Circuit Court for Washington County
Case No. C-21-CV-20-000430

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 61

September Term, 2023

JUSTIN HOLDER, et al.

v.

BENJAMIN ESTES

Friedman,
Tang,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: May 3, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case involves a property dispute between two sets of neighbors. The main issues on appeal concern whether the trial judge was legally correct in his interpretation of a deed at the summary judgment stage and whether the same judge erred in finding Little Antietam Creek in Keedysville, Maryland was not a navigable waterway, thereafter determining that there had been a trespass on the land, which he enjoined. [1]

[1] We are treating both the summary judgment order and bench trial order as final judgments subject to appeal. Generally, an order granting partial summary judgment is not an appealable final judgment "unless it is properly certified as final pursuant to Rule 2-602(b)." *Porter Hayden Co. v. Commercial Union Ins. Co.*, 339 Md. 150, 162 (1995); Judge Kevin F. Arthur, *Finality of Judgments and other Appellate Trigger Issues* 4 (3d ed. 2018). Maryland Rule 2-602(b) states, in relevant part: "If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment: (1) as to one or more but fewer than all of the claims or parties." There is not a "rigid requirement" for the language used in the order, but generally, the court should give a reason why it is exercising the discretion to order the entry of a final judgment. *Canterbury Riding Condo. v. Chesapeake Investors, Inc.*, 66 Md. App. 635, 651 (1986).

In the final judgment order in this case, Judge Andrew Wilkinson of the Circuit Court for Washington County stated: "finding that judicial economy is best served hereby and that there is no just reason for delay . . . [the Order] is hereby entered as a final judgment, even though additional claims (trespass, etc.) remain outstanding in this case." Judge Wilkinson wrote the "magic words 'no just reason for delay,'" and also stated that judicial economy was his reason for the determination. *Miller Metal Fabrication, Inc. v. Wall*, 415 Md. 210, 222 (2010). Therefore, the partial summary judgment order is properly before this court because the circuit court properly directed the entry of a final judgment pursuant to Maryland Rule 2-602(b). *See Len Stoler, Inc. v. Wisner*, 223 Md. App. 218, 227–29 (2015).

The injunctive order is properly before this court because Section 12-303 of the Courts & Judicial Proceedings Article, Maryland Code (2006, 2020 Repl. Vol.) allows a party to appeal an order granting an injunction. Section 12-303 states, in relevant part: "A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case: . . . (3)(i) Granting or dissolving an injunction, but if the appeal is from an order granting an injunction, only if the appellant has first filed his answer in the cause."

The case arose in May of 2021, after Benjamin Estes, Appellee, filed a Second Amended Complaint[2] in the Circuit Court for Washington County against Justin Holder, Deena Holder, Uncle Eddies Brokedown Palace, LLC[3] ("Uncle Eddie"), the Maryland Department of Natural Resources[4] ("DNR"), and all other interested but unknown parties in numerated counts alleging: (1) trespassing; (2) violations of Section 5-409 of the Natural Resources Article, Maryland Code (1974, 2023 Repl. Vol.); (3) nuisance; (4) aiding and abetting trespass to land; (5) quiet title; and (6) ejectment. The property at issue was a piece of land abutting Little Antietam Creek in Keedysville, Maryland. Mr. Estes requested that those sued be enjoined from further trespasses onto this land. In February of 2022, Judge Andrew Wilkinson of the Circuit Court for Washington County bifurcated the issues in the case and determined counts 5, quiet title, and 6, ejectment, would be heard together in a bench trial and counts one through four would proceed to a jury trial after the bench trial had concluded. The pending jury trial on counts one through four is not rendered moot by this opinion.

Mr. Estes filed a motion for summary judgment as to all counts in his Second Amended Complaint, except count 3, nuisance. In September of 2022, Judge Wilkinson

[2] The prior Complaints are discussed in more detail *infra*.

[3] Uncle Eddies Brokedown Palace, LLC is a New Mexico limited liability company associated with Justin and Deena Holder.

[4] Mr. Estes voluntarily dismissed the Maryland Department of Natural Resources in January of 2022.

granted the motion in part, denied it in part, and held the remaining issues under advisement. The court initially determined that the boundary line between land owned by Mr. Estes and the Holders/Uncle Eddie was "as indicated on plat 10955," which was entitled "Parcel of Reconfiguration." Judge Wilkinson denied summary judgment on the issue of whether Mr. Estes' rights to the land under the water of Little Antietam Creek prohibited others, including the Holders, from using the Creek bottom within Mr. Estes' property line. The Judge also held under advisement his decision on summary judgment for counts one through four. After a two-day bench trial, Judge Wilkinson permanently enjoined Justin Holder, Deena Holder, and Uncle Eddie from Mr. Estes' land, including the land under the water of Little Antietam Creek within Mr. Estes' property line:

> ORDERED, that Defendants Justin Holder, Deena Holder, Uncle Eddie's Brokedown Palace, LLC, and any member or agent thereof, be and are hereby permanently enjoined from coming into contact with [Mr. Estes'] land within [Mr. Estes'] property lines as determined in this case, including the land under the water of the Little Antietam Creek and its tributaries within [Mr. Estes'] property lines.

(Emphasis omitted).

Justin Holder appealed the court's order granting injunctive relief. In addition, the court issued an order designating the September 2022 summary judgment opinion and order as a final order subject to appeal, which precipitated Justin Holder, Deena Holder, and Uncle Eddie, Appellants, to appeal that order. [5]

[5] Counts one through four have not been resolved and will be the subject of a future jury trial.

The Appellants, Justin Holder, Deena Holder, and Uncle Eddie, presented us with a number of questions which we have renumbered and summarized:[6]

[6] Justin Holder's questions, as presented, were:

1. Was Estes judicially estopped from litigating the public's rights of "fishing and navigation" after stipulating to the same with the State of Maryland?
2. Does the Maryland common law reservation of "fishing and navigation" include touching the bed of the waterway when enjoining said right?
3. Did the trial judge misrepresent Appellant Justin Holder's position in the injunction trial, when it found his position was that the public right to "fishing and navigation" turned on the fact of "navigability?"
4. Did a genuine dispute of material fact exist that would prevent summary judgment?
5. Did the trial court abuse its discretion when it denied Mr. Holder's request to dismiss Estes' claim for quiet title for lack of subject matter jurisdiction?
6. Did the trial court err or abuse its discretion in holding a trial by court when a jury trial was demanded?
7. Should Appellee Estes be barred from relief in equity under the doctrine of *unclean hands*?

Uncle Eddie's questions, as presented, were:

A. If trial court was legally correct in interpretation of the NN520 Deed did a genuine dispute of material fact exist that would prevent summary judgment?
B. Did the trial court err in entering summary judgment without a jury deciding the facts of Uncle Eddie's predecessor's adverse possession?
C. Did the trial court err or abuse its discretion when it prioritized courses and distances over monuments in its interpretation of the NN520 Deed?
D. If the trial court was legally correct in interpretation of the NN520 Deed did the trial court err in application of the law decided in *Giles v. diRobbio*?
E. Did the trial court err in law when deciding the fast-lands attached to the riparian boundary of Uncle Eddies were in the Estes chain of title?
F. Did the trial court err in not applying the clean hands doctrine, barring relief to Estes in equity, when Estes filed a *verified* complaint and two affidavits lacking the proper foundation for Estes to declare personal knowledge of predecessor adverse possession?

(continued…)

1. Whether the trial court erred by denying Mr. Holder's jury demand?
2. Whether the trial court had subject matter jurisdiction over Mr. Estes' claim for quiet title?
3. Whether a genuine dispute of material fact existed that would have prevented summary judgment?
4. Whether the trial court erred in interpreting the 1832 deed recorded at Liber NN, folio 520 ("Original Deed")?
5. Whether the trial court erred by not applying the equitable doctrine of unclean hands?
6. Whether the trial court erred in determining that the land bordering Little Antietam Creek was within Mr. Estes' chain of title?
7. Whether the trial court erred in finding that Little Antietam Creek is non-navigable, therefore limiting Appellants' rights to use the water?
8. Whether Mr. Estes was judicially estopped from litigating the public's right to use the creek bed after stipulating with DNR that the rights of the public to use the waters of Little Antietam Creek were not being litigated in this case?
9. Whether the trial court erred in finding Ms. Holder and Mr. Holder are using Uncle Eddie's as an alter-ego to hold the land neighboring Mr. Estes' property?

