IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 30, 2022 Session

WATERFRONT INVESTMENTS, GP ET AL. v. LISA ANN COLLINS ET AL.

Appeal from the Chancery Court for Campbell County
No. 7CH1-2017-CV-40 Elizabeth C. Asbury, Chancellor

No. E2022-00370-COA-R3-CV

This appeal stems from a disputed strip of land along the edge of Norris Lake in Campbell County, Tennessee. The defendants in this case are lot owners of residential lakefront property in a planned development. The plaintiffs are the neighborhood home owner's association and the company operating the marina in the development. The plaintiffs claim, based upon a note in the original plat map of the development, that a "one-foot buffer" zone along the defendants' lots was reserved to the original developer. According to the plaintiffs, the marina company thus controls the shoreline in the area at issue and is at liberty, with permission from the Tennessee Valley Authority, to expand the existing marina. The defendants, on the other hand, dispute the existence of the buffer and claim that their lot boundaries extend right up to the shoreline. The plaintiffs filed a declaratory judgment action, and, following a bench trial, the trial court concluded that the plat note at issue did not reserve any interest in the disputed strip to the original developer. Plaintiffs appeal. Discerning no error, we affirm the trial court.

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

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and JOHN W. MCCLARTY, J., joined.

Brian C. Quist and Brian D. Sableman, Knoxville, Tennessee, for the appellants, Waterfront Investments, GP, and The Villages at Norris Lake Community Association, Inc.

Ronald J. Attanasio, Knoxville, Tennessee, for the appellees, Eric Burdick, Karen Lampe, Patricia Bear, Karl Hanson, Julie Koontz, Ralph Lyon, Marilyn Lyon, Steve Kastner, Stephanie Kastner, David Grosvenor, and Kathleen Grosvenor.

OPINION

BACKGROUND

This appeal concerns a disputed strip of land along the waterfront of Norris Lake ("the Lake") in Campbell County. In 2005, a developer acquired over 300 acres of land surrounding the Lake. The developer parceled out the land and began selling residential lots. The original plat maps for the development show several hundred planned lots, some of which were inland, and some of which were waterfront. The plat maps featured a note along the edge of the waterfront lots reading, "[p]roperty line meanders with the 1044' elevation contour."

The defendants in this case are all lakefront lot owners who purchased their lots in 2006 and 2007. Their deeds all contain some iteration of the following language: "Subject to any and all matters appearing on plat of record as recorded in Plat Cabinet A, Slide(s) 536-538 and any restrictions, easements or setback lines ancillary thereto, as recorded in said Registrar's Office."[1] At trial, the remaining defendants who testified[2] maintained that they purchased their respective lots with the desire to have direct access to the Lake and their own private docks.

In 2008, the original developer initiated bankruptcy proceedings. After the development changed hands several times, one of the plaintiffs in this action, Waterfront Investments, GP ("Waterfront"), acquired the rights to the development and the remaining lots.[3] In the interim, several Defendants applied to the Tennessee Valley Authority

[1] It is undisputed that all defendants' deeds contain a reference to matters appearing on the plat maps.

[2] The original defendants to this action were: Lisa Ann Collins, Trustee of the Lisa Ann Collins Trust (Lot 175); Eric Burdick and Karen Lampe (Lot 176); Stephen and Stephanie Kastner (Lot 191); Joseph P. Godfrey, Jr., Trustee of the Joseph P. Godfrey Living Trust (Lot 192); Karl Hanson and Patricia Bear (Lot 193); James and Angela Johnson (Lot 194); Ralph and Marilyn Lyon (Lot 195); David and Kathleen Grosvenor (Lot 196); Julie Koontz (Lot 198); John and Karen McMonigle (Lot 200); Thomas F. Baker, IV, Trustee for First Tennessee Bank National Association (Lender for Lot 195); and First Tennessee Bank National Association (Lender for Lot 195). Several of the original defendants failed to participate in the case, specifically, Defendants Lisa Ann Collins, Trustee of the Lisa Ann Collins Trust, James and Angela Johnson, First Tennessee Bank, N.A., and Thomas F. Baker, IV, Trustee for First Tennessee Bank, N.A. On September 25, 2019, a default judgment was entered against these defendants, providing that "said Defendants are bound by any declaration or final disposition [of] the Court[.]" Several other defendants dropped out of the case and quit-claimed any interest in the buffer zone to Waterfront. These defendants were John and Karen McMonigle and Joseph P. Godfrey, Jr., Trustee of the Joseph P. Godfrey Living Trust. Accordingly, by the time of trial, the only defendants disputing the buffer zone were Eric Burdick and Karen Lampe, Stephen and Stephanie Kastner, Karl Hanson and Patricia Bear, Ralph and Marilyn Lyon, David and Kathleen Grosvenor, and Julie Koontz (together, "Defendants" or Appellees"). Ms. Koontz did not appear at trial.

