Circuit Court for Prince George's County
Case No.: CAE21-10014

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1179

September Term, 2023

ULISES VARGAS, ET UX

v.

FRANKLIN FARMS HOMEOWNERS ASSOC. INC.

Zic,
Tang,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: November 26, 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).

The Franklin Farms Homeowners Association, Inc. (the "Association") filed a two-count complaint against Ulises and Margarita Vargas ("the Vargases") in the Circuit Court for Prince George's County seeking injunctive relief and attorney's fees because of a mailbox and patio the Vargases constructed on their property, allegedly in violation of their homeowner's association covenant.[1] The court granted the Vargases' motion for summary judgment as to the mailbox. Following a bench trial as to the patio, the circuit court found that the Vargases had violated their homeowner's covenant. The court granted the Association an injunction and awarded it attorney's fees and costs totaling $8,659.50.

QUESTIONS PRESENTED

The Vargases appeal raising the following questions, which we have condensed and rephrased for clarity:[2]

[1] The Vargases have appeared *pro se* at all legal proceedings in this case. The Supreme Court of Maryland has stated that although we shall liberally construe the contents of pleadings filed by *pro se* litigants, unrepresented litigants are subject to the same rules regarding the law, particularly, reviewability and waiver, as those represented by counsel. *Simms v. State*, 409 Md. 722, 731-32 n.9 (2009) (citation omitted).

[2] The Vargases phrased their questions in their appellate brief as follows:

1. Did the trial court err in its determination that neither an affirmative vote nor resolution by the Board of Directors is required, (condition precedent), to authorize taking legal action?

2. Did the trial court err in its determination that Article VIII Sec. 2 of [Association]'s Declaration (Right to Remove or Correct Violation) was not a condition precedent because [Association] sought remedy under Article X Section 1?

(continued…)

1. Did the circuit court err in ruling that the Association's Board of Directors was not required to adopt a resolution either at a meeting or by unanimous vote before suing the Vargases?

2. Did the circuit court err in awarding legal fees to the Association without a hearing?

We answer the first question in the negative and the second question in the affirmative. Accordingly, we shall affirm the judgment, except as to the attorney's fees award, and remand for a hearing on that issue.

FACTUAL AND PROCEDURAL BACKGROUND

The Vargases reside in a residential community near Beltsville, Maryland, called Franklin Farms at Ammendale. The community is subject to a "Declaration of Covenants, Conditions and Restrictions" (the "Covenant") and is governed by the Association, a Maryland corporation.[3] The Covenant grants to the Association the power to enforce all restrictions in the Covenant. The Covenant provides, among other things,

3. Did the trial court err in its interpretation of Article VIII Sec. 2 as being "self-help" and only applies if the Board exercises to remove on "its own"?

4. Did the trial court err in granting an injunction [sic] relief authorizing removal in violation of Article V when said Article does not provide for redress?

5. Did the trial court err when it granted [Association]'s 2-534 motion to alter/amend without the compulsory hearing?

6. Did the trial court abuse its discretion when it awarded the Plaintiff $8,659.50 in "reasonable" legal fees?

[3] The Covenant was originally entered into in 1998. Two amendments followed in 1999 and 2018. Along with the original, the amendments were recorded in the Prince George's County land records.

that before erecting a structure on a lot, a homeowner shall submit a request in writing to the Board of Directors of the Association. If the Board fails to approve or disapprove of the request within 60 days, Board approval for the structure is not required. The following two articles in the Covenant are particularly relevant:

1. Article VIII, titled "PROHIBITED USES AND NUISANCES" provides:

> Section 2: Right of the Association to Remove or Correct a Violation of the Articles. The Association may, in the interest of the general welfare of all the owners of the property and after reasonable notice to the Owner, enter upon any Lot . . . at reasonable hours on any day except Sunday for the purpose of removing or correcting any violation or breach of any attempted violation of any of the covenants and restrictions contained in this Article . . . *provided, however, that no such action shall be taken without a resolution of the Board of Directors of the Association*[.]

2. Article X, titled "GENERAL PROVISIONS" provides:

> Section 1: Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Amended Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

(Emphasis added).

