

Circuit Court for Montgomery County
Case No.: C-15-CV-22-000978

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1872

September Term, 2022

JAMES PERKINS, ET AL.

v.

AMIR EYAL, ET AL.

Berger,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: September 18, 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 Maryland Rule 1-104(a)(2)(B).

This case arose out of a dispute over the creation of an easement on the property of James and Jessica Perkins (“Appellants”) for the benefit of the neighboring property owned by Amir and Jessica Eyal (“Appellees”). Both families acquired the right to purchase their properties from Sandy Spring Builders (“SSB”), which initially purchased both lots from the estate of Charles S. Faller, Jr. (the “Faller Estate”). SSB and the Faller Estate had previously agreed to cooperate in the creation of an easement on Lot 40, Appellants’ property, for the benefit of Lot 39, Appellees’ property.

When Appellants purchased SSB’s rights to Lot 40 in 2020, they assented to the creation of a septic easement, although there were no specific terms regarding the eventual easement outlined in the agreement at that time. When such terms were finalized by the Faller Estate, they included provisions allowing for tree removal, fence construction, and the awarding of attorneys’ fees to the prevailing party. Appellants were not a party to or made aware of these provisions.

As Appellees prepared to install a septic field in the easement area in late 2021, negotiations over fencing and the removal of trees in the easement area broke down. Appellants sent a cease-and-desist letter to Appellees, demanding they halt installation of the septic field and challenging the validity of the express easement created on Lot 40. Appellees responded by initiating this litigation in the Circuit Court for Montgomery County, seeking declaratory and injunctive relief. Both parties thereafter filed cross-motions for summary judgment. The circuit court granted Appellees’ motion for declaratory relief and cross-motion for summary judgment, awarding attorneys’ fees and

declaring the express easement on Lot 40 to be valid and enforceable. Appellants then filed a timely appeal in this Court.

We reverse the grant of declaratory relief and summary judgment and remand for further proceedings, holding that the agreement creating the express easement lacks the requisite mutual manifestation of assent. Appellants are estopped from challenging the validity of any easement on Lot 40, however, as Appellees detrimentally relied on Appellants' initial assent to the creation of an easement when purchasing Lot 39.

QUESTIONS PRESENTED

Appellants present two questions for our review, which we have recast and rephrased into three:¹

¹ Appellants presented the questions as follows:

- I. Did the circuit court err by granting summary judgment and declaring the Recorded Easement valid and enforceable, given that: (1) despite the appellants holding equitable title to the encumbered property, the Recorded Easement was drafted by the appellees and signed solely by the seller with bare legal title, without the appellants' knowledge or consent; and (2) the contract of sale did not create an easement, much less one contemplating the scope ultimately provided for in the Recorded Easement?
- II. Equitable estoppel "requires that the party claiming the benefit of estoppel must have been misled to his injury and changed his position for the worse," in reliance upon the *actions of the other party*. Did the circuit court err by holding that the doctrine of equitable estoppel barred the appellants' defense, despite the appellees' assertions that they relied on representations about the easement made by third parties or statements made by the appellants *14 months after closing*?

1. Is the matter on appeal before this Court now moot, given that Appellees have already installed the septic system on Appellants' property?
2. Did the circuit court err in granting Appellees' motion for summary judgment and declaratory judgment, thereby awarding attorneys' fees and upholding the validity of the easement on Lot 40?
3. Does the doctrine of equitable estoppel bar Appellants from challenging the easement's validity and enforceability?

We hold that the issue before this Court is not moot, as the dispute between the parties remains alive and we retain the ability to fashion an effective remedy to resolve this case. Additionally, we find that the circuit court erred in granting declaratory relief and awarding attorneys' fees to Appellees, as the agreement creating the express easement is invalid under the law. Lastly, we hold that Appellants are equitably estopped from challenging the easement's validity. As Appellees detrimentally relied on Appellants' initial assent to the creation of a septic easement on Lot 40 when purchasing Lot 39, Appellees have a septic easement by estoppel. Therefore, we reverse the circuit court's grant of Appellee's motion for declaratory relief and summary judgment, and remand for further proceedings consistent with this opinion.

BACKGROUND

Facts

The separate parcels of property at issue in this case arose out of a unified, single lot under the sole ownership of Charles S. Faller, Jr. In 1998, Mr. Faller divided the property into the present-day Lot 39 and Lot 40. Lot 40, now owned by Appellants, contained an existing house, while Lot 39, now owned by Appellees, was unimproved.