[3] The development was acquired by Emerson Properties, LLC in 2009, and then later acquired by Sequoyah Investments, LLC in 2013. Waterfront then acquired it from Sequoyah. Although separate, all of the foregoing entities were controlled by Waterfront's general partner, George Potter.

("TVA") for private dock permits. Because TVA owns the land under the Lake, it controls the harbor zone, and no dock or marina can be built without a permit. Although some Defendants were granted private dock permits, some were not. A dispute arose between Defendants and Waterfront regarding private docks along the waterfront lots. Defendants believed that they owned their lots in fee simple absolute down to the waterline of the Lake. Waterfront and its predecessors, however, were under the impression that there was a "buffer zone" reserved to the developer along the waterline. This "buffer zone" meant that Waterfront controlled the shoreline and could expand the existing marina down the shoreline in order to build more boat slips. As it stands, there are several hundred residential lots in the development, but only forty-two boat slips.

Waterfront's belief regarding the buffer zone stemmed from a note in the margin of the development's plat map:

> THERE IS A 1.0' BUFFER RESERVED ALONG THE 1044.0' ELEVATION CONTOUR ON ALL LOTS ADJOINING NORRIS LAKE.

To summarize Waterfront's position, it believed that the foregoing plat note reserved to the developer a fee simple interest or an easement in a strip of shoreline running up and down the shore in front Defendants' lots. Accordingly, Waterfront opposed the issuance of the TVA permits to Defendants because Defendants' private docks would inhibit the expansion of the existing marina down the shoreline. After discovering there was a dispute and not wanting to issue competing dock permits, TVA revoked the permits issued to certain defendants. A lawsuit between Waterfront and the Villages at Norris Lake Community Association, Inc. (the "HOA")[4] and Defendants was filed in 2009. Although the record fails to clarify that case's details, it is undisputed that it was nonsuited in 2014. In 2016, TVA sent a letter to Defendants explaining that no private dock permits would be issued due to the disputed strip:

> This Voluntary Dismissal is simply a dismissal of the suit at the request of the Plaintiff and does not resolve the property right dispute across the one-foot buffer. In order to consider a Section 26a application for private water use facilities and other construction on TVA property, a court order declaring respective land rights would be required.
>
> Because TVA understands the property rights across the one-foot buffer are in dispute, in order to consider any Section 26a application, you must provide evidence of no objection to your request or evidence that you own the fee interest or an adequate agreement of tenure in the land immediately adjoining the TVA property.

[4] The HOA recently changed its name to "Clearwater Cove on Norris Lake Community Association."

Consequently, Waterfront and the HOA (together, "Plaintiffs" or "Appellants") filed a declaratory judgment action in the Chancery Court for Campbell County (the "trial court") on March 10, 2017. They sought a declaration that Waterfront owned, in fee simple absolute, the one-foot buffer on Defendants' lots or, alternatively, a perpetual easement precluding Defendants from building private docks in the buffer zone. Plaintiffs also requested reformation of Defendants' deeds based on mutual mistake.[5] Defendants filed an answer and counter-complaint for declaratory judgment and slander of title[6] on January 9, 2019.