In April of 2020, the Vargases submitted a request form to the Board for a modification to their existing mailbox. Three days later, the Board sent the Vargases a notice of "[d]isapproval, pending next meeting," which was held more than one hundred days later. In the meantime, the Vargases constructed their mailbox. In May 2021, the

Vargases began constructing a patio on their property but did not submit a request form to the Board. The Association, through its property management company, sent to the Vargases two cease and desist letters regarding the patio to which the Vargases did not respond.

The Association filed suit against the Vargases and sought an injunction for both the mailbox and patio. The Vargases moved for summary judgment, which the Association opposed. Following a hearing on the motion, the court granted the Vargases' motion as to the mailbox but denied the motion as to the patio.[4] The case proceeded to a bench trial, at which Mr. Vargas and Ms. Crawford, the President of the Board, testified. In closing argument, Mr. Vargas argued that, pursuant to Article VIII of the Covenant, the Board was required to pass a resolution before filing suit, but the Board had not. The Association responded that Article VIII was not applicable because it applied only if the Association engaged in "self-help" and entered a homeowner's property to remove or correct a violation of the Covenant without judicial intervention. The Association argued that the applicable article was Article X, which permits the Board to bring an action in law or equity without a resolution of the Board.

Following the parties' arguments, the circuit court ruled from the bench. The court found that the Vargases had violated the Covenant because they did not submit a request to the Board before constructing the patio. The court found that Article X

[4] The circuit court granted the Vargases' motion for summary judgment as to the mailbox because the Board had failed to approve or disapprove of the Vargases' mailbox request within the 60-day time period allotted under the Covenant.

applied, not Article VIII, and therefore no Board resolution was required before filing a lawsuit. The court granted the Association's request for an injunction.[5] When the Association's attorney informed the court that he was ready to present his request for attorney's fees, the court advised him to remove from his affidavit any legal fees spent on the mailbox (because the court had ruled in favor of the Vargases on that issue) and to submit the revised affidavit with a proposed order to the court.[6] The court subsequently issued a written order adopting its earlier oral order and awarded $8,659.50 in attorney's fees and costs to the Association. The Vargases timely appealed.

STANDARD OF REVIEW

In an action tried without a jury, we will not set aside a trial court's factual findings "unless clearly erroneous," giving "due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). We review the evidence in the light most favorable to the party who prevailed at trial, and we resolve all evidentiary conflicts in their favor. *Brault Graham, LLC v. Law Offices of Peter G. Angelos, P.C.*, 211 Md. App. 638, 660 (citations omitted), *cert. denied*, 434 Md. 312 (2013). In contrast, we review whether "the [circuit] court's conclusions are legally

[5] The circuit court stated that the Vargases could submit, within 30-days of its ruling, a request to the Board for construction of the patio. The court stated that if the Board disapproved of the request, the Vargases had 60 days to remove the patio, and if they did not, the Association could remove it with the Vargases paying the cost of removal.

[6] Article X, sec 1. of the Covenant provides: "If the Association . . . successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration . . . the costs of such action, including legal fees, shall become a binding, personal obligation of the Owner committing or responsible for such violation[.]"

correct under a *de novo* standard of review." *Nouri v. Dadgar*, 245 Md. App. 324, 343 (2020) (quotation marks and citations omitted). "[W]hether a contract is ambiguous ordinarily is determined by the court as a question of law." *Calomiris v. Woods*, 353 Md. 425, 434 (1999) (quotation marks and citation omitted). Because the determination of ambiguity is a question of law, not fact, the determination is subject to a *de novo* review by appellate courts. *Id.*

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN RULING THAT THE ASSOCIATION'S BOARD OF DIRECTORS WAS NOT REQUIRED TO ADOPT A RESOLUTION BEFORE FILING SUIT PURSUANT TO ARTICLE X OF THE COVENANT.

