

Circuit Court for Dorchester County
Case No. C-09-CV-18-000117

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0385

September Term, 2020

CIRCLE 21 CATTLE COMPANY, LLC

v.

LAURANCE D. CASLER

Kehoe,
Shaw Geter,
Zic,

JJ.

Opinion by Shaw Geter, J.

Filed: March 15, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal derives from a Complaint for Declaratory Judgment and to Quiet Title filed in the Circuit Court for Dorchester County by appellee, Laurance D. Casler, against appellant, Circle 21 Cattle Company, LLC. The court granted appellee’s motion for summary judgment, and following the entry of judgment, appellant filed a Motion to Alter or Amend Judgment and Request for Hearing, which the court denied. Appellant then filed a motion to reconsider arguing, *inter alia*, a final judgment had not been entered. The court denied the motion and appellant noted an appeal. In an unreported opinion, we determined a final judgment had not been entered and remanded the case for further proceedings. *Circle 21 Cattle Co., LLC v. Casler*, No. 0171, SEPT. TERM, 2019, 2020 WL 2552786, (Md. Ct. Spec. App. May 19, 2020), *cert. denied sub nom. Casler v. Circle 21 Cattle Co.*, 470 Md. 211 (2020). On May 26, 2020, the circuit court entered a final judgment and appellant timely filed this appeal. The following questions are presented for our review:

1. Whether the court committed error in granting appellee’s motion for summary judgment absent a valid affidavit as required under Maryland Rules 2-501(a) and 1-304?
2. Whether the court committed error in granting appellee’s motion for summary judgment when the motion and affidavit together created a dispute over a material fact, namely, whether the alleged use of the lane over appellant’s property was uninterrupted as required under Maryland Law in order to acquire a prescriptive easement?

For reasons discussed below, we affirm.

BACKGROUND

Appellant and appellee own adjacent parcels of land on Bailey Store Road near Federalsburg, Maryland. Appellee’s parcel is known as Countryside Mobile Park and has

ten trailers on its lot. Appellant’s parcel consists of 25 acres of unimproved farmland. Both parcels were previously owned by Harvey Lee Toomey, Jr. and his wife, Michelle Renee Toomey (“the Toomeys”). In 1984, the Toomeys purchased the mobile park parcel from Hilmar Thor Helgason and Christine Spear Helgason (“the Helgasons”). The Toomeys acquired another portion of land from Ralph W. Griffin in 1986. In 2013, Mr. Toomey transferred the parcel of land now owned by appellant to Mrs. Toomey by way of a Quit Claim deed. Mrs. Toomey’s parcel of land was transferred to Ian Toomey on September 23, 2013, and recorded in accordance with a life estate deed.

Appellee obtained and recorded a fee simple title to his land in 2003. Appellant acquired title to his portion of the land by way of a fee simple deed from Ian Toomey on March 6, 2018. That same month, appellant erected a fence along an access road that eliminated appellee’s access to several residential trailers on his land that were leased to other individuals.

On June 5, 2018, appellee filed a Complaint for Declaratory Judgment and to Quiet Title, requesting the court to “determine the rights of the parties” and determine that he held a prescriptive easement over the disputed land. Appellee alleged that his possession had been “actual, exclusive, hostile under the claim of ownership or title, notorious, open, and uninterrupted for a period of time approaching forty (40) years.” Troy Alexander, an individual who is not an attorney barred in Maryland, filed a response on behalf of appellant

and appellee filed a motion to strike the answer.¹ Appellant then retained counsel, who filed an answer on September 25, 2018.²

On September 6, 2018, the circuit court granted appellee’s Motion for Summary Judgment. In its Order, the court found that appellant had “failed to respond to [appellee’s] Motion for Summary Judgment” and that appellant “failed to respond with an affidavit . . . controverting any facts contained within the [appellee’s] affidavit.” The court held, “[t]here is no genuine dispute as to any material fact and the [appellee] is entitled to judgment as a matter of law.” The court declared that appellee had a prescriptive easement over the access road and ordered appellant to remove “all parts of the fence that . . . adversely affects the Plaintiff’s methods of ingress, egress and regress to and from all and any portions of the premises that are commonly known as Countryside Trailer Park.”

Subsequent to the court’s order, appellant filed a Motion to Alter or Amend, which was denied on October 25, 2018. In its order, the court stated, “granting summary judgment was not based upon evidence offered in the form of the Affidavit and nothing in the Order’s language indicated that the Affidavit was a basis for the judgment.” The court held that appellant’s first answer was stricken because it “violated Maryland Rule 2-131,

¹ Md. Rule 2-131(a)(2) states “a person other than an individual may enter an appearance only by an attorney.” Appellant is a Delaware limited liability corporation, and, thus, the filing of the answer by Troy Alexander was in violation of the Rule.

