Circuit Court for Baltimore City
Case No. 24-C-18-000018

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 287

September Term, 2019

CHERYLE WILSON

v.

CHRISTINA DONALD

Leahy,
Wells,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: December 14, 2020

The genesis of this appeal is a boundary line dispute between adjoining property owners in the Hamden neighborhood of Baltimore City. Appellant, Cheryle Wilson, defendant below, asks this Court to reverse the grant of declaratory judgment in favor of appellee, Christina Donald, plaintiff below. Appellant also challenges the extent of the relief granted by the Circuit Court for Baltimore City, including an award of both compensatory and punitive damages.

Appellee initially sought declaratory relief and temporary injunctive relief, based on the boundary dispute, before appellant began construction of a house based on what appellant considered to be the existing boundary. Despite the pending litigation, appellant began and continued with construction of a house, thereby exacerbating the dispute. With that, appellee amended her complaint and requests for relief.

Following a bench trial, the court granted declaratory judgment determining the boundary, a permanent injunction, and a $50,000 punitive damages award against appellant. In response to post-trial motions, the judgment was later revised to include an additional award of $1,000 in compensatory damages.

Questions Presented

Appellant present four questions,[1] which we have distilled to essentially two issues:

[1] In her opening brief appellant asks:

1. When the trial court gave weight to a measurement over a call to a monument in contravention of more than 100 years of controlling Maryland precedent did the trial court properly interpret a deed?

2. Given that the evidence in the record in the form of testimony from two surveyors, who were hired by opposing parties, established that a trespass

(1) whether the trial court erred in granting declaratory judgment; and

(2) whether the court abused its discretion in its award of both compensatory and punitive damages.

For the reasons that follow, we shall affirm the trial court's grant of declaratory and injunctive relief, but we shall return this case to the circuit court for further proceedings on the issue of damages.

I. BACKGROUND

Sequence of Underlying Events

At issue in this appeal is the boundary line between two small neighboring lots in the Hampden neighborhood of Baltimore City, identified as 3527 (Wilson) and 3529 (Donald) Hickory Avenue.

In April 2016, appellee, then a recent law school graduate, purchased the property located at 3529 Hickory Avenue for $110,000 through a short sale, the deed for which was then recorded in the land records of Baltimore City. The deed provided the following description:

> Beginning for the same on the easternmost side of Hickory Avenue at the Northwest corner of Lot No. 96, on the Plat of Hampden Association, said

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did not occur did the award of compensatory damages have a factual basis and did the trial court apply the appropriate legal standard to arrive at this award?

3. When the compensatory damage award is contrary to the evidence presented and when the factors for awarding punitive damages are ignored can a punitive damage award be upheld?

4. Given that the only evidence in the record demonstrated that a trespass did not occur was the trial court's finding that the structure constructed by Ms. Wilson trespassed on Ms. Donald's property clearly erroneous?

> point being also the beginning of the whole lot of ground hereinafter referred to; and running thence Southerly binding on the Easternmost side of Hickory Avenue Fourteen feet Ten inches to a point in line with the center of the partition wall between the house on the lot now being described and the house on the lot adjoining thereto on the South; thence Easterly to and through the center of said partition wall and continuing the same course in all One Hundred Twenty-five feet, more or less, to the West side of an alley, Ten feet wide there situate; thence Northerly on the West side of said alley, with the use thereof in common, Fourteen feet Ten inches to intersect the dividing line between Lot Nos. 96 and 99 on said Plat; and thence Westerly binding on said dividing line One Hundred Twenty-five feet, more or less, to the place of beginning.

At the time of the sale, an existing, but abandoned, house stood on the property, which appellee describes in her brief as "a dilapidated, free standing, detached structure with a large tree directly next to and south of that structure." Appellee purchased the property intending to demolish the existing "dilapidated structure" and build a house to be her home. Not until several months after she acquired title did appellee have the house razed and removed. After the house was removed in April 2017, the lot remained unimproved.

The neighboring property at 3527 Hickory Avenue had been a vacant lot for several years prior to appellee's purchase of 3529 Hickory Avenue. Subsequent to appellee's purchase of 3529 Hickory Avenue, in June 2016, appellant, also a member of the Maryland Bar,[2] purchased, as an investment, a $1,200 certificate of tax sale for 3527 Hickory Avenue through an assignment from Baltimore City.

[2] Ms. Wilson had formerly been employed as an attorney in the City of Baltimore real estate division.