PROCEDURAL HISTORY

In November of 2020, Benjamin Estes filed a Complaint against Justin Holder and Deena Holder[7] in the Circuit Court for Washington County for: (1) trespass to land; (2) a

(…continued)

Deena Holder's questions, as presented, were:

I. Did the Circuit Court err or abuse its discretion in applying the alter ego doctrine to Appellants Uncle Eddie's and Appellants Deena Holder and Justin Holder without an action against them, thereby denying them due process?
II. Did the Circuit Court err or abuse its discretion in finding that Appellants Deena Holder and Justin Holder are using Uncle Eddie's as an alter-ego to hold the land neighboring Appellee Estes' property when there was a total lack of evidence supporting its findings and conclusions as to the alter-ego doctrine?

[7] Mr. Estes previously filed a Complaint against Justin Holder in January of 2020 in the District Court of Maryland for Washington County. He alleged Mr. Holder trespassed onto his property and knowingly and intentionally destroyed trees and other vegetation. The lawsuit was consolidated in the Circuit Court in August of 2021.

statutory claim pursuant to violating Section 5-409 of the Natural Resources Article, Maryland Code (1974, 2023 Repl. Vol.);[8] (3) private nuisance; and (4) aiding and abetting trespass to land. In March of 2021, Mr. Estes filed his First Amended Complaint, which added two counts: (5) quiet title and injunctive relief; and (6) an alternative claim for ejectment. In May, Mr. Estes filed his Second Amended Complaint, which added Uncle Eddie, DNR, and all other interested but unidentified parties as defendants. All named defendants filed answers to the Second Amended Complaint.

In his Second Amended Complaint, Mr. Estes requested damages and quiet title and/or ejectment with respect to a section of real property along Little Antietam Creek that borders both Mr. Estes' and Uncle Eddie's property. As Mr. Estes stated in the Second Amended Complaint, "[t]he real property at issue in this case (the "Estes Property") is commonly known as Lot 2, Mt. Hebron Road, Keedysville, Maryland 21756." As the Amended Complaint recited, the land was more fully described as:

[8] All statutory references to the Natural Resources Article are to Maryland Code (1974, 2023 Repl. Vol.).

Section 5-409 of the Natural Resources Article provides, in pertinent part:

> Any person, his aiders, abettors, and counsellors, who willfully, negligently, recklessly, wrongfully, or maliciously enters upon lands or premises of another without written permission of the owner of the lands or premises, in order to cut, burn, or otherwise injure or destroy, or cause to be cut, burned, or otherwise injured, or destroyed, any merchantable trees or timber on the land is liable to the party injured or aggrieved in an amount triple the value of the trees or timber cut, burned, or otherwise injured or destroyed, plus the costs of any surveys, appraisals, attorney fees, or court fees in connection with the case. The damages are recoverable in a civil action, as in any other case.

> Being all of Lot 2 on the Plat of Subdivision entitled "Preliminary/Final Plat of Subdivision of Lot 2 for M. Yvonne & Maxwell B. Hope, II" prepared by Frederick, Seibert & Associates, Inc. dated September 27, 2006 and designated as Job No. 1967.2 and recorded in Plat folio 9186 among the Plat Records maintained by the Clerk of the Circuit Court for Washington County, Maryland; containing 8.28 acres of land, more or less.

Mr. Estes sought a determination that he was the sole owner of the property and that the defendants had no right, title, or interest in any portion of the property, including the land underneath the water of Little Antietam Creek that abutted the land. Mr. Estes also sought to enjoin Uncle Eddie and his agents from entering the land, as he alleged that they repeatedly came onto the property without permission:

> 16. From October 1, 2018 through the present, Defendant Justin Holder, by himself and/or through his agents did knowingly and intentionally destroy property on the Estes Property, by knowingly and intentionally removing, cutting or otherwise clearing and destroying trees, shrubs, underbrush, and/or other plants and or vegetation with full knowledge that he or his agents did not have the permission, implied or otherwise, of the Plaintiff, and knowing such vegetation was wholly located on the Estes Property. Defendant Justin Holder destroyed numerous trees, plants and bushes, common to the Maryland floodplain, including, among other vegetation, walnut trees, spice bushes, sycamore seedlings, box elder seedlings/trees, wild rose bushes and other plants, bushes and trees.
>
> 17. That Defendant Justin Holder has acknowledged that he intentionally entered upon land that he knew belonged to Plaintiff and cut down trees, plants, shrubs, alders and vegetation that he knew belonged to Plaintiff.
>
> 18. As of the date of this pleading, Defendant Justin Holder continues to enter onto Plaintiff's land and has stated his intention to continue to do so.

Mr. Estes alleged that the parties disagreed about the location of the boundary between the two properties:

22. Defendants (specifically, Justin Holder, individually and/or on behalf of Deena Holder and/or Uncle Eddies) contend that Little Antietam Creek forms the boundary between the Holder Property and Estes Property.

23. However, the chains of title for both properties, including plats of both properties prepared by a licensed surveyor—Frederick Seibert & Associates ("FSA")—separately on behalf of the parties, clearly show that the boundary line between the properties is on the western side of Little Antietam Creek.

24. Specifically, the Plat attached hereto as Exhibit A shows the boundary line between the Estes Property and the Holder Property as running, in part, on the west side of Little Antietam Creek. The Estes Property and Holder Property share the portions of the boundary depicted on Exhibit A starting at the point where "L10" ends and "L11" begins, thence running to the opposite end of a line . . . terminating on/in or near a bridge abutment (the "Shared Boundary").

25. Plaintiff contends that the Shared Boundary shown on Exhibit A accurately depicts the boundary between the Estes Property and Holder Property.

* * *

27. Plaintiff is the legal owner of the entirety of the Estes Property, including, but not limited to, the property located between the western bank of Little Antietam Creek and the Shared Boundary (the "Disputed Area"), as well as any land on the Estes Property that is beneath any creeks, streams or waters within the Estes Property.

28. Defendants have made these claims regarding the location of the shared boundary line knowing that their own chain of title as well as plat(s) that they have recorded contradict their claims and solely for the purpose of clouding Plaintiff's title to extract concessions from Plaintiff and to avoid liability for their trespasses and destruction of plants, trees, shrubs, alders and undergrowth on the Estes Property.

29. Notwithstanding Plaintiff's clear record title to the Estes Property, including the Disputed Property, even if the Shared Boundary Line was not as indicated on the plats, Plaintiff and his predecessors would have established title to the Disputed Property by adverse possession over a period of at least 25 years, and likely longer.

In addition to financial recompense, Mr. Estes requested that the court "enter judgment quieting title to the Estes Property in his favor as to Defendants' claims, confirming that the location of the shared boundary line between the Estes Property and Holder Property is consistent with the platted boundaries of the Estes Property" and enjoin all defendants from further trespasses. Finally, Mr. Estes asked the court to enter a judgment ejecting the defendants from his property.

Justin Holder filed his Answer to the Second Amended Complaint. Mr. Holder demanded judgment and declaratory relief in his favor as well as dismissal of Mr. Estes' Complaint and Petition. He then asserted the following defenses:

1. Plaintiff's Complaint lacks jurisdiction.
2. Plaintiff's Complaint is barred by the Statute of Limitations.
3. Plaintiff's Complaint is barred by laches.
4. Plaintiff's Complaint is barred by the doctrine of waiver.
5. Plaintiff's Complaint is barred by estoppel.
6. Plaintiff's Complaint is barred by the lack of necessary parties.
7. Plaintiff's Complaint is barred by *Res Judicata*.
8. Plaintiff's Complaint is barred by lack of jurisdiction.
9. Plaintiff does not hold equitable title to any lands in Keedysville, MD 21756 West of the Thread of the Little Antietam Creek, lands in which the Plaintiff has alleged counts 1 through 4 occurred.

