Circuit Court for Charles County
Case No. C-08-CV-21-000125

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 976

September Term, 2023

ROSALIE V. BUCK

v.

MARK W. STEELE, ET AL.

Graeff,
Arthur,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 5, 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 persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

This appeal arises from a dispute between neighbors in a waterfront community. Mark W. Steele and Marilyn H. Weimer, appellees, filed a complaint in the Circuit Court for Charles County against Rosalie V. Buck, appellant, seeking, *inter alia*, a declaratory judgment and injunctive relief. The request for declaratory judgment related to the parties' rights to easements to access the water and the request for an injunction related to the construction of two fences by Ms. Buck, a privacy fence that obstructed appellees' view of Port Tobacco Creek (the "Creek"), and a split-rail fence on Megan Lane that interfered with an easement on that road providing access to the Creek. Ms. Buck filed a counterclaim, seeking a declaratory judgment and to quiet title, alleging that appellees had no right to access her property and no right to a view of the water.

On April 10, 2023, after a two-day bench trial, the court issued a written opinion. The court ordered Ms. Buck to remove the split-rail fence constructed on Megan Lane, which impeded appellees' easement to access the Creek, and denied appellees' request for an order requiring Ms. Buck to remove the privacy fence built on her property, which obstructed appellees' view of the water. It found that appellees had an easement to access and use a portion of the roadway and shoreline on Ms. Buck's property, with the exception of a 120-foot parcel that Ms. Buck acquired through the doctrine of adverse possession.

Appellees filed a motion to alter and amend the judgment regarding the privacy fence, alleging that the court erroneously found that water rights and privileges granted to them did not include a right to a water view. Appellees requested that the court order an equitable apportionment of the parties' riparian rights.

A judge, different from the one who issued the initial order, granted appellees' motion without a hearing. The court ordered, *inter alia*, that Ms. Buck remove the privacy fence blocking appellees' view of the Creek within 30 days of the order.

On appeal, Ms. Buck presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err in granting appellees' motion to alter or amend without a hearing?

2. Did the circuit court err in concluding that water rights and privileges expressly reserved for all lot owners in the deed to appellees' property included a right to a view of the Creek?

3. Did the circuit court err in concluding that appellees hold an express easement to use an unnamed road originally depicted on the 1921 Waveland Plat?

4. Did the circuit court err in finding that only a portion of the easement to use the roads and shoreline on Ms. Buck's property to access appellees' water rights and privileges was relinquished by abandonment or adverse possession?

On cross-appeal, appellees raise the following additional question:

Did the circuit court err in concluding that appellees' easement to access a 120-foot parcel of shoreline property was relinquished by adverse possession?

For the reasons set forth below, we shall affirm, in part, reverse, in part, and vacate, in part, the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

The Waveland Subdivision

Ms. Buck and appellees are neighbors in the Waveland subdivision ("Waveland") located in Port Tobacco, Maryland. The plat establishing Waveland (the "1921 Plat") was recorded in the Charles County land records on July 8, 1921. The subdivision originally contained 31 lots.

As shown in the following illustration, the 1921 Plat shows three named roads, a Public Landing, and an unnamed road running along the water. For ease of understanding, we have attached an illustration below of the plat:

Beufield Avenue, now known as Megan Lane, which runs from the shoreline of the Creek through the subdivision to Chapel Point Road, abuts lots 1, 9-15, and 26-27.[1] Park Street, which runs parallel to a portion of the Creek, fronts lots 15-20, as well as the Public Landing. Washington Street fronts lots 6-8, 10-11, and 21-31.[2] An unnamed road (the "Unnamed Road"), running along the shorefront from Megan Lane to Washington Street, fronts lots 1-6. The 1921 Plat shows a strip of land lying between the bed of the Unnamed Road and the water ("the shoreline property"). The 1921 Plat did not expressly designate easements or rights-of-way for any property in the Waveland subdivision.

The original deed (the "1921 Deed") to appellees' lot, Number 14, contained the following language:

> Together with the right of usership in common with said grantors and other Lot owners of the Public Landing designated upon the aforesaid plat and the abutting shore leading from Benfield Avenue to the end of the "Waveland" sub-division, as well also as the right to use in common with said grantors and other Lot owners a twenty-foot right of way leading from "Waveland" across the abutting lands of said grantors to the County Public Road leading from Port Tobacco to Chapel Point. The water rights and privileges adjacent to said "Waveland" sub-division being specifically reserved to the use of said grantors in common with all the Lot owners at "Waveland" or any additions thereto.

[1] Beufield Avenue is sometimes referred to in records as Benfield Avenue and is now named Megan Lane. We shall refer to it as Megan Lane in this opinion, except when citing the original deed.

[2] A subsequent plat recorded in 1985 depicts Park Place on part of the Unnamed Road and states that it is "not an approved Charles County road name."

Ms. Buck owns lots 1, 2, and part of lot 3, as depicted on the 1921 Plat, as well as the portion of the Unnamed Road abutting her property.[3] The property is described in two plats. The first, a 1985 plat titled "Land of Gertrude Mitchell" (the "1985 Plat"), depicts the lots, as well as Megan Lane and Park Street as shown on the original 1921 Plat, but it also depicts a gravel driveway inside the boundaries of the Unnamed Road.

The second plat was recorded in the Charles County Land Records on October 18, 1996, after Gertrude Mitchell conveyed her property (lots 1-3) to Thomas E. Hutchins (the "1996 Crowder Plat"). This Plat consolidated Lots 1-3 into a single building lot. The 1996 Crowder Plat included other land labeled Parcel B, which appellees state consisted of the Unnamed Road abutting Ms. Buck's property and Ms. Buck contends included the road and the shoreline property. The plat included several notes, including that the property was "SUBJECT TO COVENANTS[,] RESTRICTIONS, EASEMENTS, RIGHTS-OF-WAY, AND ROADS OF RECORD OR THROUGH USE," and that the property was "SUBJECT TO THE RIGHTS OF OTHERS TO THE USE OF THE "PUBLIC LANDING" AND "PARK STREET."

In 1997, Mr. Hutchins expanded the property by purchasing Parcel B from A.B.M. Limited Partnership ("ABM Partnership"), the successor in interest to the original developers who owned the unconveyed property within Waveland.

[3] Ms. Buck's street address is on Even Tide Place, Port Tobacco, MD. The Unnamed Road is now called Even Tide Place.

The deed to Parcel B was recorded on January 6, 1997, conveying to Mr. Hutchins Parcel B "TOGETHER with all improvements . . . waters, easements, privileges . . . belonging or appertaining thereto." Mr. Hutchins undertook significant erosion control measures on the shorefront while he owned the property.

On February 27, 2015, Mr. Hutchins conveyed his Waveland property to William and Andrea Tart (the "Tarts"). The deed conveyed two parcels of property to the Tarts. The deed described the first parcel, "Parcel One (1)," as the "Land of Gertrude W. Mitchell":

> **TOGETHER** with the concurrent use of that 20 foot right of way with other lot owners of Waveland Subdivision from Waveland Subdivision to Public Road leading from Port Tobacco to Chapel Point, as per plat recorded at Plat Book 38, folio 127, now called Megan Lane, formerly Beaufield Avenue.
>
> **TOGETHER** with the concurrent use of water rights and privileges with other lot owners of Waveland Subdivision.

The deed described the second parcel conveyed, "Parcel Two (2)," as Parcel B and stated that:

> **THE LAND** and premises above described and hereby intended to be conveyed being *all of the same* acquired by Grantors by deed from Thomas E. Hutchins, dated April 28, 2003 and duly recorded among the Land Records of Charles County, Maryland in Liber 4040, folio 530.

(Emphasis added). On May 27, 2016, the Tarts sold their Waveland property to Ms. Buck. The deed conveying the property to Ms. Buck included substantially the same language and property descriptions as the Tarts' earlier deed. During their ownership of the property, the Tarts had considered planting a living fence along

the property line.[4] Ms. Buck testified that the Tarts left the plans for the living fence behind when they moved, and she contacted a fencing company for a quote in 2018, before appellees had purchased their lot.