In January 2017, prior to foreclosing on the tax sale certificate and before demolition of the old house on appellee's lot, appellant retained Kenneth Wells of KJWellsInc to survey 3527 Hickory Avenue. The results of the Wells survey reflected potential title line conflicts with the adjoining property to the south — 3525 Hickory Avenue. The Wells survey described the width of the lot as 13.17 feet on Hickory Avenue and 13.04 feet on the rear of the lot bounding an unnamed alley. The survey also reflected a "title line overlap" with the adjoining property to the south and a "title line hiatus" that it also appeared to have with the adjoining property located to its south — 3525 Hickory Avenue. In September 2017, appellant foreclosed on the tax sale certificate for 3527 Hickory Avenue and received a deed by decree from the City of Baltimore. That deed, recorded on December 18, 2017, described the lot as:

> **3527 Hickory Avenue**, Lot Size 14x90, (being known as Ward 13, Section 13, Block 3528, Lot 044, on the Tax Rolls of the Director of Finance).

On December 19, 2017, appellant filed a notice of zoning appeal to "CONSTRUCT A NEW THREE-STORY SEMI-DETACHED DWELLING WITH A 2ND FLOOR REAR DECK[]" on 3527 Hickory Avenue. The zoning hearing was held on January 23, 2018.

Discovering appellant's pending zoning appeal, and anticipating construction on her lot, appellee retained an architect and commissioned a survey by Joel Leininger of S.J. Martenet & Co., Inc. Appellee attended the zoning appeal hearing and obtained appellant's building plans and the Wells survey. However, she had not yet received Leininger's survey of her lot. Appellant's building plan was ultimately approved by the zoning board.

Appellee did not receive the Leininger survey of her property until almost a week after the zoning appeal hearing.[3] The Leininger survey reflected a lot width of 10.78 feet on Hickory Avenue and 14.65 feet at the rear facing the alley, distances significantly smaller than that described in her deed. The Leininger survey also reflected a gray area indicating that the since-razed abandoned house on her property had been built over the property line of her northern neighbor — 3531 Hickory Avenue — by 2.9 feet in the front of the lot, facing Hickory Avenue, and by 1.58 feet in the rear of the lot, facing the alley.

The Litigation

On January 2, 2018, after retaining an architect and commissioning the Leininger survey, appellee, acting *pro se*, preemptively filed suit in the Circuit Court for Baltimore City seeking, *inter alia*, to quiet title and a temporary injunction to delay appellant's proposed construction. Appellee contacted appellant prior to service of the complaint in an effort to compromise the dispute and establish the boundary line by agreement. Appellant declined. When appellee's effort at a negotiated compromise failed, appellant was served with the complaint. Despite service, and knowledge of the pending litigation, appellant began construction. The building was completed and listed for sale during the pendency of the litigation, all prior to trial.

Appellee's amended complaint proceeded to trial on the claims for declaratory judgment to determine the boundary lines for 3529 Hickory Avenue, trespass, conversion,

[3] For clarity, we append hereto copies of both the Wells survey of 3527 Hickory Avenue and the Leininger survey of 3529 Hickory Avenue, both of which had been admitted at trial as Exhibits 19 and 31, respectively.

loss of use and enjoyment, and permanent injunctive relief, as well as compensatory and punitive damages.

The trial testimony consisted of that of the parties and Leininger, who was called to testify by both appellee and as an expert witness by appellant. Also admitted were transcripts of deposition testimony of Kenneth Wells and appellant's contractor, David Schilling. Following a two-day court trial and a separate hearing on damages, the court entered a written declaratory judgment order that outlined its ruling on the various requests for relief.

In its declaratory judgment order, the court reiterated its findings of fact, as established at both the trial and damages hearing, and adopted the description of appellee's property contained in her deed, declaring that "the boundary line beginning point of 3529 Hickory Avenue, Baltimore, Maryland 21211 is the Northwest corner of Lot. [No.] 96 on the Plat of Hampden Association and runs Fourteen feet, Ten inches[,]" and "the boundary line for 3527 Hickory Avenue[] … BEGINS Fourteen feet, Ten inches from that Northwest corner Lot. No. 96 on the Plat of Hampden Association." The court granted a permanent injunction from appellant's trespass, requiring her to remove the encroaching structure within 120 days, and awarded $50,000 in punitive damages (to be paid in installments).

Appellant filed several post-trial motions challenging the court's judgment and damages award and requested a new trial. On April 19, 2019, while those motions were pending, she noted this appeal. On May 21, 2019, following a hearing on the post-trial motions, the court vacated the original judgment and entered an amended declaratory judgment order that mirrored the original declaration, but included an additional $1,000 in

compensatory damages. The court also granted appellant's request to stay the injunction, pending disposition of this appeal.