Mr. Holder, thereafter, filed an Amended Answer which added a new defense, that being that Mr. Estes failed to join necessary parties under Maryland Rule 2-211.[9] Mr. Holder filed a Second Amended Answer to the Second Amended Complaint and asserted the additional defenses as follows:

[9] Maryland Rule 2-211 states, in relevant part:

(continued…)

1. Defendant has superior title to Plaintiff. Defendant denies Plaintiff has legal paper title to land South and/or west of the Little Antietam Creek and Big Spring Branch in Keedysville, Maryland and demands strict proof thereof.
2. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

* * *

12. Plaintiff's claims in law are barred by in *pari delicto*.
13. Plaintiff's claims in equity are barred by the Clean Hands Doctrine.

Deena Holder filed her Answer to the Second Amended Complaint and requested that Mr. Estes' claims be dismissed or a judgment entered in her favor, and asserted various defenses:

1. The Second Amended complaint fails to state claims upon which relief can be granted.
2. The Second Amended Complaint is barred by estoppel.
3. The Second Amended Complaint is barred by laches.
4. The Second Amended Complaint is barred by limitations.
5. The Second Amended Complaint is barred by the statute of frauds.

(continued…)

(a) Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence

(1) complete relief cannot be accorded among those already parties, or

(2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.

The court shall order that the person be made a party if not joined as required by this section. If the person should join as a plaintiff but refuses to do so, the person shall be made either a defendant or, in a proper case, an involuntary plaintiff.

6. The Second Amended Complaint is barred by the doctrine of unclean hands.
7. The Plaintiff has failed to join all necessary parties.
8. Collateral estoppel.
9. The Second Amended Complaint is barred by the doctrine of waiver.
10. *Res judicata*.
11. The Defendant did not commit the wrongs alleged.
12. The Plaintiff was not damaged as alleged.
13. The chains of title to the lands owned by the Plaintiff and the lands on the western side of Little Antietam Creek show that the creek is the boundary line between the properties.

Uncle Eddie, through its attorney, filed an Answer to Mr. Estes' Second Amended Complaint. It was signed by Justin Holder as a "Member"[10] of Uncle Eddie's Brokedown Palace, LLC. The Answer asserted the following defenses:

1. The Second Amended Complaint fails to state a claim upon which relief can be granted.
2. The Second Amended Complaint is barred by estoppel.
3. The Second Amended Complaint is barred by limitations.
4. The Second Amended Complaint is barred by laches.
5. The Second Amended Complaint is barred by the statute of frauds.
6. The Second Amended Complaint is barred by the doctrine of unclean hands.
7. The Plaintiff has failed to join all necessary parties.
8. The Second Amended Complaint is barred by collateral estoppel.
9. The Second Amended Complaint is barred by the doctrine of waiver.
10. The Second Amended Complaint is barred by *res judicata*.
11. The Defendant did not commit the wrongs alleged.
12. The Plaintiff was not damaged as alleged.

After the issues were joined, to delimit the scope of the litigation, the parties stipulated that neither a railroad bed nor the public's use of Little Antietam Creek was an issue in the case:

[10] Mr. Holder identified himself in the signature line as a "Member."

> [Stipulate], that for the purpose of clarifying the scope of this litigation and discovery herein, the only boundary lines or areas in dispute in this case are (1) the southern boundary of the Estes Property . . . where it meets the northern boundary of the former railroad bed depicted on Plat 9186 and described in a Quitclaim Deed recorded in the Land Records of Washington County at Liber 1015 folio 796; (2) the western boundary of the Estes Property where it meets the eastern boundary of the Uncle Eddies Property . . . ; and (3) any other boundaries of the Estes Property that adjoin any land owned or claimed to be owned by Justin Holder or Deena Holder; and the parties further
>
> [Stipulate], that legal ownership of the former railroad bed is not being litigated or adjudicated in this case; and the parties further
>
> [Stipulate], that while Plaintiff is seeking a determination and declaration of his fee simple interest in and right of exclusive possession of all lands that comprise the Estes Property, including the land beneath any waters located on the Estes Property, the right of the public, if any, to make use of the waters of the Little Antietam Creek, or any other waters on the Estes Property, are not being litigated or adjudicated in this case.

Thereby, Mr. Estes agreed to the dismissal of DNR as a party.

Prior to the beginning of the bench trial, Mr. Holder filed copious pleadings, most of which are not related to this appeal.[11] The circuit court then issued a Case Management

[11] Pleadings filed by Mr. Holder not in issue in this appeal include:

A "Motion for Rule 2-211 Required Joinder of Parties." The court denied his motion.

A document titled "Bill Quia Timet." The court denied the requested relief. He appealed the denial to this Court, which we denied as premature, but is not the subject of the instant appeal.

A document titled "Amended Memorandum Bill Quia Timet." The court denied the requested relief.

(continued…)

Order, which outlined the parameters of when and how each party could file motions with the court "in order to promote the just, speedy and inexpensive resolution of this case."

The court also issued an order to bifurcate the counts listed in Mr. Estes' Second Amended Complaint. The order stated that count 5, quiet title, and 6, ejectment, would be scheduled for a bench trial, while counts one through four would go to a jury trial after the bench trial concluded.

Mr. Estes then filed a Motion for Summary Judgment for all counts in his Second Amended Complaint except count 3, nuisance. His motion claimed the following:

1. Plaintiff is entitled to judgment as to his claim for quiet title.
2. Plaintiff is entitled to judgment in his favor as to his claim for trespass.
3. Plaintiff is entitled to judgment in his favor as to his claim for violation of § 5-409 of the Natural Resources Article.
4. Plaintiff is entitled to judgment as to his claim for aiding and abetting.
5. In the alternative, Plaintiff is entitled to judgment in his favor as to ejectment.

The court held a hearing on the Motion for Summary Judgment in August of 2022, and issued its opinion and order the following month.

(…continued)

Numerous motions concerning dismissal of Counts 2, 5, and 6 of the Second Amended Complaint, none of which is subject of the instant appeal. The court denied Mr. Holder's motions.

Multiple motions for summary judgment, none of which are the subject of the instant appeal. The court denied his motions.

Summary Judgment Opinion

In September of 2022, the court issued an Opinion and Order related to Mr. Estes' summary judgment motion. The judge briefly recounted the procedural history of the case and stated that the "threshold issue for the court is whether the court can determine the location of the property line between Plaintiff's land and Defendant Uncle Eddie's land at this summary judgment stage."

The Relevant Land Records

In his findings, Judge Wilkinson discussed the history of the boundaries between Mr. Estes and Mr. Holder's properties as follows: the land that was purchased by Mr. Estes in 2013 had been subdivided from another property in 2007 by Plat 9186, which had been approved by the Planning Commission in April 2007, by the Mayor in May 2007, and was recorded in August 2007. Plat 9186,

> shows the boundary line between [Mr. Estes'] property and [what is now] Uncle Eddie's property beginning at its southernmost point within or just along the western edge of the Antietam Creek (the "Creek"), then running within or just along the western edge of the Creek, then moving westward away from the Creek and into the lands bordering the Creek to the west, then moving overland until rejoining the western edge of the Creek as the Creek turns west at the northernmost point of the boundary.

The judge then found that the Appellants acquired adjoining property to Plat 9186 in April of 2018 through a transfer from the Estate of Mary Jane Hutzell to Uncle Eddie by a deed that described the property line with consistency to the deed description of Mr. Estes' property. Uncle Eddie then transferred the property to Deena Holder by deed, and the properties were reconfigured in 2019.