The Vargases argue that the circuit court erred in ruling that the Association was not required to secure a majority vote at a meeting with a quorum of the Board of Directors present, or to show unanimous consent, before suing the Vargases. To support their argument, the Vargases cite to Md. Code Ann., Corp. & Assoc. § 2-408 (1975, 2014 Repl. Vol.) and Art. VI § 3 of the Association's Bylaws, which they argue require either a majority vote at a meeting of a quorum of the Board of Directors or unanimous consent before the Board may take action. The Vargases also argue that the circuit court erred in ruling that the Board acted under Article X of the Covenant, as opposed to Article VIII. The Association responds that the Vargases failed to preserve for appellate review the argument that the Board "must hold a meeting at which a quorum is present or adopt a resolution by the unanimous consent of the Board." As to the Vargases argument that the Board was required to pass a resolution under Article VIII of the Covenant before filing

suit, the Association argues that the circuit court correctly ruled that this was not required because the Board took action under Article X, which requires no Board resolution.

As the Association correctly points out, the Vargases never raised below that the Board was required to approve a resolution by quorum or unanimous vote before suing the Vargases. Therefore, that argument is not preserved for our review. *See* Md. Rule 8-131(a) ("Ordinarily, an 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[.]"). *See also DiCicco v. Baltimore Cnty.*, 232 Md. App. 218, 224-25 (2017) (stating that a contention not raised or considered below is not properly before an appellate court). As to the Vargases' remaining argument, that the Board needed to meet and approve a resolution under Article VIII, we find no error by the circuit court in ruling that the Board was not required to do so before filing suit against the Vargases.

"Maryland has long adhered to the objective law of contract interpretation and construction." *Wells v. Chevy Chase Bank, F.S.B.*, 377 Md. 197, 224 n.12 (2003) (citations omitted). The Supreme Court of Maryland has stated:

> A court construing an agreement under this test must first determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated. In addition, when the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.

Id. (quotation marks and citation omitted). "The test for ambiguity is whether the terms are reasonably susceptible to two or more meanings." *Metro. Life Ins. Co. v. Promenade Towers Mut. Hous. Corp.*, 84 Md. App. 702, 717 (1990).

Under the clear and plain language of the Covenant, no meeting or resolution was required before the Association filed suit against the Vargases. Article X of the Covenant authorizes the Association to bring legal action against a homeowner to enforce any restriction in the Covenant. No meeting or Board resolution is required to bring a legal action. In contrast, Article VIII, section 2 of the Covenant authorizes the Board to exercise self-help to remove a violation on a homeowner's property. When the Board decides to proceed under the self-help Article, a resolution is required. We find no ambiguity here in the two Articles, and as the Association points out, there are ample reasons to compel the distinction. Most significantly, the Association could be liable for damages if it exercised self-help before obtaining a court order permitting them to do so. Accordingly, we affirm the circuit court's ruling.

II. THE CIRCUIT COURT ERRED IN GRANTING THE ASSOCIATION'S MOTION TO ALTER/AMEND THE JUDGMENT TO INCLUDE ATTORNEY'S FEES WITHOUT HOLDING A HEARING PURSUANT TO MARYLAND RULE 2-534.

The Vargases argue that the circuit court erred in not holding a hearing before granting the Association's Maryland Rule 2-534 motion to alter or amend the judgment to include attorney's fees. The Association responds by arguing that its motion to alter or amend was not submitted pursuant to Maryland Rule 2-534, but pursuant to Rule 2-311(f), which mandates a hearing only if requested by a party. Neither party here requested a hearing, therefore the Association contends a hearing was not required. To

fully understand the argument presented, we shall present a brief factual and procedural summary regarding the Association's request for attorney's fees.

As stated above, the circuit court granted the Vargases' motion for summary judgment as to the mailbox violation and the case proceeded to trial that day on the alleged patio violation. At the conclusion of the trial, the circuit court found that the Vargases had violated the Covenant when constructing their patio. The Association's attorney advised the court that he had prepared and was ready to submit an affidavit regarding his attorney's fees. The court, however, asked him to remove from his affidavit any legal fees spent on the mailbox issue (because the court had ruled in favor of the Vargases on that issue) and then to submit an amended attorney's fees affidavit with a proposed order.