II. DISCUSSION

Standard of Review

When an action is tried without a jury, we "will review the case on both the law and the evidence[,]" Md. Rule 8-131(c), "defer[ing] to the trial court's findings of fact, and will not disturb those findings unless they are clearly erroneous." *Kunda v. Morse*, 229 Md. App. 295, 303 (2016). We consider the evidence properly produced at trial in the light most favorable to the prevailing party. *Webb v. Nowak*, 433 Md. 666, 680 (2013) (quoting *General Motors Corp. v. Schmitz*, 362 Md. 229, 233–34 (2001)). This does not mean, however, that this Court sits "'as a second trial court, reviewing all the facts to determine whether an appellant has proven his [or her] case.'" *Id*. (quoting *L.W. Wolfe Enterprises, Inc. v. Maryland Nat'l Golf, L.P*., 165 Md. App. 339, 343 (2005)). "A trial court's findings are not clearly erroneous if '*any* competent material evidence exists in support of the trial court's factual findings[.]'" *Plank v. Cherneski*, 469 Md. 548, 568 (2020) (emphasis added) (quoting *Webb*, 433 Md. at 678).

However, "[t]he interpretation of mortgages, plats, deeds, easements and covenants has been held to be a question of law." *Webb*, 433 Md. at 681. Similarly, because a "court's legal conclusions do not receive the same deference[,]" we will review the "court's application of law to facts *de novo*." *Kunda*, 229 Md. App. at 303. Accordingly, when "an appeal present[s] both legal and factual issues, we shall review each issue under the appropriate standard." *Id*.

Construction of the Deed

Appellant first posits that the court's "ruling incorrectly gave weight to distances instead of monuments in contravention of more than 100 years of established legal precedent[,]" which, she asserts is that "'[c]alls for monuments, natural or artificial, generally prevail over courses and distances.'" (Quoting *Wood v. Hildebrand*, 185 Md. 56, 60–61 (1945)).

Appellee responds that "[i]t is [a] fundamental principle of boundary law that the court's paramount objective in resolving boundary disputes is to fulfill the intention of the parties to the original instrument." (Citing *Zawatsky Construction Co. v. Feldman Development Corp.*, 203 Md. 182, 187 (1953)).

The trial court's written Declaratory Judgment order reiterated its oral pronouncement of findings of fact and rulings on the various requests for relief, stating in pertinent part:

> The court found that [Donald's] Deed *was unambiguous and extrinsic evidence was not needed to determine the boundary lines* and that the extrinsic evidence presented and relied on by [Wilson] was not persuasive. The court found that [Wilson] trespassed, took benefit and built on the property belonging to [Donald]. The court found that [Wilson] prevented [Donald] from the use and enjoyment of [Donald's] property. The court found that [Wilson] converted [Donald's] property by building a structure which lies partially on [Donald's] property….

(Emphasis added).

Contrary to appellant's assertions that the court "misapplied the legal standard" giving preference "to distances as opposed to monuments," the court's order reflects that

it found Donald's deed to be unambiguous, thus, "extrinsic evidence was not needed to determine the boundary lines." We agree.

The boundary lines described in appellee's deed are clear and unambiguous. At trial, to rebut the *prima facie* evidence of an unambiguous deed, appellant offered the expert testimony of Joel M. Leininger, the surveyor whom appellee had hired to survey her property, 3529 Hickory Avenue. Leininger described what he characterized as latent ambiguities within the deed:

> [Appellee's] deed had a description that we found did not agree with itself. It had anomalies that were inconsistent. In other words, it had specifications for distances and calls, which are monuments -- title monuments or physical monuments, and we found that the location of those physical monuments were at locations that did not agree with the distances and angles between -- as specified in the description. In other words, so that description -- the text of the description was inconsistent with itself.

He gave two examples of his perception of conflicts within the deed:

> So it's calling for a distance, essentially between Hickory Avenue and the alley as 125 feet, but you can see on our survey there's only 111 feet there. There's not 125 feet. There never was 125 feet, and in fact, 125 feet from Hickory Avenue, if you measure, would take you past the alley and three or four feet into the yard of the owner on the other side of that alley.
>
> * * *
>
> [A] large problem was the distance along Hickory Avenue. In other words, the frontage along Hickory Avenue that the deed calls for is 14 feet, 10 inches. That's on the fourth line of this description, 14 feet, 10 inches, but that's not the only thing it calls. It calls -- beginning at the northwest corner of lot 96 which is that old Hampden plat that I was talking about. It begins there, that line, and it ends at a point in line with the center of the partition wall between the duplex houses that used to be there.
>
> And we found that if you hold the northwest corner of lot 96, and you hold the center of the partition wall between the houses that used to be there, you do not get 14 feet, 10 inches. You only get 10.78 feet.

Leininger explained that the latent ambiguities "only become apparent when you have additional information as to what they're intending to say, which is to say we have good information as to where these title calls actually are on the ground." Leininger testified that he relied on several documents, including an incomplete 1920[4] survey from his company's records to locate the partition wall, noting: "We don't have the finished product of the 1920 survey, but that showed precise dimensions of the duplex that used to exist on these two lots. We had precise dimensions to the sides and to the partition wall …."

