UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2657

September Term, 2014

DEBORAH A. VOLLMER

v.

ARTHUR SCHWARTZ, ET UX.

Kehoe,
Leahy,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: February 11, 2016

This case is one of several that has arisen between two neighbors. Arthur Schwartz, M.D., and Linda Schwartz, appellees, purchased property in Chevy Chase, Maryland in 2008. The property shared a driveway (the "Driveway") with their neighbor, Deborah Vollmer, appellant. The Driveway lay on an easement shared by the two properties between the houses (the "Easement.") Beginning in 2008, the Schwartzes began improving their property, including constructing a new home and garage, and most recently, repairing and reconstructing the Driveway. When the Schwartzes initiated the process of pursuing these improvements, Vollmer began filing lawsuits seeking to obstruct the Schwartzes' efforts. This appeal arises from the fifth lawsuit between the parties.[1] The four prior lawsuits were

[1]The four previous lawsuits concerned the following:

1. Vollmer filed a Petition for Writ of Administrative Mandamus in the Circuit Court for Montgomery County concerning the building permits issued by the Town of Chevy Chase for the construction of the Schwartzes' new house. The circuit court denied the petition and Vollmer appealed to this Court, which affirmed the trial court.

2. Vollmer filed a petition before the Montgomery Board of Appeals challenging other building permits issued by the County for the construction of the Schwartzes' house. Her petition was denied and she appealed to the circuit court, which affirmed the Board of Appeals. Still dissatisfied, she appealed to this Court, which also affirmed the Board of Appeals.

3. Vollmer filed suit in the Circuit Court for Montgomery County seeking: (1) a declaratory judgment stating that the Schwartzes had no legal right to use the Easement for access to their home, and (2) a permanent injunction prohibiting the Schwartzes from using the Easement. The circuit court entered a declaratory judgment in the Schwartzes' favor, declaring that they had a right to use the Easement for ingress and egress to their house. Vollmer appealed and we affirmed the judgment of the circuit court.

4. Vollmer filed a second declaratory judgment action in the Circuit Court for Montgomery County declaring that the Schwartzes had no legal right to use the Easement.

(continued...)

filed by Vollmer, in various attempts to obstruct the Schwartzes' improvement efforts. Two of these lawsuits sought to extinguish the Schwartzes' rights to use the Easement for ingress and egress to their house—both of which were ruled in the Schwartzes' favor.

This particular lawsuit was filed by the Schwartzes in the Circuit Court for Montgomery County in response to Vollmer's dogged refusal to recognize their rights under the Easement. They sought a) a declaratory judgment declaring the parties' respective rights and obligations pursuant to the Easement to repair and maintain the Driveway, and b) injunctive relief and specific performance that would allow the Schwartzes to repair the Driveway and prohibit Vollmer from interfering with these efforts. The circuit court granted the declaratory judgment and ordered Vollmer to pay half the cost of the repairs to the Driveway. It also issued a permanent injunction prohibiting Vollmer from interfering with the repair of the Driveway.

Several events have transpired since the court issued this order. First, Vollmer was held in contempt for interfering with the construction work and ordered to pay $750 of costs that the Schwartzes incurred due to the interference. Second, the repair and reconstruction of the Driveway is now complete. Third, Vollmer was ordered by the court to pay the Schwartzes' attorneys fees and costs incurred from maintaining the current action against

[1](...continued)
The circuit court dismissed the suit based on *res judicata* and collateral estoppel. Vollmer appealed and we affirmed the judgment of the circuit court.

Vollmer. Vollmer now raises eight questions on appeal, which we have consolidated into three, re-ordered, and re-worded:

> 1. Does the doctrine of laches bar the Schwartzes from raising their claims against Vollmer?
>
> 2. Did the circuit court abuse its discretion in issuing the injunction?
>
> 3. Did the circuit court abuse its discretion in awarding the Schwartzes' attorneys fees and costs?

We will affirm the judgment of the circuit court. The facts of this case are well-known to the parties; as such, we will discuss any pertinent facts within our analysis.

Analysis

1.1 Laches

As a preliminary issue, Vollmer alleges that the Schwartzes should have been prohibited from bringing this suit against her pursuant to the doctrine of laches.[2] She bases this position on the fact that in 2008, she notified the Schwartzes that she would not consent to any changes to the then-existing state of the Driveway, yet the Schwartzes did not institute the current action until 2014. She contends that this eight-year delay in asserting their rights under the Easement was unreasonable and should be estopped pursuant to the doctrine of laches.

[2]In her brief, Vollmer secondly argues that the doctrine of estoppel alternatively bars the Schwartzes' from filing suit against her; however, the caselaw she cites in support of her argument references the doctrine of laches, not estoppel. Thus, we will limit our discussion to the applicability of the doctrine of laches.