² Maryland Rule 2-321 (b) (1) states “[a] defendant who is served with an original pleading outside of the State but within the United States shall file an answer within 60 days after being served.” Appellant’s Delaware resident agent was served on June 11, 2018. The second answer was filed after the 60-day deadline.

Section 14-607 of the Real Property Article, and Section 10-206 of the Business Occupations and Professions Article of the Annotated Code of Maryland, constituting the unauthorized practice of law.” The second answer was stricken, the court stated:

[The second answer] was not timely filed, did not establish any genuine issue of fact material to the outcome of the proceeding, and was not verified as required by Section 14-607 Real Property Article. In other words, the [appellant’s] Answers and Response to Motion for Summary Judgment failed to comply with the mandates of Rule 2-501. More importantly, none of the questions raised by the [appellant] in the Motion to Alter or Amend controvert any factual allegations made by the [appellee].

The court concluded “[t]he [appellee] has met the requisite burden and the [c]ourt is unpersuaded by the arguments the [appellant] has advanced to the contrary.”

STANDARD OF REVIEW

“On review of an order granting summary judgment, our analysis ‘begins with the determination [of] whether a genuine dispute of material fact exists; only in the absence of such a dispute will we review questions of law.’” *D’Aoust v. Diamond*, 424 Md. 549, 574 (2012) (quoting *Appiah v. Hall*, 416 Md. 533, 546 (2010)). “An appellate court reviews the record in the light most favorable to the non-moving party and construes any reasonable inferences that may be drawn from the well-pled facts against the moving party.” *Flores v. Maryland-Nat. Capital Park & Planning Comm’n*, 220 Md. App. 391, 399 (2014). When there is no dispute in material facts, “we determine whether the trial court granted summary judgment correctly as a matter of law.” *Id.* “Our examination is limited to the same record and legal reasoning that the trial court analyzed to grant the motion for summary judgment.” *O’Brien v. Bank of Am., N.A.*, 214 Md. App. 51, 59 (2013). For summary judgment to be granted the following must occur:

First, the movant must clearly demonstrate the absence of any genuine issue of material fact. A fact is ‘material’ if it somehow affects the outcome of the case. And second, the movant must demonstrate that he is entitled to judgment as a matter of law. Once the movant makes this showing, the burden shifts to the non-moving party to show “that there is a genuine dispute as to a material fact by proffering facts which would be admissible in evidence.”

Boucher Inv., L.P. v. Annapolis-W. Ltd. P’ship, 141 Md. App. 1, 9–10 (2001) (cleaned up).

DISCUSSION

Appellant argues the trial court erred in granting the motion for summary judgment because appellee did not file a valid affidavit and because the affidavit and motion together “documented a dispute over a material fact.” Appellee counters that the court properly granted the Motion for Summary Judgment as there was no dispute as to the material facts.

Maryland Rule 2-501(a) governs motions for summary judgment which provides:

(a) Motion. Any party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if it is (1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record. A motion for summary judgment may not be filed: (A) after any evidence is received at trial on the merits, or (B) unless permission of the court is granted, after the deadline for dispositive motions specified in the scheduling order entered pursuant to Rule 2-504(b)(1)(E).

(b) Response. A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

(c) Form of Affidavit. An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth

such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

Md. Rules 2-501 (a)–(c).

Under Maryland Rule 1-304:

The statement of the affiant may be made before an officer authorized to administer an oath or affirmation, who shall certify in writing to having administered the oath or taken the affirmation, or may be made by signing the statement in one of the following forms:

Generally. “I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.”

Personal Knowledge. “I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of this document are true.”

Md. Rule 1-304.

Appellee’s affidavit included the following affirmation from Harvey Toomey: “I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.” In *Cty. Comm’rs of Caroline Cty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 103 (2000), the Court of Appeals held, “[w]hen an affidavit is required, it must contain language that it is made on ‘personal knowledge.’” “[W]ording such as ‘to the best of my knowledge, information and belief’ is generally insufficient to satisfy this requirement.” *Id.* Accordingly, in the present case, we hold the affidavit was insufficient.

Appellant next contends because the court’s original order relied on the affidavit, the court erred. We disagree with this contention and observe that the court’s opinion described its review of the complaint, exhibits, affidavit and memorandum in support of

summary judgment as well as the answers filed. The court then stated:

Further, despite the Plaintiff’s Motion for Summary Judgment being supported by affidavit, Defendant Circle 21 failed to respond with an affidavit or other written statement under oath controverting any facts contained within the Plaintiff’s affidavit[.]

In our view, the court did not state that the affidavit was a basis for its determination, rather it noted that the motion had been supported by an affidavit. The court found that Circle 21 had failed to respond appropriately, and the court concluded, “there is no genuine dispute as to any material fact and the Plaintiff is entitled to judgment as a matter of law.”