Despite acknowledging that the duplex between 3529 and 3527 Hickory Avenue was no longer standing when he performed the survey, he concluded that the house formerly located on 3529 Hickory Avenue had been part of that earlier referenced duplex, positing:

> Yes, the houses were both -- were razed by the time we were there. However, we had the records that I just produced. We also had records from the city called WPA records which were produced during the depression which showed the -- met physical [sic] measurements of all the houses, and the fences, and the alleys, and whatnot in the entire block….
>
> * * *

[4] The incomplete 1920 survey was not admitted into evidence because it had not been provided to Donald in discovery; however, 1920 field notes and other record documents were admitted.

We note, however, that Leininger testified that S.J. Martenet & Co., Inc. is "the sole repository" for many of Baltimore City's land surveys and related documents, and those records are available to on a fee basis. Despite having been hired by Donald to complete the survey, she was not provided with the 1920 survey that Leininger intended to rely on in court. Both Leininger and Wilson also testified that they were acquainted and had worked together on occasion during Wilson's tenure as an attorney for the City of Baltimore's real estate division.

> So with the combination of those, I believe these are the same two houses, and I also used the -- just general knowledge, that houses aren't razed and then rebuilt, and then razed, and then rebuilt several times in the course of 60 or 70 years.

The trial court did not share in Leininger's confidence as to those assertions.

As the Court of Appeals has explained, "[t]he location of a monument called for in a deed must be proven, however, with reasonable certainty." *Webb*, 433 Md. at 682. Leininger's survey was centered entirely around the location of the ghost partition wall that was no longer standing when he performed his survey. In fact, no part of the deed-referenced duplex that had previously existed on both properties remained when Leininger performed his survey. His conclusions require us to disregard the language of the deed, providing for a distance of 14 feet, 10 inches, and rely wholly on speculation of his "general knowledge" that the old house that had previously existed on 3529 Hickory Avenue when appellee purchased the property, was the same duplex, or part of the same duplex, that was referred to in the 1920 documents.

As we have explained, "[t]he proper method of beginning an interpretation of whether a deed is ambiguous is to construe the language of the deed[.]" *Millar v. Bowie*, 115 Md. App. 682, 698 (1997). The language of the deed itself provides guidance as to the drafter's intent of the boundary lines of 3529 Hickory Avenue. First, the deed begins with an unambiguous and undisputed starting point — "the northwest corner of Lot No. 96, on the Plat of Hampden Association."[5] Next, the deed clearly provides that the northern

[5] The Plat of Hampden Association was not offered into evidence at trial.

and southern boundary lines of the property are to run approximately 125 feet, "more or less," between "[e]asternmost side of Hickory Avenue" and "the [w]est side of an alley, Ten feet wide there situate[,]" with the northern boundary line running east from the northwest corner of Lot No. 96 to the west side of the 10-foot wide alley. The southern boundary line is the only disputed line, but one which affects the length of the eastern and western boundary lines and, thus, the property's width.

The deed calls for the western boundary line to run "[s]outherly binding on the Easternmost side of Hickory Avenue Fourteen feet Ten inches to a point in line with the center of the partition wall," which is no longer in existence.

Appellee's deed calls for a fixed width of 14 feet, 10 inches for the length of both the western and the eastern boundary lines, but also refers to the less definite distance "in all One Hundred Twenty-five feet, *more or less*[]…" for the length of the northern and southern boundary lines. (Emphasis added). The phrase "more or less" is a traditional reference in conveyancing, and Maryland courts have recognized that:

> "It is a firmly established rule in this State that where it appears by definite boundaries, or by words of qualification, such as 'more or less,' in a contract of sale that the statement of the quantity of land is mere estimation and description, and not of the essence of the contract the buyer takes the risk of quantity[.]"

Steele v. Goettee, 313 Md. 11, 22 (1988) (quoting *Brodsky v. Hull*, 196 Md. 509, 514 (1950)). The deed then provides the fixed northerly distance of 14 feet, 10 inches "to intersect the dividing line between Lot Nos. 96 and 99" on the Plat of Hampden Association, and concludes the boundary lines for 3529 Hickory Avenue by giving a

westerly distance to run "binding on said dividing line One Hundred Twenty-five feet, *more or less*, to the place of beginning." (Emphasis added).

There are two instances in the deed that describe the line to be "binding" to another — in the initial 14 feet, 10 inches to bind along the easternmost side of Hickory Avenue, and in the final 125 feet, more or less, to bind to on the dividing line between Lots 96 and 99 on the Hampden plat back to the starting point. We think it clear that the scrivener of the description in appellee's deed intended the conveyance of a rectangular lot that is 14 feet, 10-inches in width, by the length of the distance between Hickory Avenue and the 10-foot wide unnamed alley.