A bench trial was held on October 25 and 26, 2021. Both parties called expert witnesses to opine on the deeds and plat map, specifically the meaning of the disputed language in the plat notes. The trial court heard from several Defendants, all of whom expressed the desire to have a private dock on their property. The trial court also heard from several HOA members and inland residents of the neighborhood, who generally opined that they want the marina to expand and offer more boat slips. According to these witnesses, the current marina cannot support the amount of residential lots in the development, and expansion is necessary in order to draw more residents and add amenities. Mr. Potter, the general partner of Waterfront, also testified. He generally claimed that the entire purpose of the development was to build an expanded marina and other amenities, such as a clubhouse and restaurant, to serve the neighborhood. Without the expanded space for more boat slips and thus more residents, Mr. Potter opined that the development would, essentially, fail.

The trial court entered findings of fact and conclusions of law on November 8, 2021. The trial court ultimately determined that the plat note at issue was too vague:

> 5. The Court stated in Harrison vs. Beaty, 137 S.W.2d 946 (Tenn. Ct. App. 1939) the following: "Uncertainty or vagueness of description renders a reservation void unless there is something in the exception, deed or evidence whereby it can be made sufficiently certain..."
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> 6. The Court in Waller vs. Thomas[,] 545 S.W.2d 745 (Tenn. Ct. App. 1976) states the following: "Although the law recognizes the validity of restrictive covenants, they are not favored because such covenants are in derogation of the enjoyment of the fee. Therefore, restrictive covenants are to be strictly construed and will not be extended by implication and any ambiguity in the restriction will be resolved against the restriction".
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> 7. In Crittenden vs. Green, No. E2004-02270-COA-R3-CV, 2005 Tenn. App. Lexis 396 (2005), the Court relied on the plat language rather than the

[5] This claim was later dismissed and is not at issue on appeal.

[6] Defendants' counter-claim for slander of title was later dismissed and is not at issue on appeal.

testimony of surveyors.

8. A buffer easement was litigated in Helmboldt vs Jugan, 2016 Tenn. App. Lexis 523. That case dealt with a foreclosure and a buffer easement. Again the Court states: "Our main objective is to ascertain the grantor's intention... We look to the words of the deed as a whole and the circumstances surrounding the deed to ascertain the grantor's intent".

9. The buffer note at issue is vague and ambiguous. That is confirmed by the fact that the developer/original grantor did clearly and specifically create other easements on the Plats such as the drainage easement and utility easement. The buffer note has no explanation as to its purpose. Specificity could have been added to the language. The buffer note could have included that the buffer was intended to give the developer/marina owner control of the shore for future development of a marina and that private docks in that area would not be permissible. However, that language was not included. The fact that Deeds were created in 2016 and 2017 to clear up the matter confirms vagueness and ambiguity in the buffer note. Further, the realtors/agents for sellers made no mention whatsoever of a buffer that would prevent lakefront lots from being dockable. To the contrary, they provided purchasers with information regarding private dock construction. TVA actually issued a permit to one (1) lakefront property owner but later revoked that permit after learning of the issue raised herein. Therefore, the documents regarding the buffer must have not been of concern to TVA or TVA would not have issued a permit for a private dock. Additionally, there is a quantity of specific language on the referenced Plats to indicate to anyone that the property boundaries of the lake lots meander along the shoreline at the 1044.0'. None of the marketing literature noted a buffer between the 1044.' and the 1045.0' contour lines. Further, Plaintiffs' title expert could not explain what a 1ft buffer actually meant in regard to the amount of property involved. He could not state whether it meant l foot on the ground or 1 foot given the elevation of the area in question. That lead to Plaintiffs' counsel making a judicial admission that the 1 ft buffer would be a 1 ft linear area measure along the shore.

The trial court then entered its final judgment on March 3, 2022:

[F]or those reasons stated in the Court's "Amended Findings of Fact, Conclusions of Law, and Opinion of the Court," the Court hereby declares that the note appearing on both Plats at issue, Plat Cabinet A-538 and A-544, Register's Office for Campbell County, Tennessee, stating that "There is a 1.0' buffer reserved along the 1044.0' elevation contour on all lots adjoining

> Norris Lake," is so vague and ambiguous that it cannot be enforced, and that the same is null and void, and of no effect whatsoever.
>
> 4. The Court further declares that the owners of the shoreline lots, as the same are shown on the Plats located in Plat Cabinet A-538 and A-544, own those lots in fee simple absolute, all the way to, and meandering with, the 1044' elevation contour of the TVA Norris Lake Reservoir, and the shoreline boundary of those lots is not subject to (a) any buffer, (b) any other interest asserted by Plaintiffs, or (c) any other interest arising out of or related to, the interests asserted by Plaintiffs.