As part of the reconfiguration, Plat 10955, labeled as a "Parcel Reconfiguration," was approved by the Planning Commission, Mayor, and Town of Keedysville Council in April 2019. The plat was recorded shortly thereafter. Plat 10955, "and the deed of transfer, incorporating Plat 10955, describe the property line consistently with [Mr. Estes'] deed. The plat:

> shows the boundary line between [Mr. Estes'] property and Uncle Eddie's property beginning at its southernmost point within or just along the western edge of the [Little] Antietam Creek, then running within or just along the western edge of the Creek, then moving westward away from the Creek and into the lands bordering the Creek to the west, then moving overland until rejoining the western edge of the Creek as the Creek turns west at the northernmost point of the boundary.

Deena Holder then transferred the property back to Uncle Eddie. In the deed, Justin Holder, on behalf of Uncle Eddie's, and Deena Holder, personally, acknowledged that they chose not to have a title examination. The deed also "confirms acceptance and acknowledgement of the limits of Uncle Eddie's property in accord with Plat 10955."

To demonstrate the boundary line and chain of title of the disputed property, Mr. Holder included a deed from 1832 recorded at Liber NN, folio 520 ("Original Deed") as an exhibit to his Amended Answer and one of his Motions to Dismiss. During the summary judgment hearing, Mr. Holder discussed the Original Deed and "suggest[ed] it is the deed that originally created the property line between [Mr. Estes'] land and Uncle Eddie's land." The relevant portion of the Original Deed states, "to Little Antietam Creek; then down said Creek the nine following courses," and then lists the courses and distances. The judge found that:

> [t]he parties agree that the courses and distances of [the Original Deed] do not remain within the water of the Creek. Rather, the courses take the property line westward away from the Creek and into the lands bordering the Creek to the west, then moving overland until rejoining the western edge of the Creek as the Creek turns west at the northernmost point of the boundary.

Interpretation of the Land Records

In interpreting the plats and deeds, the judge made the following findings: he noted that if "Uncle Eddie's had a concern as to the location of the boundary line, the time to dispute that location would have been before recording the plat and the deed confirming the boundary line where [Mr. Estes'] deed and Plat 9186 claim it to be." (Emphasis in original). Nevertheless, Judge Wilkinson found that the deeds and recorded plats were consistent and depicted the same boundary line. The judge found that inconsistencies in the land records had not been proven, and explained that, "this is not a case where there are two (2) current, competing deeds that show a deed overlap. Instead, the current deeds and plats agree as to the description of the boundary between them."

Ultimately, Judge Wilkinson granted partial summary judgment to Mr. Estes on the boundary line issue in count 5, quiet title. In interpreting the Original Deed, Judge Wilkinson found that the deed was "unambiguous," and determined, as a matter of law, "that the boundary line between the Plaintiff's land and Uncle Eddie's land is as indicated on Plat 10955."

Bench Trial Opinion

In December of 2022, the court held a two-day bench trial,[12] during which Judge Wilkinson made various findings regarding navigability and injunctive relief:

Findings on Navigability

The judge found that the issue of whether Little Antietam Creek was navigable was the overriding concern, because if the waters were not navigable, then the public had a more limited right to use the water. In non-navigable water, the judge found that the public has the right "to be on top of the water and to be within the water, but they do not have the right to *walk* or *stand* on the land under the water."

The judge outlined two independent tests to determine navigability. The first test was "whether the water is subject to the ebb and flow of the tides," while the second test was "whether the water is of such width, depth, or has other characteristics that make it usable, in its ordinary condition, as highways of commerce over which trade and travel can be conducted by customary modes of trade and travel on water," and cited, *Gray, et al. v. Gray*, 178 Md. 566, 574 (1940); *Wicks v. Howard*, 40 Md. App. 135, 136 (1978).

The judge noted that water, meeting the criteria under either test, is considered navigable and therefore the State of Maryland "maintains rights in the land under the water . . . [and] the public is permitted to use not only the water, but also the land

[12] No representative for Uncle Eddie's attended the bench trial. In a September 2022 order, the court excused the company and counsel from attending the bench trial and noted that Uncle Eddie had consented to the Court "entering an Order further enjoining the further trespass on Plaintiff's land as indicated on Plat 10955."

underneath." The judge also found that the water in Little Antietam Creek, were it not to meet the criteria, would be owned by the fee holder, so that the public could use the water, but could not touch the land underneath.

After making the relevant findings, the judge applied both tests to Little Antietam Creek and its tributaries and found that Little Antietam Creek and its tributaries were non-navigable.

Injunctive Relief

After having determined the crucial issue of navigability, Judge Wilkinson entertained Mr. Estes' request that the Defendants be enjoined from entering his property and applied the legal formula regarding permanent injunctive relief. The judge stated that the "standard for the grant of an injunction is a four-factor test" and listed the factors he considered:

> (1) The existence of a right which could be injured without an injunction;
> (2) Whether the plaintiff will suffer irreparable injury without an injunction;
> (3) The "balance of convenience" determined by whether greater injury would be done to the defendant by granting the injunction than from its refusal; and
> (4) In the appropriate case, the public interest.

Judge Wilkinson applied these factors and issued a permanent injunction against all Defendants "related to their use of the **land** within Plaintiff's property lines, including the land under the water of the Little Antietam Creek and its tributaries." (Emphasis in original). He included the following language at the end of the opinion in a footnote:

> Deena Holder asks not to be enjoined because she has no direct interest in this matter and she does not deserve to be enjoined. From information received in a previous proceeding, it is clear that Justin Holder and Deena

> Holder use Uncle Eddie's as an alter-ego to hold the land neighboring Plaintiff's property. The issue in this case is not whether Mrs. Holder has been cordial to Plaintiff (she has been cordial). The issue is whether she has argued that she has the right to use the land under the water (she has so argued) and whether she is involved with Uncle Eddie's (she is).

Mr. Holder, thereafter, filed multiple motions, which were all denied and are not subject to this appeal.[13] Mr. Holder then timely appealed the injunction.

After Mr. Holder noted his appeal, the circuit court entered the September 2022 Summary Judgment Order as a final judgment on March 24, 2023. Uncle Eddie[14] timely

[13] These were: (1) "Motion to Alter or Amend Judgment of Injunction;" (2) "Motion to Revise/Dismiss in Accordance with Md. Real Property Code. Ann. § 14-108(a);" and (3) "Motion for new trial."

[14] In his brief, Mr. Estes argues that Uncle Eddie's Appeal should be dismissed. He claims the business lacks standing since it is a foreign limited liability company and was not registered to do business in Maryland at the time the court held the hearing on the motion for summary judgment.

Section 4A-1007 of the Corporations & Associations Article, Maryland Code (1975, 2014 Repl. Vol.), states, in part:

> (a) If a foreign limited liability company is doing or has done any intrastate, interstate, or foreign business in this State without complying with the requirements of this subtitle, the foreign limited liability company and any person claiming under it may not maintain suit in any court of this State, unless the limited liability company shows to the satisfaction of the court that:
>
> (1) The foreign limited liability company or the person claiming under it has paid the penalty specified in subsection (d)(1) of this section; and
>
> (2)(i) The foreign limited liability company or a successor to it has complied with the requirements of this title;
>
> * * *

(continued…)

appealed the summary judgment order.[15] Mr. Holder timely noted, what he titled, a "Cross Appeal"[16] to the summary judgment order. Ms. Holder[17] timely filed her appeal to the summary judgment order on April 5, 2023. All appeals were consolidated into the instant action.

(continued…)

> (d)(1)(i) If a foreign limited liability company does any intrastate, interstate, or foreign business in this State without registering, the Department shall impose a penalty of $200 on the limited liability company.

Furthermore, in *A Guy Named Moe, LLC v. Chipotle Mexican Grill of Colorado, LLC*, 447 Md. 425 (2016), the Supreme Court of Maryland held that a foreign limited liability company "can 'cure' its failure to comply with registration requirements and continue its suit even though not registered at the time of filing suit." *Id.* at 447. "Thus, once a foreign limited liability company comes into compliance with the statute, it may maintain its action even though not registered when initiating the suit." *Id.*

The appellate record contains a certificate from the Maryland Department of Assessments and Taxation confirming that Uncle Eddie's Brokedown Palace, LLC is in good standing in the State. Mr. Holder also filed a screenshot showing the payment made to register Uncle Eddie's in Maryland and pay the fine for doing business without registering. This demonstrates that Uncle Eddie cured its infirmity at some point during the lawsuit, which is sufficient under *A Guy Named Moe, LLC*, 447 Md. at 447, to grant Uncle Eddie standing.