Even were we to find the call to the partition wall ambiguous, the extraneous evidence offered by appellant would not change the outcome. Other than Leininger's testimony, appellant did not produce evidence to support the location of the partition wall or whether the old house on 3529 Hickory Avenue was part of the original duplex with the same partition wall as called to in appellee's deed.

No prior deed for 3529 Hickory Avenue was admitted into evidence at trial. Nevertheless, appellee introduced an earlier deed in the 3527 Hickory Avenue chain, dated August 27, 1979, and which provided a description that was consistent with the description of 3529 Hickory Avenue in appellee's deed. The prior description of 3527 Hickory Avenue provided the beginning point for the lot as:

> [O]n the easternmost side of Hickory Avenue at a point fourteen feet ten inches southerly from the northwest corner of lot number ninety-six as laid out on the plat of the Hampden Association which point is also intended to be in line with the center of the partition wall between the house erected on

> the lot now being described and the house erected on the lot adjoining thereto on the north ….

That description provides clarifying language that is consistent with appellee's deed. First, the point of beginning for the northern boundary line is stated to be the same point where appellee's property was stated to end, a point 14 feet and 10 inches south the northwest corner of Lot No. 96. Next, the deed further explains that the starting point for 3527 Hickory Avenue "is *intended* to be in line with the center of the partition wall" between the two properties. (Emphasis added). Therefore, we agree that the stated intent of the parties to that conveyance was that the partition wall between the two properties was to be 14 feet and 10 inches south of the northwest corner of Lot No. 96.

While appellant acquired 3527 Hickory Avenue through an assigned tax sale certificate that contained a description of the lot being "14x90", both Leininger and Wells testified that they relied on the property description from the prior 3527 Hickory Avenue deed to ascertain the respective metes and bounds for each property.

The transcript of Wells' deposition testimony does not reveal whether he ever returned to the property after completing his final survey for 3527 Hickory Avenue, around February 1, 2017. He could attest only to what he did in his placement of the survey stakes, which took place almost a year and half before construction began. Appellant testified that she hired another surveyor, identified in the record only as "Ben," who came in at some point after Wells had completed his final survey, around February 1, 2017, to verify Wells' survey and place additional survey stakes.[6] Appellant testified that while she was not

[6] "Ben" was neither deposed nor called to testify at trial.

present when "Ben" verified Wells' survey, he (Ben) had placed a second set of survey stakes to mark the planned location and boundaries for construction of the house. That apparently occurred before appellant's February 22, 2018 email to appellee, wherein she stated that the Wells' survey "was verified to be accurate by a second surveyor."

Leininger, when called as appellant's expert, testified that "when they (the monuments) cease to exist -- remember, it's not the monument that's important. It's the position of the monument." Leininger's survey had been done after the Wells survey and after the second set of stakes had been placed, but before construction had begun on appellant's property. Notably absent from Leininger's testimony was any mention of the boundary markers (survey stakes) that had supposedly been placed by Wells almost a year earlier, or even the second set of boundary markers that had supposedly been placed by "Ben," both sets of which ought to have been apparent to him during his site visit.

Leininger also testified that "the intent of the parties is how you view the entire document, but the intent of the parties in part is manifested by the description they used in the deed." He explained the concept of "interpreting the instrument most favorable [sic] to the grantee," stating that: "That's a concept where if in the case of ambiguity of a document, you have to pick one of a number of inconsistent elements in that same document, you pick the one that is most beneficial to the grantee." He explained further that "[y]ou have inconsistency within the four corners of the document…. If you have to pick one, and this is a case of last resort, you would pick one that would be most beneficial and throw out the one that would be most beneficial to the grantor." He explained, in words

reminiscent of the late Professor Irwin Corey,[7] that his reason for not following that interpretative concept in this instance was that he used "a different rule of construction … which orders the order of conflicting title elements." He continued that, in appellee's deed, "the conflicts (between the title elements of the description) were rather large between those elements, but we used the same order to decide which to hold and which not to hold."

Leininger explained that the deed's reference to the unnamed alley and the distance of 125 feet "more or less" is that the alley is a monument that "is one of those things that the surveyor didn't place, but the scrivener used when he wrote the description to frame the outlines of the lot. So I think as I read this, the lot goes in an east-west direction between Hickory Avenue, wherever it is, and the alley, wherever it is, which is what we did." Thus, Leininger affirms the acceptability of the common use of "more or less" in boundary descriptions.

