

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 25th day of February, 2021.*

Present: Lemons, C.J., Goodwyn, Powell, Kelsey, McCullough and Chafin JJ., and Russell, S.J.

Mount Aldie, LLC, Appellant,

against Record No. 191717  
Circuit Court No. CL-83131-01

Land Trust of Virginia, Inc., Appellee.

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

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is reversible error in the judgment of the circuit court.

Mt. Aldie, LLC (“Mt. Aldie”) owns a 60-acre tract of forested property in Loudoun County which is bounded in part by the Little River. The property contains a footpath known as Indian Spring Trail that runs along the riverbank for approximately 1,100 feet before connecting to a road leading to the interior of the property. The Indian Spring Trail derives its name from a natural spring (the “Indian Spring”) that flows into the river near the end of the trail.

In 2008, Mt. Aldie’s predecessor in title conveyed a conservation easement (the “Easement”) to Land Trust of Virginia, Inc. (“LTV”). The Easement provides, among other things, conditions that must be met before Mt. Aldie can conduct certain activity on the property. As relevant to the present case, Article II, Section 3 of the Easement provides that “a 100-foot buffer strip shall be maintained . . . along each edge of the Little River” (the “riparian buffer”). The Easement states that no “earth disturbing activity” may be conducted within the riparian buffer, “except as may be reasonably necessary for . . . (c) removal of individual trees presenting a danger to persons or property and removal of diseased, dead or invasive trees, shrubs or plants . . . or (d) creation and maintenance of foot or horse trails with unimproved surfaces.”

Additionally, this section prohibits the construction of any buildings or structures in the riparian buffer.

In 2013, LTV brought an action against Mt. Aldie, claiming that Mt. Aldie had violated the Easement by conducting earth disturbing activity related to the construction of “what appeared to be a road” within the riparian buffer. LTV’s complaint specifically took issue with Mt. Aldie’s clearing of the vegetation, removal of “a number of rock outcrops,” and the grading work related to the construction of the road within the riparian buffer. At no point did the complaint reference any structures that had been constructed on the property or any changes that may have been made to the Indian Spring itself.

Both parties moved for summary judgment on the issue of liability, and the trial court ruled in favor of LTV. Mt. Aldie appealed the matter to this Court. After considering the matter, the Court reversed the trial court’s ruling, finding that there were issues of disputed fact that needed to be resolved, and remanded the matter for further proceedings. *Mount Aldie, LLC v. Land Trust of Virginia, Inc.*, 293 Va. 190 (2017). On remand, an advisory jury was empaneled to address the issue of Mt. Aldie’s liability.

At trial, evidence was presented showing that Mt. Aldie had brought construction equipment onto the property to work on the Indian Spring Trail. Specifically, the jury heard that Mt. Aldie widened and leveled the trail. As part of the widening of the Indian Spring Trail, a jackhammer was used to chip away at a rock outcropping that jutted into the trail. According to Mt. Aldie, the work was necessary to clear dead and diseased trees, as well as to turn the Indian Spring Trail into a horse trail. Additional evidence was presented that Mt. Aldie had modified the Indian Spring site and that Mt. Aldie had installed brick paving stones to allow the water from the spring to drain across the trail.

The advisory jury determined that Mt. Aldie’s creation of a road and/or horse trail had not breached the Easement. The trial court entered an order memorializing the advisory jury’s findings but noted that the advisory jury only “addressed a limited number of the alleged breaches of the conservation easement.” It then continued the matter to consider the remaining the issues.

At a subsequent hearing, the trial court ruled that Mt. Aldie’s construction activities at the Indian Spring site was a breach of the Easement. Specifically, the trial court ruled that the

modifications to the Indian Spring and the installation of the brick paving stones<sup>1</sup> violated the Easement. Having determined that Mt. Aldie had breached the Easement, the trial court awarded LTV its attorneys' fees and costs. It also granted LTV "limited" injunctive relief, which prohibited Mt. Aldie from conducting any further earth disturbing activities within the riparian buffer without first seeking approval from either the trial court or LTV.