Plaintiffs filed a timely notice of appeal to this Court.

Prior to oral argument, Defendants filed a motion to consider post judgment facts, claiming that Waterfront sold the marina property at issue. Defendants claimed the issues in this case were moot and that this Court could not provide Plaintiffs any meaningful relief. Waterfront responded to this motion, conceding that "Waterfront sold certain marina property to CMA [Investments, LLC] effective September 30, 2022[.]" Waterfront further explained regarding its contract with CMA:

> CMA were careful to allow for two (2) separate conveyances. Per Section 1(a) of the Marina Contract, Waterfront was to convey two (2) tracts to CMA. Tract 1 as described at Exhibit A to the Marina Contract is the marina property and was to be conveyed by warranty deed (which was done). Tract 2 is Waterfront's ownership of the one-foot buffer which was to be separately conveyed by quitclaim deed following the conclusion of this appeal and any subsequent proceedings.

(Citations omitted). The attachments to Waterfront's response established the foregoing. Consequently, Defendants orally withdrew their motion at oral argument.

ISSUES

Plaintiffs raise two issues on appeal, which we restate slightly:

1. Whether the trial court erred in construing the Defendants' deeds as not containing a valid reservation of the one-foot buffer zone.

2. Whether the trial court erred in overruling Plaintiffs' hearsay objections regarding out of court statements by non-party sales persons employed by the original developer.

Defendants respond to Plaintiffs' issues and raise an additional issue:

3. Whether the trial court erred in overruling Defendants' hearsay objections regarding writings of the original developer.

STANDARD OF REVIEW

> In a non-jury case such as this one, appellate courts review the trial court's factual findings de novo upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. *See* Tenn. R. App. P. 13(d); *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013). We review the trial court's resolution of questions of law de novo, with no presumption of correctness.

Kelly v. Kelly, 445 S.W.3d 685, 691–92 (Tenn. 2014). Deed interpretation is a question of law and is reviewed de novo with no presumption of correctness. *Griffis v. Davidson Cnty. Metro. Gov't*, 164 S.W.3d 267, 274 (Tenn. 2005) (citing *Rodgers v. Burnett*, 65 S.W. 408, 411 (Tenn. 1901)).

DISCUSSION

First, Plaintiffs challenge the trial court's decision regarding Defendants' deeds. Plaintiffs claim that the trial court ignored the evidence of the grantor's intent and inappropriately deemed the buffer note vague and ambiguous. Having thoroughly reviewed the deed and the plat map, as well as the surrounding circumstances, however, we agree with the trial court that the buffer note is not a clear reservation and is thus unenforceable.

> In evaluating the deed, we apply certain established principles. The interpretation of a deed is a question of law. *Griffis*[, 164 S.W.3d at 274]; *Mitchell v. Chance*, 149 S.W.3d 40, 45 (Tenn. Ct. App. 2004). In interpreting a deed, courts are primarily concerned with ascertaining the intention of the grantor. *Griffis*[,] 164 S.W.3d at 274; *Rutherford Cnty. v. Wilson*, 121 S.W.3d 591, 595 (Tenn. 2003); *Hall v. Hall*, 604 S.W.2d 851, 853 (Tenn. 1980). Courts ascertain the grantor's intent from the words of the deed as a whole and from the surrounding circumstances. *Griffis*[,] 164 S.W.3d at 274; *Ottinger v. Stooksbury*, 206 S.W.3d 73, 79 (Tenn. Ct. App. 2006); *Shew v. Bawgus*, 227 S.W.3d 569, 576 (Tenn. Ct. App. 2007); *Cellco P'ship v. Shelby Cnty.*, 172 S.W.3d 574, 586 (Tenn. Ct. App. 2005).

