill, and Johnny Hill in February 1984.² A few months before the purchase, the

¹ Nels Adams Road is not the same road as Nols Adams Road; the latter road will be an important landmark in this appeal.

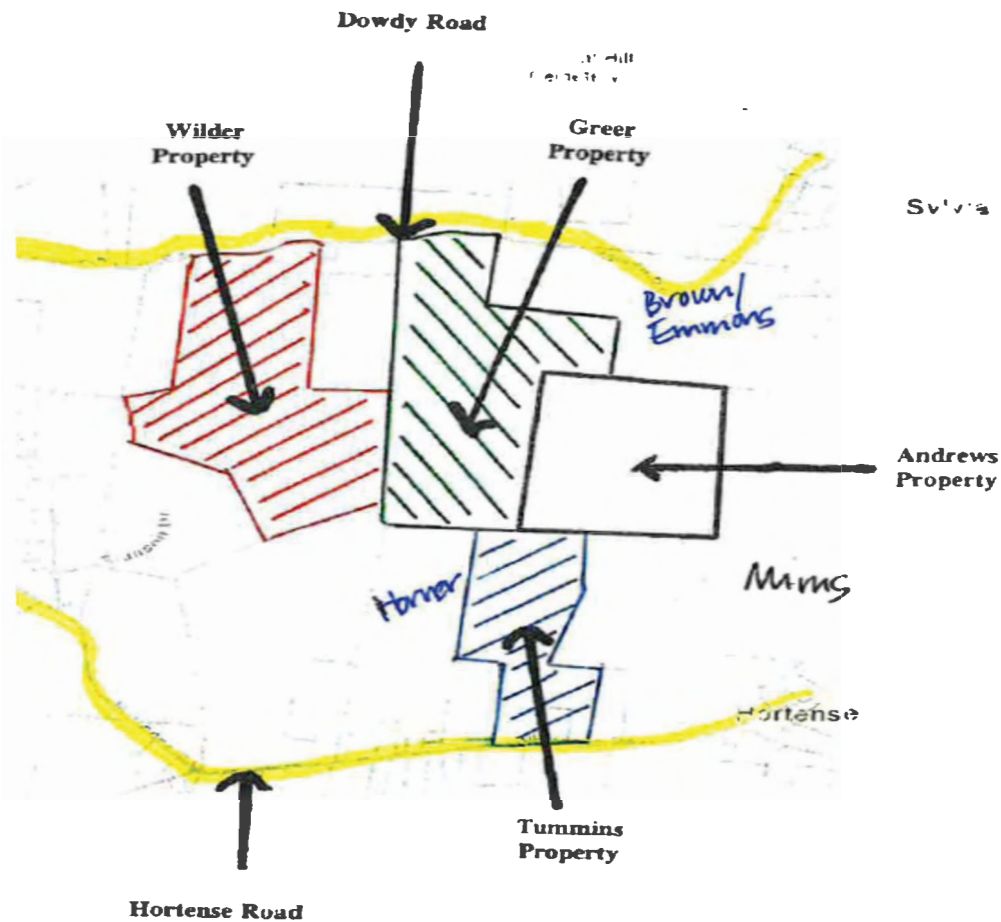
² The deed also includes the date February 10, 1983, and it is not clear from the record which year is correct. In any event, the deed was recorded in May 1984.

Hudsons obtained a location survey that showed three purported easements providing two access routes to the Andrews Property from Dowdy Road.



Easements number 1 and 2 crossed properties owned at that time by Stephen Wilder, Shirley Hassell, and Kenneth Fowlkes, trustee. Easement 3 also crossed property not owned by the Hills. These easements were included in the Hudson's warranty deed from the Hills. However, according to the Andrewses' complaint, the Hills did not own the servient estates for these express easements, and the servient estate owners never granted the express easements.

The Andrewses initiated this lawsuit in May 2021 against several of the surrounding landowners seeking a "private road easement or right of way" pursuant to Tenn. Code Ann. § 54-14-102 to provide them with access to their property. The Andrewses subsequently amended their complaint several times and added defendants. We will, therefore, address the third amended complaint, which was filed on April 16, 2024, against more than 20 defendants, all of whom own property in the area surrounding the Andrews Property. The complaint includes a description of the chain of title for each of the pertinent pieces of property, which are: the Brown/Emmons Property; the Vermilyea Property; the Greer Property; the Wilder Property; the Mims Property; the Williams Property; the Tummins Property; the Ludaway Property; and the Horner Property. To the extent ascertainable from the record, we have marked these properties on the tax map below.



For purposes of this appeal, the key properties are the Andrews Property, the Wilder Property, and the Greer Property.

Because of the previously-described error regarding the express easements contained in their chain of title, the Andrewses concluded that the conveyance of these easements from the Hills to the Hudsons was “unenforceable.” Easements 1 and 2, which cross the Wilder and Greer properties, are known collectively by the parties as “the Long Easement.” Easement 3 has been denominated “the Short Easement.”³ According to the third amended complaint, when the Hudsons owned the Andrews property, they accessed the property by using the Long Easement, the Short Easement, and the Tummins Property. The complaint further states:

Upon receiving title, the Andrews, who reside in Ohio, would access their Property, infrequently, by and through the Long Easement and the Short

³ These names are confusing because they seem to presume that a legally enforceable easement exists, which is the issue before this Court.

Easement as well as other access points. However, the Long Easement is a long distance from the public road, steep terrain, filled with brush and overgrowth, and requires the crossing of a large stream. The Short Easement is shorter in distance to the public road, but that too includes steep terrain, filled with brush and overgrowth, and requires the crossing of a large stream, as such, the easements do not provide reasonable access and there are more reasonable access points across other properties.

Further, according to the third amended complaint, “since there is no express easement to the Andrews Property and [it] is landlocked, the Andrews have been prevented from gaining vehicular access to the Andrews Property.” The Andrewses alleged that their property was “cut off or obstructed entirely from a public road or highway by the intervening lands of others” and requested that a right-of-way be condemned “and set aside for the benefit of their land over and across the intervening lands or property belonging to one or more of the Defendants.” The Andrewses sought to establish a right of way for ingress and egress pursuant to Tenn. Code Ann. § 54-14-102.⁴ They requested the appointments of a jury of view, in accordance with Tenn. Code Ann. § 54-14-111, to determine the proper location for the right of way.

