26-106/JWH/jm

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

CASE NO.: 2025-CA-2916

MICHAEL P. COLOSI,

Plaintiff,

vs.

QUARRY COMMUNITY DEVELOPMENT DISTRICT and FLOW WAY COMMUNITY DEVELOPMENT DISTRICT, ESPLANADE GOLF AND COUNTRY CLUB OF NAPLES INC.,

Defendants.
_____/

DEFENDANT, QUARRY COMMUNITY DEVELOPMENT DISTRICT'S MOTION TO DISMISS

COMES NOW Defendant, QUARRY COMMUNITY DEVELOPMENT DISTRICT, ("District"), by and through undersigned counsel, hereby files its Motion to Dismiss Plaintiff's Complaint brought by Plaintiff, MICHAEL P. COLOSI (hereinafter "Plaintiff"), and in support thereof, states as follows:

I. Introduction

Plaintiff commenced this action by filing his Complaint on or about December 18, 2025. Plaintiff seeks a judicially created "Statutory Way of Necessity" under Chapter 704, Florida Statutes, allegedly because "Plaintiff's parcel of land is landlocked" and Plaintiff asserts that "his only remedy is to seek a Statutory Easement by necessity under Chapter 704, Fla. Stat." *See Complaint* at ¶ ¶ 40, 38-42. Plaintiff alleges the "most practicable means of travel is over the lands of the Defendants [District]" and demands a court order "determining that a statutory way of

necessity exists" and "determining the use, type, extent, and location of the easement and the amount of compensation for it." *Id.* at ¶¶ 42, 78.

The scope of relief Plaintiff demands in Paragraph 78 extends well beyond a narrow statutory access determination. Plaintiff seeks a declaration that an easement exists "whether by statutory way of necessity or otherwise", in favor of Plaintiff over the District's property interests, "or any tenant thereof, or anyone on their behalf," while further seeking authorization for use by "persons, vehicles (including without limitation any construction vehicles or heavy equipment), stock, franchised cable television service and any utility service as may be necessary or desirable." *Id.* at ¶ 78(1). Plaintiff also seeks temporary and permanent injunctive relief compelling the District to permit across their respective properties. *Id.* at ¶ 78(3). Plaintiff also demands "any damages, including without limitation any and all actual, special, nominal and compensatory damages" and "any punitive damages that may be available upon amendment. *Id.* at ¶ 78(5). These requests, on their face, confirm Plaintiff is not seeking a limited statutory easement. Instead, Plaintiff requests this Court create, define, and then enforce a framework not authorized by Chapter 704 and then to award damages based on allegations that are not supported by facts required under Chapter 704.

As pled, Plaintiffs Complaint fails to allege the ultimate facts required to establish entitlement to a statutory way of necessity. It relies on conclusory opinions that the property is "landlocked" and "hemmed in." *Id.* at ¶ 40, 48. What Plaintiffs Complaint fails to plead the essential statutory facts that would allow the Court to determine whether Plaintiff can avail himself of Chapter 704, how he would qualify, whether any necessity arises from severance, or whether the relief demanded in paragraph falls within the statutes limited scope. Plaintiffs pleading deficiencies are substantive and material as they prevent the District from framing a meaningful

response and prevent the Court from evaluating the statutory prerequisites on the face of the pleading. For these reasons, Plaintiff's Complaint must be dismissed as a matter of law.

II. Applicable Pleading Standards

Rule 1.110(b) of the Florida Rules of Civil Procedure provides that a pleading must contain "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." A Complaint must clearly and plainly allege the ultimate facts, not conclusions and when a claim is statutory, the plaintiff must allege facts satisfying the statutes essential elements. Rule 1.140(b)(6) of the Florida Rules of Civil Procedure authorizes dismissal for "failure to state a cause of action." Rule 1.140(e) further provides that if a pleading is so "vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading."

Here, Plaintiffs Complaint fails to state a statutory claim as a matter of law and independently fails to satisfy essential statutory elements utilizing vague claims so that the District cannot reasonably answer it.

III. Plaintiff's Complaint Fails to State a Claim for a Statutory Way of Necessity Under Chapter 704

A statutory way of necessity is not an open-ended equitable remedy available whenever a property owner alleges inconvenience or wants a particular route of access. Florida courts require an analysis that considers whether access exists by common law before resorting to Chapter 704. Further, § 704.01(2) is available only where land is truly shut off or hemmed in such that no reasonable or practicable means of ingress or egress exists. See *Reyes v. Perez,* 284 So. 2d 493, 495 (Fla. 4th DCA 1973); *Ganey v. Byrd,* 383 So. 2d 652 (Fla. 1st DCA 1980); *Faison v. Smith*, 510 So. 2d 928, 929 (Fla. 5th DCA 1987). That inquiry necessarily implicates how the parcel came to be severed, because a statutory way of necessity does not exist where access arises by implication, grant, or reservation.

Florida appellate courts have repeatedly explained that this analysis requires a determination of the parcel's history, including unity of title and severance, because those facts determine whether a common law way of necessity exists and then, in turn, whether the statutory remedy is available at all. In *Parham v. Reddick*, the Fifth District held that where an implied common law way of necessity exists, a statutory way of necessity does not, because the land is not truly hemmed in. *See Parham v. Reddick*, 537 So. 2d 132, 135 (Fla. 5th DCA 1988). Courts have likewise recognized that implied ways of necessity created upon severance pass by conveyance to subsequent grantees, highlighting that access rights are tied to the origin and configuration of the parcel rather than to the current ownership or development plan. *See Roy v. Euro-Holland Vastgoed*, B.V., 404 So. 2d 410, 412 (Fla. 4th DCA 1981). This approach reflects the settled Florida understanding of "necessity" which exists only where there is no other reasonable and practicable means of ingress or egress and where access is reasonably necessary for the beneficial use of the land. See *Matthews v. Quarles,* 504 So. 2d 1246, 1248 (Fla. 1st DCA 1987); § 704.01(1), Fla Stat.