In April 2019, appellees purchased Lot 14 of the original Waveland subdivision.[5] Lot 14 is located behind Ms. Buck's property and abuts Megan Lane. Ms. Buck's property is situated between appellees' property and the Creek, but there is no house between appellees' property and the water. Appellees' house was in foreclosure when they purchased it, and it had not been occupied for at least 10 years. Ms. Weimer testified that the house was in serious disrepair when she and her husband purchased it, and they spent months restoring the property prior to moving in. Prior to beginning repairs on the property, appellees "went around to every neighbor" to introduce themselves and let them know as a courtesy that they would be fixing up the property. When appellees went to Ms. Buck's property, she "stayed on her porch, would not come near [them], would not shake [their] hands or anything." Ms. Buck was "a little bit standoffish" and not very friendly, so appellees returned on another occasion to leave a bottle of wine and a note.

In 2020, appellees, who had not yet moved into their house, learned that Ms. Buck began construction of a stockade fence obstructing their view of the Creek along the entire

[4] A living fence is a privacy barrier created by "a combination of various bushes and trees."

[5] The street address for Lot 14 is Megan Lane, Port Tobacco, MD.

backyard of appellees' property. Appellees went to Ms. Buck's house to ask her why she was putting up the fence. Ms. Buck stated that it was her "view," which she "paid dearly for," and she was "appalled that they even registered [appellees'] property as having a water view, it doesn't." Ms. Buck also had a split-rail fence installed at the end of Megan Lane along the edge of the waterfront.

II.

Litigation History

On March 14, 2023, appellees filed a complaint seeking a declaratory judgment that they and the other lot owners had a right to use in common the roads on the Waveland Plat and the shoreline property, as well as the right to a view of the water over the community property. Appellees also filed a claim for injunctive relief, requesting that the court order Ms. Buck to:

> 1) remove all parts of the spite fence that do not provide immediate privacy to [appellant's] dwelling; 2) remove all barriers, signs, fences or other signals indicating that the platted road and waterfront area are private property as opposed to open to the community; [and] 3) prohibit the [appellant] from challenging lot owners' future access.[6]

Ms. Buck filed a counterclaim, seeking a declaratory judgment that appellees "have no right, title[,] or interest in the Buck Property of any kind . . . and no right to use or enjoy the Buck Property or any portion thereof." Ms. Buck also filed a claim for quiet title, alleging abandonment of an easement or, in the alternative, adverse possession, as well as

[6] Appellees also alleged breach of covenants, but they dismissed that count prior to trial.

for trespass, alleging that appellees entered Ms. Buck's property and caused damage to the fence after it was put up.[7]

On January 30-31, 2023, the court held a two-day bench trial. Witness testimony and other evidence established the facts discussed, *supra*. Appellees introduced into evidence several photographs of their property prior to and during the restoration process. The judge and the parties conducted a site visit of the properties involved in the litigation.

Both parties presented expert testimony. They presented differing views on whether appellees had easements to access the end of Megan Lane, the Unnamed Road, and the shoreline property.

John J. Dowling, a licensed attorney and land surveyor, testified as an expert witness for appellees. Mr. Dowling reviewed the chain of title and recorded plats with regard to both appellees' and Ms. Buck's properties. He testified that the original deed to both appellees' lot and Ms. Buck's property included the same language "with respect to common use of the waterfront." Based on the 1921 Plat and the language in the deeds, lot owners had a common right of usership of the Public Landing and "the abutting shore leading from [Megan Lane] to the end of the Waveland subdivision." The intent of the grantor was to give all lot owners the right to use all the shoreline property.[8]

[7] The trespass claim subsequently was dismissed.

[8] Mr. Dowling testified that the reference to the 20-foot right of way "leading from Waveland across abutting lands of said grantors" related to "access to a County road" and did not grant anyone an express right to use the Unnamed Road.

The Unnamed Road, a "platted but unnamed right-of-way," was conveyed by the original owners to Mr. Hutchins in 1997 and referred to as Parcel B. The conveyance of Parcel B to Mr. Hutchins did not extinguish any rights that other lot owners had in the parcel, including appellees' right to access the Unnamed Road running along the shoreline. Both the deed and annotations on the plat relating to the transfer of Parcel B to Mr. Hutchins stated that the conveyance was subject to easements, privileges, and rights-of-way. Mr. Dowling testified that these easements included the rights of the lot owners to use the road along the waterfront on the Waveland plat to access and go around the shore, from Washington Street to Megan Lane, all the way around. A survey prepared by DH Steffens, as well as a plat of consolidation of lots 1, 2, and part of 3, parcel B and parcel C, showed that there was land between the Unnamed Road and Port Tobacco Creek.[9] None of the plats Mr. Dowling reviewed showed erosion "coming up . . . into . . . the unnamed road . . . with the exception of up in the far northern corner, at the end of Megan [Lane]."

Mr. Dowling prepared a special purpose plat of the properties at issue in this case. He testified that the split-rail fence on Ms. Buck's property crossed into "almost the entirety of" Megan Lane. The split-rail fence forces lot owners to climb over the fence to reach the water and is an obstruction to the easement on Megan Lane. With regard to a right of way to use Megan Lane, Mr. Dowling stated that "the recorded plat shows [Megan Lane]

[9] The Plat of Consolidation showed Parcel B as the Unnamed Road, measuring 9,521 square feet, and Parcel C, an area between Parcel B and the Creek, measuring 9,703 square feet.

running from the eastern outline of the subdivision to the water," giving lot owners the "option of going to the water or out in a direction toward the County road."

Mr. Dowling testified about the Declaration of Abandonment of Roads and Right of Way and Declaration of Easements ("Road Abandonment Deed"), executed by ABM Partnership, Mr. Hutchins, and several other lot owners. This deed, which was not executed by appellees or their predecessors-in-interest, abandoned part of Park Street and the northern portion of Washington Street, but it made no mention of abandoning Megan Lane or the Unnamed Road. The plat referenced in the deed was not in the land records, so the exact location of the abandoned roads was unknown. The plat expressly stated, however, that lot owners still had a right to use Megan Lane to go down to the water.[10] Mr. Dowling testified he had not seen anything in the land records indicating that any Waveland property owner "has the right to prohibit another lot owner from accessing the water" at the end of Megan Lane or that there had been a loss of the shared right to use the abutting shoreline.

[10] The Declaration of Abandonment of Roads and Right of Way and Declaration of Easements stated, in relevant part, as follows:

> **USE OF ROADS OR RIGHTS OF WAY:**
>
> Every party subject to these covenants shall have the right to use the roads or common access easements depicted as the remaining portion of Washington Street and Benfield Avenue (now known as Megan Lane) on the aforesaid Plats for the purpose of ingress and egress to and from their respective Lot(s) to and from Chapel Point Road and Port Tobacco Creek. No lot owner or party shall have the right to deny or impede such use by any other lot owner or any other lot owner's agents, guests, servants, or family.

Kevin Norris, a licensed attorney and professional land surveyor, testified as an expert witness for Ms. Buck. Mr. Norris prepared a special purpose survey, which depicted the paved portion of Megan Lane with solid lines and the gravel portion on Ms. Buck's property with dashed lines. He explained that "Megan Lane . . . goes straight through" and "runs all the way to the water." He agreed that the split-rail fence was an obstruction to those who have a right to use the road to get to the water. Another portion of the fence, an extension of the "hard fence," also was in the platted road.

Mr. Norris next reviewed the 1996 Crowder Plat and conveyance deed and testified that Ms. Buck was the fee simple owner of Parcel B. He stated that the note on the plat indicating that the conveyance was "subject to covenants, restrictions, easements, rights-of-way, road of record or through use" was a "standard note," which "may not appear on every single survey." Because surveyors are not "title experts," they include this standard note to protect themselves from liability related to title claims.

Mr. Norris reviewed the language in the 1921 Deed to appellees' lot. With regard to the lot owner's right of common usership in the Public Landing and the abutting shore from Megan Lane to the end of the Waveland subdivision, Mr. Norris stated:

> My opinion is that the abutting shore leading from [Megan Lane] to the end of Waveland subdivision is the shore along the public landing and because it's talking about that, [Megan Lane] is a . . . fixed location and we have to go one side or the other from [Megan Lane].