The Tummins defendants answered the third amended complaint on June 3, 2024. They denied that the Andrewses or their predecessors in interest had used the Tummins Property for ingress and egress to the Andrews Property. They further denied that the Andrewses lacked lawful access by using the Long Easement and/or the Short Easement. The Tummins raised affirmative defenses, including that the Andrewses had existing adequate lawful access to their property under one of the following theories: (1) adverse use under recorded assurance of title, (2) adverse use for common law prescriptive period, or (3) easement by express and implicit reservation (express easement over Wilder Property and implied easement over Greer Property).

⁴ Tennessee Code Annotated section 54-14-102(a)(1) states:

A person owning any land, where ingress or egress to and from which is cut off or obstructed entirely from a public road or highway by the intervening land of another, or who has no outlet from the land to a public road in the state, by reason of the intervening land of another, is given the right to have a private easement or right-of-way not exceeding twenty-five feet (25') condemned and set aside for the benefit of the land over and across the intervening land for the purpose of ingress and egress and extending utility lines, including, but not limited to, electric, natural gas, water, sewage, telephone, or cable television to the enclosed land. Maintenance of the easement or right-of-way shall be the responsibility of the person granted the easement or right-of-way. Gates or fencing that restricts access to the subservient land may not be erected. In counties with a metropolitan form of government, the maximum permissible width for an easement or right-of-way is fifteen feet (15').

On June 27, 2024, the Andrewses filed a motion for appointment of a jury of view and writ of inquiry. David Wilder filed a response expressing no opposition to the motion for a jury of view.

On July 17, 2024, the Tummins defendants filed a motion for summary judgment, specifically requesting a ruling that the Andrewses “have a valid and subsisting easement and right-of-way over the lands of either” the Wilder defendants or the Greer defendants. The Tumminses asserted that no genuine issue of material fact remained to show that one or both of the following are true:

- a. The road identified in the complaint herein as the “Long Easement” and known as “Nols Adams Road,” and which runs from Dowdy Road (a public road) to the lands of the Andrews (the “Andrews Property”) has been in existence in its present location for nearly fifty (50) years, and the lands of the Wilder Defendants were conveyed to the Wilder Defendants subject to the right-of-way thereof.
- b. The lands now belonging to the Greer Defendants (the “Greer Property”), and which borders both the Andrews Property and the right-of-way of Dowdy Road, was owned by Andrews’ immediate predecessors in title, Charles L. Hudson and Wife, Elizabeth C. Hudson (collectively, the “Hudsons”), at the same time that the Hudsons owned the Andrews Property, and the Greer Property was conveyed by the Hudsons under circumstances giving rise to an easement by necessity retained by implication over and across the Greer Property.

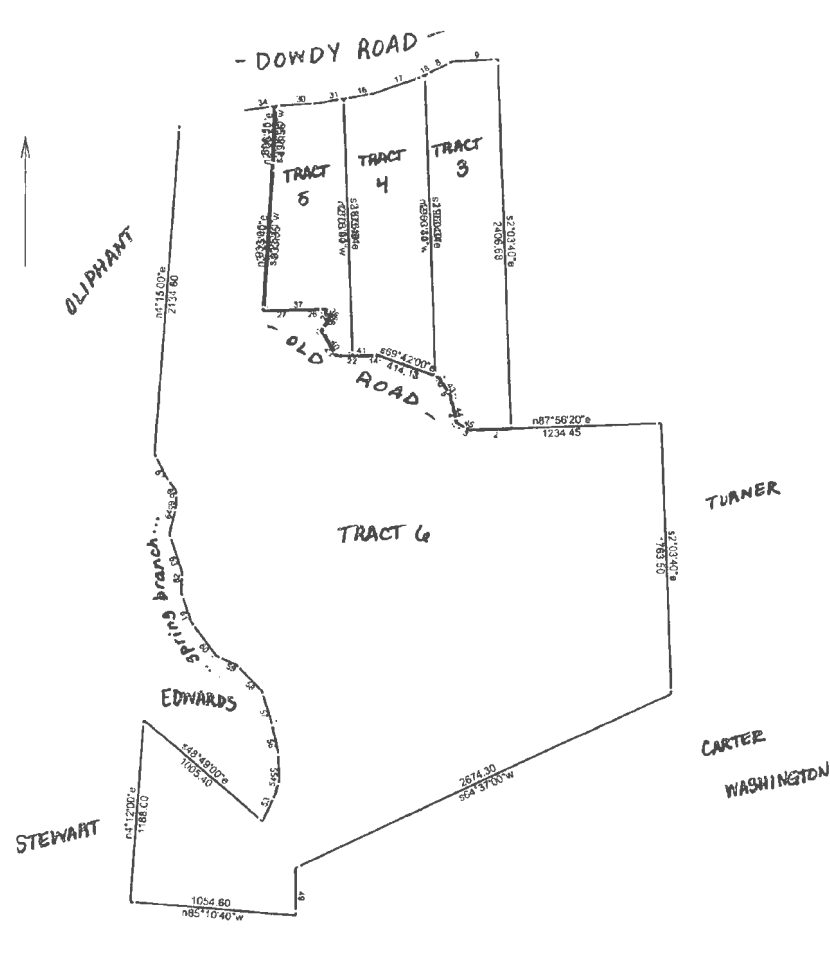
In support of their motion, the Tummins defendants submitted documents, including certified copies of relevant deeds, plats, and affidavits.

With respect to the Wilder Property, the Tummins defendants submitted the following:

- Warranty deed executed on August 30, 1976, and recorded on September 16, 1976, transferring a parcel of land “containing 312 acres, more or less” described by metes and bounds from Hickman Enterprises to S. Gary Spicer, Sr., and Katherine M. Spicer.
- Warranty deed executed on October 31, 1977, and recorded on November 8, 1977, transferring four tracts (tracts 3, 4, 5, 6) described by metes and bounds from S. Gary Spicer and Katherine M. Spicer to Jerry V. Robertson. Tract No. 3 (25.02 acres) “is subject to a 20 ft. easement or right of way along the south boundary of the Tract for the existing old road, and a 20 ft. easement extending along the Southern boundary from the old road to the Southeast corner of said tract.” Tract No. 4 (21.73 acres) is “subject to a 20 ft. easement or right of way along the South boundary of the tract for the existing old road.” Tract No. 5 (16.03 acres) contains

the same easement language as Tract No. 4. Tract No. 6 (206.8 acres) mentions “a point in the center of an old road” in one of the calls in its description.

