Circuit Court for Montgomery County
Case No. 422196-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 136

September Term, 2018

DENNIS O. KANE, ET UX.

v.

BRENT N. RUSHFORTH, ET UX.

Graeff,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: May 16, 2019

This case involves two adjacent parcels of property in the Potomac Falls subdivision of Potomac, Maryland. Appellants, Dennis and Kecia Kane, ("the Kanes") reside at 11110 Cripplegate Road ("Lot 55"). This lot abuts appellees, Brent and Marilyn Rushforth's, ("the Rushforths") property at 11112 Cripplegate Road ("Lot 54"), where they have resided for approximately thirty-two years. The Rushforths filed a complaint for declaratory judgment and injunctive relief against the Kanes in the Circuit Court for Montgomery County regarding easements. Following a bench trial, the court issued a Memorandum Opinion and Order granting a prescriptive easement in favor of the Rushforths and enforcing the terms of a maintenance easement. The Kanes filed a timely appeal to this Court and present the following questions for our review:

1. Did the circuit court err in concluding that the Rushforths have a prescriptive easement across the Kane property, including admitting testimony by an attorney on questions of law?

    a. Alternatively, if the circuit court was correct in recognizing a prescriptive easement, did it err in not concluding that the access easement (asserted to be intended for the driveway) was abandoned and should be extinguished?

2. Did the circuit court err in concluding that the Kanes' perimeter fence, which went around a portion of the maintenance easement, impermissibly interfered with the maintenance easement and had to be removed, including admitting testimony by an attorney on questions of law and excluding evidence of other chain link fences in the neighborhood?

3. Did the circuit court err in concluding that the Rushforths did not commit a trespass or trespass to chattels, when they entered the Kane property and took down and damaged the fence?

4. Did the circuit court err in granting additional injunctive and other relief without articulated reasons, which is vague, ambiguous, indefinite, inconsistent with the nature and terms of the easements, and otherwise

unwarranted in law or fact.

For reasons set forth below, we shall affirm.

BACKGROUND

In 1978, the Rushforths purchased a five-acre parcel of land ("Lot 21"). The Rushforths subdivided Lot 21 in 1985, creating Lots 54 and 55—with the intention to reside on Lot 54 and to sell Lot 55. The Rushforths signed a plat of re-subdivision, which identifies two easements for the benefit of Lot 54. The first is a maintenance easement, which "is intended to allow the owner of Lot 54 [the Rushforths] to place and maintain for aesthetics purposes landscaping." The second easement is an access easement, which, according to the Rushforths, was intended for their driveway. However, instead of the driveway being exclusively inside of the access easement, only a portion of it crosses the access easement.

In 1986, the Rushforths sold Lot 55 to Bill and Madelyn Stephens ("the Stephenses"). Shortly thereafter, the Stephenses conducted a survey of the property to determine the potential location of a fence. The survey revealed that the driveway to the Rushforths' property was not exclusively inside of the access easement as it crossed over Lot 55. As a result of the survey, Mr. Stephens had a conversation with Mr. Rushforth to inform him about the driveway. He did not ask the Rushforths to stop using the driveway and allowed the driveway to remain where it was.

In 2005, Lot 55 was sold to Dennis and Kecia Kane. In a letter addressed to Mr. Rushforth, dated April 25, 2013, Mr. Kane stated a desire to install a fence; that the Rushforth's driveway was not entirely on the access easement; and proposed an exchange

of land. The Rushforths declined to exchange land and in 2013, through counsel, the Rushforths wrote Mr. Kane to inform him that they were claiming a prescriptive easement on the area where their driveway intersected Lot 55. In June 2014, the Kanes obtained permits to install a fence. In September 2016, the Kanes completed the installation of the fence, a portion of which was constructed in the maintenance easement adjacent to the Rushforths' driveway. In December 2016, without notice to the Kanes, the Rushforths removed the fence.