[15] Mr. Estes filed multiple motions to dismiss Uncle Eddie's Appeal in this Court, which we denied.

[16] Typically, a cross-appeal is "[a]n appeal by the appellee." *Appeal*, Black's Law Dictionary (11th ed. 2019). Obviously, Mr. Holder was not attempting to "cross-appeal" but to join all the appeals together, which this Court did on April 4, 2023.

[17] Mr. Estes' filed a Motion to Dismiss Deena Holder's Appeal Pursuant to Maryland Rule 8-602, which we denied.

STANDARD OF REVIEW

The decision to grant summary judgment is a legal question. *Dett v. State*, 161 Md. App. 429, 441 (2005). When reviewing a trial court's grant of a motion for summary judgment, the standard of review is *de novo*. *Dashiell v. Meeks*, 396 Md. 149, 163 (2006); *Webb v. Giant of Maryland, LLC*, 477 Md. 121, 135 (2021). When the trial court makes a summary judgment decision, the court "must not determine any disputed facts. Rather, considering the undisputed material facts, the court must decide if the moving party is entitled to judgment as a matter of law." *Rockwood Cas. Ins. Co. v. Uninsured Employers' Fund*, 385 Md. 99, 106 (2005) (citing *Williams v. Mayor & City Council of Baltimore*, 359 Md. 101, 114 (2000)).

Before the appellate court decides whether the trial court was legally correct in granting summary judgment, the appellate court must first determine if there is a genuine dispute of material fact. *Dashiell*, 396 Md. at 163. "'A material fact is a fact the resolution of which will somehow affect the outcome of the case.'" *Todd v. Mass Transit Admin.*, 373 Md. 149, 155 (2003) (quoting *Matthews v. Howell*, 359 Md. 152, 161 (2000)). To determine if a material fact is in dispute, the appellate court "must independently review the record," *Rockwood Cas. Ins. Co.*, 385 Md. at 106, and if "the record reveals that a material fact is in dispute," summary judgement was not appropriate. *Todd*, 373 Md. at 155. However, "'mere general allegations which do not show facts in detail and with precision are insufficient to prevent summary judgment.'" *O'Connor v. Baltimore Cnty.*, 382 Md. 102, 111 (2004) (quoting *Beatty v. Trailmaster*, 330 Md. 726, 738 (1993)). Only

when there is not a genuine "dispute of material fact will the appellate court determine whether the trial court was correct as a matter of law." *Dashiell*, 396 Md. at 163 (citations omitted).

Review of a judgment entered following a bench trial is governed by Maryland Rule 8-131(c), which provides:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

The court's findings are "not clearly erroneous if they are supported by substantial evidence." *Porter v. Schaffer*, 126 Md. App. 237, 259, *cert. denied*, 355 Md. 613 (1999). In other words, a "'factual finding is clearly erroneous if there is no competent and material evidence in the record to support it.'" *Hillsmere Shores Improvement Ass'n Inc. v. Singleton*, 182 Md. App. 667, 690 (2008) (quoting *Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md. App. 562, 576 (2007)). The clearly erroneous standard, however, does not apply to questions of law. *Id.*

DISCUSSION

Demand for Jury Trial

Both Mr. Holder and Uncle Eddie argue that the trial judge erred by not submitting the issue of navigability to the jury. Mr. Estes contends that the Appellants did not have a right to a jury trial because the claims for injunctive relief and ejectment were purely

equitable. Furthermore, Mr. Estes claims that even if there were a right to have a jury trial on the injunction claim, Uncle Eddie waived that right by not attending the hearing.

Article 5 of the Maryland Declaration of Rights provides, in pertinent part, that "the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law." It is well established that the Maryland Declaration of Rights preserves the right to a jury trial as it existed at common law, *Murphy v. Edmonds*, 325 Md. 342, 371 (1992), and that there is "no right to a jury trial in a court of equity." *Calabi v. Gov't Emps. Ins. Co.*, 353 Md. 649, 657 (1999) (citing *Impala Platinum Ltd. v. Impala Sales (U.S.A.), Inc.*, 283 Md. 296, 320 (1978)). "[T]he jury trial right in civil cases relates to 'issues of fact' in legal actions. It does not extend to issues of law, equitable issues, or matters which historically were resolved by the judge rather than by the jury." *Murphy*, 325 Md. at 371. *See also Mattingly v. Mattingly*, 92 Md. App. 248, 255 (1992) (stating there is neither a federal nor state right to a jury trial for actions in equity).

Due to the "1984 'merger of law and equity' in Maryland, parties may now 'join legal and equitable claims in a single legal action,' in the courts of this state." *Mattingly*, 92 Md. App. at 255 (quoting *Higgins v. Barnes*, 310 Md. 532, 541 (1987)). When both legal and equitable claims are made, and a jury trial is requested, "a jury will hear the case and decide common legal issues, and the court will hear the case and decide equitable claims." *Shabazz v. Bob Evans Farms, Inc.*, 163 Md. App. 602, 631 (2005) (citation omitted).

In the present case, Mr. Estes included both legal and equitable claims in his Second Amended Complaint. The circuit court bifurcated the claims and only entertained the equitable issues—injunctive relief and ejectment—during a bench trial and the remaining counts—trespassing, violating Section 5-409 of the Natural Resources Article, nuisance, and aiding and abetting trespass to land—were to proceed to a jury trial.[18]

Whether a waterway is navigable or not is a factual question that is "to be determined by the natural conditions in each case." *Mayor & City Council of Havre de Grace v. Harlow*, 129 Md. 265, 274 (1916). Prior cases have demonstrated that navigability is a question of fact to be decided by the court, so the issue did not need to be presented to the jury. *See Becker v. Litty*, 318 Md. 76, 82–83 (1989) (applying both navigability tests and determining the creek was navigable); *Wagner v. Mayor & City Council of Baltimore*, 210 Md. 615, 626–27 (1956) (affirming the court's determination that the waterway was navigable). *Cf. Causey v. Gray*, 250 Md. 380, 386–87 (1968) (holding that it was proper for a court of equity to determine title to riparian land bordering navigable water).

Subject Matter Jurisdiction

Subject matter jurisdiction is being challenged by Mr. Holder because he alleges Mr. Estes was not in possession of the land for which he claims ownership. Mr. Holder, in essence, alleges that Mr. Estes' claim for quiet title could not have been pursued, because Mr. Holder, not Mr. Estes, had actual possession of the land.

[18] The jury trial has not yet occurred.

Subject matter jurisdiction involves "the court's ability to adjudicate a controversy of a particular kind." *John A. v. Bd. of Educ. for Howard Cnty.*, 400 Md. 363, 388 (2007) (citing *Henderson v. United States*, 517 U.S. 654, 671 (1996)). Circuit courts in Maryland are courts of general jurisdiction, Section 1-501 of the Courts and Judicial Proceedings Article, Maryland Code (1974, 2020 Repl. Vol.), relating to the circuit courts provides:

> The circuit courts are the highest common-law and equity courts of record exercising original jurisdiction within the State. Each has full common-law and equity powers and jurisdiction in all civil and criminal cases within its county, and all the additional powers and jurisdiction conferred by the Constitution and by law, except where by law jurisdiction has been limited or conferred exclusively upon another tribunal.

Here, the circuit court had jurisdiction over the action to quiet title. *See Porter*, 126 Md. App. at 243–244 (affirming an action to quiet title that was filed in the circuit court). Actions to quiet title are actions in equity as the "primary relief" is "an equitable decree removing any cloud from the plaintiff's title." *Dep't of Nat. Res. v. Welsh*, 308 Md. 54, 66 (1986). Actions to quiet title may be brought "to establish title against adverse claims to property." Section 14-602 of the Real Property Article, Maryland Code (1975, 2015 Repl. Vol.).