Mr. Norris described the language as "peculiar" and explained that "the public should have the right to use the shore that abuts the public landing and [in his] opinion . . . that's what's

being described in the first clause." With regard to the reservation of water rights and privileges adjacent to the Waveland subdivision, Mr. Norris testified that:

> This language is . . . speaking to what was already mentioned, and that being the land and water adjacent to the public landing . . . the grantors and lot owners all share, the grantors reserve their rights to the water.[11]

Mr. Norris testified that there was no express easement to use the Unnamed Road on the original plat or on any documents he reviewed. This road "would have been necessary for access for lots 2, 3, 4, 5, 6." Absent a public dedication or express easement, appellees would not have any rights to access the Unnamed Road because they were not adjoining owners and had "egress to both [the] public road and public landing without using the unnamed street along [lots] 1, 2 and 3." There was "nothing dedicated to the public as part of th[e] plat." Any implied right was limited to the lot owners' frontage. There would not be an implied easement to jog or walk a dog on the Unnamed Road.

Mr. Norris testified that Parcel B was a portion of "the bed of the unnamed platted road," and it does not include "any land that is to the water side of the road." He agreed that the 1921 Plat depicted land on the water side of the road, and in 2022, there still was land on the water side of the platted road.

Regarding the shoreline property, the land between the Unnamed Road and the water in front of Ms. Buck's property, Mr. Norris testified that "the fee simple owner

[11] Mr. Norris stated that language describing a 20-foot easement mentioned in the deed referred to an easement adjacent to the plat of Waveland that gave lot owners access to the County public road leading from Port Tobacco to Chapel Point. This 20-foot easement was shown on the top of the 1921 Plat as a dashed line and was labeled as a "right-of-way to public road."

would be the heirs or successors in interest of the original developer, . . . ABM Partnership," stating that he had "not seen any conveyances otherwise." In Mr. Norris's opinion, no easement had been granted with respect to "any land that is to the water side of the road," to Ms. Buck or any other lot owner.

In sum, Ms. Buck's expert testified that appellees had an easement only over Megan Lane, the Public Landing, and the shore along the public landing. Appellees' expert, on the other hand, testified that appellees' easements were much broader and included access to Megan Lane, the entirety of the shorefront property, as well as the Unnamed Road.

A.

Appellees' Written Closing Arguments

In their written closing arguments, appellees contended that, in the 1921 Deed, the grantor of the Waveland properties "'specifically reserved' the riparian rights related to the entire property 'to the use of said grantors in common with all of the lot owners of Waveland.'" With respect to the grant of joint usership of the "abutting shore," this included the shoreline along the Unnamed Road, not just the immediate shore of the Public Landing. Appellees argued that, because the grantor reserved all riparian rights on the plat and was the owner of the shorefront property between the Unnamed Road and the Creek, it was clear that the grantor intended all lot owners to have "mutual use in common of all the waterfront lands and joint usership of the riparian rights associated with those lands." This shows an intent that lot owners have the ability to use the Unnamed Road to access the waterfront strip.

Appellees also alleged that they were entitled to access to the Unnamed Road and the shoreline based on an implied easement by plat. They asserted that the establishment of Waveland as a waterfront community made the use of both Megan Lane and the Unnamed Road essential to the lot owners' express right to access the water and their ability to realize the full value of their property. Appellees contended that placement of the Unnamed Road between the waterfront lots and the Creek serves no purpose other than to provide access to "traverse the entirety of the waterfront," and any intended limitation on the use of the Unnamed Road would have been indicated in a plat note or deed reference. Because no lots in the Waveland subdivision touched the waterfront, all lot owners enjoyed "the right of joint usership" of all the waterfront property abutting the public landing. Megan Lane extended to the waters of Port Tobacco Creek, and the split-rail fences and security cameras obstructing Megan Lane were obstructing their easement and "must be removed."

With regard to Ms. Buck's claim that any easement over her property was abandoned, appellees asserted that Ms. Buck did not provide any evidence of an intent to abandon the easement, and mere non-use of the property is insufficient to prove abandonment under Maryland law. With respect to the claim that any easement in the shoreline property was extinguished by adverse possession, this claim failed because Ms. Buck failed to join necessary parties, i.e., ABM Partnership, which owned the shorefront parcel, and other lot owners, who had the right to joint usership of the shoreline property, to the quiet title action under Maryland law.

Appellees next addressed the issue of riparian rights, i.e, rights associated with waterfront property, including water access. They argued that the grantor (and its successor-in-interest ABM Partnership) retained the rights to the shoreline "for use in common with the lot owners." Although acknowledging that a view of the water is not expressly included in the "'bundle' of rights due to the riparian owner in Maryland," appellees argued that Maryland cases indicate that the view "is an extremely valuable aspect of riparian property," and therefore, "the view is one of the 'bundle' of riparian rights." By using the phrase "water rights and privileges" in the deed, the grantor intended the "broadest possible interpretation of the rights associated with the waterfront." Appellees requested that the court restore their riparian right to a view by ordering Ms. Buck to remove the portion of the fence obstructing their view of the water.

B.

Ms. Buck's Post-Trial Closing Arguments

In her post-trial memoranda, Ms. Buck stated that a claim challenging the building of a "spite fence" typically is addressed as a nuisance case, but because there was no evidence that the fence was built with malice and had no utility to her, appellees were attempting to create a right to a water view or "sight easement."[12] She asserted that

[12] In reply, appellees asserted that Ms. Buck constructed a "spite fence." Ms. Buck testified that she had the fence constructed to create a privacy barrier between her house and patio for privacy. Appellees argued that the fence did not preserve the privacy of Lot 1 because the lot was "readily observable" from the Creek, the Public Landing, the Unnamed Road, and the abutting shore, and therefore, the fence had "no utility whatsoever other than to block [appellees'] view of the creek."

appellees failed "to support the claim that the language 'water rights and privileges' [used in the deed] implies a legal right to a view of the water to non-waterfront property owners." Accordingly, she argued that the court should deny the request for an order requiring her to remove that fence.

Ms. Buck also asserted that the court should not require her to remove the split-rail fence installed along the portion of Megan Lane abutting her property. She argued that she had acquired title to that property, free of easements, through abandonment and/or adverse possession.

Ms. Buck next argued that appellees had no easement to use the Unnamed Road or the shoreline abutting her property. She asserted that the right to use the Unnamed Road shown on the original plat applied only to properties that abut the road and require use of the road for ingress and egress to the property. Any implied easement by necessity created by the original plat had been eliminated.

Ms. Buck also argued that appellees failed to provide evidence of an express easement to access the abutting shoreline in front of her property. She asserted that the language in the deed, giving a right of usership in the Public Landing and "leading from [Megan Lane] to the end of the 'Waveland' sub-division," means the shore from the left of the road to the end of the subdivision. If the "grantors intended to provide access to the shoreline around the subdivision[,] they would have used the word 'around'" in the deed.

In any event, Ms. Buck argued that any easements to the Unnamed Road or the shoreline property were abandoned or extinguished through adverse possession. Mr.

Hutchins testified that, during the twenty-six years he lived at Waveland, he never saw anyone use the portion of his driveway within the Unnamed Road or the abutting shoreline without his permission. Ms. Buck contended that Mr. Hutchins was the only lot owner to address significant erosion issues on the land, and during a meeting relating to maintenance of "commonly shared" Waveland roads, "no one claimed that Megan Lane went to the waterfront, nor did anyone assert any easement right associated with the unnamed paper road shown on the original 1921 Waveland plat or suggest any portion of the paper road be paved."

Moreover, Ms. Buck argued that the evidence of Mr. Hutchins' activities in constructing and maintaining a driveway for his own private benefit and in addressing erosion on the shoreline at his own expense satisfied the elements of adverse possession because his use was hostile to any other lot owners' claim of easement. She asserted that, because the 1996 Crowder Plat "did not depict any right-of-ways or easements across Parcel B" and stated that it was "only 'subject to the rights of others to use the 'Public Landing' and 'Park Street,'" other lot owners were on notice in 1996 that Mr. Hutchins claimed the property "free and clear of any other interests."