The Rushforths commenced litigation against the Kanes, filing a complaint on June 10, 2016, in which, the Rushforths claimed they had perfected an easement by prescription, through their use of the driveway. On November 29, 2017, the Rushforths amended their complaint to include, *inter alia*, that the Kanes' installation of the fence interfered with their use of the maintenance easement. The Kanes filed a counterclaim on August 19, 2016, maintaining that the Rushforths had not established a prescriptive easement and that the maintenance easement was extinguished by abandonment. In their February 3, 2017 amended counterclaim, the Kanes asserted an additional claim that the Rushforths committed trespass by entering onto their property to remove the fence. Following a five-day bench trial held on October 30, 2017, the court found that the Rushforths had established a prescriptive easement across the Kanes property, required the Kanes to remove all fencing located within the maintenance easement, and denied the Kanes' trespass claim. This timely appeal followed.

DISCUSSION

I. The circuit court did not err in concluding that the Rushforths have a prescriptive easement across the Kanes' property. Alternatively, the circuit court did not err in determining that the access easement was not abandoned and thus, extinguished.

i. The circuit court correctly determined the existence of a prescriptive easement in favor of the Rushforths.

On appeal, our review of whether an owner's "use of [a] disputed area established a prescriptive easement, is a legal question . . . Therefore, we will review the issue *de novo*." *Turner v. Bouchard*, 202 Md. App. 428, 442–43 (2011). "Whether the circuit court properly assigned the burden of proving the elements of a prescriptive easement" is also a legal question subject to *de novo* review. *Id.* at 443. However, the circuit court's conclusion that the servient owner failed to meet the burden of showing a permissive use is a factual determination, and is thus, reviewed under the clearly erroneous standard. *Id.*

The Kanes argue the circuit court erred in determining that the Rushforths have a prescriptive easement across their property. Conversely, the Rushforths assert that the court's determination was proper. An easement is a nonpossessory interest in the real property of another which can be created expressly or by implication. *Id.* at 441. "One type of easement created by implication is an easement by prescription, which arises when a party makes an adverse, exclusive, and uninterrupted use of another's real property for twenty years." *Jurgensen v. New Phoenix Atl. Condo. Council*, 380 Md. 106, 122–23 (2004) (internal citations and quotations omitted). "Adverse use is established when the use is without license or permission." *Turner v. Bouchard*, 202 Md. App. 428, 448 (2011) (explaining that "the use of a way over the lands of another whenever one sees fit, and

without asking leave, is an *adverse use*") (emphasis in original). It is well established that "as a general rule, a permissive use of another's land cannot ripen into a prescriptive easement." *Jurgensen*, 380 Md. 106 at 123.

The party claiming to have established a prescriptive easement has the burden of demonstrating that "it has had the character and is of the duration required by law." *Dalton v. Real Estate Imp'v't Co.*, 201 Md. 34, 41 (1952). However, adverse use is presumed "when a person has used a right of way openly, continuously, and without explanation for twenty years." *Turner v. Bouchard*, 202 Md. App. 428, 443 (2011); *see also*, *Kirby v. Hook*, 347 Md. 380, 392 (1997). Under such circumstances, "[t]he burden then shifts to the [servient] landowner to show that the use was permissive." *Id.* (internal citations omitted). To show permissive use, "the servient owner must do more than merely present evidence of permission—he or she must prove its existence by affirmative evidence . . . merely presenting 'some evidence' of permission will not overcome the presumption of adversity in this State." *Mavromoustakos v. Padussis*, 112 Md. App. 59, 68–69 (1996).

Here, the Kanes argue the trial court improperly presumed adverse use because "a presumption of adverse use is created only when there is an absence of any evidence which would indicate that the use was permissive," and the court therefore erred in shifting the burden to them to show the use was permissive. In our view, the trial court's presumption of adverse use was proper, and therefore, the burden was correctly shifted to the Kanes. The court noted "there was no suggestion by any party that the Rushforths' claim was dependent on the use of another. The Rushforths have used the driveway as their exclusive

means of going to and from their house on a daily basis for the past thirty plus years." Further, the court recognized that "the Rushforths' driveway has been located in the same location, continuously, and without interruption since the construction of their residence more than thirty years ago." The court concluded that "[b]ecause the Rushforths' ha[d] been openly and continuously using their driveway for more than twenty years without explanation, adversity is presumed and the burden shifts to the Kanes to prove the use was permissive." We hold the court properly, in accordance with applicable case law, shifted the burden to the servient landowner, the Kanes.