The aim of a quiet title action "is to protect the owner of legal title 'from being disturbed in his possession and from being harassed by suits in regard to his title by persons setting up unjust and illegal pretensions.'" *Wathen v. Brown*, 48 Md. App. 655, 658 (1981) (quoting *Textor v. Shipley*, 77 Md. 473, 475 (1893)). In order to bring an action to quiet title, there is a requirement of possession, actual or constructive. *Id.* at 658–59. "'[T]he plaintiff has the burden of establishing both possession and legal title by "clear proof."'"

Wilkinson v. Bd. of Cnty. Comm'rs of St. Mary's Cnty., 255 Md. App. 213, 259 (2022) (quoting *Porter*, 126 Md. App. at 260)). If the party bringing the suit is not in possession of the disputed property, his remedy is in an action of ejectment, which is a remedy at law. *Wathen*, 48 Md. App. at 658.

Section 14-108 of the Real Property Article, Maryland Code (1974, 2020 Repl. Vol.),[19] addresses the prerequisites of an action to quiet title. At minimum, the statute requires that the plaintiff show "color of title," which "denotes 'that which in appearance is title, but which in reality is not good and sufficient title.'" *Porter*, 126 Md. App. at 262 (quoting *Gore v. Hall*, 206 Md. 485, 490 (1955)). Prior cases have further defined "color of title" as "'title papers good enough in appearance and ostensible effect to give [the party claiming title] the right to the bona fide belief they held that they owned the land.'" *Id.* (quoting *Spicer v. Gore*, 219 Md. 469, 476 (1959)).

[19] Section 14-108 of the Real Property Article states, in relevant part:

> (a) Any person in actual peaceable possession of property, or, if the property is vacant and unoccupied, in constructive and peaceable possession of it, either under color of title or claim of right by reason of the person or the person's predecessor's adverse possession for the statutory period, when the person's title to the property is denied or disputed, or when any other person claims, of record or otherwise to own the property, or any part of it, or to hold any lien encumbrance on it, regardless of whether or not the hostile outstanding claim is being actively asserted, and if an action at law or proceeding in equity is not pending to enforce or test the validity of the title, lien, encumbrance, or other adverse claim, the person may maintain a suit in accordance with Subtitle 6 of this title in the circuit court for the county where the property or any part of the property is located to quiet or remove any cloud from the title, or determine any adverse claim.

In his Second Amended Complaint, Mr. Estes alleged he had title to the property and offered proof of his ownership. Judge Wilkinson evaluated the evidence and found that the boundary line between Mr. Estes' property and that of Uncle Eddie's was as indicated on Plat 9186, which was incorporated in Mr. Estes' deed, and Plat 10955, which was incorporated in Uncle Eddie's deed. The Circuit Court determined that Mr. Estes had legal title to the disputed property.

Summary Judgment

Mr. Holder[20] and Uncle Eddie also argue that the trial court erred in granting summary judgment to Mr. Estes, as both claim there was a genuine dispute of material fact. They contend that the judge abused his discretion by evaluating the credibility of witnesses, which they allege is only the province of the jury. Mr. Holder and Uncle Eddie claim a dispute of material fact regarding the boundary line between both properties as the deeds and surveys depict an area of overlap.[21] Mr. Holder and Uncle Eddie further argue that the

[20] Mr. Holder presents only generalized allegations without specificity. Allegations which do not provide detailed facts, however, are "'insufficient to prevent summary judgment.'" *O'Connor*, 382 Md. at 111 (quoting *Beatty v. Trailmaster*, 330 Md. 726, 738 (1993)).

[21] In support of this argument, Mr. Holder and Uncle Eddie rely on *Union United Methodist Church, Inc. v. Burton*, 404 Md. 542 (2008). However, that case is distinguishable as it deals solely with an ambiguous deed whereas the language in the Original Deed was unambiguous.

trial court misinterpreted the Original Deed and prioritized courses and distances[22] over monuments.[23]

The judge granted partial summary judgment only on count 5, quiet title.[24] In an action for quiet title, the plaintiff must prove possession and a legal claim to title. *Porter*, 126 Md. App. at 274. The burden is then shifted to the defendant to establish superior title. *Id.* A defendant "who cannot establish his own record title has no basis to complain about the strength of the plaintiff's title." *Id.*

In present case, we agree with the Circuit Court's determination that no dispute of material fact exists.[25] The parties agree that the Original Deed created the original property lines. The only dispute is the interpretation of the Original Deed, which is a legal question.

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[22] Distances "in the description of a tract of land, [are] the length of a line segment or curve." *Distance*, Black's Law Dictionary (11th ed. 2019). Courses describe the bearing, which are "often expressed as a compass direction" and are "used to describe property boundaries in metes-and-bounds descriptions and plat maps." *Bearing*, Black's Law Dictionary (11th ed. 2019).

[23] A monument is "[a]ny natural or artificial object that is fixed permanently in land and referred to in a legal description of the land." *Monument*, Black's Law Dictionary (11th ed. 2019). Our appellate courts have typically applied the "monument rule" which states that "'[it is a] general canon of boundary law . . . that calls to monuments control if they can be established and that, where a monument called for in a deed is missing, the second priority is the course and distance.'" *Webb v. Nowak*, 433 Md. 666, 681 (2013) (quoting *Barchowsky v. Silver Farms*, 105 Md. App. 228, 240 (1995)).

[24] The judge decided the remaining issues in count 5 at a bench trial. Counts one through four are pending a jury trial. Neither the summary judgment order nor the bench trial order addressed the status of count 6.

[25] During the hearing on the motion for summary judgment, Mr. Holder stated:

(continued…)

Original Deed Interpretation

The interpretation of plats and deeds is a question of law, and the primary consideration is the language of the grant. *Emerald Hills Homeowners' Ass'n, Inc. v. Peters*, 446 Md. 155, 162 (2016).

In the opinion granting partial summary judgment on the boundary line, the judge included a comprehensive review of the relevant land documents. The judge gave a detailed discussion regarding his interpretation of the Original Deed and why he used courses and distances instead of the "monument rule" in regard to Little Antietam Creek. He stated:

> When considering a deed, an issue can arise where a physical monument is used to describe a location that differs from a statement of course and distance. With this type of conflict, the general rule is that a call to a monument is preferred to a conflicting course and distance because the monument is more readily and accurately identifiable. However, the general rule is not absolute, and the established rules as to preference [to calls for monuments over courses and distances] are simply guides to ascertain the intention of the parties. Where strict application of the monument rule would defeat the clear intentions of the original parties, the rule is not applied.

(Internal citations omitted). Ultimately, the judge found that the Original Deed was "unambiguous" and determined:

(continued…)

> it's not so much a dispute of material fact that we're going to bring to the Court . . . . Both parties acknowledged in their expert . . . that these calls were established hundreds of years ago by a deed recorded at liber NN and folio 520 of the land records . . . . And the Court can make that determination as a matter of law, save us days of trial just by reviewing this deed at NN 520 and saying, okay, here's the line.

> By the inclusion of the courses and distances, the grantor intended that the property line described was to leave the body of the Creek. The parties agree that the courses and distances of [the Original Deed] do not remain within the water of the Creek. Rather, the courses take the property line westward away from the Creek and into the lands bordering the Creek to the west, then moving overland until rejoining the western edge of the Creek as the Creek turns west at the northernmost point of the boundary. If the grantor had intended that the property line would be the Creek itself or would run along the water's edge, the grantor would have indicated so. The grantor would not have provided for a deviation away from the Creek bed. Because of the deviation, this court does not apply the "monument rule" because ignoring the grantor's courses, and the deviation away from the Creek intended thereby, would destroy the manifest intent of the grantor.

(Internal citations omitted). The judge ultimately determined that the boundary line between Uncle Eddie's and Mr. Estes' property was as it is indicated on Plat 10955, the "Parcel of Reconfiguration."