C.

Circuit Court Opinion

1.

Findings of Fact

On April 10, 2023, the circuit court issued a written opinion and order. The following factual findings are of particular relevance:

> 5. Lots 1, 2, and part of 3, along with Parcel B are a single consolidated lot, as depicted on the 1996 Crowder Plat . . . filed in the Land Records of Charles County.
>
> 7. The Plat Notes on the 1996 Crowder Plat include the following notations:
>
> > a. Plat Note 2 "Subject to Covenants, Restrictions, Easements, Rights-of-Way, and Roads of Record of Through use."
> > b. Plat Note 3 is "Subject to the rights of others to the use of the 'Public Landing' and 'Park Street.'"
> > c. Plat Note 4 "This consolidation creates one lot as defined by the Charles County Zoning Ordinance."
>
> 8. [I]n 1997, Mr. Hutchins took title to Parcel B via [recorded] Deed . . . which specifically references the 1996 Crowder Plat. The Grantor was A.B.M. Limited Partnership.
>
> 9. A.B.M. Limited Partnership was the successor in interest to the original developers of Waveland.
>
> 10. During the period between the original filing of the 1921 Plat and trial, there were a number of changes and/or ambiguities to the names of the roads appearing on the plat, to whit:
>
> > a. The 1921 Plat showed a road named Beufield or Benfeld . . . For the purposes of this decision, Beufield, Benfield, and Megan Lane are used interchangeably.
> > b. The 1921 Plat contained [an unnamed] road running parallel to the shore of Port Tobacco Creek from the terminus of Benfield to Washington Street . . . .(hereinafter the "Unnamed Road").

> i. A portion of this Unnamed Road was deeded to Thomas Hutchins as Parcel B in 1997 and is now referred to as Even Tide Place.
> ii. [A 1996 plat] identifies the Unnamed Road as Park Place [and calls] this plat a resubdivision subject to "all existing conveyances, easements, and right of ways of record."

11. In October 2002, A.B.M. Limited Partnership, Mr. Hutchins and other lot owners prepared a Declaration of Abandonment of Roads and Right of Way and Declaration of Easements . . . .

> a. The Road Abandonment Deed was not executed by the predecessors of Plaintiffs.
>
> * * *
>
> d. [T]he Court finds this Deed appears to reaffirm the remaining lot owners[']right to access Port Tobacco Creek using Megan Lane.

13. Defendant's expert, Mr. Norris, testified that it was his opinion that "the abutting shore" was the shoreline of the Public Landing and South along Park Street. Plaintiffs' expert, Mr. Dowling, testified that it was his opinion that "the abutting shore" was the uplands on the river side of the Unnamed Road leading from the riverfront end of Beufield Avenue to the end of the platted property roughly where it intersected with Washington Street. Neither expert persuaded the Court as to the continuing existence of the alleged easements.

14. A.B.M. Limited Partnership conveyed the property containing the Unnamed Road, depicted on the 1921 Plat along the front of Mr. Hutchins' property, to Mr. Hutchins. A plat depicting this property as "Parcel B" and the "Hutchins' Addition" was recorded on October 18, 1996.

15. In January 2010, Mr. Hutchins had a Plat of Consolidation drawn showing the final Even Tide Place Property, including Lots 1, 2, and part of 3, from the 1921 Plat, as well as, Parcel B and "Parcel C." The Plat of Consolidation identified "Parcel C" as "area of accretion" to Parcel B . . . . The Deed conveying this property from Mr. Hutchins to the Tarts . . . . included reference to the 1996 Plat depicting "Parcel B" and legal description of Parcel B, and the subsequent Deed to Defendant . . . included the same. The Plat of Consolidation was not recorded in the Land Records.

16. Mr. Hutchins testified that while he owned his property, he maintained and preserved Parcel B and the abutting shoreline against erosion by constructing extensive bulkheading, backfilling, and landscaping on the property. For adverse possession purposes and the twenty-year requirement,

Mr. Hutchins did not provide the exact dates he maintained and preserved Parcel B. It is not in dispute that Mr. Hutchins owned Lots 1 and 2 and part of Lot 3 from 1985 to 2015. He also acquired Parcel B from 1997 to 2015. Mr. Hutchins' ownership of the disputed waterfront parcel does not extinguish Plaintiffs' claim to an easement. In or about 1999, Mr. Hutchins received a permit from the Department of the Environment [MDE license] to conduct extensive shore erosion work . . . Mr. Hutchins' testimony and the MDE license do not entirely match and the Court concludes the shoreline erosion work was more limited than the testimony suggested.

17. Mr. Hutchins also testified regarding a community meeting in which the community agreed to pave certain roads in the subdivision; paving what is now Megan Lane only to the point where Mr. Hutchins' property started and Plaintiffs' property ends. Plaintiffs' predecessor in title did not participate in the community meeting or paving agreement.

18. Defendant testified that she was aware that the previous owners of her property had considered planting a "living fence" as a barrier along the property line and she received the plans from the previous owners. . . . . Defendant testified that the fence served as a privacy wall.

19. On or about April 28, 2020, Defendant installed the privacy fence between her property and Plaintiffs' property. The privacy fence is located entirely on Defendant's property.

20. Defendant's privacy fence blocks Plaintiffs' view of Port Tobacco Creek and [her] split fence interferes with Plaintiffs' easement to the Public Landing parcel and Port Tobacco Creek.

2.

Analysis

The court first addressed whether appellees had an easement over (1) the portion of Megan Lane on which the split-rail fence was located; and (2) the Unnamed Road, then known as Even Tide Place, which ABM Partnership conveyed to Mr. Hutchins as Parcel B in 1997. The court found that the express note in the 1921 Deed permitted the lot owners to use Megan Lane from the Creek to the public road, "as well as the Unnamed Road which

runs parallel to the creek from Megan Lane to Washington Street."[13] When Mr. Hutchins acquired Parcel B, which includes portions of Megan Lane, the Unnamed Road, and the shoreline property, it was subject to the easement to access that property.

Although Ms. Buck alleged that she extinguished any easement to use and access the entire shoreline property via adverse possession, the court found that she extinguished appellees' easement for only a 120-foot portion of that claimed property based on Mr. Hutchins' MDE-approved erosion control work. The court rejected as inaccurate the Special Purpose Surveys prepared by both parties' experts purporting to show the location and extent of the stone revetment constructed pursuant to an MDE permit. The court found that Mr. Hutchins' "restoration of [a] 120-foot area and subsequent maintenance of that area[] satisf[ied] the adverse possession factors because "[h]is restoration efforts should have alerted other lot owner[s] that he was claiming the 120-foot area."

Crediting testimony presented by appellees that other lot owners used the shoreline, and noting that "access to the water is an essential component of the waterfront subdivision," the court found that, beyond the 120-foot area approved for revetment by the MDE, there was "insufficient evidence to show [appellees] or their predecessors in title abandoned the easements" or that the criteria for adverse possession was satisfied. The court noted Mr. Hutchins' testimony that he was the only person who maintained the shoreline property, but it found that "there were no fences or hedges between the Unnamed

[13] The court mistakenly stated that the express language cited was in the 1921 Plat; it was in the 1921 Deed.

Road and Port Tobacco Creek" to "meet the open, exclusive, or hostile factors for adverse possession." With regard to Ms. Buck's argument that the exclusion of the Unnamed Road from a community agreement to pave and maintain commonly shared roads showed abandonment of any easement, the court found that the agreement "did not include all lot owners, particularly the Plaintiffs' predecessor title holder," and there was "no evidence to determine what the non-participating lot owners believed as to their access." Accordingly, the court ordered that appellees "may access Port Tobacco Creek utilizing Megan Lane and that portion of the parcel of waterfront property, excluding the land within the 120-foot restoration area as specifically drawn on the 1999 MDE license."