The Kanes argue further that even if the burden shift was proper, they satisfied their burden of showing the use was permissive. To support their argument, the Kanes rely on the testimony of Mr. Stephens, a previous owner of Lot 55. During trial, Mr. Stephens testified by *de bene esse* video deposition. When asked about the conversation he had with Mr. Rushforth regarding the survey of Lot 55, Mr. Stephens testified:

> Q. And following your review of that survey, did you have a conversation with Mr. Rushforth about that survey?
>
> A. Yeah, I -- I remember having some sort of discussion. And -- and it wasn't like, oh my gosh, look the Rushforths are on our property. Whatever. It was -- it was along the lines of, do you -- you know, we got this survey. Did you -- you know, we noticed that your driveway is on our -- is on the corner of our property. No big deal. I don't really care, but if you want to clean this up, if you want to change the easement, if you want to give us a little piece of land up here and you take that land down there, that's fine with me. I -- I don't care but the next people that -- that live here might care.
>
> Q. Okay.
>
> A. And -- and so it was that sort of a general discussion. It wasn't -- I literally -- it was over the hill, it didn't matter to us. I mean, it just didn't matter.

Q. Is -- you mentioned an easement along the property line.

A. Right.

* * *

Q. At the time that you had the conversation with Mr. Rushforth where you pointed out this situation to him, did you believe you had the right to prevent them from continuing to use the driveway in its then present location?

A. I wouldn't -- I -- I was thinking about rights. I didn't -- I didn't care. I just didn't care. It didn't -- it -- it meant -- it was over the hill, you know, they were nice people, we weren't -- no. It wasn't like, we got -- we got right here or something. It never -- it never crossed my mind.

* * *

Q. Did you ever ask the Rushforths to discontinue use of the driveway in its present location?

A. No.

Q. Did you ever give the Rushforths a permanent right to use the driveway in its present location?

A. I mean, I -- I don't know what you mean by right. I mean, we just never -- it never -- how do I say -- just business as usual. I mean, it wouldn't -- I wasn't thinking about giving rights or permissions or – you know, just keep -- use it. We don't -- we don't care, but there is an issue there that someday probably you want to take care of.

Q. Following that conversation did you and Mr. Rushforth have any other conversations regarding the driveway?

A. I -- I don't think so, no.

* * *

Q. Okay. And at the time you executed the affidavit in September of 2016, was it true and accurate?

A. Yes, to the best of -- again, to the best of my recollection.

Q. Okay. And does it remain true and accurate to the best of your recollection today?

A. Yes, it does. As I reread it, there is -- there is a couple words that I probably would have defined further. But I mean, permission, I -- don't -- I don't know -- they continued to use the driveway without our permission. I don't -- this is about rights and permission. We just

> didn't get into that. It was fine, just leave things the way they are, but there is an issue there that you ought to solve . . . .

After considering the testimony of Mr. Stephens, the circuit court reasoned as follows:

> The evidence at trial does not support any finding that the Kanes (or any previous owner of Lot 55) granted the Rushforths permission to keep their driveway where it was. At most, the evidence shows the Kanes knew the Rushforths' driveway encroached on Lot 55 and failed to object within the twenty-year period. Likewise, the video deposition *de bene esse* of William K. Stephens who, with his wife, purchased Lot 55 in April 1986 and resided there until June 1999, shows that they did not object to the driveway being there but also did not give permission. Significantly, in his deposition Mr. Stephens stated that during a conversation about the driveway he was not "thinking about giving rights or permission" and that [the Rushforths] continued to use the driveway without our permission."
>
> . . . .
>
> Even the [prior] owner's testimony cannot establish permissive use, given that Mr. Stephens didn't have the subjective intent to grant permission. Without some other direct or circumstantial evidence showing that permission was actually granted, the most the [Kanes] have shown is that the Stephens and the Kanes acquiesced to the Rushforths' driveway crossing Lot 55. Based on the foregoing evidence, the [c]ourt finds that the Rushforths have established a prescriptive easement for the location of their driveway.