- Plats of Tracts No. 3, 4, 5, and 6 and a plat of all four tracts, shown below:



- A survey identified by the Tummins defendants as “[a] plat of the roadway identified in the complaint filed herein as the ‘Long Easement’ and exhibited to the plaintiffs’ Third Amended Complaint as Exhibit D.”⁵ This document is largely illegible.
- A certified copy of a grant of easement of passage dated June 29, 1979, and recorded on July 16, 1979, from Jerry V. Robertson and Opal Hinson Peevyhouse Robertson, grantors, to Garland England, Sr., and William Swaw, Jr., grantees. The document gives the grantees and their agents the right to use a road described as follows:

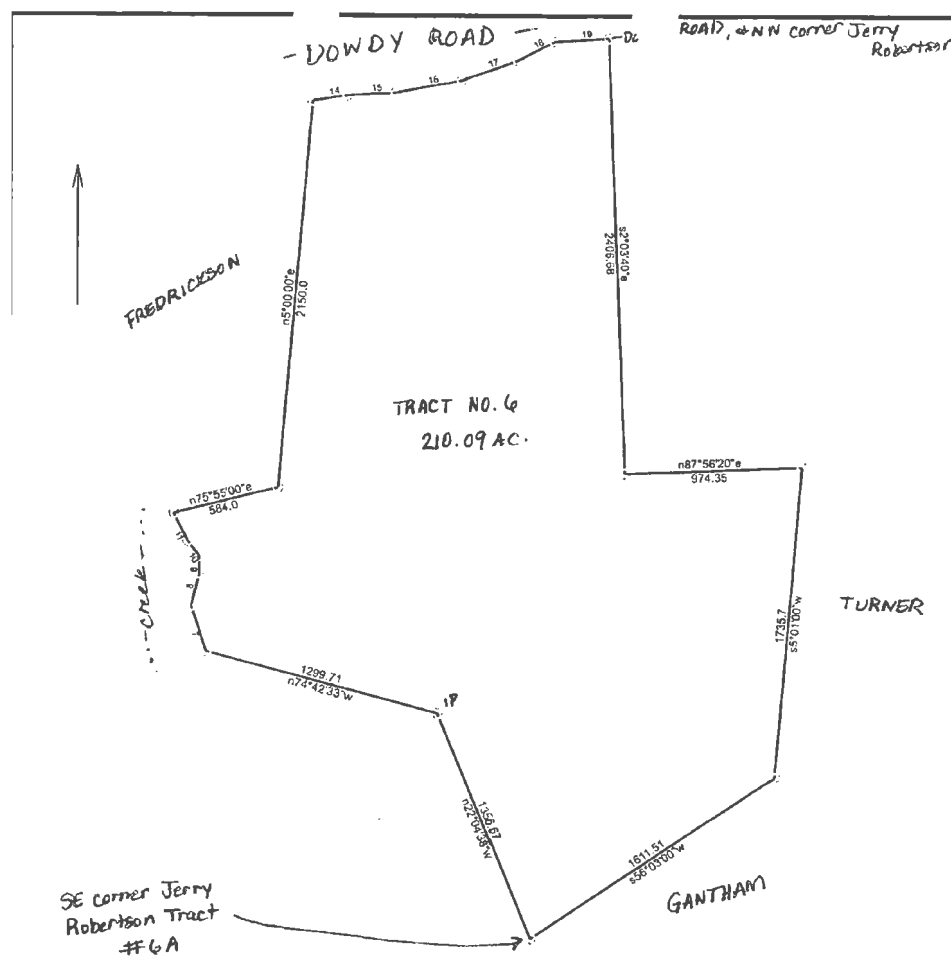
[A]n existing roadway known as the Nols Adams Road which runs Southwardly from Dowdy Road along the Western portion of the Grantors property and then cuts across said property in a Southeastwardly direction

⁵ We note that the third amended complaint in the record on appeal includes none of the exhibits identified in the document.

to the Southwest corner of the Grantees' property; thence continues on Eastwardly approximately 280 feet to an existing log road; thence along said log road Northwardly approximately 60 feet to Grantees' South boundary line.

Grantees agreed to repair and maintain the road, and the easement was "appurtenant to and shall run with the lands of the Grantors and of the Grantees."

- A warranty deed executed on September 4, 1981, and recorded on September 21, 1981, transferring land identified as "Tract No. 6" (210.09 acres) and described by metes and bounds from Jerry V. Robertson and Opal Lee Robertson to Earle A. Wilder and wife, Valerie M. Wilder, and Stephen E. Wilder and David A. Wilder. "Tract No. 6" encompasses all four of the tracts described in the previous deed, as shown below:



With respect to the Andrews Property, the Tummins defendants submitted the following:

- A warranty deed executed on February 10, 1984,⁶ and recorded on March 10, 1984, transferring land described by metes and bounds from Warren Hill, Warren Thomas Hill, and Johnny Hill to Charles L. Hudson and Elizabeth C. Hudson. The grantors also purported to transfer three easements, described by metes and bounds. These are the easements that make up the Long Easement and the Short Easement, discussed above.
- A warranty deed executed on November 10, 2011, and recorded on November 11, 2011, transferring land described in metes and bounds from Charles L. Hudson and Elizabeth C. Hudson to Fred Andrews and Amy Andrews. The deed states: “Also conveyed herewith are Easement Rights of record in Volume 154, Page 298, in the Register’s Office of Dickson County.” This reference is to the easements that make up the Long Easement and the Short Easement.

With respect to the Greer Property, the Tummins defendants submitted the following:

- A warranty deed executed on April 23, 1984, and recorded on April 26, 1984, transferring land described by metes and bounds from Kenneth Fowlkes to Charles L. Hudson. The property was subject to a deed of trust from Fowlkes to Farmers Home Administration, and Hudson agreed to pay Fowlkes an amount sufficient for Fowlkes to make the annual payment to Farmers Home Administration.
- A deed of trust executed on April 23, 1984, and recorded on April 26, 1984, by Charles L. Hudson and Elizabeth C. Hudson on the same property in favor of Lawrence E. Ramsey, trustee.
- A trustee’s deed executed on September 4, 1984, and recorded on September 12, 1984, by trustee Lawrence E. Ramsey reflecting that Charles L. Hudson defaulted on the promissory notes on the property and the trustee held a public sale at which the trustee sold the property to Kenneth Fowlkes.
- A warranty deed executed on October 18, 1984, and recorded on October 29, 1984, transferring the same property from Kenneth Fowlkes to Roscoe E. Walker and J.D. Eatherly. The grantees agreed to pay Fowlkes an amount sufficient for him to make the annual payment to Farmers Home Administration.
- A warranty deed executed on May 6, 1989, and recorded on June 10, 1989, transferring the same property from Roscoe E. Walker and J.D. Eatherly to James B. May and Joyce Anderson May, H. Coke Sams and Martha Heywood, and E. Mac Bennett.
- A quitclaim deed executed on July 28, 2000, and recorded on July 31, 2000, from Joyce Anderson May to E. Mac Bennett transferring all of the grantor’s interest in the same property.