Hughes v. New Life Dev. Corp., 387 S.W.3d 453, 466 (Tenn. 2012); *see also Bryant v. Bryant*, 522 S.W.3d 392, 412 (Tenn. 2017) (quoting *Griffis*, 164 S.W.3d at 275) ("'Words of a deed are to be given their common meaning unless a technical meaning is clearly

intended.'"). When possible, we give effect to the "'intention of the grantor, as ascertained from a consideration of the entire instrument.'" *Bryant*, 522 S.W.3d at 412 (quoting *Pryor v. Richardson*, 162 Tenn. 346, 37 S.W.2d 114, 114 (1931)). Nonetheless, "[a] grantor's intent with respect to the type of ownership created may be established by extrinsic evidence to 'place ourselves as nearly as possible in the place of the grantor.'" *Id.* at 412 (quoting *Griffis*, 164 S.W.3d at 275).

In this case, the disputed language is in the plat map notes, which are referenced in Defendants' deeds. The note at issue appears in the margins of the plat.

> Where land is conveyed according to a plat or plan, the courses, distances, and boundary lines delineated on it are to be regarded in legal construction as the description by which the limits of the grant may be ascertained. Thus, whenever a deed describes property by reference to a plat or map, the grantor is considered as having adopted the plat or map as a part of the deed, and the grantee takes title in accordance with the boundaries so identified, which are conclusive upon the parties unless or until a reformation of the deed is secured.

12 Am. Jur. 2d *Boundaries* § 5 (West 2023); *see also Bernier v. Morrow*, No. M2012-01984-COA-R3-CV, 2013 WL 1804072, at *5 (Tenn. Ct. App. Apr. 26, 2013) ("A plat may be utilized in establishing implied restrictive covenants if the deed of the party seeking to impose the restriction refers to the plat. . . . A deed and the plat which includes the property granted must be read together, and whatever appears on the plat is to be considered as a part of the deed." (internal citations and quotations omitted)).

It is also important to note, in this particular case, that "a deed conveys all of a grantor's estate or interest unless it clearly expresses an intent to limit the estate or interest conveyed." *Hughes*, 387 S.W.3d at 467 n.12 (citing Tenn. Code Ann. § 66-5-101 (2004)); *see also Cellco P'ship*, 172 S.W.3d at 587 (noting same); *Russell v. Brown*, 260 S.W.2d 257, 259 (Tenn. 1953) ("Ordinarily a reservation in a deed conveying real property must describe the property reserved to the grantors with as much definiteness and certainty as the land conveyed; otherwise it is void and the grantee takes title to the entire property described."). And, as properly noted by the trial court, "[a]n exception should describe the property with sufficient certainty. Uncertainty or vagueness of description renders a reservation void unless there is something in the exception, deed, or evidence whereby it can be made sufficiently certain." *Harrison v. Beaty*, 137 S.W.2d 946, 951 (Tenn. 1939).

Herein lies the problem with the present case. Plaintiffs claim that the plat note at issue reserved a fee simple absolute interest or a perpetual easement along the Lake's shoreline in the original developer. However, we cannot draw this conclusion with any certainty based on the record before us.

First, we look to the deed and plat map. *See Hughes*, 387 S.W.3d at 466 ("'Courts ascertain the grantor's intent from the words of the deed as a whole and from the surrounding circumstances.'" (quoting *Griffis*, 164 S.W.3d at 274)). To reiterate, the plat note at issue provides, "[t]here is a 1.0' buffer reserved along the 1044.0' elevation contour on all lots adjoining Norris Lake." Nonetheless, the actual buffer zone is not pictured along the waterline on the map. The buffer's absence proves significant because specific reservations are clear and visible on the map in other places. For example, a twenty-foot easement "reserved for lake access" is clearly visible between Lots 196 and 197. In another place, a .19-acre area is marked on the map and labeled as "drainage reserve **to be retained by developer** and homeowner's association (not for building)." (Emphasis added). Other reservations in the plat notes are specifically labeled as "easements," such as the clearly noted "5.0' drainage easement reserved along all side lot lines within th[e] development." At trial, Defendants' expert witness, a title attorney with extensive experience in lakefront property, testified that the specificity used in the other reservations, compared to the absence of specificity in the buffer note, was significant. Stated differently, the expert pointed out that the original developer clearly knew how to establish a reservation and/or easement, yet opted not to with regard to the purported buffer zone.[7]