According to the Kanes, the circuit court erred in finding mere acquiescence and "ignored that implied permission suffices to defeat a prescriptive easement." We disagree. "Acquiescence is the inactive status of quiescence or unqualified submission to the hostile claim of another, and is not to be confused with permission, which denotes a grant of permission in fact or a license." *Dalton v. Real Estate Imp'v't Co.*, 201 Md. 34, 49–50 (1952). Furthermore, "the mere failure to protest is not permission but acquiescence." *Id.* at 50.

Here, the court's finding that Mr. Stephens failed to grant permission and merely acquiesced to the Rushforths' continued use of the driveway was not error. During Mr. Stephens' conversation with Mr. Rushforth regarding the Rushforths' use of the driveway, Mr. Stephens stated, he "wasn't thinking about giving rights or permission" and the Rushforths "continued to use the driveway *without [the Stephenses] permission*." (Emphasis added). In addition, Mr. Stephens testified that once he found out about the location of the driveway "it didn't matter" and he "didn't care." Such evidence supports a failure to protest and the court's conclusion of mere acquiescence. *See Mavromoustakos v. Padussis*, 112 Md. App. 59, 71–72 (1996) (noting, "when there is only a failure to protest, the only possible interpretation of that failure is as acquiescence to the hostile claim of another."). Furthermore, the Kanes, as the current owners of Lot 55, have not provided any evidence that they granted permission to the Rushforths to keep the driveway in the disputed location.

ii. The circuit court properly determined the Kanes did not establish permissive use.

The Kanes argue that the circuit court failed to consider other surrounding circumstances that established permissive use. The Kanes assert that the driveway existing within a portion of the access easement and the maintenance easement established permissive use with respect to those areas. The Kanes cite *Feldstein v. Segall* for the proposition that an express easement may be widened by prescription, "[b]ut use originally permissive or of right is presumed to continue, and there must be affirmative evidence of change to adverse use." 198 Md. 285, 295 (1951). In *Feldstein*, the trial court found Feldstein had established an expanded prescriptive easement on a portion of an existing

express easement. *Id.* at 294. The Court of Appeals reversed, holding that Feldstein's use of the servient tenement was with permission of a prior owner, and "was so miscellaneous and promiscuous that it could not be called either adverse or exclusive." *Id.* at 295.

In *Turner v. Bouchard*, this Court examined *Feldstein*. 202 Md. App. 428, 444–46 (2011). The appellant in *Turner* relied on *Feldstein* for the proposition that the dominant tenant's use of the disputed area was permissive, arguing that under *Feldstein*, "an express easement cannot be enlarged by prescription unless the dominant tenant can show affirmative evidence of a change to adverse use." *Id.* at 445. In rejecting appellant's argument, the Court in *Turner* made clear that "under *Feldstein*, the mere existence of an express easement does not necessarily create a presumption that a use in excess of that express easement is permissive." *Id.* The Court noted that *Feldstein* was distinguishable from *Turner* because a prior owner of the servient tenement gave the easement holder permission to cross his property and it was only because of this permissive use that "the burden shift[ed] to the easement holder to show affirmative evidence of a change to an adverse use." *Id.* In addition, the Court reiterated that the use of the servient tenement in *Feldstein* was so "miscellaneous and promiscuous" that it failed to meet the exclusive or adverse requirements of a prescriptive easement. *Id.* Further, the Court recognized that in most cases, an enlarged easement by prescription does not arise because of a failure to meet "the elements necessary to create it."

In the present case, the location of the prescriptive easement is undisputed, a portion of it exists on the access easement and the maintenance easement. However, as stated

prior, the Kanes fail to point to any evidence that this use was given by permission. Thus, the burden did not shift to the Rushforths to "show affirmative evidence of a change to an adverse use," as was the case in *Feldstein*.