The last issue the court addressed was appellees' request for injunctive relief to remove both the privacy fence on Lot 1 and the split-rail fence on Megan Lane. Noting that Waveland did not have any covenants restricting fencing, the court first discussed whether the privacy fence was a "spite fence," a fence "erected solely to annoy a neighbor, as by blocking the neighbor's view." The court stated that, although "the installation of the fence was unneighborly," and the fence blocked appellees' view of the water, there was no evidence that Ms. Buck constructed the privacy fence for illicit purposes. The court found that appellees "presented no evidence or law that suggested their water access rights included a right to a water view," and therefore, the court denied appellees' request for injunctive relief to remove the stockade privacy fence.

With regard to the split-rail fence, the court concluded that it unlawfully obstructed appellees' easement to the Public Landing and Port Tobacco Creek, acting as a deterrent

to access and providing "no ascertainable safety features." The court ordered its removal.

The court then ordered as follows:

> **ORDERED**, that Defendant shall remove the split rail fence and any other barrier or sign located on Megan Lane and Even Tide Place that acts as a barrier to Port Tobacco Creek and the Public Landing parcel; and it is further,
>
> **ORDERED**, that Defendant may maintain the privacy fence that is located on her property which separate Lot 1 from Lot 14; and it is further,
>
> **ORDERED**, that Plaintiffs may access Port Tobacco Creek utilizing Megan Land and that portion of the parcel of waterfront property, excluding the land within the 120-foot restoration area as specifically drawn on the 1999 MDE license; and it is further,
>
> **ORDERED**, that Plaintiffs may continue to access the Public Landing waterfront parcel as depicted on the 1922 Plat; and it is further,
>
> **ORDERED**, that Defendant is the fee simple owner of Parcel B as described by the A.B.M. Limited Partnership to Thomas E. Hutchins deed, recorded Liber 2324 Folio 318; and it is further,
>
> **ORDERED**, that Defendant and her predecessors in title acquired the 120-foot waterfront parcel, as depicted on the 1999 MDE license by adverse possession. The waterfront area laying between Port Tobacco Creek and Even Tide Place and outside the 120 feet of restored land shall remain accessible and useable to the Plaintiffs; and it is further,
>
> **ORDERED**, that these declarations are expressly applicable as to the property rights of the Plaintiffs and Defendant and may or may not have any significance to other lot owners depending on their specific deeds, circumstances, and prior actions and those of their predecessors in title; and it is further,
>
> **ORDERED,** that this case is closed statistically.

D.

Motion to Alter or Amend Judgment

On April 20, 2023, appellees filed a Motion to Alter and Amend the Judgment, challenging the court's ruling declining to order removal of the privacy fence. They argued that the court erroneously concluded that they presented no evidence or law to show that their water access rights included a right to a water view. Appellees asserted that the conveyance of "water rights and privileges adjacent to" the Waveland subdivision included a right to a water view. They argued that there should be "an equitable apportionment of the view rights over the river," and the portion of the fence blocking their view "must be removed."

Ms. Buck filed an opposition to the motion, asserting that appellees failed to identify any legal error or incorrect factual finding in the court's opinion. Instead, appellees "simply reassert their faulty legal basis for their claims, hoping the Court will change its mind." Ms. Buck argued that appellees did not present any expert testimony or other evidence to support their view that "water rights and privileges" includes the conveyance of a legal right to view the water. Rather, as the court concluded, appellees have only right-of-way access to the Creek, not riparian rights, because Ms. Buck is the fee simple owner of the shoreline property. Moreover, as there were no specific covenants restricting construction of the fence, any dispute as to property rights should "be resolved in favor of the unrestricted use of property."

E.

Supplemental Order

On June 29, 2023, the court issued a Supplemental Order. A judge, other than the one that issued the initial ruling, ordered that Ms. Buck remove the portion of the privacy fence from the utility pole all the way to the road and refrain from reinstalling any fence or plantings that would "negatively impact" or "obstruct the views from Lot 14 in the future."[14] It ordered that the original Waveland grantor intended that all lot owners share "the right and privileges in the waterfront, including the right to the view of Port Tobacco Creek," and the privacy fence was an "unreasonable imposition against those shared rights and privileges." The court further ordered that, "upon removal of the fences," appellees will have a Special Purpose Plat filed showing the areas where fences are prohibited, "which is to be maintained – with respect to its view – in the status quo as it existed before the fence was installed." Finally, the court ordered that its opinion and order, the exhibits, and the Special Purpose Plat be filed by the Clerk in the Land Records of Charles County.

On July 12, 2023, Ms. Buck filed a Motion to Stay Enforcement Pending Appeal, alleging that appellees had "no immediate need to access any portion of the easement granted to them" because they "have other waterfront access through the community's public landing." Ms. Buck asserted that she had "immediate concerns relating to her privacy and wellbeing stemming from numerous individuals coming onto her property."

[14] Although the Order states that findings of fact and law are set forth in a Memorandum, the record does not contain a memorandum related to this Order.

Appellees filed an opposition arguing, *inter alia,* that Ms. Buck failed to file an affidavit verifying her factual assertions in the motion to stay and her concerns were untruthful because she had not lived at the property since at least June 2023.[15] On July 12, 2023, the court granted Ms. Buck's motion and stayed enforcement of the court's April 10, 2023 and June 29, 2023 orders pending appeal.

This appeal followed.

STANDARD OF REVIEW

Md. Rule 8-131(c) provides that:

> When an action has been tried without a jury, an 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 Supreme Court of Maryland has described the standard of review under Rule 8-131(c), as follows:

> We give due regard to the trial court's role as fact-finder[,] and will not set aside factual findings unless they are clearly erroneous. The appellate court must consider evidence [that is] produced at the trial in a light most favorable to the prevailing party[,] and[,] if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous[,] and cannot be disturbed. Questions of law, however, require our non-deferential review. When the trial court's decision involves an interpretation and application of Maryland statutory and case law, [this] Court must determine whether the trial court's conclusions are legally correct. Where a case involves both issues of fact and questions of law, this Court will apply the appropriate standard to each issue.

[15] Ms. Weiner filed an affidavit stating that, based on her observations, Ms. Buck had moved out of the house on or before June 5, 2023, and that records show that Ms. Buck bought a different waterfront property in November 2022.

Estate of Zimmerman v. Blatter, 458 Md. 698, 717-18 (2018) (quoting *Bottini v. Dep't of Fin.*, 450 Md. 177, 187 (2016)). The interpretation of deeds, plats, covenants, and easements is a question of law. *Wilkinson v. Bd. of Cnty. Comms. of St. Mary's Cnty.*, 483 Md. 590, 616 (2023).

DISCUSSION

I.

Order to Remove Privacy Fence/Right to Water View

A.

Parties' Contentions

Ms. Buck's initial contention involves the circuit court's June 2023 Supplemental Order finding that appellees had a shared right to a view of the Creek and the privacy fence was an unreasonable imposition against appellees' right. She contends that the court's order requiring her to remove the privacy fence was erroneous for two reasons.

First, she argues that the court abused its discretion in granting appellees' motion to alter or amend without a hearing, contrary to the requirements of Maryland Rule 2-311(e), which requires a hearing before granting such a motion. She contends that appellees asked the court to reconsider its decision without identifying any legal or factual error, new evidence, or other strong basis to revisit the initial decision by the first judge, who heard

all the testimony at trial and concluded that there was no evidence to show that appellees' "water access rights included a right to a water view."

Second, Ms. Buck contends that, even if it was appropriate to grant the motion without a hearing, the court's decision "contradicts established legal principles governing covenants, riparian rights, and 'spite fences,'" and it unreasonably restricts the use of her property. She argues that the court clearly erred in finding that the Waveland deed granted appellees a right to a water view because Maryland law requires that restrictions on property use must be expressly set forth in a recorded deed of covenants "or similar recorded restriction or reservation." Because there was no express restriction or covenant in the Waveland deed prohibiting the construction of a fence, Ms. Buck asserts that the court must resolve this dispute in favor of unrestricted property use.

Ms. Buck states that neither appellees nor the circuit court cited any authority to support the position that the reservation of "water rights and privileges" grants appellees a "sight easement" or right to a water view. Moreover, she asserts that there was no evidence that the original grantors intended all Waveland lot owners to have a right to view the Creek. Indeed, she asserts that such a conclusion is illogical because the subdivision is built with some lots having multiple lots in between them and the Creek, with potential dwellings, trees and fences blocking their view.