In May 2020, the Faller Estate entered into a Contract of Sale with SSB for both lots. On June 4, 2020, the Faller Estate and SSB signed a General Addendum, which stated that the parties would cooperate regarding the establishment of an easement in the rear right corner of Lot 40 for the benefit of Lot 39.

One week later, SSB assigned its rights to purchase Lot 40 to Appellants (“Perkins Assignment”). Under the terms of the Perkins Assignment, Appellants affirmed they understood a septic easement was being created on Lot 40 for the benefit of Lot 39, “either before settlement or immediately thereafter.” On June 16, 2020, SSB assigned its rights to purchase Lot 39 to Appellees (“Eyal Assignment”). The terms of the Eyal Assignment required SSB to deliver a perpetual easement, which Appellees would have the “sole and exclusive right” to use, as a condition precedent to closing the sale. Appellees claim they would not have purchased SSB’s rights to Lot 39 without such terms.

On June 22, 2020, Appellees sent SSB terms for a proposed easement agreement, which SSB approved the next day. The terms of the agreement were not shared with Appellants, although SSB informed them on August 20 that Montgomery County had approved a septic easement on the rear corner of their lot. On August 31, the Faller Estate signed a Sewage Disposal Easement Agreement (“Easement Agreement”). In addition to granting Lot 39 perpetual and exclusive access to the easement area on Lot 40 for “sewage disposal field needs,” the Easement Agreement also permitted the construction of a fence around the easement area and, in the event of litigation over a

breach of the Easement Agreement’s terms, recovery of the prevailing party’s attorneys’ fees. The Faller Estate closed on the sale of both properties on September 18, 2020, conveying Lot 40 to Appellants and Lot 39 to Appellees. The specific terms of the Easement Agreement, however, were not shared with Appellants until ten months after this closing date. It is not clear from the record whether Appellants ever requested to review the Easement Agreement prior to the conveyance. The Easement Agreement was recorded on November 5, 2020, six weeks after the closing date of September 18, 2020.

Over the next year, Appellants manifested a continuing assent to the existence of an easement on their property, if not to the exact terms of the Easement Agreement. Because Appellants were planning to renovate Lot 40 and sell it to a third party, they required building permits from Montgomery County, which in turn prompted the septic easement to be legally recorded on November 5, 2020. Additionally, from November 17, 2021, to December 4, 2021, Appellants and Appellees emailed to discuss terms regarding Appellees’ ability to access and manage the easement, including fencing and the removal of trees to aid in the installation of a septic field in the easement area. Their discussions concluded with Appellants assuring Appellees they would “stick to what was agreed to in the easement agreement.”

On December 10, 2021, however, Appellants sent a cease-and-desist letter to Appellees, demanding that they halt construction of a septic field on Lot 40 and refrain from accessing the easement area. In a letter sent by Appellants’ attorney to Appellees,

Appellants claimed the easement was not valid or enforceable. Appellees responded by initiating the litigation now before this Court.

Procedural History

Appellees filed suit on March 2, 2022, in the Circuit Court for Montgomery County, seeking declaratory relief that the easement on Lot 40 is valid and enforceable, an injunction against Appellants from blocking or obstructing access to the easement area, and the recovery of attorneys' fees.

The parties then proceeded to file cross-motions for summary judgment. In Appellants' motion, they argued that the easement was not valid or enforceable under the merger doctrine, as the Faller Estate was both grantor and grantee in the creation of the easement. Appellees' motion asserted that the doctrine of equitable estoppel should prevent Appellants from challenging the validity of the easement, as Appellees had relied to their detriment on Appellants' prior assent to the creation of an easement when purchasing Lot 39. The circuit court denied Appellants' motion for summary judgment, and subsequently denied the motion to reconsider filed shortly thereafter. The circuit court then granted Appellees' motion for declaratory relief and cross-motion for summary judgment on November 23, 2022, and declared the Easement Agreement valid and enforceable, enjoined Appellants from obstructing access to the easement area, and ordered that Appellants pay attorneys' fees.