The Kanes argue that because both the maintenance and access easements were express easements on which the driveway runs, the use of those portions of property is permissive. However, "[t]he owner of the dominant tenement is entitled to use the easement only in such manner as is fairly contemplated by his grant." *Miller v. Kirkpatrick*, 377 Md. 335, 350 (2003). Here, the Rushforths' use of the disputed area was in excess of the use granted by deed, as the maintenance easement grants use for aesthetic purposes—not for a driveway. Absent other evidence of permission, we cannot presume that the Rushforths' use of the disputed area was permissive merely because of the prior grant of an express easement. *See Turner v. Bouchard*, 202 Md. App. 428, 445 (2011) ("the mere existence of an express easement does not necessarily create a presumption that a use in excess of that express easement is permissive."). Thus, the Rushforths' use of the disputed area was adverse rather than permissive.

iii. The circuit court did not err in its consideration of expert witness testimony.

The Kanes suggest that the circuit court erred in relying on expert testimony, specifically Mr. Llewellyn, for his legal conclusions that "Mr. Stephens didn't have the subjective intent to grant permission," and "that a fence in the maintenance easement is prohibited." This argument is without merit. The court's Memorandum Opinion relied heavily on applicable Maryland case law, as well as evidence offered at trial, including Mr.

Kane's testimony, Mr. Stephens *de bene esse* video deposition, and the language of the maintenance easement. During trial, the court allowed the expert witness to give testimony, however, nothing in the record indicates the court relied on this testimony or the expert's opinion. Further, the testimony was cumulative of other evidence previously adduced at trial and legal sources readily available to the court. In regard to permissive use, the court noted:

> Because the Rushforths' have been openly and continuously using their driveway for more than twenty years without explanation, adversity is presumed and the burden shifts to the Kanes to prove the use was permissive. *See Mavromoustakos*, 112 Md. App at 68–69 (specifying that the servient owner must do more than merely present evidence of permission -- he or she must *prove* its existence by affirmative evidence); *see also Clickner*, 424 Md. at 281–82 (" . . . when a person has used a right of way openly, continuously, and without explanation for twenty years, it is presumed that the use has been adverse under a claim of right . . . [t]he burden then shifts to the landowner to prove that the use was, in fact, permissive.").

Relying on Maryland authority, the court reasoned that the Kanes did meet their burden of showing permissive use because "the evidence at trial [did] not support any finding that the Kanes (or any preceding owner of Lot 55) granted permission" and "even the [prior] owner's testimony cannot establish permissive use, given that Mr. Stephens didn't have the subjective intent to grant permission." Nowhere in the court's memorandum did it indicate that it relied on expert testimony to reach its conclusion.

Further, in addressing the interference of the Kanes' fence with the maintenance easement, the court relied on *Miller*, stating:

> *Miller* cites a long history of Maryland cases that discuss the dominant tenement's right to use of the whole easement granted. *See Bump*, 37 Md. at 627–28 (finding that a grant of an express easement includes right to use of "the last inch [of the land granted] as well as the first inch").

After citing case law, the court made mention of expert testimony, stating:

> When asked about building a fence over the maintenance easement, the [p]laintiffs' expert witness at trial, Mr. Llewellyn, opined that "there is no question under Maryland law that is prohibited . . . there is a whole line of Maryland cases [] on easements about the first inch to the last inch that they have the right to the whole easement area."

However, the court included an abundance of relevant evidence to support its conclusions. We cannot assume the court relied on expert witness testimony in making its legal determinations where the court declined to reference it.

iv. The access easement is not extinguished by abandonment.

In the alternative, the Kanes argue that if the circuit court was correct in recognizing a prescriptive easement, it was error for the court to determine that the access easement was not abandoned and thus, extinguished. During trial, appellant did not raise this issue. Instead, in their amended counterclaim, the Kanes requested the court to "determine and adjudicate the rights and obligations of the parties with respect to the *maintenance easement*; and [] find and declare that all or a portion of the *maintenance easement has been extinguished, forfeited or abandoned* by misuse and or/non-use." (Emphasis added). Maryland Rule 8-131(a) provides that, except for jurisdiction of the trial court, "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule 8-131(a). Because this issue was not properly preserved for appeal, we decline to review it.