Mr. Holder and Uncle Eddie, however, rely on *Ski Roundtop, Inc. v. Wagerman*, 79 Md. App. 357 (1989), to argue that the trial court should have used monuments instead of courses and distances. The *Ski Roundtop* case is inapposite because it concerned conflicting land patents[26] which resulted in conflicting surveys. *Id.* at 362–63, 372. Mr. Holder and Uncle Eddie's reliance on *Ski Roundtop* to argue that Judge Wilkinson should have applied the "monument rule" ignores prior Maryland case law, which emphasizes that the court's main goal is to determine the parties' intentions. *Union United Methodist Church*, 404 Md. at 558 ("established rules as to preference are simply guides to ascertain the intention of the parties.").

[26] For a general background of Maryland's land patent system see *Porter v. Schaffer*, 126 Md. App. 237 (1999).

Appellants are correct that generally, calls to monuments control over courses and distances. *Webb v. Nowak*, 433 Md. 666, 681 (2013). However, "this rule is not applied if it defeats the manifest intention of the parties." *Zawatsky Const. Co. v. Feldman Dev. Corp.*, 203 Md. 182, 187 (1953) (citing *Giles v. diRobbio*, 186 Md. 258, 265 (1946)). The pertinent language of the deed reads: "North seventy seven degrees East eight perches to Little Antietam Creek; then down said Creek the nine following courses . . . ."

In *Millar v. Bowie*, 115 Md. App. 682 (1997), we interpreted a deed that stated, in part, "thence continuing in the same straight line and with an old fence line." *Id.* at 685 (emphasis omitted). We found the deed was unambiguous and that, "[t]he language 'with a fence line' is controlled by the specific language 'continuing in the same straight line' . . . [and] refers merely to the general direction of the course and does not substitute the fence line . . . for 'the same straight line.'" *Id.* at 692. *See also Budd v. Brooke*, 3 Gill 198, 221–22 (Md. 1845) (stating that "the words, 'running up a creek,' not being a binding call, but merely indicating the general direction of the line referred to.").

In this case, the language "to Little Antietam Creek" is a general reference to the Creek and is controlled by the more particular "the nine following courses." Judge Wilkinson did not err in his interpretation of the Original Deed.

Doctrine of Unclean Hands

Mr. Holder and Uncle Eddie claim that the doctrine of unclean hands bars Mr. Estes from equitable relief. Mr. Holder and Uncle Eddie also claim Mr. Estes acted in bad faith

when he signed an affidavit about adverse possession.[27] Furthermore, they contend Mr. Estes lacks a good faith reason and substantial justification to pursue his action to quiet title.

> Maryland Rule 8-131(a) states, in part:
>
> > 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, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

In *Concerned Citizens of Cloverly v. Montgomery Cnty. Planning Bd.*, we agreed with the federal court that "a passing reference to an issue, without making clear the substance of the claim, is insufficient to preserve an issue for appeal, particularly in a case with a voluminous record." 254 Md. App. 575, 603 (2022).

[27] Mr. Estes signed an affidavit that stated: "From 1993 through 2010, the [prior owner of the Estes property] continuously maintained open, notorious, exclusive and actual possession of the Disputed Property and were the only persons to occupy, maintain or otherwise make use of the Disputed Property during that time frame."

Mr. Holder questioned Mr. Estes about this statement during the bench trial by asking, "What personal knowledge do you have from 1993 to 1998 of the use of the property shown on that plat 9186?" In response, Mr. Estes stated,

> "I think you're getting caught up on personal knowledge, legal definitions of personal knowledge . . . . Do I have personal knowledge from 1993 or whatever it is? No, if you're talking about personal knowledge that I was there for every day for twenty years and didn't see anyone go there. No."

Mr. Holder relies on Mr. Estes' response to argue that Mr. Estes violated the affidavit document that he was signing "under penalties of perjury and upon personal knowledge that the contents of this document are true."

In this case, the Appellants raised the defense of unclean hands in their Answers to Mr. Estes' Second Amended Complaint. The unclean hands defense was not raised again and was not determined by the trial judge. The Appellants did not pursue other affirmative defenses and did not provide proof Mr. Estes violated the affidavit. Raising the issue before us without pursuing a decision by the trial court does not preserve the issue. Therefore, that claim is not properly before this Court. *See Gadekar v. Phillips*, 36 Md. App. 715, 719 (1977) (finding that the defense of laches was not preserved for appeal where the claim was only asserted in the appellant's answer and was not raised again or decided by the trial court).

Chain of Title

Uncle Eddie argues that the trial judge erred when he decided that the land abutting the Creek[28] was within Mr. Estes' chain of title.[29] Uncle Eddie claims the land is attached to its riparian boundary and relies on the common law principle *ad medium filum aquae*.[30] Mr. Estes acknowledges that there is support for Uncle Eddie's position that when a river is described as a boundary, the owner of the property will own the river bed to its middle, but argues that the Creek is not the relevant boundary.

[28] The area of land abutting a waterway is referred to as the "fast-lands," which are lands "above the high-water mark." *Land*, Black's Law Dictionary (11th ed. 2019).

[29] Chain of title is "[t]he ownership history of a piece of land, from its first owner to the present one." *Chain of Title*, Black's Law Dictionary (11th ed. 2019).

[30] *Ad filum aquae* means "[t]o the thread of the water; to the central line or middle of a stream." *Ad Filum Aquae*, Black's Law Dictionary (11th ed. 2019). The phrase is also "termed *ad medium filum aquae*."

Uncle Eddie relies on *Marquardt v. Papenfuse*, 92 Md. App. 683 (1992), in support of its argument that the creek is the relevant boundary and therefore the fast-lands are within its chain of title. In *Marquardt*, the appellants argued that the language of the land patents and deeds indicated they had title to coves within the creek. *Marquardt*, 92 Md. App. at 698–99. This Court found that the deeds called to the boundaries of the creek, not into the creek. *Id.* at 699. The land patent in *Marquardt* provided the following description of the property: "the land begins at a marked oak and runs to a cove, and it is bounded 'with the said Cove and Saint Leonard's Creek.'" *Id.* at 698. The deeds on which the land patent was based described the property being conveyed as "to a stake on St. Leonard's Creek, then with St. Leonard's Creek & Veitches Cove to the beginning," and "[T]hence with the meanderings of Quarter Cove, St. Leonard's Creek and Veitch's Cove." *Id.* (emphasis omitted).

The language of the Original Deed does not use Little Antietam Creek as a boundary line for the properties but uses language such as "to Little Antietam Creek" or "down said Creek the nine following courses," as the trial judge found. Judge Wilkinson recognized in the summary judgment opinion, "[i]f the grantor had intended that the property line would be the Creek itself or would run along the water's edge, the grantor would have indicated so." "[T]he grantor made a subsequent call to the 'center of the Turnpike Road, and with the center of said Road[.]'" Furthermore, the judge found that the boundary line is described consistently in both Mr. Estes' and Uncle Eddie's chain of title.

Based on the land patent in issue in the *Marquardt* case, it is clear that the language of the deeds in *Marquardt* intended to use the cove and creek as a boundary, and the language used in *Marquardt* is distinguishable from the language used in the Original Deed. As discussed previously, Judge Wilkinson found that the language in the Original Deed did not intend to use Little Antietam Creek as the boundary in this case. The trial court's finding is supported by the evidence in the record. Accordingly, we hold the trial court did not err when finding that the land bordering Little Antietam Creek was within Mr. Estes' chain of title.

Creek Navigability

In order to limit the scope of the litigation, the parties stipulated that the public's use of Little Antietam Creek was not an issue in the case. The stipulation stated in part,

> that while [Mr. Estes] is seeking a determination and declaration of his fee simple interest in and right of exclusive possession of all lands that comprise the Estes Property, including the land beneath any waters located on the Estes Property, the right of the public, if any, to make use of the waters of Little Antietam Creek, or any other waters on the Estes Property, are not being litigated or adjudicated in this case.

Mr. Holder claims the trial court erred in finding that Little Antietam Creek is non-navigable. He argues Mr. Estes was judicially estopped from litigating the navigability issue after the parties' stipulation and Mr. Estes' voluntary dismissal of DNR. Mr. Holder also alleges that the fact of navigability is irrelevant to whether he may use the bed of the creek and that the court misrepresented his position. He relies on the 1632 Charter of

Maryland,[31] which reserved a right for the public to use the State's waterways for fishing and navigation in all land patents issued by the State of Maryland.