Following this judgment, Appellants filed a motion in circuit court to stay the judgment pending appeal, which the circuit court denied. Appellants then filed an

emergency motion for injunctive relief in the Appellate Court, seeking to prevent Appellees from completing the installation of their septic system in the easement area, which was also denied. Appellees have since completed the installation of the septic system, as well as the construction of their family home. The circuit court’s order granting Appellees’ motion for declaratory relief and summary judgment is now on appeal before this Court.

STANDARD OF REVIEW

A circuit court’s grant of summary judgment is subject to *de novo* review on appeal. *Romeka v. RadAmerica II, LLC*, 485 Md. 307, 330 (2023). This Court will review the record to determine whether the parties have a “dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.” *Myers v. Kayhoe*, 391 Md. 188, 203 (2006). For the purposes of summary judgment, a “material fact is a fact the resolution of which will somehow affect the outcome of the case.” *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 174 (2011) (internal quotations omitted). This Court reviews the record “in the light most favorable to the non-moving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party.” *Rhoads v. Sommer*, 401 Md. 131, 148 (2007).

DISCUSSION

I. THE MATTER ON APPEAL IS NOT MOOT, AS THERE REMAINS AN EXISTING CONTROVERSY BETWEEN THE PARTIES AND THIS COURT RETAINS THE ABILITY TO FASHION AN EFFECTIVE REMEDY.

Appellees contend that the matter before this Court is moot. After the Easement Agreement was declared valid and enforceable by the circuit court, Appellees proceeded with their plan to install a septic system in the easement area, which has since been fully completed. As a result, Appellees argue they no longer have a live controversy with Appellants, and this Court lacks an effective remedy to resolve this case. For the following reasons, we disagree.

Under Maryland law, “a case is moot where there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy.” *Coburn v. Coburn*, 342 Md. 244, 250 (1996). Ineffective remedies include those which, “without any future action . . . would be without effect.” *Hayman v. St. Martin’s Evangelical Lutheran Church*, 227 Md. 338, 343 (1962). With these standards in mind, we hold that this case is not moot for two reasons: (1) this Court retains the ability to fashion an effective remedy, and (2) the controversy between Appellants and Appellees remains alive.

Regarding the first point, Appellees’ mootness argument falls flat because this Court remains fully capable of providing an effective remedy to resolve this dispute. If this Court so chose, it could reverse the circuit court’s order, declare the easement to be invalid and unenforceable, and order Appellees to dig up and remove the septic system

currently installed on Lot 40. *See Urban Site Venture II Ltd. P’ship v. Levering Assocs. Ltd. P’ship*, 340 Md. 223, 230 (1995) (stating that the court has the power to order the removal of encroaching structures and items on someone else’s property). While harsh to Appellees, such an order would undeniably provide an effective remedy for Appellants, and it is entirely within this Court’s power to provide. *Id.*

Turning to the second point, Appellees inaccurately assert that their controversy with Appellants ended with the installation of the septic system. Appellants object not only to the existence of an easement on their property, but also to the specific terms of the Easement Agreement, in particular those provisions regarding tree removal, fence construction, and attorneys’ fees. The controversy is therefore one of contract law as well as property law. The question to be answered is not just whether the easement on Lot 40 is enforceable, but also whether the entire Easement Agreement can validly bind both Appellants and Appellees. There remains an active dispute over the contractual viability of the Easement Agreement, particularly its provisions on tree removal, fence construction, and attorneys’ fees.

For these reasons, we reject Appellees’ assertion that this matter is moot.

II. THE CIRCUIT COURT ERRED IN GRANTING DECLARATORY RELIEF AND SUMMARY JUDGMENT BECAUSE APPELLANTS DID NOT ASSENT TO THE FINAL TERMS OF THE EASEMENT AGREEMENT.

The Easement Agreement is akin to a deed, and Maryland courts “construe deeds by using the rules of interpretation of contracts.” *Peters v. Emerald Hills Homeowners’ Ass’n, Inc.*, 221 Md. App. 338 (2015). Every contract requires a manifestation of mutual

assent to be valid under the law. *Cochran v. Norkunas*, 398 Md. 1, 14 (2007). For the reasons explained below, we hold that the Easement Agreement is lacking in this “essential prerequisite” and is, therefore, legally invalid.