Despite the perceived uncertainty in the actual length of the property from Hickory Avenue to the unnamed alley, from the use of traditional "more or less" language in the deed, it is clear that the intended length of the property was to be whatever the actual distance was between Hickory avenue and the alley. But, there exists no such uncertainty in the deed's reference to the intended width of the property — "Fourteen feet Ten inches."

Maryland courts have explained that "the established rules as to preference [to calls for monuments over courses and distances] are simply guides to ascertain the intention of the parties." *Union United Methodist Church, Inc. v. Burton*, 404 Md. 542, 558 (2008)

[7] Irwin Corey was a performer who was famous for his comical persona as the absentminded Professor Irwin Corey, "the world's foremost authority."

(quoting *Dundalk Holding Co. v. Easter*, 195 Md. 488, 495 (1950)). Furthermore, "while it is a general rule that calls in a deed ordinarily prevail over courses and distances, this rule is not applied if it defeats the manifest intention of the parties." *Zawatsky Const. Co.*, 203 Md. at 187 (citing *Giles v. diRobbio*, 186 Md. 258, 265 (1946)).

The trial court determined that the deed for 3529 Hickory Avenue is unambiguous, and the language is clear as to the intended boundary lines with a width of 14 feet, 10 inches and a length of the distance between Hickory Avenue and the alley. The court's findings were not clearly erroneous.

Trespass

Having determined the boundary line dispute in favor of appellee, the court found that appellant's construction extended beyond the established property line, and that the invasion constituted a trespass.

Appellant challenges the sufficiency of the evidence to support the court's finding of trespass, contending that "[w]ithout any evidentiary support, the trial judge found 'that the actions of [appellant], and the building of her home, trespasses on the property of [appellee].'" (Citation omitted). For support, appellant avers that the results of a belated survey completed on both properties after the trial had concluded were that "the structure is solely contained on [her] property and that the structure does not encroach on [appellee's] property." (Citation omitted). Appellant contends that, as a result, "[t]he trespass that was found by the trial court, accordingly, never happened."

This argument, unsupported by legal authority or logic, is based solely on a post-trial affidavit by Leininger, which states, in relevant part:

> On March 26, 2019, I surveyed [appellant's] Property and [appellee's] Property. Based on the results of that survey it is my opinion to a reasonable degree of professional certainty that the structure that was constructed by [appellant] (the "Structure") is solely contained on [appellant's] Property and that the Structure does not encroach on [appellee's] Property.

Despite the statements in the affidavit that he had surveyed both properties, no such survey of appellant's property was made a part of the affidavit. The court, considering Leininger's affidavit, stated on the record that it "does not believe that even the affidavit that was presented by [Leininger] was persuasive to this Court that this Court's decision was incorrect, or was in error." As a result, the court denied appellant's post-trial motions for a new trial, granting only modification of the judgment to include an additional award of $1,000 in compensatory damages to support the original punitive damages award.

Appellant's assertion that "the *only* evidence contained in the record showed that the structure is solely located on [her] property …" is inconsistent with the record. (Emphasis added).

We have explained that:

> "[T]respass[8] is a tort involving 'an intentional or negligent intrusion upon or to the possessory interest in property of another.'" *Mitchell v. Baltimore Sun Co*., 164 Md. App. 497, 508 (2005) (quoting *Ford v. Baltimore City Sheriff's Office*, 149 Md. App. 107, 129 (2002)), *cert. denied*, 390 Md. 501 (2006). "In order to prevail on a cause of action for trespass, the plaintiff must establish: (1) an interference with a possessory interest in his property; (2) through the defendant's physical act or force against that property; (3) which was executed without his consent." *Id*.

Royal Inv. Group, LLC v. Wang, 183 Md. App. 406, 444–45 (2008).

[8] Wilson's arguments reference only the trespass claim. Accordingly, we need not address the remaining claims of conversion and loss of enjoyment.

The trial court's finding of trespass, based on its construction of the deed, which was found to be unambiguous, was likewise not clearly erroneous.

Damages

Appellant does not challenge the court's entry of a permanent injunction requiring her to remove the newly constructed house as a remedy for the trespass. Rather, she challenges only the awards of both compensatory and punitive damages.

In the original declaratory judgment order, entered on March 28, 2019, the court awarded appellee $50,000 in punitive damages in addition to granting a permanent injunction to remedy the trespass. However, in its initial order the court failed to impose compensatory damages, nominal or otherwise, as a predicate to the punitive damages award.