⁶ As stated above, the deed also includes the date February 10, 1983.

- A warranty deed executed on May 26, 2011, and recorded on May 27, 2011, transferring the same property from E. Mac Bennett, H. Coke Sams, and James B. May to Craig M. Greer and Karen M. Greer. The deed states that it is subject to “all matters as shown on final plat of record in property plat of the May to Craig M. Greer Property by Southern Surveying, dated May 18, 2011.”
- A plat dated July 8, 2024, described by the Tummins defendants as being “of the real property described in the warranty deed from Bennett, Sams, and May to Greer.” The plat does not show any easements.

Susan Tummins owns the Tummins Property with her son, Justin Tummins. Ms. Tummins’s mother, Virginia Fiumefreddo acquired the property in 1997 and transferred it to Susan and Justin in 2022.⁷ In her affidavit, Susan Tummins testified that Charles L. Hudson (previous owner of the Andrews Property) had twice asked her mother for an easement for ingress and egress over the Tummins Property so the Hudsons could access their property from Hortense Road. Ms. Fiumefreddo refused the request. Ms. Tummins further stated that at no time since 1997 had any person used the Tummins Property to access the Andrews Property.

In his affidavit, Justin Tummins testified that he had ridden a recreational vehicle, with permission, over the Wilder Property, the Greer Property, and the Andrews Property during his teenage years (12 to 15 years earlier). He further stated:

9. I have ridden a recreational vehicle over the entire length of the old road known (and by road sign identified at Dowdy Road) as “Nols Adams Road” from its terminus on Dowdy Road as far back as the Andrews Property. As late as the period referenced in paragraph 8 above [his teenage years] Nols Adams Road was passable to vehicular traffic over its entire length from Dowdy Road to the Andrew Property, and there were no gates, chains, ropes, or other physical obstructions to passage on any part of Nols Adams Road.

10. Other than Nols Adams Road, there was, as of the period referenced in paragraph 8 above, no physical sign of any other old road in the area of the Wilder Property which is crossed by Nols Adams Road. On the Greer Property there are some otherwise unimproved field tracks, consisting of parallel bare worn dirt tire paths on the ground.

Justin Tummins and his mother both noted the existence of a double-wide mobile home visible from the common boundary of the Andrews Property and the Tummins property.

⁷ The Tummins defendants also submitted documents evidencing the chain of title of their property. For purposes of this appeal, we need not describe those documents.

According to Justin, this mobile home “has been in its present location for as long as I can remember.” He further stated:

12. The mobile home located on the Andrews Property, as well as the areas of the Andrews Property visible from my own property, have plainly been for many years used, kept, and to one degree or another maintained by someone who obviously has access to the Andrews Property, and who is obviously able to bring equipment onto the Andrews Property sufficient [for] those purposes. More particularly, it is readily visible from the common boundary of the Tummins Property and the Andrews Property that—

a. Electrical service to the mobile home is active at least as late as 2019; I personally observed exterior lights illuminated, and notified plaintiff Amy Andrews of that fact.

b. Grass and other vegetation surrounding the mobile home has been regularly (if not always frequently) mowed, bush-hogged, or otherwise kept from growing up.

c. During the period that the Andrews Property was owned by Charles Hudson and his wife, I observed motor vehicles on the Andrews Property.

d. I have heard equipment and/or other motor vehicle noises at close enough range that the sources of those noises would have had to have been on the Andrews Property, even though not directly observable.

13. The electrical service line which serves the mobile home located on the Andrews Property runs from the main line along Hortense Road through the woods and to the mobile home. I have examined the main pole on Hortense Road from which the said service line extends and there is no electrical service meter located on that pole.

Mr. Tummins further stated that there was “no visible indication” that anyone had “ever used any portion of the Tummins Property for purposes of on-going ingress or egress from the Andrews Property.”

Virginia Fiumefreddo, mother of Susan Tummins and grandmother of Justin Tummins, stated in her affidavit that, on at least two occasions, she refused a request from Charles L. Hudson to allow him to use her property to gain access to the Andrews Property. She further testified that, at no time during her ownership of the Tummins Property did anyone use her property to access the Andrews Property.

In September 2024, the Wilders filed a motion requesting additional time to respond to the Tumminses’ motion for summary judgment and a preliminary response to the motion. In their preliminary response, the Wilders made three statements: (1) that the Andrewses in their petition had not claimed an easement over the Wilder Property, (2) that the Andrewses asserted that the Long Easement mentioned in their deed was “unenforceable,” and (3) that the Andrewses acknowledged that, since their acquisition of

the Andrews Property, the Long Easement had been abandoned and was “therefore non-existent.”

The Wilders filed an answer to the third amended complaint in December 2024 and asserted affirmative defenses, including laches, the existence of an implied easement by necessity through the Greer Property, and abandonment of any right of way through the Wilder Property. They also filed a response to the Tumminses’ motion for summary judgment and a response to the Tumminses’ statement of material facts. The following statements of material fact (by the Tumminses) and Wilder responses are relevant:

4. Since the Andrews acquired the Andrews Property, they have accessed the Andrews Property via (i) the old (if possibly non-public) road known and identified as “Nols Adams Road,” (ii) the path referred to in their Third Amended Complaint (the “Complaint”) as the “Short Easement,” and (iii) other unnamed “access points.”

Response: No. The so-called Nols Adams Road referred to as the old existing road in the Spicer/Robertson deed only transverses the Wilder property, and does not extend to surrounding properties. Since the Andrews acquired the Andrews property, according to the Complaint, the Andrews, who live in Ohio, have rarely and infrequently transversed the Wilder property.

8. Tract No. 3 and Tract No. 4 as described in Exhibit B have as their south boundary line the centerline of “an old road,” which “old road” is the non-public thoroughfare known as Nols Adams Road.

Response: No. The Spicer deed to Jerry Robertson refers to an old road, but never refers to a thoroughfare and at that time it was little more than a cow path leading to an old cabin on his property. The primary purpose of the easement was to provide access to Tract 6.

11. The “old road” a partial description of the centerline of which appears in Exhibit B (the warranty deed from Spicer to Robertson) is the same thoroughfare as depicted in Exhibit D to the plaintiffs’ Third Amended Complaint filed in this action.