“The generally accepted rule for an express easement is ‘that [because] an easement is a restriction upon the rights of the servient property owner, no alteration can be made by the owner of the dominant estate which would increase such restriction except by mutual consent of both parties.’” *Miller v. Kirkpatrick*, 377 Md. 335, 349 (2003) (citation omitted). The manifestation of mutual assent includes two primary elements: intent to be bound and definiteness of terms. *4900 Park Heights Ave. LLC v. Cromwell Retail 1, LLC*, 246 Md. App. 1, 28 (2020). When evaluating a party’s intent to be bound, courts consider the following factors: (1) the language of the preliminary agreement, (2) the existence of open terms, (3) whether partial performance has occurred, (4) the context of the negotiations, and (5) the custom of such transactions. *Id.* at 8. Additional factors may include: (1) whether the agreement has few or many details, (2) whether the amount involved is large or small, and (3) whether it is a common or unusual contract. *Cochran*, 398 Md. at 15. While each factor may be relevant, the most important is the language of the agreement. *Id.*

Regarding the definiteness of terms, “[i]f an agreement omits an important term, or is otherwise too vague or indefinite with respect to an essential term, it is not enforceable.” *4900 Park Heights Ave. LLC*, 246 Md. App. at 32; *see also Mogavero v. Silverstein*, 142 Md. App. 259, 272 (2002) (“For a contract to be legally enforceable, its

language must not only be sufficiently definite to clearly inform the parties to it of what they may be called upon by its terms to do, but also must be sufficiently clear and definite in order that the courts, which may be required to enforce it, may be able to know the purpose and intention of the parties.”). Furthermore, “the indefiniteness of terms bears upon the solution of both intent to be bound and definiteness of terms, because definiteness may show finality and the presence of an intention to be bound.” *Falls Garden Condo. Ass’n v. Falls Homeowners Ass’n*, 441 Md. 290, 305 (2015). Conversely, then, indefiniteness may suggest a lack of both finality and an intention to be bound.

In the instant case, Appellants agreed to the creation of an easement on their property “either before settlement or immediately thereafter.” Critically, no further details on the creation or management of that easement—such as those contained in the eventual Easement Agreement—were provided to Appellants at any time before closing. Appellees essentially argue that by agreeing to the creation of an open-ended septic easement on Lot 40, Appellants somehow also agreed to all of the terms contained in the Easement Agreement—that Appellants knew, or should have known, that the term “easement” would also encapsulate contractual provisions about removing trees, constructing fences, and awarding attorneys’ fees.² We reject this assertion as incompatible with the law.

² We understand that for the express purposes of the creation of a septic easement, the removal of trees may be necessary. However, we do not read the construction of

The Appellees may not increase the easement’s restrictions by including more terms such as the construction of a fence on the Appellants’ estate without mutual assent, which is absent here. *See Miller*, 377 Md. at 349. Appellees would perhaps have a stronger case if the term “easement” usually carried with it a general understanding and expectation that provisions such as the removal of trees, the construction of fencing, and the awarding of attorneys’ fees would be included. Nothing in the statutory or common law, however, supports the notion that even a sophisticated party, without more information, should anticipate that the creation of a simple septic easement would include such provisions. In fact, relevant law suggests just the opposite. Regarding attorneys’ fees, “Maryland follows the common law American Rule, which states that, generally, a prevailing party is not awarded attorney’s fees.” *Bainbridge St. Elmo Bethesda Apartments, LLC v. White Flint Express Realty Grp. Ltd. P’ship, LLLP*, 454 Md. 475, 486 (2017). Therefore, contracting parties are not expected to anticipate attorneys’ fees provisions when assenting to contracts which do not expressly list them—which the Perkins Assignment did not. *See id.*

The above demonstrates that the terms of the Perkins Assignment were not sufficiently definite for the Easement Agreement to be validly binding on Appellants. The only contract signed by Appellants was the Perkins Assignment, which merely stated that Appellants assented to the creation of a septic easement on their property. While the

fences or awarding of attorneys’ fees to be essential elements in the creation of a septic easement.

Easement Agreement’s only signatory was the Faller Estate, its language was proposed and drafted by Appellees. The end result was a document purporting to bind both Appellants and Appellees, but whose particular provisions were known only to Appellees. If Appellees, SSB, and the Faller Estate intended for Appellants’ assent to the creation of an “easement” on Lot 40 to encapsulate the terms outlined in the Easement Agreement, they should have either shared those terms with Appellants before closing or provided greater clarity in the Perkins Assignment. Without more, the Perkins Assignment is too indefinite to satisfy the requirement for mutual manifestation of assent and the Easement Agreement cannot bind Appellants.