II. The circuit court did not err in determining the Kanes' perimeter fence impermissibly interfered with the maintenance easement.

Appellants argue the court erred in ordering the removal of the Kanes' perimeter fence as it interfered with the Rushforths' full use of the maintenance easement. Conversely, the Rushforths assert that the court's determination was not error. In rendering its decision, the court cited the Court of Appeals opinion *Miller v. Kirkpatrick*, 377 Md. 335 (2003). In *Miller*, a twenty-foot wide easement was granted over the Kirkpatricks' property to allow for ingress and egress to the Millers' property. *Id.* at 342. After the relationship between the Kirkpatricks and Millers soured, Mr. Kirkpatrick installed two parallel barbed wire fences along the access road. *Id.* at 342–43. The fences interfered with the Millers' ability to use or maintain forty percent of the right-of-way and prevented direct access from the right-of-way to the Millers' farm fields. *Id.* at 343. The circuit court refused to order removal of fences from the right-of-way, and the Court of Special Appeals affirmed. *Id.* at 347.

The Court of Appeals reversed, holding that the lower courts "should not have concerned themselves with whether the Kirkpatricks' alteration of the easement, by installation of the fences, afforded the Millers reasonable access to their home and farm property." *Id.* at 348. Instead, the Court concluded that "the Kirkpatricks, standing in chain of title as grantors of an express easement, may not unilaterally narrow the right-of-way easement from twenty feet to twelve feet by the installation of the fences." *Id.* The Court reasoned that the Millers had the right to the entirety of the express easement and that installation of the fences were unreasonable because "it is axiomatic that the owner of a servient tenement cannot close or obstruct the easement against those who are entitled to

its use in such manner as to prevent or interfere with their reasonable enjoyment." *Id.* at 350 (quoting *Maddran v. Mullendore*, 206 Md. 291, 297 (1955)). The Court further concluded, "*any interference* of a permanent nature within a right-of-way that obstructs an express easement, created by reservation, for ingress and egress is unlawful as a matter of law and should be ordered removed." *Id.* at 354 (emphasis added).

In the instant case, the court properly relied on *Miller*, observing that the question is not whether the Kanes' actions "unreasonably interfered" with the Rushforths' use of the maintenance easement, but rather was there "any interference of a permanent nature within a right-of-way that obstructs an express easement" (citing *Miller*, 377 Md. at 354). The language of the maintenance easement states its intended purpose is "to allow the owner of Lot 54 to place and maintain for aesthetic purposes landscaping such as shrubbery, ornamental trees, annual perennial plants and mulch within the easement." The court properly concluded, the Kanes impermissibly interfered with this intended purpose by erecting a fence.

The Kanes, however, insist that *Miller* does not render the fence *per se* unreasonable because the fence contains a gate through which the Rushforths could still access the maintenance easement, and, unlike the easement in *Miller*, the maintenance easement is not an easement for ingress and egress. In our view, *Miller* stands for the general proposition that one party may not act unilaterally to cause any interference that obstructs an express easement, such an obstruction is unlawful and should be ordered removed. The

fact that the fence contains a gate[1] does not defeat this proposition because the fence not only disrupted access, it directly interfered with the Rushforths' right to control the aesthetics of the easement. *See Bump v. Sanner*, 37 Md. 621, 627–28 (1873) (the grant of a right to use a piece of property includes "the last inch as well as the first inch," and a fence or obstruction placed upon it by the servient tenement is an invasion of the dominant tenement's rights); *see also Miller v. Kirkpatrick*, 377 Md. 335, 356 (2003) (citing *Waldschmidt v. Vito*, 228 Md. 328, 330 (1962)) ("When an easement has been located by mutual agreement of the parties and granted by deed, the express easement cannot thereafter be obstructed physically by one party acting unilaterally."). We hold the Kanes' unilateral erection of a fence across a portion of the maintenance easement interfered with the Rushforths' use of the whole easement, and thus, the circuit court properly ordered its removal.

III. The circuit court did not err in determining that the Rushforths were not liable for trespass or trespass to chattels.