Appellees do not dispute that the court should have held a hearing prior to granting their motion to alter or amend. They argue, however, that a hearing would not change the outcome, and therefore, a remand is not necessary. Appellees assert that the circuit court

"properly found that it was the original Grantor's intent that the water rights and privileges, including the right to a view of the creek, be shared between lot owners." They assert that the court's finding, that the fence obstructing appellees' view to the Creek was "an unreasonable imposition against those shared rights and privileges," was supported by the record.

B.

Analysis

We begin by addressing whether the court erred in granting appellees' motion to alter or amend without holding a hearing. A decision to grant a motion to alter or amend is reviewed for an abuse of discretion. *In re Adoption/Guardianship of Joshua M.*, 166 Md. App. 341, 351 (2005). Trial judges, however, "do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature." *Miller v. Mathias*, 428 Md. 419, 438 (2012) (quoting *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 675 (2010). Whether the court is required to hold a hearing before granting a motion to alter or amend is a question of law reviewed *de novo*. *See Mayor of Baltimore v. Prime Realty Assocs., LLC*, 468 Md. 606, 616 (2020) ("Interpretation of a Maryland Rule is a question of law and is therefore reviewed *de novo*.") (quoting *State v. Schlick*, 465 Md. 566, 573 (2019)).

Maryland Rule 2-311(e) states: "When a motion is filed pursuant to Rule . . . 2-534 [a motion to alter or amend judgment], the court shall determine in each case whether a hearing will be held, *but it may not grant the motion without a hearing*." (Emphasis added).

Because the court granted the motion to alter or amend, it erred in doing so without a hearing. *See Renbaum v. Custom Holding, Inc.*, 386 Md. 28, 46 (2005) (Before a circuit court may grant a Rule 2-534 motion, "[t]he responding party must have an opportunity to address the merits," and the court must hold a hearing pursuant to Rule 2-311(e)).

We agree with appellees, however, that a remand is not necessary. There was a full hearing on the issue before the initial judge, so we have a record to review. And because the issue is a legal one, it is appropriate for judicial economy to resolve the issue now, as opposed to remanding to the circuit court for further proceedings. *See Express Auction Servs., Inc. v. Conley*, 127 Md. App. 447, 450 (1999) (no practical purpose served in remanding case for hearing when only issue on appeal is narrow one of law).

In addressing a claim regarding riparian rights, we note that a riparian land owner "is defined as one who owns land bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to and in contract with a body of water, such as a river, bay, or running stream." *Conrad/Dommel, LLC v. West Dev. Co.*, 149 Md. App. 239, 268 (2003) (quoting *Kirby v. Hook*, 347 Md. 380, 389 (1997)). *Accord Olde Severna Park Improvement Ass'n, Inc. v. Gunby*, 402 Md. 317, 331 (2007). Here, the original owner of the subdivision was the riparian landowner.

When the grantor deeded property to appellees, he reserved the use of "water rights and privileges" adjacent to Waveland in common with all lot owners. As indicated, appellees contend that this language gave them a right to a view to be shared equally with the other lot owners.

To determine the scope of these rights granted to appellees, we begin with a discussion of riparian rights. Riparian rights have been defined as:

> a bundle of rights that turn on the physical relationship of a body of water to the land abutting it. These rights are significantly different from each other in many respects, and yet they share a common name just as riparian landowners attempt to share the common benefits that arise from adjacency to defined bodies of water. This bundle includes at least the following rights:
>
> (i) of access to the water;
>
> (ii) to build a wharf or pier into the water;
>
> (iii) to use the water without transforming it;
>
> (iv) to consume the water;
>
> (v) to accretions (alluvium); and
>
> (vi) to own the subsoil of nonnavigable streams and other "private" waters.

Conrad, 149 Md. App. at 268-69.[16]

Appellees assert that, although a view of the water is not listed in the bundle of rights due to a riparian owner, the "view of the water is an extremely valuable aspect of riparian property." They assert that the circuit court properly found that the fence obstructing their view was an unreasonable imposition against the water rights and privileges granted to them in the deed.

[16] Rights of an adjacent landowner in nontidal waters, such as rivers and streams, are "riparian rights." *See, e.g., 5F, LLC v. Hawthorne*, 317 So.3d 220, 222 n.1 (Fla. Dist. Ct. App. 2021). "Littoral rights" are rights of a waterfront property owner in the waters of an ocean, sea, or lake. *Id.* "Riparian" is commonly used to refer to both riparian and littoral rights. *Id.*

The parties have not cited, and we have not found, a reported Maryland case addressing whether the rights of riparian landowners include a right to a water view. Courts in other states have addressed the issue and come to different conclusions. In Florida, for example, the court held that owners of property abutting water have the right to an unobstructed view of the water. *See Lee Cnty. v. Kiesel*, 705 So.2d 1013, 1015 (Fla. Ct. App. 1998). *Accord Treuting v. Bridge and Park Comm'n of City of Biloxi*, 199 So.2d 627, 633 (Miss. 1967) (common law riparian right of upland owner includes an unobstructed view).

Other states, however, have rejected the argument that a water view is a protected property interest. *See, e.g., Newton v. MJK/BJK, LLC*, 469 P.3d 23, 32 (Idaho 2020) (littoral rights "solely concern the *use* of lakeside property, not the preservation of the property's scenic view"); *Ctr. Townhouse Corp. v. City of Mishawaka*, 882 N.E. 2d 762, 772 (Ind. Ct. App. 2008) (court "unwilling" to find that riparian rights include the right to an unobstructed view of the water); *Thompson v. Enz*, 154 N.W.2d 473, 483 (Mich. 1967) (grant of right and privilege to use lake for recreational purposes considered only the grant of a right of way to use canal for lake access).

We need not decide whether a riparian landowner in Maryland has a right to a view because appellees are not riparian landowners. They own an interior lot, and their land does not border on the water. Any view of the water is over Ms. Buck's property.

Even in Florida, where a riparian landowner does have a right to a view, that right is limited to a waterfront landowner who has a water view from his or her property. It does

not extend to a view over property in which the owner has no interest. *See Mickel v. Norton,* 69 So.3d 1081, 1082-83 (Fla. Dist. Ct. App. 2011) (the riparian right to a view is available only incident to the ownership of land bordered by the body of water, and there is no riparian right to a view of water that borders on a neighbor's property). Here, the grant of "water rights and privileges" to appellees for use in common with other lot owners was an easement for a right of access to the water and community shorefront property. *See, e.g., White v. Pines Comm. Improvement Ass'n, Inc.*, 403 Md. 13, 46 (2008) (deed providing for use of property in common with other lot owners, as well as "water and riparian rights incident thereto," established an easement in common with other lot owners to riparian rights). We hold, however, that an easement providing for a right of access to the water did not give appellees, interior lot owners, who are not riparian landowners, a right to a view of water over the neighboring property of Ms. Buck. Had the original grantor of the Waveland community intended to prohibit the construction of fences that obstructed other lot owners' view of the Creek, an express restriction in the deed or subdivision rules could have been included. *See Hillsmere Shores Improvement Ass'n, Inc. v. Singleton*, 182 Md. App. 667, 707 (2008) (community rules and deed covenants required permission for construction of fences or other obstructions to water rights). No evidence of such a restriction was presented here.

This case does not fall in the category of "good fences make good neighbors."[17] Indeed, the circuit court found in its initial ruling that building the fence was unneighborly. We agree. Nevertheless, appellees have no legal right to a water view over Ms. Buck's property, and the court erred in finding, in its Supplemental Order, that the grant of water rights and privileges included the right to a view of the Creek.[18] Accordingly, we reverse the order requiring Ms. Buck to remove the privacy fence.

II.