In its consideration of appellant's post-trial motions, the court explained on the record:

> And as to motion requesting in the alternative to alter and amend the judgment, I agree to an extent, that there should have been some nominal or a compensatory damage. My intent, just for the record, when I indicated that the trust was -- meaning Ms. Wilson, had to cease trespassing on the property that I designated to be Ms. Donald's property, I knew that in order to cease trespassing, that structure that she built would have to come down. That's how you -- that's the only way that she could not, and so in my mind, that was compensatory in and of itself.
>
> But in later research, with the help of a good law clerk, is that even though that was my intent I did not articulate it as such, but also property or the -- that that property, in the way that I saw it, or the compensatory damages in the way that I saw it, was not possible. It is not considered compensatory damages, just so that I make you tear down a piece of property. That is not … considered as compensatory, even though I believe that it would strike her, certainly, in her purse. But it was not compensatory.

> So the way that the Court is going to alter this, at the declaratory judgment portion of it does not change at all, but what I am going to do is to award to Ms. Donald, based on the evidence that I heard, was a $1,000 in compensatory damages.
>
> * * *
>
> So I put as $50,000 and I believe, if I'm not mistaken, it was broken up into increments. It was not a one-time $50,000 payment that she would make. But the way that I will alter it is that it will be a $1,000 compensatory damages [award] to Ms. Donald. The Court remains steadfast in the fact that the punitive award is not excessive, and it is appropriate to do so in this matter.

Compensatory Damages

Appellant's challenge to the compensatory damages award is twofold: 1) the court failed "to adhere to the appropriate legal standard for awarding compensatory damages[;]" and 2) there was a "lack of factual support for the compensatory damage award[.]" She contends that the damages "may be measured … at the Plaintiff's election either by the loss of value that results from the harm or by the cost of restoration[,]" but the court "was presented with neither evidence regarding the loss of value associated with any trespass, nor the cost to restore the property." As a result, she concludes, "the trial court arbitrarily awarded [appellee] $1,000 in compensatory damages without any legally cognizable basis[,]" which was "unsupported by evidence and contrary to the legal standard for damage awards in real property cases."

The Court of Appeals has articulated the appropriate purpose and use for compensatory damages in requests for relief:

> Compensatory damages are awarded in an "attempt to make the plaintiff whole again by monetary compensation." *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 414 *on reconsideration in part*, 433 Md. 502 (2013)

> *and cert. denied*, [571 U.S. 1045] (2013). We have noted that, although compensatory damages are awarded to make a plaintiff whole, "they are not intended to grant to the plaintiff a windfall as a result of the defendant's tortious conduct. Thus, an award for compensatory damages must be anchored to a rational basis on which to ensure that the awards are not merely speculative." *Exxon Mobil Corp*., 433 Md. at 414.

Beall v. Holloway-Johnson, 446 Md. 48, 70 (2016).

In the instant matter, the court did not explain how it reached the sum of $1,000, or how that sum was intended to compensate appellee. None of the elements of damages claimed by appellee, or any combination thereof, as presented at trial, explain the $1,000 compensatory damages award. The $1,000 compensatory damages award is neither nominal nor compensatory of any specific harm suffered by appellee.

At trial, appellee testified as to the purchase price of her property, the transfer tax and recordation fee, as well as the subsequent annual taxes and ground rent fees she paid. She testified that her re-assessed post-demolition taxes on 3529 Hickory Avenue were $1,251, in addition to the annual ground rent fees of $52. Also, she paid Leininger $3,000 for his survey of her property.

In the court's discussion and findings of fact at trial, it concluded that "[appellee] had a viable piece of property that is … no longer viable. There's not anything she can do with that strip." Following the post-trial motions hearing, the court explained that it "could have, certainly, granted … as damages, to [appellee], $110,000, but the Court did not believe that on top of forcing [appellant], by way of injunction, to tear down her property, and also … paying [appellee] the money that [appellee] spent on the property, I didn't think that was the appropriate way to resolve it."

We have explained that "a plaintiff is entitled to the value of the loss of use of the land for the period in which the plaintiff was unable to use it, even after use of that land had been restored to him and even when the plaintiff had not suffered any lasting harm." *Yaffe v. Scarlett Place Residential Condo., Inc*., 205 Md. App. 429, 448 (2012) (citing *Superior Constr. Co. v. Elmo*, 204 Md. 1, 12 (1954)). "In the context of damages for loss of use and enjoyment of real property, we determine that loss of use and enjoyment of real property cannot exceed the fair market, unimpaired value of the property at issue." *Exxon Mobil Corp.*, 433 Md. at 415.