The Kanes contend the circuit court "erred in concluding that the Rushforths did not commit a trespass or trespass to chattels, when they entered the Kane property and took down and damaged the fence."

As explained prior, the Kanes' fence interfered with the Rushforths' use of the maintenance easement and as the Court of Appeals explained in *Maddran v. Mullendore*:

> where anyone unlawfully obstructs an easement, a person whose rights are interfered with need not resort to an action at law for damages or a suit in

[1] Both parties concede that the Kanes lock the gate with a combination lock. When asked how the Rushforths gain access to the maintenance easement with a locked gate, Mrs. Kane responded, "they can ask [her or Mr. Kane.]"

> equity for an injunction, but may abate the nuisance by removing the obstruction, provided that he does so in such a manner as not to disturb the public peace or to put innocent persons or their property in peril.

206 Md. 291, 299 (1955) (internal citations omitted). Accordingly, the Rushforths' had a right to enter upon the maintenance easement to remove the fence. Thus, the court did not err in concluding the Rushforths did not commit trespass.

IV. The circuit court did not err in granting additional injunctive and other relief.

Finally, the Kanes argue that the circuit court erred in ordering injunctive and other relief without specificity. The Kanes described the following four statements in the circuit court's order as "vague, ambiguous, indefinite, unexplained, and inconsistent with the easements:"[2]

> 1. The [Kanes] shall immediately remove all fencing located within the maintenance easement and/or the access easement on their property and shall be prohibited from the construction of any future fencing or other permanent structure of any kind in the maintenance easement and access easement.
> 2. The [Kanes] may not interfere with or inhibit the [Rushforths'] access of and to the maintenance easement, access easement and/or prescriptive easement.
> 3. Any use of the maintenance easement by [the Kanes] shall not affect, limit or infringe the [Rushforths'] right to place and maintain for aesthetic purposes landscaping such as shrubbery, ornamental trees, annual and perennial plants and mulch within the easement; and
> 4. The [Kanes'] may not install any landscaping or take any actions that would affect the aesthetics of the maintenance easement without the express consent of the [Rushforths] (including, but not limited to, the dumping of leaves and lawn waste or the redirection of water onto the easement).

[2] With respect to the Kanes' contention regarding withdrawal of their claims as to the septic easement, we hold that the court's order relating to the septic easement was surplusage.

Generally, a party seeking an injunction "has been required to demonstrate irreparable harm in order for the writ to issue." *Namleb Corp. v. Garrett*, 149 Md. App. 163, 173 (2003) (citing *El Bey v. Moorish Science Temple of America, Inc.*, 362 Md. 355, 765 (2001)). "The harm need not be great, however, and it is irreparable when it cannot be measured by any known pecuniary standard." *Id.* The decision to grant or deny a request for injunctive relief rests within the sound discretion of the circuit court and is therefore, reviewed under an abuse of discretion standard. *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 394 (2000) (citations omitted). An abuse of discretion occurs when "no reasonable person would take the view adopted by the [trial] court[.]" *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312, (1997) (brackets in original)).

Maryland Rule 15-502 provides that "an order granting an injunction shall be in writing, be specific in terms, and describe in reasonable detail . . . the act sought to be mandated or prohibited." Md. Rule 15-502. Therefore, an order granting an injunction should be "sufficiently specific to give a defendant a fair guide as to that expected of him." *Harford County Education Ass'n v. Bd. of Education*, 281 Md. 574, 587 (1977). What constitutes a "fair guide" varies, thus, such a determination is made on a case-by-case basis. *See Chesapeake Outdoor Enterprises, Inc. v. Mayor and City Council of Baltimore*, 89 Md. App. 54, 78 (1991) ("Because what constitutes a 'fair guide' may vary, cases tend to be somewhat fact-specific."). In addition, "an order need not be absolutely comprehensive in order to satisfy the requirements of the Rule; the Rule requires only 'reasonable detail.'"

Id.; *see also Scandia Down Corp. v. Euroquilt, Inc.*, 772 F.2d 1423 (7th Cir.1985), *cert. denied* 475 U.S. 1147, (1986) ("the Rule[3] does not require the impossible. There is a limit to what words can convey. The more specific the order, the more opportunities for evasion").