Ascertaining whether water is navigable or non-navigable is central to determining whether the public has rights to use the bed of the waterway. *Van Ruymbeke v. Patapsco Indus. Park*, 261 Md. 470, 476–77 (1971). "[T]he entire property of [navigable waters is] vested in the public, while [non-navigable waters] belong to riparian proprietors, although in some cases subject to a qualified public use." *Id.* at 476–77 (citations omitted). If the water is navigable, the public has greater rights. "[N]avigable water and the land under it is held by the State, for the benefit of the public." *Dep't of Nat. Res. v. Mayor and Council of Ocean City*, 274 Md. 1, 5 (1975) (citations omitted).

To determine navigability, Maryland adheres to the test of whether the water is subject to the "ebb and flow of the tide." *Gray v. Gray*, 178 Md. 566, 574 (1940); *Van Ruymbeke*, 261 Md. at 475. The Supreme Court has also used the "navigability in fact" test, by which "rivers are navigable in law when they are used, or are susceptible of being used in their ordinary condition, as highways of commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water." *Gray*, 178 Md.

[31] "The modern authority to regulate land use in Maryland may be traced to the colonial Maryland Charter of 1632." *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 502 (2015). "During the colonial period, the [colonial] Proprietor, and for 86 years thereafter, the State, granted private individuals patents to [the land owned by the State of Maryland], which is what created private wetlands." *Maryland Bd. of Public Works v. K. Hovnanian's Four Seasons at Kent Island, LLC*, 425 Md. 482, 486 n.1 (2012) (citing *Bd. of Public Works v. Larmar Corp.*, 262 Md. 24, 47 (1971)).

at 574 (citations omitted). *See Wagner*, 210 Md. at 624–25 (articulating the two navigability tests and finding the result is the same under both tests).

After reviewing all of the evidence introduced at trial on the issue of navigability, "including testimony, photographs, and video, all geared toward showing the width, depth, water and land characteristics, and flow of the Creek and tributaries," Judge Wilkinson determined that Little Antietam Creek did not meet the criteria under either navigability test and was not navigable. Therefore, the judge found, the Appellants had no right to use the land beneath the water. The findings entered by the trial judge were comprehensive, supported by the record and without clear error. Based on the application of the tests of navigability adhered to by the trial courts, we affirm the circuit court's rulings. Little Antietam Creek is non-navigable, and the Appellants do not have a right to use the land underneath the water.

Uncle Eddie as an Alter Ego

Ms. Holder argues that Judge Wilkinson erred when he held that Ms. Holder was subject to the injunction, because she and Mr. Holder were using Uncle Eddie as an alter ego[32] to hold the land neighboring Mr. Estes' property. The judge, in a footnote to the opinion, stated:

[32] "The 'alter ego' doctrine has been applied 'where the corporate entity has been used as a subterfuge and to observe [the entity's corporate status] would work an injustice.'" *Hildreth v. Tidewater Equipment Co.*, 378 Md. 724, 735 (2003) (quoting 1 WILLIAM MEADE FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 41.10 at 574–76 (1999 Rev. Vol.)).

> Deena Holder asks not to be enjoined because she has no direct interest in this matter and she does not deserve to be enjoined. From information received in a previous proceeding, it is clear that Justin Holder and Deena Holder use Uncle Eddie's as an alter-ego to hold the land neighboring Plaintiff's property. The issue in this case is not whether Mrs. Holder has been cordial to Plaintiff (she has been cordial). The issue is whether she has argued that she has the right to use the land under the water (she has so argued) and whether she is involved with Uncle Eddie's (she is).

A court may take judicial notice of "adjudicative facts."[33] Maryland Rule 5-201. Judicial notice may be taken at "any stage of the proceedings," including by an appellate court. Maryland Rule 5-201(f); *Dashiell*, 396 Md. at 176; *Lerner v. Lerner Corp.*, 132 Md. App. 32, 40 (2000). "Included among the categories of things of which judicial notice may be taken are 'facts relating to the . . . records of the court.'" *Lerner*, 132 Md. App. at 40 (quoting *Smith v. Hearst Corp.*, 48 Md. App. 135, 136 n.1 (1981)). This includes notice of records in the pending litigation. *Id.* at 40–41; *Dashiell*, 396 Md. at 176–77.

All three Appellants in this case were defendants/appellants in a prior property dispute case with another landowner, Jeffrey Young, in Keedysville, Maryland ("The

[33] An adjudicative fact is a fact "'about the parties and their activities, businesses and properties. They usually answer the questions of who did what, where, when, how, why, with what motive or intent.'" *Eastern Shore Title Co. v. Ochse*, 453 Md. 303, 336 n.25 (2017) (quoting *Dashiell*, 396 Md. at 175 n.6)).

Young Action").[34] Court documents and transcripts from the Young Action were filed and made part of the record in the current case with Mr. Estes.[35]

The trial transcripts from the Young Action show that the trial judge in that action questioned Uncle Eddie's attorney extensively about the relationship between the Holders and Uncle Eddie. In the circuit court's opinion in the Young Action, the trial judge ultimately stated that the "Holders use Uncle Eddie's as an alter-ego." The parties appealed to this Court. In our unreported opinion we also addressed the relationship between the Holders and Uncle Eddie's and concluded that Uncle Eddie's is "associated with Justin and Deena Holder." *Holder v. Young*, Nos. 1145 & 1457, 2023 WL 3674691, at *1 n.1 (Md. App. May 26, 2023) *cert. denied*, 485 Md. 144 (2023).

We take judicial notice of the records from the Young Action and note that the circuit court found and determined each of the Holders used Uncle Eddie's as an alter ego.

[34] The Young action was brought in the Circuit Court for Washington County, number C-21-CV-20-000371. All parties appealed and we issued an unreported opinion. *Holder v. Young*, Nos. 1145 & 1457, 2023 WL 3674691 (Md. App. May 26, 2023) *cert. denied*, 485 Md. 144 (2023).

[35] On December 14, 2022, Mr. Holder filed an objection in the Circuit Court for Washington County in the current case. Mr. Holder attached the circuit court judge's opinion from the Young Action to his motion and Mr. Holder stated that "[t]he record of *Young* [is] incorporated herein by reference." Furthermore, portions of the transcripts from the Young Action were filed as an appendix to a motion filed by Mr. Estes on July 24, 2023.

As a result, the doctrine of collateral estoppel[36] bars re-litigation of whether Mr. as well as Ms. Holder was an alter ego of Uncle Eddie's.

CONCLUSION

In conclusion, we hold that the circuit court did not err in declining Mr. Holder's jury trial demand, determining it had subject matter jurisdiction, or granting summary judgment. The court also did not err in finding that the land bordering Little Antietam Creek was within Mr. Estes' chain of title, that the creek was non-navigable, and that the issue of navigability was relevant to the injunctive relief ordered. Furthermore, we agree with the trial judge's interpretation of the deed and his determination that the boundary line between the properties is as it is indicated on Plat 10955. The Appellants failed to preserve their arguments regarding the doctrine of unclean hands as well as the Holders' use of Uncle Eddie's as an alter ego.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[36] Collateral estoppel

> bars the re-litigation of an issue decided in a prior adjudication if that issue was (1) identical to the issue to be decided in the present action; (2) there was a final judgment on the merits in the prior adjudication; (3) the party against whom the doctrine is asserted was a party to the prior adjudication or was in privity with a party to the prior adjudication; and (4) the party against whom the doctrine is asserted had a fair opportunity to be heard on the issue in the prior adjudication.

Cunningham v. Baltimore Cnty., 246 Md. App. 630, 669 (2020) (internal citations omitted). The court may invoke collateral estoppel *sua sponte*. *Campbell v. Lake Hallowell Homeowners Ass'n*, 157 Md. App. 504, 529 (2004).