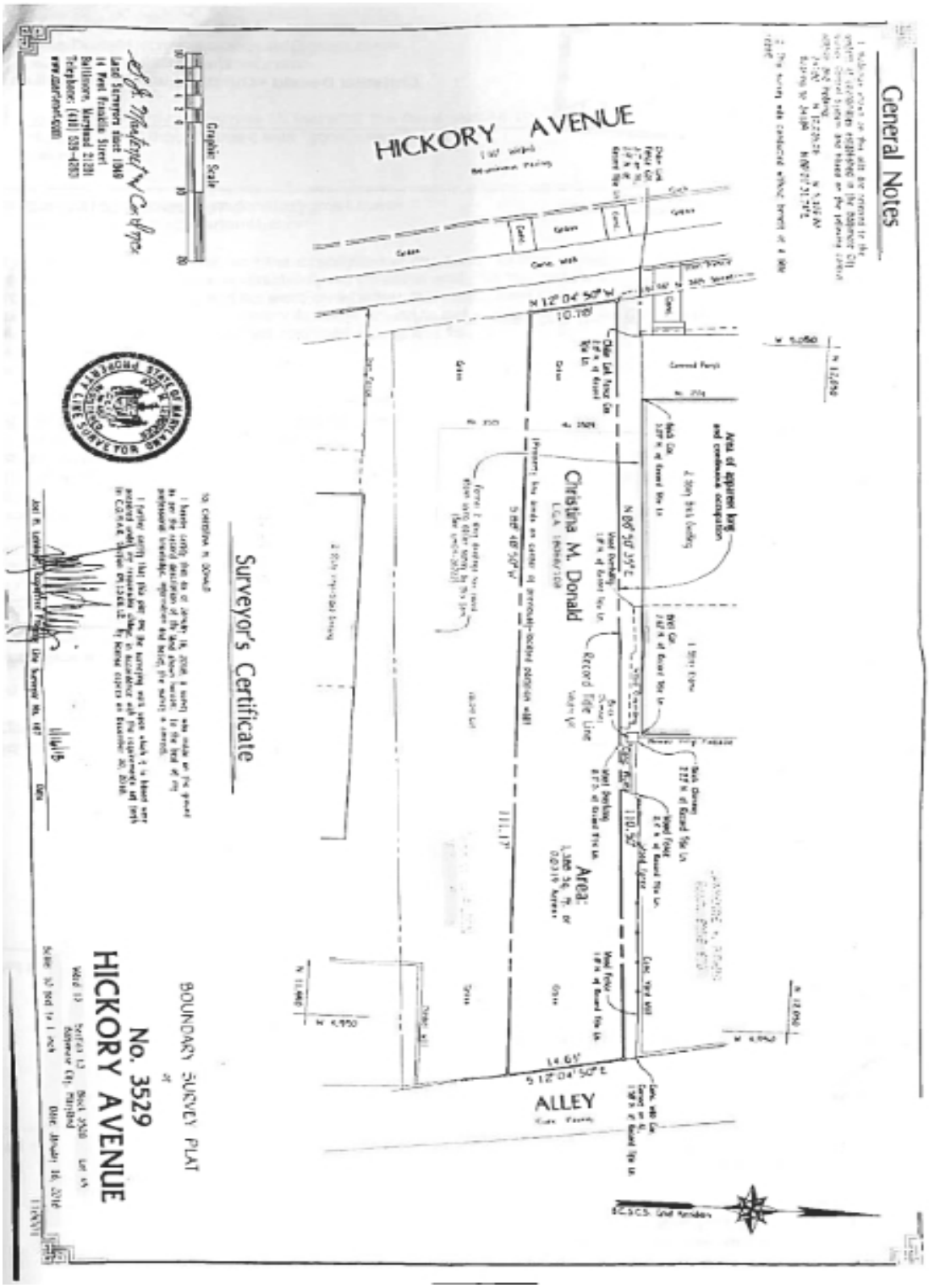
Therefore, we shall vacate the award of compensatory damages and remand for a new trial on damages to determine what, if any, compensatory damages are appropriate in this case. Because we vacate the compensatory damages, so too must the punitive damages award be vacated, because it cannot be sustained in the absence of a sustainable award of compensatory damages. *See Shell Oil Co. v. Parker*, 265 Md. 631, 644 (1972) (explaining that "to support an award of punitive damages in Maryland there must first be an award of at least nominal compensatory damages").

Although we vacate the damages awards and remand for a new trial on damages, we do not suggest that punitive damages, on these facts, are not sustainable. On remand, if the court orders appropriate compensatory damages it will not be constrained from a consideration of appropriate punitive damages. Thus, having vacated the awards and remanded the matter for a new trial on damages, we need not discuss at this juncture appellant's specific challenges to the award of punitive damages.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN PART; AWARDS OF COMPENSATORY AND PUNITIVE DAMAGES ARE VACATED; AND CASE IS REMANDED FOR A NEW TRIAL ON DAMAGES CONSISTENT WITH THIS OPINION. COSTS ASSESSED THREE FOURTHS TO APPELLANT AND ONE FOURTH TO APPELLEE.

APPENDIX

The Leininger Survey of 3529 Hickory Avenue



The Wells Survey of 3527 Hickory Avenue