Roughly three weeks later, a "DAILY SHEET" was docketed that reflected that the court had granted summary judgment as to count 1 (the mailbox) and denied it as to count 2 (the patio); the case had proceeded to trial; a witness/exhibit list was filed; the court had entered judgment in favor of and awarded "costs" to the Association; and the Association's attorney was to submit an order. The court then entered a "NOTICE OF RECORDED JUDGMENT," that it had granted judgment in favor of the Association and assessed a "total judgment" against the Vargases in the amount of $175.00. This amount reflected an appearance fee of $10.00 and a filing fee of $165.00.

The Association's attorney subsequently filed a motion to alter or amend the judgment "pursuant to Maryland Rule 2-534" requesting $8,659.50 in attorney's fees,

which reflected work only on the patio issue.[7] Attached to the motion was a three-page amended affidavit and an eleven-page spreadsheet detailing the time/date/description of the attorney's work. That same day, the circuit court entered an order granting: 1) summary judgment for the Vargases on count 1 (the mailbox); 2) the Association's request for an injunction on count 2 (the patio); and 3) the Association's "Motion to Alter [or] Amend Judgment" to include an award to the Association of "attorney's fees in the amount [of] $8,659.50 and costs."

Maryland Rule 2-311 governs motions in the circuit court and bifurcates which motions require a hearing. The Rule states that when a motion is filed under Maryland Rule 2-532 (motion for judgment notwithstanding the verdict), 2-533 (for a new trial) and 2-534 (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." Md. Rule 2-311(e). Therefore, under that section, when a motion to alter or amend judgment is filed pursuant to Maryland Rule 2-534, a circuit court *must hold a hearing only if it grants* the filed motion, otherwise it may grant a hearing in its discretion. *Cf. Miller v. Mathias*, 428 Md. 419, 439 (2012) (when a party files a motion to alter or amend judgment under Rule 2-534, the hearing requirement of Rule 2-311(e) is mandatory) (citation omitted). As to any other type of motion, the Rule provides that "the court shall determine in each case whether a hearing will be held, but the court may not render a

[7] The Association's attorney averred in his affidavit that he had removed from his request for attorney's fees the time he spent on the mailbox issue, which amounted to 3.8 billable hours and $1,387.00 in attorney's fees.

decision that is dispositive of a claim or defense without a hearing if one was requested[.]" Md. Rule 2-311(f). Therefore, under this section, a circuit court *must hold a hearing if a party requests a hearing*, otherwise it may grant a hearing in its discretion.

The Vargases argue that because the Association filed a motion to alter or amend the judgment under Rule 2-534, and the court granted the motion, a hearing was required. Without a hearing, the Vargases argue they were severely prejudiced because they were unable to challenge the Association's attorney's fees evidence. The Association responds that their motion was not in fact a motion to alter or amend judgment under Rule 2-534 but "a motion to enter a proposed order, which was never entered to begin with." The Association contends that, because their motion falls under the "other motions" section of Rule 2-311(f), no hearing was required because no party requested a hearing.

The Association's argument that their motion was not a motion to alter or amend judgment but a motion "to enter a proposed order" is a stretch we are unwilling to make. First, in the Association's three-page motion titled "Plaintiff's Motion to Alter or Amend Judgment," they repeat those words three additional times and specifically cite to Maryland Rule 2-534. Second, by the time they filed their alleged motion to "enter a proposed order," the court had already entered a recorded judgment. Additionally, we note that the circuit court thought the Association's motion was one to alter or amend a judgment, as it so stated in its later order. Under the circumstances, it is clear to us that the Association's motion was one to alter or amend the judgment under Rule 2-534 and, in granting the motion, the circuit court erred in not holding a hearing. Accordingly, we

shall vacate the judgment on attorney's fees and remand for the court to hold a hearing on that issue.

JUDGMENT GRANTING INJUNCTION AFFIRMED. JUDGMENT GRANTING ATTORNEY'S FEES VACATED AND CASE REMANDED FOR A HEARING ON ATTORNEY'S FEES CONSISTENT WITH THIS OPINION. COSTS TO BE PAID ½ BY THE APPELLANTS AND ½ BY THE APPELLEE.