Moreover, other plat notes on the map cast doubt on Plaintiffs' interpretation. Along the line representing the lake-side boundary of Defendants' lots, there is another note providing that "property line meanders with the 1044.0' contour line." This note appears in several places up and down the shoreline abutting Defendants' lots, as well as in the margins of the plat. Indeed, the margin notes further provide that "the shoreline boundaries of any lakefront lots shown here meander with the 1044.0' elevation contour of the Norris Lake Reservoir. All property located below the 1044.0' elevation contour line is under the ownership, control and jurisdiction of the [TVA]." Plaintiffs' expert testified that the "1044.0' elevation contour" is "the maximum level to which the water of [the Lake] could be raised." He also noted that "I believe it is the top of the dam." Defendants' expert did not dispute this description of the term "1044.0' elevation contour." Defendants' expert also pointed out that according to the plat notes, "there are iron pins at all lot corners unless otherwise noted." The iron pins are visible on the map. And the iron pins on Defendants' respective lots are placed directly on the boundary line marked as "meander[ing] with the 1044.0' foot elevation contour." Accordingly, and as Defendants' expert witness testified

[7] Although our research did not reveal any cases applying it under similar circumstances, the doctrine of *expressio unius est exclusio alterius* comes to mind here. *See Richmond v. Frazier*, No. W2008-01132-COA-R3-CV, 2009 WL 2382303, at *7 (Tenn. Ct. App. Aug. 4, 2009) ("There is no rule better established with reference to the construction of written instruments than that the exception of particular things from general words shows that the things excepted would have been within the general language, had the exceptions not been made.") (citing *Magevney v. Karsch*, 65 S.W.2d 562, 571 (Tenn. 1933)). Stated simply, where particular language is used in one section but not another, it is presumed that the omission or inclusion of the subject was purposeful. *See State v. Pope*, 427 S.W.3d 363, 368 (Tenn. 2013) (addressing the doctrine in the context of statutory interpretation).

at trial, the plat map strongly suggests that Defendants' lots run right up to the 1044.0' elevation contour, and that everything past that point is controlled by TVA.

To be sure, the deeds and plat maps alone do not establish the grantor's intent to reserve an interest along the shoreline with definiteness or certainty. *See Russell*, 260 S.W.2d at 487 ("[A] reservation in a deed conveying real property must describe the property reserved to the grantors with as much definiteness and certainty as the land conveyed . . . ."). Extensive evidence regarding the surrounding circumstances of the deeds was introduced at trial. *See Hughes*, 387 S.W.3d at 412 ("A grantor's intent with respect to the type of ownership created may be established by extrinsic evidence to 'place ourselves as nearly as possible in the place of the grantor.'" (quoting *Griffis*, 164 S.W.3d at 275)). However, the proof presented does not establish the original grantor's intent to make a reservation along the shoreline any more than the actual deed and plat map. For example, Plaintiffs relied heavily on facts showing that the original development was advertised with plans for an expanded marina, a clubhouse, etc.[8] Advertising material from the original developer features drawings of an expanded marina along the Lake's shore. Nonetheless, this material also provides:

> These materials, including the features described and featured herein are based upon current development plans, which are subject to change without notice. No guarantee is made that said features will be built or, if built, will be of the same type, size, or nature as depicted or described. The images and photographs contained herein may not be representative of the property.