Response: No. The description that appears in Exhibit B is not a partial description of an old road, but instead a complete description of a 20 foot easement needed to supply access to Parcel 6 of the Spicer to Robertson deed in the event that Parcel 6 was not purchased by the same party that purchased Parcels 3, 4 and 5.

13. A thoroughfare identified as Nols Adams Road leads from the public right-of-way margin of Dowdy Road to the western boundary line of the Andrews Property.

Response: No. There is no mention of the Nols Adams Road in the Spicer deed to Robertson. The old road referred to in the Spicer deed to Robertson was confined to the Robertson/Wilder property. There is no reference to the Nols Adams Road easement in the Wilders Deed or the Spicer deed to Turner, what is not the Greer property. There is no recorded history of any road crossing the Wilder property and then continue to cross the Greer property to the Andrews property until Warren Hill and Mr. Hudson invented multiple illegal, invalid and unenforceable 10 foot easements in order to sell his landlocked property.

15. By grant of easement of passage dated June 29, 1979, Jerry V. Robertson and wife, Opal Hinson Peevyhouse . . . conveyed as easement and right-of-way over and across the Wilder Property . . . along the route of “an existing roadway known as Nols Adams Road,” in favor of lands then owned by Garland England, Sr. and William Shaw.

Response: While it is true that the easement of passage was granted by Jerry Robertson to Mr. England and Mr. Swaw, that same easement was returned to the Wilders by Quitclaim Deed from the subsequent owner, Dale Brannon.

In opposing the Tumminses’ motion for summary judgment, the Wilders also submitted deeds and affidavits. Among the deeds is a quitclaim deed executed on October 27, 1989, and recorded on November 3, 1989, in which Dale Brannon, successor in title to Jerry and Opal Robertson, released and conveyed back to the Wilders the easement described in the grant of easement executed by their predecessors in title in 1979.

In an affidavit, David and Stephen Wilder, owners of the Wilder Property, stated, in part:

4. The Spicer to Robertson deed was divided into Tracts of 3,4,5 and 6 and contained a 20 foot easement or right-of-way along the South boundary of Tracts 3, 4, and 5, from which the easement did not extend beyond the borders of the property, and was not in favor of any surrounding properties. The old road referred to in the Spicer deed served as access to an old cabin on the property and access to Tract 6.

5. Upon information and belief, since we purchased all four tracts, there was no need for access to Tract 6, and therefore the road easement was excluded from our deed.

6. On or about July 16, 1979, the Robertsons granted an easement of passage to England and Swaw to Nols Adams Road; however, per the subsequent landowner, Dale Brannon, he quitclaimed any rights to the easement back to the Wilders in a Quitclaim Deed recorded on November 3, 1989. After we purchased the Wilder property in 1981, it came to our

family's attention that at or about the time that Charles and Elizabeth Hudson purchased the now Andrews property that a surveyor had come onto our property. It also came to our attention that the Hudsons were purportedly recording 10 foot easements, one of which transversed through our property. Upon this revelation, our family retained a Dickson County attorney, Jerry Smith. Mr. Smith sent the Hudsons a letter that the easements were invalid and that the Hudsons did not have permission to trespass on our property. The Hudsons were also informed of this in person. Even though it was rare and infrequent, the Hudsons, upon information and belief, opened our gate and trespassed through our property, as well as other properties.

7. Likewise, upon information and belief, after the Andrews bought their property in 2011, without our knowledge or acquiescence, Andrews, who lived out of state, would occasionally but infrequently trespass through our property, as well as other routes.

8. Passage through our property has always been a rugged journey, with hills, a stream and steep terrain. To the best of our knowledge and belief, there has been no trespass in the past five (5) years and the Andrews have abandoned any access through our property.

9. The general public used our road on our property for hunting purposes. Also, Rodger Rochelle, a neighbor, with permission would regularly use part of our road for passage, and Dale Brannon, former neighbor, used part of our road.

The Andrewses filed a response in opposition to the Tumminses' motion for summary judgment in December 2024. The Andrewses' responses to the Tumminses' statement of material facts include the following:

11. The "old road" a partial description of the centerline of which appears in Exhibit B (the warranty deed from Spicer to Robertson) is the same thoroughfare as depicted in Exhibit D to the plaintiffs' Third Amended Complaint filed in this action.

Response: Disputed. Tracts No. 3, 4, 5 state that said tracts are subject to the "old road" but not Tract No. 6, as such, the express grant or reservation for usage of the "old road" is only part of "Nols Adams Road" and does not grant or reserve rights to traverse the entire Wilder Property by and through the "old road" to reach the Greer Property.

13. A thoroughfare identified as Nols Adams Road leads from the public right-of-way margin of Dowdy Road to the western boundary line of the Andrews Property.

Response: Undisputed for purposes of ruling on the motion for summary judgment only. However, the terrain that the Long Easement (i.e. Nols Adams Road) traverses is steep in parts, thick brush in other parts, and

requires the crossing of a stream that turns into a river when it rains and becomes impassable.

14. As late as approximately 12-15 years ago, Nols Adams Road was passable to vehicular traffic along, and was entirely unobstructed for, its entire length from Dowdy Road to the Andrews Property.

Response: Denied as stated.

15. By grant of easement of passage dated June 29, 1979, Jerry V. Robertson and wife, Opal Hinson Peevyhouse . . . conveyed as easement and right-of-way over and across the Wilder Property (which was then owned by Jerry V. Robertson and wife, Opal Hinson Peevyhouse), along the route of “an existing roadway known as Nols Adams Road,” in favor of lands then owned by Garland England, Sr. and William Swaw, Jr.

Response: Undisputed for purposes of ruling on the motion for summary judgment only. However, the easement and right-of-way grant of rights was *only across the now Wilder Property* (“Nols Adams Road” also traverses the Greer Property) and for the benefit of the property owned by Garland England, Sr. and William Swaw, Jr., but not for the benefit of the Andrews Property.

20. Because the Wilder Property was conveyed to Jerry V. Robertson and his wife expressly subject to the right-of-way of Nols Adams Road, a.k.a. “an old road,” a.k.a the “Long Easement,” the Wilder Defendants took title to the Wilder Property subject to the right-of-way of the same.

Response: Disputed. Petitioners do not dispute that the “old road” is referenced in the deed attached as Exhibit B, however as stated above Tracts Nos. 3, 4, 5 state that said tracts are subject to the “old road,” but not Tract No. 6. As such, the express grant or reservation for usage of the “old road” is only part of Nols Adams Road, a.k.a “an old road,” a.k.a. the “Long Easement.”