For the above reasons, we strike down the Easement Agreement as legally invalid and hold that the circuit court erred in granting declaratory relief and summary judgment and awarding attorneys’ fees to Appellees.

III. THE DOCTRINE OF EQUITABLE ESTOPPEL SUPPORTS THE ENFORCEMENT OF A SIMPLE SEPTIC EASEMENT ON LOT 40 BECAUSE APPELLEES DETRIMENTALLY RELIED ON APPELLANTS’ INITIAL ASSENT WHEN PURCHASING LOT 39.

While the Easement Agreement’s precise terms are invalid and unenforceable, that does not mean Lot 40 is free of any easement whatsoever. Because Appellants initially assented to the creation of a septic easement on their property, and Appellees relied on that assent when purchasing Lot 39, we hold that Appellants are estopped from challenging the septic easement that exists on Lot 40 as a product of the Perkins Assignment.

“An easement may be created by express grant, by reservation in a conveyance of land, or by implication.” *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 174-75 (2011). “Easements 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.’” *Lindsay v. Annapolis Roads Property Owners Ass’n*, 431 Md. 274, 291 (2013) (citation omitted). Under the doctrine of equitable estoppel, one party’s voluntary conduct precludes that party from asserting “rights which might perhaps have otherwise existed . . . as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse.” *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 309 (2007) (quoting *Cunninghame v. Cunninghame*, 364 Md. 266, 289 (2001)). Equitable estoppel consists of three elements: voluntary conduct or representation, reliance, and detriment. *Cunninghame*, 364 Md. at 289. These elements are necessarily related: “The voluntary conduct or representation of the party to be estopped must give rise to the estopping party’s reliance and, in turn, result in detriment to the estopping party.” *Knill v. Knill*, 306 Md. 527, 535 (1986).

All elements of equitable estoppel are present in this case. Appellants’ assent to the Perkins Assignment, particularly its provision regarding the creation of a septic easement on Lot 40, satisfies the voluntary conduct element. Appellees relied on that assent when purchasing Lot 39, even asserting that they “would not have purchased Lot 39 without an easement for their septic system because, without it, they could not build their home.” Lastly, Appellees acted to their detriment in reliance on Appellants’ initial

assent to the creation of an easement on Lot 40. Appellees have spent significant sums to acquire Lot 39 and construct their home on its premises. Without Appellants' assent to the creation of an easement on Lot 40 for the benefit of Lot 39, Appellees would not have spent such money, or likely would have spent it elsewhere. Therefore, with all three elements of equitable estoppel present in the facts of this case, Appellants are estopped from challenging the validity of a septic easement that exists on Lot 40. Appellees have a septic easement by estoppel. *See Lindsay*, 431 Md. at 291.

Consequently, even though the Easement Agreement's precise terms—as drafted and agreed to by Appellees, SSB, and the Faller Estate—are invalid and unenforceable, Appellants are nonetheless estopped from challenging the validity of any septic easement on Lot 40 whatsoever.

CONCLUSION

For the reasons outlined above, we hold that the Easement Agreement is invalid and unenforceable. Appellants cannot have manifested assent to an agreement the terms of which they never saw, just as Appellees cannot expect Appellants' initial assent to the creation of a simple septic easement on Lot 40 to somehow mean they also agreed to all the terms outlined in the eventual Easement Agreement.

Appellants are estopped, however, from challenging the validity of any septic easement on Lot 40 whatsoever. By assenting to the creation of a septic easement on their property in the Perkins Assignment, Appellants engaged in voluntary conduct which Appellees properly and detrimentally relied upon in purchasing Lot 39. While the

Easement Agreement's particular provisions are invalid, there nonetheless remains a valid and enforceable septic easement by estoppel on Lot 40.

It is for the circuit court to determine what precise terms and conditions should govern the septic easement by estoppel based on the facts of this case, but it may not include the construction of a fence and/or attorneys' fees. For that reason, we reverse the circuit court's order granting declaratory relief and summary judgment and awarding attorneys' fees, and remand for further proceedings consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
REVERSED. CASE REMANDED TO THE
CIRCUIT COURT FOR PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLEES.**