VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 8th day of December, 2016.

James Bodak, Appellant,

against Record No. 160241
Circuit Court No. CL14-347

Shar Mayne, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Page County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is no reversible error in the judgment of the circuit court.

In August 1969, Martin and Suzanna Price subdivided a tract of land into 47 lots and recorded the plat. The subdivision is bounded on the north by the Shenandoah River and on the east by Route 684. River Road runs westward from Route 684 through the subdivision, providing access to all lots. Lots 3 through 25 border the river while lots 1, 2, and 26 through 47 do not.

The plat labels three areas as a "Right-Of-Way." The first is a fifty-foot-wide right-of-way upon which River Road is located. The second is a thirty-foot-wide right-of-way between lots 10 and 11 known as the "Parking and Recreation Area." The third is another thirty-foot-wide right-of-way that extends north from the western end of River Road to the river, along the western edge of lot 25. This third right-of-way is the subject of this appeal.

Several lot owners testified that they commonly use the right-of-way across lot 25 to access the river. John Conoboy, the owner of lot 15, testified that his guests' children used the right-of-way to float down the river in tubes. Harry Barlow, the owner of lots 21 and 22, used the right-of-way for fishing and canoeing. He explained that to effectively float down the river "you need an input point and a takeout point," and that this "enhances the value" of his lots. Shar Mayne, the owner of lots 42 and 43, testified that the right-of-way was one of the reasons she bought her lots. Without the right-of-way, she and other owners of lots not bordering the

river would only have access to the river via the Parking and Recreation Area. She testified that having two access points adds value to her property.

James Bodak acquired lot 25 in 2003. In 2013, he wrote a letter to the subdivision's property owners' association ("POA") stating that he does "not recognize" any right in the POA or other lot owners to use lot 25 to access the river. Accordingly, he "advised and notified" the POA not to come upon lot 25 "under penalty of trespass." On cross-examination, Bodak admitted that it would be "valuable" and "beneficial" for the other lot owners to have two access points to the river.

The POA and 10 lot owners ("appellees") filed for permanent injunctive relief against Bodak, seeking to enjoin him from preventing free and unencumbered access to the river via the right-of-way on lot 25. Bodak demurred, arguing that the plat was insufficient to establish an easement as a matter of law under *Burdette v. Brush Mountain Estates, LLC*, 278 Va. 286, 682 S.E.2d 549 (2009) and *Beach v. Turim*, 287 Va. 223, 754 S.E.2d 295 (2014). The circuit court overruled the demurrer, finding that the case is more akin to *Lindsay v. James*, 188 Va. 646, 51 S.E.2d 326 (1949) and *Ryder v. Petrea*, 243 Va. 421, 416 S.E.2d 686 (1992).

After receiving the evidence and viewing the locus in quo, the circuit court found that there was an easement over lot 25, as detailed in the plat, "beneficial to and appurtenant to all of the lots in the [s]ubdivision." Accordingly, it granted the appellees' request for a permanent injunction.

On appeal, Bodak contends that no such easement exists. He argues that the plat did not "convey" an easement across lot 25 because it does not contain "operative words to demonstrate the manifest intention to grant an easement."

When Martin and Suzanna Price recorded the plat, they did not dedicate it for public use. Accordingly, "the rights of the public are not involved in this litigation, but only the private right of . . . owner[s] who ha[ve] acquired . . . lot[s] in a subdivision, the plat of which shows certain areas laid out as streets and alleys." *Lindsay*, 188 Va. at 652, 51 S.E.2d at 329. It is "settled law in Virginia" that "'[w]hen lands are laid off into lots, streets and alleys and a map or plat thereof is made and recorded, all lots sold and conveyed by reference thereto . . . carry with them, as appurtenant thereto, the right to the use of the easement in such streets and alleys necessary to the enjoyment and value of said lots.'" *Fugate v. Carter*, 151 Va. 108, 112, 144 S.E.483, 484

(1928) (citing *Sipe v. Alley*, 117 Va. 819, 822, 86 S.E. 122, 123 (1915)); *see also Ryder*, 243 Va. at 423,416 S.E.2d at 688 ("[P]urchasers of subdivision lots may acquire the same private easements of passage over 'rights-of-way' that are shown on a subdivision plat as they would acquire over streets and alleys that are shown on such a plat.").

Such easements, however, are "limit[ed] . . . to such streets and alleys shown on the plat as are reasonably beneficial to the grantee, and a deprivation of which would reduce the value of his lot." *Lindsay*, 188 Va. at 653, 51 S.E.2d at 329; *see also Fugate*, 151 Va. at 115, 144 S.E. at 485 ("To force the streets [in a plat] open" when their closure does not abridge or destroy the rights or privileges of other proprietors in the plat "would be to inflict serious injury upon [the] defendant, and prevent his making valuable use of his premises, with no corresponding advantage to anyone.").

It is not disputed that the lot owners acquired their lots by reference to the recorded plat. The plat shows a thirty-foot-right-of-way over the western edge of lot 25. Thus, they acquired private easements over this right-of-way to the extent it is "reasonably beneficial" to the lot owners and the "deprivation of which would reduce the value" of their lots. *Lindsay*, 188 Va. at 653, 51 S.E.2d at 329.

The uncontroverted evidence in the present case supports the circuit court's finding that the right-of-way was "beneficial" to "all of the lots in the [s]ubdivision." *See Wetlands Am. Trust, Inc. v. White Cloud Nine Ventures, L.P.*, 291 Va. 153, 160, 782 S.E.2d 131, 135 (2016) (a circuit court's "factual determinations" will not be disturbed "unless they are plainly wrong or without evidence to support them"). Multiple lot owners testified that they and their guests used the right-of-way to access the river. Their testimony established that having two access points is beneficial to and increases the value of the lots. Even Bodak admitted on cross-examination that it was beneficial for the other lot owners to have two access points to the river.

Nevertheless, Bodak argues that under *Burdette v. Brush Mountain Estates* and *Beach v. Turim*, the plat did not create an easement because it does not contain operative words of conveyance. In *Burdette*, the appellee asserted that it had an express easement created by two deeds, which referenced a plat. 278 Va. at 297, 682 S.E.2d at 555. The Court disagreed, holding that "there was no conveyance of an *express* easement" because the deeds did not "contain operative words . . . sufficient to demonstrate the manifest intention to grant an easement." *Id.* at

297, 299, 682 S.E.2d at 555, 556 (emphasis added). Similarly, in *Beach*, the case was before the Court "on the limited issue [of] whether the trial court erred in holding [the appellees] have an *express* easement . . . ." 287 Va. at 228, 754 S.E.2d at 297 (emphasis in original).

In the present case, the appellees do not claim they received an express easement. Rather, they claim private easements acquired when they obtained their lots under the recorded plat. This distinction was recognized by the Court in *Burdette* when it noted that "[t]he case before us is not analogous to those instances when we held that purchasers of subdivision lots acquire private easements over rights-of-way that are shown on the subdivision plats." 278 Va. at 299 n.2, 682 S.E.2d at 556 n.2 (citing *Lindsay v. James*, 188 Va. 646, 653, 51 S.E.2d 326, 329 (1949) and *Ryder v. Petrea*, 243 Va. 421, 423, 416 S.E.2d 686, 688 (1992)). Bodak's reliance on *Burdette* and *Beach* therefore is misplaced.

For the foregoing reasons, we affirm the judgment of the circuit court.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Patricia L Harrington

Clerk