Additionally, the property report given to Defendants by the original developer provides:

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[8] On appeal, Defendants claim in their statement of the issues that the trial court erred in overruling Defendants' hearsay objections regarding writings of the original developer. The entirety of Defendants' argument on this issue, however, provides:

> Although counsel for Defendants timely objected to writings/documents of the original Developer being introduced at trial by someone who could not authenticate same under Rule 801 of the Tennessee Rules of Civil Procedure, the Trial Court wrongfully allowed the evidence to be introduced, on which the Plaintiffs heavily relied in their case in chief.
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> A number of evidentiary rulings were made by the Court during the two-day trial and both parties complain of the competency of certain evidence. That said, if one considers the fact the case was heard by a Chancellor without a jury, the nature of the testimony, that the finding of fact by the Court is supported by competent evidence and that the main question involved was the meaning of a word, the Court's action in overruling the objections did not materially affect the result. *See Clarke v. Walker*, 25 Tenn. App. 78, (1941).

Because it is woefully underdeveloped, this argument is waived. *See Sneed v. Bd. of Prof'l Resp. of S. Ct.*, 301 S.W.3d 603, 610 (Tenn. 2010) ("[W]here a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.").

> We have tentative plans to complete the facilities which, if constructed, would be conveyed to the Association for the benefit of the purchasers. The facilities would become part of the common area of the Association. Completion of the proposed facilities is conditioned upon our determination to proceed. Therefore, there is no guarantee or assurance that the proposed facilities will be completed.
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> * * *
>
> You should carefully consider your decision to purchase a lot in the subdivision it if is based upon the presumed availability of these proposed facilities.

At trial, Mr. Potter conceded that upon acquiring the development following the original developer's bankruptcy, he was under no legal obligation to expand the marina.

On one hand, "[w]ords deliberately put in a deed, and put there for a purpose, are not to be lightly considered, or arbitrarily put aside." *In re Est. of Wilson*, 825 S.W.2d 100, 102 (Tenn. Ct. App. 1991) (quoting *Fountain Cnty. Coal and Mining Co. v. Beckleheimer*, 1 N.E. 202, 203 (Ind. 1885)). An equally important principle, however, is that "a reservation in a deed conveying real property must describe the property reserved to the grantors with as much definiteness and certainty as the land conveyed[.]" *Russell*, 260 S.W.2d at 259. In this particular case, the latter principle carries the day. Indeed, the language at issue was not lightly considered or arbitrarily cast aside. Rather, the trial court heard two days of extensive testimony and considered a plethora of circumstances surrounding the deeds. We have reviewed the same and still cannot say with definiteness or certainty that the grantor in this case intended to reserve for itself an interest in the land at issue. *See Russell*, 260 S.W.2d at 259.

On appeal, Plaintiffs argue that the trial court erred by "fail[ing] to construe the grantor's intent . . . ." Specifically, Plaintiffs urge that they "placed into evidence significant proof of the grantor's intent and suggested the intent of that language was to control for itself the shoreline." In this sense, Plaintiffs argue that the trial court ignored Plaintiffs' proof. As we perceive it, however, the trial court considered all of the proof and was—as we are—unable to conclude that the grantor intended to reserve an interest in itself. While true that the record contains a significant quantity of proof, taken together it fails to clearly establish "an intent to limit the estate or interest conveyed." *Hughes*, 387 S.W.3d at 467 n.12. And "[u]ncertainty or vagueness of description renders a reservation void unless there is something in the exception, deed, or evidence whereby it can be made sufficiently certain." *Harrison*, 137 S.W.2d at 951.

Accordingly, we affirm the ruling of the trial court. The plat note at issue is so vague and ambiguous as to be rendered void.

Plaintiffs' next issue addresses the trial court's admission of hearsay testimony. At trial, several Defendants testified about statements made to them by realtors and employees of the original developer. These statements were, generally, that Defendants could construct private docks on their property subject to TVA's approval. Defendants offered these statements to establish that the original grantor did not intend to expand the marina in front of Defendants' lots, and more simply, to cause more doubt regarding the grantor's intent. In light of our resolution of the first issue, the second issue is pretermitted. And even without said statements, the result of this case would be the same. Consequently, any error in this regard was harmless.

CONCLUSION

The judgment of the trial court is affirmed, and this case is remanded for further proceedings consistent with this opinion. Costs on appeal are taxed to the appellants, The Villages at Norris Lake Community Association, Inc., and Waterfront Investments, GP.

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KRISTI M. DAVIS, JUDGE