45. The mobile home located on the Andrews Property, as well as the areas of the Andrews Property visible from the Tummins Property, have been for many years used, kept, and to one degree or another maintained by someone who obviously has access to the Andrews Property, and who is able to bring equipment onto the Andrews Property sufficient [for] those purposes.

Response: Petitioners admit that a mobile home is located on the Andrews Property. Further, Petitioners admit that they were using the Long Easement, Short Easement, and the other access points including Fortner Road, which traverses the Tummins Property from 2011-2018 to gain access to the Andrews Property. Since that time, the Andrews have not gained

access to the Andrews Property, and therefore the Andrews Property has not been maintained.

The Andrewses admitted that there were electrical services to the mobile home on the Andrews Property but otherwise stated that they could not admit or deny any of the Tumminses' observations about evidence of activity at the mobile home after 2018, when they were no longer able to access the property.

In an affidavit, Fred Andrews stated, in pertinent part, as follows:

12. For several years after our purchase, my wife and I would visit the Andrews Property from Ohio and stay for days, weeks, or even months and gained vehicular access to same using different points, including the Long Easement, Short Easement, and an old road which we understood at the time to be called "Fortner Road." Fortner Road is from the public road (Hortense Road) and then traverses several properties including the Tummins Property and Greer Property until it reaches the Andrews Property.

13. As explained above, from 2011 until 2018, the usage of the Long and/or Short Easement for vehicular access to the Andrews Property was challenging.

14. At that time, my wife and I believed that we had legal access pursuant to the Long Easement and Short Easement given that it was expressed in our deed.

15. In 2011, after the purchase of the Andrews Property, there was a gate that was locked and boulders in the pathway of the Long Easement blocking vehicular access. My wife and I removed the boulders and cut the lock and used the Long Easement.

16. In or around 2018, my wife attempted to access the Andrews Property, by and through the Long Easement, and she was shot at by someone. After that incident, my wife and I felt scared and unsafe to use the Long Easement.

...

18. Further, in around 2018, my wife and I attempted to access our property (i.e. Andrews Property), by and through the Short Easement, and were told by Joel Brown that we were not allowed to cross his property (i.e. Brown/Emmons Property), thus denying us the right to use the Short Easement to gain access to our property.

19. Since 2018, my wife and I have not used the Long Easement, Short Easement, or any other access location and have been denied roadside access to our property.

20. The Tummins assert that my wife and I could traverse solely the Greer Property to gain access to the public road (Dowdy Road). First, my wife and I have never traversed solely Greer Property to gain access to the

public road. Second, there is not driveway or road that traverses only the Greer Property to the public road and would need to be built from scratch. Third, the terrain of the Greer Property is such that it is steep in parts, extremely thick brush, and would require crossing a far distance across the Greer Property to reach the public road (Dowdy Road) and in my opinion be cost prohibitive.

Amy Andrews completed an affidavit substantially the same as that of her husband.

The Greers filed a response in opposition to the Tumminses' motion for summary judgment in which they adopted the position of the Andrewses and added a paragraph stating the they had "no object[ion] to negotiating a location to convey an easement for ingress and egress across their property or a portion of their property," but asserting that "a direct easement from Dowdy Road across the Greer property to the Andrews' property appears to be virtually impossible due to the steep terrain." In an affidavit, Mr. Greer reiterated this position and further stated:

4. Due to the inaccessibility to reach a portion of my property from Dowdy Road to through [sic] my property, I previously accessed the portion of my property that borders the Andrews' property, through what has been referred to as the "long easement" that began on the Wilder's property.
5. I used the "long easement" from when I acquired the property until I was threatened by Roger Rochelle, who claimed to be authorized by the Wilders to make such threats in restricting my access in 2014.

The motion for summary judgment was heard by the trial court in December 2024. In an order entered on January 27, 2025, the court stated that, "Although the affidavit of the Andrews states that at some time they accessed their property through the Tummins property, it is acknowledged that there is not an easement in the deed to allow for said access point, nor is there permission from either the Tummins Defendants or the prior owner." The court then focused its analysis on the Long Easement. For reasons to be discussed below, the trial court concluded that the Andrews Property did not meet either of the statutory predicates for a private condemnation action and granted the Tumminses' motion for summary judgment and dismissed the civil action against the Tummins defendants.

On February 27, 2025, the Andrewses filed a motion to revise the court's order granting summary judgment in favor of the Tumminses. The Andrewses argued that the court's order of dismissal should be final as to all parties because "it addresses the one count private condemnation claim and resolves the entire case." The Andrewses further asserted that the final order "should explicitly find that the Andrews Property has legal access, by and through, the Long Easement, and that said access should not be impeded, hindered, or obstructed by the Wilders and Greers or their successors-in-interest."

The Wilders filed a response on May 28, 2025, in opposition to the Andrewses' motion to revise the final order.⁸ They argued that the motion to revise was premature for two reasons: (1) the Andrewses did not allege in their third amended complaint that the Long Easement "was lawful and enforceable" and had not requested such a finding in the complaint; and (2) the Wilders, in their answer, raised the affirmative defense of abandonment. The Wilders asked that, if the court decided to make the order final as to all parties, the court find that the Long Easement was 10 feet wide.

The trial court held a hearing on the motion to revise on May 30, 2025, and thereafter, on July 14, 2025, entered an order granting the motion. The court reasoned that the entire case was resolved based upon the "legal findings that the Andrews Property has legal access by and through the Long Easement." The court further stated that "said access should not be hindered, impeded, obstructed, or otherwise thwarted by the Wilders or Greers and their successors-in-interest." The court granted the motion to revise and stated that the order granting the Tumminses' motion for summary judgment was a final order pursuant to Tenn. R. Civ. P. 54.02.

The same day, July 14, 2025, the trial court entered an amended order granting the Tumminses' motion for summary judgment. This order added the following language to the original order:

This Court does not find that the Andrews can meet either of the predicate conditions necessary for a private condemnation action pursuant to Tenn. Code Ann. § 54-14-102, further the Court does not find the Andrews property is landlocked. Based on the foregoing, the Court does not find a viable cause of action and shall dismiss the underlying civil action in its entirety.

The Wilders have appealed the trial court's decision and assert the following issue for our consideration: whether the trial court erred in finding as a matter of law that the Long Easement is a valid and enforceable easement through the Wilder Property. The Andrewses and the Tumminses are the only appellees that filed briefs in this appeal.⁹ The

⁸ The Wilders also filed a counter-complaint for reversion/abandonment on May 28, 2025, asserting that the Andrewses had abandoned any right of way to use their property. On June 16, 2025, they voluntarily dismissed the counter-complaint.