This question is not properly before us. Vollmer did not raise the issue before the circuit court, and thus did not preserve it for our review. *See* Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ."). Furthermore, even if it was preserved, we would conclude that the doctrine of laches does not bar the Schwartzes' suit. The doctrine of laches requires that the delayed assertion of rights cause prejudice to the defending party. *Liddy v. Lamone*, 398 Md. 233, 244 (2007). Vollmer has failed to assert—nor do we perceive—any prejudice she has suffered due to the Schwartzes' delay in asserting their rights. Thus, the doctrine is inapplicable.

1.2 The Injunction

Vollmer's next two contentions pertain to whether the circuit court abused its discretion in issuing the injunction. She asserts that the injunction should not have been issued because it: a) infringed upon her property rights by allowing construction on her property without her consent, and b) violated her First Amendment rights by precluding her from voicing her objections to the construction work.

Before we address these claims, we must decide whether they are moot, due to the fact that the reconstruction of the Driveway at this point has been completed. "A case is moot when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy." *Albert S. v. Dep't of Health & Mental Hygiene*, 166 Md. App. 726, 743 (2006). The circuit court enjoined

Vollmer from interfering with the Schwartzes' application for a permit to repair the Driveway and interfering with the repair and reconstruction of the Driveway. At this point, the Schwartzes have received the permit and have finished the repairs to the Driveway; thus, the injunction no longer effects Vollmer, and the issue is moot.

However, even if the issues were not moot, we would conclude that the court did not err in issuing the injunction. First, as to Vollmer's property rights, she claims that the court authorized the Schwartzes to repair and reconstruct areas that were outside the Easement. However, she does not direct us to anything in the record to support her position, thus we are unable to address it. *See Konover Prop. Trust, Inc. v. WHE Associates, Inc.*, 142 Md. App. 476, 494 (2002) ("We will not rummage in a dark cellar for coal that isn't there.")

Second, we conclude that her allegation that the injunction violated her First Amendment right to free speech is without merit. The court order enjoined Vollmer from "refusing to consent, withholding or conditioning her consent, and/or blocking, hindering or interfering," with the Schwartzes' application for a permit to repair and reconstruct the Driveway, as well as prohibiting her from interfering with the construction work itself. Vollmer claims that this "overbroad" injunction limits her right to express her objections to the reconstruction of the Driveway. We disagree.

Nothing in the injunction prohibits Vollmer from expressing herself verbally, it only prohibits her from engaging in *conduct*, albeit perhaps verbal conduct, that would actively interfere with the Schwartzes' efforts to repair the Driveway. We conclude the circuit court

was justified in issuing the injunction in light of Vollmer's continuous acrimonious and confrontational behavior. *See State Comm'n on Human Relations v. Talbot Cty. Det. Ctr.*, 370 Md. 115, 127 (2002) ("[A]ppellate courts review a trial court's determination to grant or deny injunctive relief for an abuse of discretion because trial courts, sitting as courts of equity, are granted broad discretionary authority to issue equitable relief.")

3. Attorneys' Fees and Costs

The circuit court awarded the Schwartzes' attorneys' fees and costs pursuant to Rule 1-341(a), which states:

> In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

Maryland employs a two-step process to determine if sanctions pursuant to Rule 1-341 are appropriate. *Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 676 (2003). First, the court must determine whether the party acted in bad faith or without substantial justification. Second, it must determine whether to award sanctions. *Id.* at 676–77. Vollmer takes issue with the first step; she alleges that the circuit court erroneously concluded that she acted in bad faith or without substantial justification.

We review a circuit court's finding of bad faith or lack of substantial justification pursuant to the clearly erroneous standard. *Inlet Associates v. Harrison Inn Inlet, Inc.*, 324

Md. 254, 267 (1991). "If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous." *L.W. Wolfe Enterprises, Inc. v. Maryland Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005). In her brief, Vollmer fronts several arguments in defense of her position that she did not defend the present action or file for a stay enforcing the action in bad faith. Yet the vast majority of these contentions turn on the credibility of Vollmer as a witness in this case, which the circuit court found to be wanting.[3] Nothing in the record convinces us that the trial court's finding of bad faith or lack of substantial justification was clearly erroneous. Thus, we will not disturb its imposition of sanctions.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED.

APPELLANT TO PAY COSTS.

[3]The circuit court, in its factual findings, stated that: "Vollmer's tetimony in this case [is] insincere and unworthy of belief. Just a few examples of this testimony convince the Court her purpose is to obstruct, disrupt, and block any reasonable changes and/or repairs to the driveway."