In its appeal to this Court, Mt. Aldie asserts two assignments of error. In its first assignment of error, Mt. Aldie contends that the trial court erred in disregarding the findings of the advisory jury. In its second assignment of error, Mt. Aldie claims that the trial court erred by granting LTV relief based on a claim that was neither pled nor litigated at trial. The Court has determined that the second assignment of error is dispositive of this appeal and, therefore, it need not address the first assignment of error. *See Shareholder Representative Servs. v. Airbus Americas, Inc.*, 292 Va. 682, 689 (2016) (noting, "a dispositive assignment of error obviates any need to address other assignments of error").

This Court has repeatedly admonished that "[t]he issues in a case are made by the pleadings, and not by the testimony of witnesses or other evidence." *Jenkins v. Bay House Assocs., L.P.*, 266 Va. 39, 44 (2003) (quoting *Ted Lansing Supply Co. v. Royal Aluminum & Constr. Corp.*, 221 Va. 1139, 1141 (1981)).

A litigant's pleadings are as essential as his proof, and a court may not award particular relief unless it is substantially in accord with the case asserted in those pleadings. Thus, a court is not permitted to enter a decree or judgment order based on facts not alleged or on a right not pleaded and claimed.

*Id.* at 43 (citations omitted).

Here, the trial court entered an award in LTV's favor based on its determination that the restoration of the Indian Spring and the installation of the brick paving stones violated the Easement. LTV's complaint, however, made no reference to either of these activities. Indeed, the complaint does not once mention either the Indian Spring or its restoration, nor is there any allegation regarding the installation of a structure in the form of the brick paving stones. The absence from the pleadings of any allegations related to these matters necessarily precluded them

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<sup>1</sup> The trial court characterized the installation of the brick paving stones as creating a structure on the property.

from being the basis of any relief granted by the trial court.<sup>2</sup> As such, its decision to award relief based on these unpled claims was erroneous.

Accordingly, the trial court's decision in this case is reversed and the award of attorneys' fees and costs, as well as its award of injunctive relief, is vacated. Further, as the trial court has already ruled in Mt. Aldie's favor on all of the claims that LTV actually asserted in its complaint, there remains no basis upon which relief may be granted to LTV. Therefore, final judgment is entered in favor of Mt. Aldie.

This order shall be certified to the Circuit Court of Loudoun County.

A Copy,

Teste:



Clerk

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<sup>2</sup> LTV's assertion that Mt. Aldie waived its argument on this issue by failing to object to the evidence related to the Indian Spring is unpersuasive. According to LTV, because Mt. Aldie failed to object to evidence offered at trial that supported LTV's later argument related to the unpled claim, Mt. Aldie has waived any argument about the unpled claim. In raising this argument, LTV ignores the fact that the evidence at issue (i.e., that Mt. Aldie had made modifications to the Indian Spring) was not initially offered in support of its unpled claim; it was offered to show that Mt. Aldie had an ulterior motive in making the road/trail. Indeed, in its closing argument, LTV only referenced the modifications to the Indian Spring to assert that Mt. Aldie had built the road/trail as part of its plan to make the area a tourist attraction. In other words, the evidence of the modifications to the Indian Spring was initially offered to provide context and background for the issues that LTV had actually pled, not to provide evidence of an unpled claim.

More importantly, however, is the fact that once LTV sought to use that evidence to make arguments regarding the unpled claim, Mt. Aldie did object, placing that issue before the trial judge. As this Court has repeatedly explained, "[t]he main purpose of requiring timely specific objections is to afford the trial court an opportunity to rule intelligently on the issues presented, thus avoiding unnecessary appeals and reversals." *Weidman v. Babcock*, 241 Va. 40, 44 (1991). Here, the record clearly indicates that the trial court had ample time to consider Mt. Aldie's argument on this issue and rule intelligently on the matter. Accordingly, it cannot be said that Mt. Aldie's objections were not timely raised.