⁹ The Andrewses also filed a motion to dismiss the appeal on the basis that the Wilders' brief fails to comply with Tenn. R. App. P. 27(a) and Tenn. R. Ct. App. 6. While the Wilders' brief does not comply with some of the procedural rules, we find that these deficiencies do not hamper our ability to understand and address their arguments. Therefore, we deny the Andrewses' motion to dismiss the appeal. *See DiNovo v. Binkley*, 706 S.W.3d 334, 336 (Tenn. 2025) (quoting *Trezevant v. Trezevant*, 696 S.W.3d 527, 230 (Tenn. 2024)) (stating that "the overall intent of the appellate rules is 'to disregard technicality in form in order to determine every appellate proceeding on its merits'").

Tumminses frame the issues to be (1) whether the trial court correctly granted the Tumminses' motion for summary judgment on the basis that the plaintiffs have lawful access to a public road over Nols Adams Road; and (2) whether the trial court should have granted the Tumminses' motion for summary judgment even if a genuine issue of material fact remains as to whether the Andrewses have lawful access to a public road over Nols Adams Road.

STANDARD OF REVIEW

We review a trial court's summary judgment determination de novo, with no presumption of correctness. *Rye v. Women's Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). This means that "we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Id.* We "must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor." *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002); *see also Acute Care Holdings, LLC v. Houston Cnty.*, No. M2018-01534-COA-R3-CV, 2019 WL 2337434, at *4 (Tenn. Ct. App. June 3, 2019).

Summary judgment is appropriate "if 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. A disputed fact is material if it is determinative of the claim or defense at issue in the motion. *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008) (citing *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993)). When a party moves for summary judgment but does not have the burden of proof at trial, the moving party must submit evidence either "affirmatively negating an essential element of the nonmoving party's claim" or "demonstrating that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense." *Rye*, 477 S.W.3d at 264. Once the moving party has satisfied this requirement, the nonmoving party "may not rest upon the mere allegations or denials of [its] pleading." *Id.* at 265 (quoting TENN. R. CIV. P. 56.06). Rather, the nonmoving party must respond and produce affidavits, depositions, responses to interrogatories, or other discovery that "set forth specific facts showing that there is a genuine issue for trial." TENN. R. CIV. P. 56.06; *see also Rye*, 477 S.W.3d at 265. If the nonmoving party fails to respond in this way, "summary judgment, if appropriate, shall be entered against the [nonmoving] party." TENN. R. CIV. P. 56.06. If the moving party fails to show he or she is entitled to summary judgment, however, "the non-movant's burden to produce either supporting affidavits or discovery materials is not triggered and the motion for summary judgment fails." *Martin*, 271 S.W.3d at 83 (quoting *McCarley v. W. Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998)).

ANALYSIS

The Andrewses brought their case under Tenn. Code Ann. § 54-14-102, which authorizes the establishment of a private easement (by eminent domain) for a landowner where one of two conditions is met: (1) “ingress or egress to and from [the land] is cut off or obstructed entirely from a public road or highway by the intervening land of another” or (2) the landowner “has no outlet from the land to a public road in the state, by reason of the intervening land of another.” Tenn. Code Ann. § 54-14-102(a). The issue in this case is whether the trial court erred in granting summary judgment and dismissing the case as to all defendants based upon a determination that the Long Easement provides the Andrewses with lawful access to a public road.

I. Law on easements

The term “easement” has been defined as “a right an owner has to some lawful use of the real property of another.” *Cellco P’ship v. Shelby Cnty.*, 172 S.W.3d 574, 588 (Tenn. Ct. App. 2005) (quoting *Pevear v. Hunt*, 924 S.W.2d 114, 115 (Tenn. Ct. App. 1996)). This Court has recognized that easements “may take many different forms” and can be created in the following ways: “(1) express grant, (2) reservation, (3) implication, (4) prescription, (5) estoppel, and (6) eminent domain.” *Id.* at 588 (quoting *Pevear*, 924 S.W.2d at 115-16). Although there are a number of ways in which easements can be created, easements are divided into two broad categories: easements appurtenant and easements in gross. *Pevear*, 924 S.W.2d at 115-16. These two categories can be distinguished as follows:

In an easement appurtenant, there are 2 tracts of land, the dominant tenement, and the servient tenement. The dominant tenement benefits in some way from the use of the servient tenement. Easements in gross are simply a personal interest or right to use the land of another which does not benefit another property, or dominant estate, thus easements in gross usually involve only one parcel. An easement appurtenant to land is favored over an easement in gross in Tennessee.

Id. at 116. An easement appurtenant runs with the land and “may be enforced by subsequent purchasers of the dominant tenement against owners of the servient tenement.” *Holder v. Serodino*, No. M2014-00533-COA-R3-CV, 2015 WL 5458377, at *8 (Tenn. Ct. App. Sept. 16, 2015) (quoting *Newman v. Woodard*, 288 S.W.3d 862, 865 (Tenn. Ct. App. 2008)). Because an easement in gross is considered a personal right, “the [easement holder’s] rights are not attached to a dominant estate,” *id.* (citing *Cellco P’ship*, 172 S.W.3d at 588), and “[t]he beneficiary need not, and usu[ally] does not, own any land adjoining the servient estate,” *id.* (quoting BLACK’S LAW DICTIONARY 586 (9th ed. 2009)).

As will be discussed below, the trial court interpreted the relevant deeds to give the Andrewses an express easement over the Wilder Property and the Greer Property. For an

express easement to be created, “there must be a document evincing the parties’ intent that complies with the relevant statute of frauds, Tennessee Code Annotated § 29-2-101[.]”¹⁰ *Holder*, 2015 WL 5458377, at *7; *see also Smith v. Evans*, No. M2007-02855-COA-R3-CV, 2008 WL 3983117, at *2 (Tenn. Ct. App. Aug. 27, 2008) (citation modified) (“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.”). In construing an instrument creating an express easement, a court must attempt “to ascertain and give effect to the intention of the parties.” *Burchfiel v. Gatlinburg Airport Auth.*, No. E2005-02023-COA-R3-CV, 2006 WL 3421282, at *3 (Tenn. Ct. App. Nov. 28, 2006) (quoting 28A C.J.S. *Easements* § 57 (1996)). The parties’ intention regarding “the purpose and scope of an easement conveyed by express grant is determined by the language of the deed.” *Shell v. Williams*, No. M2013-00711-COA-R3-CV, 2014 WL 118376, at *4 (Tenn. Ct. App. Jan. 14, 2014); *see also Foshee v. Brigman*, 129 S.W.2d 207, 208 (Tenn. 1939).