Easements

The parties next dispute the court's findings in the April 7, 2023 order with respect to the existence of easements on a portion of Megan Lane, the Unnamed Road, and the shoreline property, as well as the finding that Ms. Buck owned the shoreline property. As indicated, the court found that the 1921 deed provided an express easement to appellees and "other lot owners to use Megan Lane and the Unnamed Road to access Port Tobacco

[17] Robert Frost, "Mending Wall," *Seven Centuries of Verse: English and American,* 588 (Charles Scribners Sons, 3d ed., 1967).

[18] Appellees asserted in their Complaint that Ms. Buck constructed a "spite fence" to obstruct their view of the water. The circuit court in the initial order stated that there was no testimony that Ms. Buck constructed the fence for illicit purposes, and it determined that the fence did not materially diminish the value of the property or "seriously interfere with the ordinary comfort and enjoyment of it." *See Exxon Mobile Corp. v. Albright*, 433 Md. 303, 408 (2013) (to prove nuisance, plaintiff "must establish an unreasonable and substantial interference with his or her use and enjoyment of [the] property" in such a way that materially diminishes the property value). Appellees have not pursued their argument on appeal that the fence was a private nuisance, arguing solely that the easement granted to them included a right to a water view.

Creek," as well as the shoreline property.[19] It found that, due to a subsequent acquisition in 1997, Ms. Buck owned the Unnamed Road, the abutting shoreline property, and the portion of Megan Lane abutting Ms. Buck's property, subject to the easements. The court then found, however, that the easement to a 120-foot portion of the shoreline property, most of which ran parallel to lot 2, had been extinguished by adverse possession.

Ms. Buck contends that the circuit court erred in concluding that appellees were given an easement in the Unnamed Road. She further argues that, even if appellees initially had an easement to access the Unnamed Road, along with the shoreline property and Megan Lane, any easements were extinguished through abandonment or adverse possession.

Before addressing the specific claims, we discuss generally the law regarding easements. Appellees contend that the court correctly determined that they have easements with respect to the Unnamed Road, Megan Lane, and the shoreline property. They argue, however, that the court erred in finding that Ms. Buck owned the shoreline property and that the easement to a portion of the waterfront strip was extinguished by adverse possession.

An easement is a "nonpossessory interest in the real property of another." *USA Cartage Leasing, LLC v. Baer,* 429 Md. 199, 207 (2012) (internal citations omitted). "It is a species of 'servitude,'" permitting a party to act on or to the detriment of another's

[19] As indicated, the court erroneously referred to the 1921 Plat when citing the language in the deed.

property. *Id.* "When the easement is for the benefit of another property—for example, an easement to provide access to an adjacent property—the neighboring property is known as the dominant estate, while the property subject to the easement in known as the servient estate." *Id.* at 208. "In general, 'the terms "right of way" and "easement" are synonymous.'" *Anderson v. Great Bay Solar I, LLC*, 243 Md. App. 557, 601 (quoting *Chevy Chase Land Co. v. United States*, 355 Md. 110, 126 (1999)), *cert. denied*, 468 Md. 224 (2019).

"An easement may be created by express grant, by reservation in a conveyance of land, or by implication." *Cartage,* 429 Md. at 208. An express easement may be general or specific. *Id.* "An easement is reserved in general terms when it is clear from the intentions of the parties that an easement is created, but without a precise location." *Id.* (quoting *Rogers v. P-M Hunter's Ridge, LLC*, 407 Md. 712, 729 (2009)). An easement by implication "may arise by 'prescription, necessity, the filing of plats, estoppel, and implied grant or reservation where a quasi-easement has existed while the two tracts are one.'" *Id.* (quoting *Lindsay v. Annapolis Rd. Prop. Owners Ass'n*, 431 Md. 274, 291 (2013)).

An implied easement by reference to a plat is created when the deed establishing the easement "contains a reference to a plat that contains a right of way." *Lindsay*, 431 Md. at 291 (quoting *Boucher v. Boyer*, 301 Md. 679, 688-89 (1984)). "[A] reference to a plat in a deed incorporates generally that plat as part of the deed." *Id.* It is well-established that, "when a property owner subdivides property and makes or adopts a plat designating lots as bordering streets, and then sells any of those lots with reference to the plat, an

implied easement of way 'passes . . . over the street contiguous to the property sold.'" *Kobrine, L.L.C. v. Metzger*, 380 Md. 620, 639 (2004) (quoting *Koch v. Strathmeyer*, 357 Md. 193, 199 (1999)).

There is an expanded view of implied easements by plat in waterfront property. *Klein v. Dove*, 205 Md. 285, 292-93 (1954). In determining whether an implied easement has been created in a waterfront community, it is proper, if not "essential," for the court to consider a property owner's expectation of having access to the water. *Id.* at 293 (quoting *Williams Realty Co. v. Robey*, 175 Md. 532, 539 (1938)). *Accord Koch*, 357 Md. at 203. Thus, the Supreme Court of Maryland has held that a plat to a waterfront community need not clearly mark a certain area as "community property" or as having a right of way if that area is necessary to access the waterfront contemplated in the deed. *Klein*, 205 Md. at 293. The well-established principle that streets shown on a plat "give[] the right to the purchaser to use only the street upon which his land abuts and such other streets . . . as may be necessary to reach a public street" has "no application" in cases involving waterfront community access. *Id.* at 292.

A.

Necessary Parties for Actions for a Declaratory Judgment and Quiet Title

Both parties sought a declaratory judgment regarding the rights of the parties in Waveland, specifically who owned the shoreline property and whether there were easements on that strip of land, the Unnamed Road, and Megan Lane. Ms. Buck's counterclaim against appellees also made a claim to quiet title. In that claim, she requested

the court to "find and declare that [she] is the fee simple owner of the Buck Property," declare that any easements that appellees had were abandoned or extinguished by adverse possession, and "to remove any cloud from her title."

To the extent that the court's ruling amounted to a grant of the requests for a declaratory judgment or to quiet title, it was erroneous due to the failure to join necessary parties. Md. Code Ann., Real Property ("RP") §§ 14-108(b) and 14-601, *et seq.,* (2023 Repl. Vol.), governs actions for quiet title. Section § 14-108(b) requires that "[a]ny person who appears of record, or claims to have a hostile outstanding right, shall be made a defendant in the proceedings." Section 14-608(a) further provides that the "plaintiff shall name as defendants in an action under this subtitle the persons having adverse claims to the title of the plaintiff that are of record or known to the plaintiff or reasonably apparent from an inspection of the property against which a determination is sought."

In *Wilkinson v. Board of County Commissioners of St. Mary's County*, we affirmed the dismissal of a quiet title action for failure to join neighboring property owners under RP §§ 14-108(b) and 14-608(a) where a survey of the property showed that plaintiff's garage was built on land that appeared to be owned by his neighbor. 255 Md. App. 213, 263-64 (2022), *aff'd on other grounds*, 483 Md. 590 (2023). Concluding that the neighbor "*may* be a person who claims to have an outstanding right" to the property, we held the neighbor was required to be joined. *Id.* (emphasis added). We further held that other community members who "cast[] doubt on [plaintiff's] title" were also required to be

joined even if their exact identity was unknown.[20] *Id*. Similarly, in *Estate of Zimmerman*, 458 Md. at 732, the Supreme Court of Maryland concluded that the circuit court improperly determined which party had the right to use and possess the disputed property at issue when the property's record owner was not joined as a party to the action.

Here, Ms. Buck was on notice of appellees' claim, made in its answer to Ms. Buck's counterclaim, that "all owners of property on the Plat of Waveland" must be joined as parties to this action, if she intended to assert a claim of adverse possession. Although the court ordered that its findings "may or may not have any significance to other lot owners depending on their specific deeds, circumstances, and prior actions and those of their predecessors in title," a finding that Ms. Buck owned the shoreland property, given the allegations that ABM Partnership owns the shorefront parcel, was improper. And the court's finding that the easement on a 120-foot portion of the shoreline property was extinguished by adverse possession could impact other Waveland lot owners, without their opportunity to participate in the litigation. The court erred in making any determinations as to Ms. Buck's quiet title claims without these necessary parties.