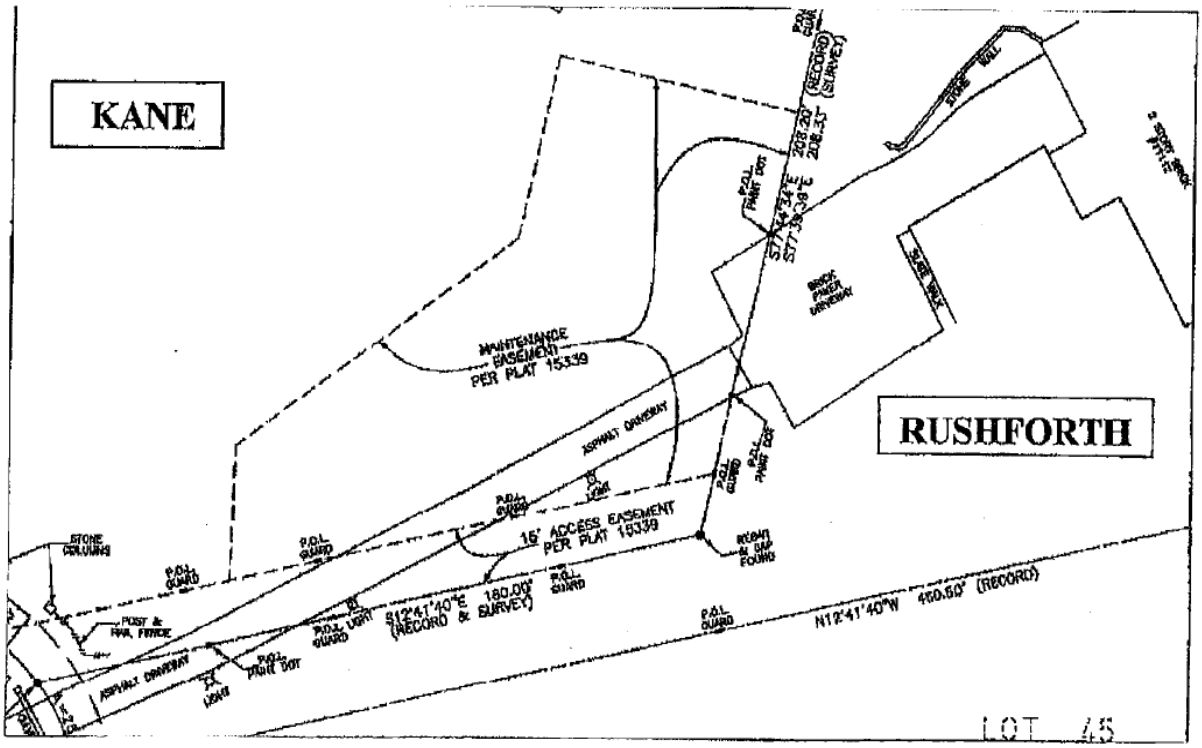
Here, the court's order is not impermissibly vague. It provides sufficient detail as to the actions the Kanes must take, as well as the prohibitions. In light of the facts of this case, we are satisfied that the court acted within its discretion in granting injunctive relief as it relates to the access and maintenance easements.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[3] Referring to Federal Rules of Civil Procedure Rule 65 (d)(1): Every order granting an injunction and every restraining order must:

A. state the reasons why it issued;
B. state its terms specifically; and
C. describe in reasonable detail--and not by referring to the complaint or other document--the act or acts restrained or required.

EXHIBIT


KANE
RUSHFORTH
MAINTENANCE EASEMENT PER PLAT 15339
16' ACCESS EASEMENT PER PLAT 15339
ASPHALT DRIVEWAY
BRICK PAVER DRIVEWAY
STONE WALL
STONE CURBING
POST & RAIL FENCE
P.O.L. GUARD
P.O.L. POINT OUT
S12°41'40"E 180.00' (RECORD & SURVEY)
N12°41'40"W 460.50' (RECORD)
LOT 45