II. Trial court’s decision

As stated above, the moving party, the Tummins defendants, had the initial burden of submitting evidence either affirmatively negating an essential element of the Andrewses’ claim or demonstrating that the Andrewses’ evidence was not sufficient to establish their claim. *Rye*, 477 S.W.3d at 264. In granting summary judgment, the trial court found that the Tumminses had established, as a matter of law, that the Andrewses could not invoke the private easement statute because they already had lawful access to their property. For the reasons discussed below, we have concluded that the trial court erred.

In its decision, the trial court began its analysis with the Hudson to Andrews deed recorded in November 2011, stating that this deed “included two express easements” (the Long Easement and the Short Easement).¹¹ The court did not discuss whether the deed was sufficient to create the easements in question. This deed, by which the Hudsons transferred

¹⁰ With respect to the conveyance of real property, Tennessee’s statute of frauds, Tenn. Code Ann. § 29-2-101(a), provides:

No action shall be brought ... [u]pon any contract for the sale of lands, tenements, or hereditaments, or the making of any lease thereof for a longer term than one (1) year . . . unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person lawfully authorized by such party. In a contract for the sale of lands, tenements, or hereditaments, the party to be charged is the party against whom enforcement of the contract is sought.

¹¹ The trial court declined to examine the chain of title for the Short Easement because, “As outlined in the briefs, the relevant easement at issue for the Tummins Defendants’ Motion for Summary Judgment is the Long Easement.”

the Andrews Property to the Andrewses, does mention two easements, citing Volume 154, Page 298, in the Register's Office of Dickson County, which is a reference to the Hill to Hudson deed recorded in March 1984. In order to create express easements, however, the 1984 deed had to be signed by "the party to be charged," Tenn. Code Ann. § 29-2-101, which would be the owner of the servient estate. *See Cellico P'ship*, 172 S.W.3d at 593. The servient estates for the Long Easement were the Wilder Property and the Greer Property, and the owners of those properties at the time were not signatories to the 1984 deed. Moreover, the record does not contain any separate deed conveying easements to the owners of the Andrews Property.

The trial court then examined the deeds related to the servient estates, beginning with the Greer Property. The court stated: "The Long Easement is contained within the warranty deed from E. Mac Bennett, H. Coke Sams, and James B. May to Craig M. Greer and wife, Karen R. Greer, dated May 26, 2011." The court cited no language from the May 2011 deed or any other document to support this conclusion. Moreover, as will be discussed below, the supposed presence of Nols Adams Road, which is a private road, through part of the Greer Property does not automatically lead to the conclusion that the Andrews Property has an easement over that private road.

The trial court went on to examine the chain of title for the Wilder Property, beginning with the Hickman Enterprises to Spicer deed recorded in September 1976. In November 1977, the Spicers conveyed a portion of the land conveyed in the September 1976 deed to Robertson in four contiguous tracts, numbered 3, 4, 5, and 6, whose southern boundary was the "centerline of an old road." The court then reasoned as follows:

The conveyance from the Spicers to the Robertsons was expressly subject to an "old road." Jerry V. Robertson later granted an "easement of passage" across his property to Garland England Sr. and William Swaw, parties [who] are not involved in this suit. The easement was described as "an existing roadway known as Nols Adams Road." This easement was expressly granted "appurtenant to and shall run with the lands of the Grantors [and] the Grantees. . ." Nols Adams Road crosses the Wilder property and the Greer property and goes into the Andrews property. A question for the Court was whether for the purposes of summary judgment can the "old road" and Nols Adams Road be found to be one [and] the same and, based upon the recordings, the Court finds, based upon the evidence and the inferences to be reasonably drawn from the evidence, a reasonable person could reach only one conclusion that they are one [and] the same and the warranty deed from the Spicers to Robertson and the grant of the easement from the Robertsons to England and Swaw are of public records and in the Wilder Defendants' chain of title.

Respectfully, we believe the trial court conflated the issue of whether the old road and Nols Adams Road are the same road with the issue of whether the Andrews Property has an easement over that private road across the Wilder and Greer property. The evidence may support the trial court's determination concerning the old road being the same as Nols Adams Road. The trial court failed, however, to proceed to the issue of whether the Andrewses or their predecessors in title had been granted an easement over the Nols Adams Road. The easement granted by Robertson to England and Swaw related to a different property (as the dominant estate), not to the Andrews Property. Moreover, the trial court failed to note that a successor in interest to England and Swaw later quitclaimed the easement rights back to the owners of the Wilder Property. As previously noted, the creation of an express easement must comply with the statute of frauds and evidence a conveyance of easement rights from a grantor to a grantee. The chain of title does not evidence such a conveyance.

Based upon its analysis, outlined above, the trial court concluded that "[t]he Andrews cannot meet either of the predicate conditions necessary for a private condemnation action pursuant to Tenn. Code Ann. § 54-14-102 against the Tummins property." The court determined that: "The Andrews property is neither 'cut off or obstructed entirely from a public road or highway by the intervening land of another,' or shown that they have 'no outlet from the land to a public road in the state,' therefore, summary judgment is appropriate as a matter of law as no genuine issues of material fact exist between the parties." We respectfully disagree. The initial burden was on the Tummins defendants to show that the Andrewses could not meet their burden as to the two statutory predicates. The documentary evidence presented by the Tumminses does not establish that an express easement exists.

In their motion for summary judgment, the Tumminses argued that the Andrewses had access to their property under one of two theories: (1) a prescriptive easement over Nols Adams Road because of its supposed existence for over 50 years, or (2) an implied easement by necessity over the Greer Property. The trial court did not decide the case under either of these theories. Based upon the evidence submitted for and against the motion for summary judgment, genuine issues of material fact remain with respect to these theories, including whether the Andrewses have abandoned any right to use Nols Adams Road and the current feasibility of using the existing routes over the Wilder and Greer property.¹²

¹² The Tumminses point out that Tenn. Code Ann. § 54-14-102(a) was amended in 2020 to change the language of the second prerequisite from having "no adequate and convenient outlet" from a person's land to a public road to having "no outlet" from a person's land to a public road. Nevertheless, in order to have an outlet at all, the route must be useable.

CONCLUSION

The judgment of the trial court is reversed and the case is remanded. Costs of this appeal are assessed against the appellees, and execution may issue if necessary.

/s/ Andy D. Bennett
ANDY D. BENNETT, JUDGE