Here, Plaintiff's Complaint is legally insufficient. Plaintiff alleges that property is "landlocked" and "hemmed in. *Id.* at ¶ 40, 48. Plaintiff further asserts the Marketable Record Title Act ("MRTA") codified at Chapter 712, Florida Statutes, defeats any common law easement. *Id.* at ¶ 40. However, in his Complaint Plaintiff does not plead any historical facts necessary to permit the Court to conduct the required analysis, pursuant to the above decisions, requires facts proving unity of title, severance, how or when the alleged lack of access arose and why no access exists by implication, grant or reservation. Plaintiff pleads MRTA as a legal conclusion, without alleging chain of title facts or facts establishing that any implied access right has been extinguished as a matter of law. **Without those facts, the Court cannot determine whether subsection §**

704.01(2) is available, whether the land is truly hemmed in as a matter of law, or whether Plaintiff is attempting to convert convenience or development goals into statutory necessity. Accordingly, Plaintiff's Complaint fails to state a claim for a statutory way of necessity under Chapter 704 and must be dismissed.

IV. Plaintiff Fails to Plead the Absence of Reasonable or Practicable Access

A threshold premise of Plaintiff's Chapter 704 claim is that the Colosi property lacks reasonable or practicable access to a public road. Plaintiff alleges that his "parcel of land is landlocked" and "hemmed in and shut off by the lands of defendants" such that "no practicable route of ingress or egress" exists. *Id.* at ¶ 40, 48. These assertions are legal conclusions, not facts. The Complaint does not identify what access exists or may exist, whether by recorded easement, implied right, plat, governmental access, or permissive use, nor does it plead facts explaining why any such access is unreasonable or impracticable. Instead, Plaintiff merely alleges that "no such access … exists by common law implication or by express grant. *Id.* at ¶ 48. That conclusory allegation does not satisfy Rule 1.110(b).

Florida courts require a claimant seeking a way of necessity to plead facts demonstrating the absence of any reasonable or practicable access and not merely assert that access is unavailable to Plaintiff. Because the Complaint fails to identify existing access conditions or to plead facts showing the absence of access conditions, the District cannot meaningfully admit or deny the central premise of the claim and the Court cannot determine whether Chapter 704 is available on the face of the pleading. This failure is material and independently warrants dismissal under Rule 1.140(b)(6).

This pleading deficiency is underscored by Plaintiff's failure to identify any definite route of access, alleging only that travel would occur over lands "roughly indicated by Quarry Trail"

and seeking an indeterminate width "of sufficient size" to satisfy zoning and development codes, which prevents the Court from assessing whether any purported access is practicable or least burdensome as required by Chapter 704. *Id.* at ¶ 42, 44, 49.

Accordingly, for these reasons, Plaintiff's Complaint must be dismissed as a matter of law.

V. In the Alternative, to the extent Plaintiff Seeks Damages Sounding in Tort Against Governmental Defendants, Plaintiff's Complaint Fails To Plead Compliance With Section 768.28, Florida Statutes

Paragraph 78(5) of the Complaint expressly seeks monetary relief, including any "damages, including without limitation any and all actual, special, nominal and compensatory damages" and "any punitive damages as may be available upon amendment. *Id.* at ¶ 78(5). Chapter 704 does not authorize an award of damages or punitive damages in connection with a statutory way of necessity. Rather the statutory scheme constitutes a limited access determination and if appropriate, compensation pursuant to § 704.04, Fla. Stat. Plaintiffs inclusion of a broad damages demand confirms that the relief sought is not confined to the narrow statutory remedy Plaintiff purports to invoke here.

To the extent Plaintiff's demand for damages in paragraph 78(5) is construed as sounding in tort against the District, the Complaint independently fails as a matter of law because it does not allege compliance with section 768.28, Florida Statutes. Section 768.28 provides a limited waiver of sovereign immunity and requires, as a condition precedent to filing a suit, that a claimant provide pre-suit notice to the appropriate Department of Financial Services and allow the statutory waiting period to expire. Compliance with these requirements must be affirmatively pled under the statute. Here, Plaintiffs Complaint contains no pre-suit notice, no confirmation of compliance and no confirmation that the statutory waiting period has elapsed.

The District raises this argument to preserve the defense and to prevent expansion of a simple statutory access dispute into tort damage claims without Plaintiff's failure to comply with § 768.28 requirements.

WHEREFORE, Defendant, QUARRY COMMUNITY DEVELOPMENT DISTRICT, respectfully request that this Court enter an Order granting its Motion to Dismiss the Plaintiff Michael Colosi's Complaint and enter any other relief it deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by e-service to all parties on the attached Counsel List this 2nd day of February, 2026.

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STYLE: MICHAEL P. COLOSI V QUARRY COMMUNITY DEVELOPMENT DISTRICT and FLOW WAY COMMUINTY DEVELOPMENT DISTRICT, ESPLANADE GOLF AND COUNTRY CLUB OF NAPLES INC.
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OUR FILE NO.: 26-106

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