Similarly, the Declaratory Judgment Act provides that, "[i]f declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party." Md. Code. Ann. § 3-405(a)(1). *Accord Rounds v. Maryland-Nat. Cap. Park and Plan. Comm'n*, 441 Md. 621, 648 (2015) (the general rule for a declaratory

[20] Sections 14-609(a) and 14-613 set forth procedures for naming unknown persons in an action for quiet title. Md. Ann. Code, ("RP") Real Property, §§ 14-609(a) and 14-613 ("RP"), *et seq.* (2023 Repl. Vol.).

judgment is that "all persons interested in the declaration are necessary parties") (quoting *Williams v. Moore*, 215 Md. 181, 185 (1957)). *See also* Maryland Rule 2-211 (requiring that a person shall be joined as a party if "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.")

As indicated, there was a dispute regarding whether ABM Partnership had transferred the waterfront strip to Mr. Hutchins or still owned it. ABM Partnership was an interested party in the declaration of rights in that regard. Moreover, the other lot owners were interested parties in determining whether easements in Waveland had been extinguished by abandonment or adverse possession. *See Rice v. Rudolph*, 384 S.E.2d 295, 114 (N.C. Ct. App. 1989) (In a declaratory judgment action, "a dispute as to the extinguishment of a subdivision easement by abandonment or adverse possession cannot be resolved without the joinder of the grantor, or his heirs, who retain fee title to the soil . . . and the record owners of lots in the subdivision, who have user rights in the easement."). Thus, we vacate the court's rulings declaring title and easements in the roads and shoreline property.

B.

Injunctive Relief

In addition to a request for declaratory relief, appellees filed a claim for injunctive relief. We have already addressed the request, and the order issued, that Ms. Buck remove

the privacy fence. That leaves appellees' request for the court to order Ms. Buck to remove, among other things, the split-rail fence on Megan Lane because it obstructed their easement on Megan Lane to the Creek. As indicated, the court ordered that Ms. Buck remove "the split-rail fence and any other barrier or sign located on Megan Lane and Even Tide Place that acts as a barrier to Port Tobacco Creek and the Public Landing parcel."

The question is whether we can address this ruling without the other lot owners being joined in the suit. We conclude we can.

In an action to compel removal of a fence from a right of way, there is precedent for granting an injunction despite the failure to join all parties who may have an interest in the right of way. For example, in *Frye v. Shuman*, 806 S.W.2d 157, 159-60 (Mo. Ct. App. 1991), which involved a request for injunctive relief to remove a gate obstructing an easement to a private road, the court found that the record owners of the road at issue and other lot owners holding easement rights were not indispensable parties. The court noted that the case did not involve a request for declaratory judgment, and the "ultimate issue was whether obstruction of the road by appellants violated the respondents' right to use the road." *Id.* at 159. Because there was no evidence that other lot owners wanted to deprive the Fryes from using the road, or that the Fryes wanted to deprive these other lot owners of their right to use the road, those owners were not indispensable parties that needed to be joined to determine whether Mr. Shuman could lawfully block the Fryes' access to the road. *Id.* at 160. The court held that "the relief sought (i.e., injunction) would not directly affect the interests of other landowners who were not parties in this litigation." *Id. Accord*

Klein, 205 Md. at 296 (record title holder of road subject to disputed right of way was not required to be joined in action for injunctive relief because court's decree determined "rights and obligations only as between the plaintiffs and the defendants" and did not impair rights of the title holder).

Here, as indicated, the parties do not dispute that there initially was an easement on Megan Lane to the Creek. The parties' experts agreed below that there was an implied easement by reference to the plat for Megan Lane. *See Koch*, 357 Md. at 201 (implied easement by reference to plat provides an easement over the streets contiguous to these lots to the next "street or public way," which includes a public waterway). And at oral argument, counsel for Ms. Buck stated that she did not dispute that an easement for the entirety of Megan Lane was initially granted.

There similarly is no dispute that the split-rail fence erected on Megan Lane obstructs the easement initially granted. In the absence of a showing that the easement was extinguished by abandonment or adverse possession, Ms. Buck was not entitled to block appellees' access to the Creek from Megan Lane.

Although Ms. Buck alleged in her counterclaim that the easement had been extinguished, the other lot owners clearly had interests in that claim and needed to be joined as necessary parties for the declaratory judgment and quiet title claims.[21] For purposes of

[21] Several lot owners testified regarding their use of the shorefront parcel in front of Ms. Buck's property. Patrick Hillman stated that, when he purchased his property on Megan Lane in 2020, the realtor took him down to the community dock area "where the end of the road is." At that time, Ms. Buck had not yet put up the split-rail fence blocking

the injunction requested by appellees, however, we agree with the circuit court that this issue can be determined solely as it relates to the parties here, and there was not sufficient proof of an extinguishment of the easement on Megan Lane.

To extinguish an easement by adverse possession, the claimant must "demonstrate a visible, notorious and continuous adverse and hostile use of [the] land which is inconsistent with the use made and rights held by the easement holder, not merely possession which is inconsistent with another's claim of title." *Purnell v. Beard & Bone, LLC*, 203 Md. App. 495, 528 (2012) (quoting *Mueller v. Hoblyn,* 887 P.2d 500, 507 (Wy. 1994)). The claimant must also show continuous possession of the property for the statutory period of 20 years. *See Anderson,* 243 Md. App. at 594. "[T]ermination of an easement by adverse possession is not favored" in the law. *Id. Purnell*, 203 Md. App. at 528.

Because the owner of the servient estate has the right to use and possess the land consistent with the easement, to prove adverse possession that owner "must prove the use of the servient estate made during the period of [alleged] adverse possession is sufficiently hostile and inconsistent with the use permitted by the easement." *Id.* (internal citations

access to the water. Mr. Hillman used the shorefront lot at the end of Megan Lane "a handful of times" to take wildlife photographs. After Ms. Buck installed the fence and security camera on Megan Lane, Mr. Hillman "fe[lt] awkward" and was "very hesitant" to use the shorefront parcel. Yelena Naydich, another resident of the Waveland subdivision since 2010, testified that she and her husband had gone to the water by Megan Lane to walk the dog, watch the sunset, and kayak. Since construction of the fence, Ms. Naydich no longer allows her dog to access the shorefront parcel at the end of Megan Lane because the area then had a feeling that it was no longer "our territory, [they] cannot cross it."

omitted). Moreover, when an easement has been created, but there has been no occasion for its use, there will be no notice of an adverse claim until the need for the easement arises, a demand is made to use the easement, and the owner of property on which the easement is located refuses access. *Id*. at 529-31 (plaintiff could not adversely possess easement until defendant "sought to locate, develop, and use the easement"). Ms. Buck did not provide evidence showing adverse possession permitting her to block appellees' access down to Megan Lane to the Creek.

Nor did Ms. Buck show that appellees abandoned the easement over Megan Lane. To prove abandonment of an easement, "there must be an act or a combination of acts that unequivocally demonstrate an intention to abandon." *Chevy Chase Land Co. v. United States,* 355 Md. 110, 159 (1999). "Non-use alone is insufficient to show an intent to abandon." *Id. Accord Purnell*, 203 Md. App. at 532 (intent to abandonment and an overt act or omission to carry out intent to abandon necessary to extinguish easement).

That appellees or their predecessors did not personally act to protect the easements does not amount to an abandonment of the easements. *See id*. (no evidence of intent to abandon easement even though other landowners farmed land for 50 years and had placed drainage ditch over site of easement). Moreover, that some members of the Waveland Community decided in 2000 not to pave the portion of Megan Lane that abutted Ms. Buck's property did not constitute an abandonment of the easement by appellees where neither

they, nor their predecessors, were a part of that decision.[22] The court did not err in finding that appellees had not abandoned the easement on Megan Lane. We affirm the court's ruling ordering Ms. Buck to remove the split-rail fence and any other barrier to the Creek on Megan Lane.

JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED, IN PART, VACATED, IN PART, AND AFFIRMED, IN PART. COSTS TO BE PAID 50 PERCENT BY APPELLANT AND 50 PERCENT BY APPELLEES.

[22] We also note that, although the 2002 Road Abandonment Deed was not signed by appellees or their predecessors in title, it was signed by Mr. Hutchins, and it confirmed the presence of an easement on Megan Lane.