The court also made clear its basis, in its opinion and order denying appellant’s Motion to Alter or Amend the Judgment, stating its “Order dated September 6, 2018 granting summary judgment was not based upon evidence offered in the form of the Affidavit, and nothing in the Order’s language indicated that the Affidavit was a basis for the judgment.” The court concluded:

the Defendant’s Answers and Response to Motion for Summary Judgment failed to comply with the mandates of Rule 2-501. More importantly, none of the questions raised by the Defendant in the Motion to Alter or Amend controvert any factual allegations made by the Plaintiff.

Appellant nevertheless argues that the court erred in granting summary judgment because there was a material dispute of fact in the insufficient affidavit and motion. Appellant argues that the statement stating, “[t]hat access road has served that trailer and some of the trailers closer to Bailey Store Road, interruptedly, since 1984, to this day,” was clearly a fact in dispute. We view this statement and argument as meritless as the affidavit was insufficient, the court specified that it did not consider any evidence contained therein and appellant failed to file a response that “controverted any of the factual allegations made

by the Plaintiff.”

Appellant also posits that the court “disregarded the requirement of an affidavit” in granting the motion for summary judgment. Rule 2-501(a) provides that a summary judgment motion “shall be supported by affidavit if it is (1) filed before the day on which the adverse party’s initial pleading or motion is filed or (2) based on facts not contained in the record.” According to Rule 2-501(f), “[t]he court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” Nothing in the Rule requires the filing of an affidavit in order for the court to consider whether to grant a motion for summary judgment.

This case is an action to quiet title and is governed by Article 14 of the Maryland Real Property Article, Subtitle 6. Under Section 14-606:

A complaint under this subtitle shall be verified and shall include:

- (1) A description of the property that is the subject of the action, including both its legal description and its street address or common designation, if any;
- (2)(i) The title of the plaintiff as to which a determination is sought and the basis of the title; and
 - (ii) If the title is based on adverse possession, the specific facts constituting the adverse possession;
- (3) The adverse claims to the title of the plaintiff against which a determination is sought; and
- (4) A prayer for a determination of the title of the plaintiff against the adverse claims.

Md. Code Ann., Real Prop. § 14-606. Section 14-607 provides:

(a) An answer to a complaint under this subtitle shall be verified and shall set forth:

- (1) Any claim the defendant has to the property that is the subject of the action;
- (2) Any facts tending to controvert any material allegations of the complaint that the defendant does not wish to be taken as true; and
- (3) A statement of any new matter constituting a defense.

Md. Code Ann., Real Prop. § 14-607.

In the case at bar, the complaint included a signed statement from appellee under oath,³ and nine exhibits, as well as an affidavit from Mr. Toomey. The nine exhibits were:

1. a copy of appellee's August 9, 2006 Deed recorded in the Land Records for Dorchester County at Liber 750, folio 570;
2. a copy of appellant's March 6, 2018 Deed recorded in the Land Records for County at Liber 1455, folio 213;
3. a copy of the Deed of Trust for Midatlantic, an Agricultural Credit Association created by the United States, upon appellee dated March 6, 2018 recorded in the Land Records for Dorchester County at Liber 1455, folio 219;
4. a copy of a Dorchester County GIS Viewer;
5. a copy of a June 22, 1979 Building Permit & Zoning Certificate Application;
6. the May 2, 1984 Deed in which the Helgasons transferred land to the Toomeys recorded in the Land Records for Dorchester County at Liber 230, folio 463;
7. the August 8, 1996 Deed where the Toomeys transferred the land to Countryside Mobile Park, Inc., recorded in the Land Records for Dorchester County at Liber 342, folio 74;
8. the August 3, 1999 Deed where Countryside Mobile Park, Inc., transferred land to Christopher L. Thomas recorded in the Land Records for Dorchester County at Liber 407, folio 806; and
9. the Site Plan recorded in the Land Records for Dorchester County at Plat Book 45, folio 156B, which illustrated ten trailers on the County Park Land.

³ The oath in the complaint was signed by appellee and stated, "I SOLEMNLY AFFIRM under the penalties of perjury and upon personal knowledge that the contents of the foregoing [c]omplaint are true."

The complaint, as filed, and the exhibits attached, constituted a verified complaint and under the Rules, were sufficient for the court’s determination that the motion for summary judgment should be granted. We note appellant did not file a verified answer and appellant’s argument that a motion for summary judgment cannot be granted without a valid affidavit has no legal support in either the Rules or case law.

In Maryland, a prescriptive easement may be established by proving “adverse, exclusive[,] and uninterrupted use of the way for 20 years.” *Kiler v. Beam*, 74 Md. App. 636, 639 (1988). “Adverse use is established when the use is without license or permission.” *Turner v. Bouchard*, 202 Md. App. 428, 448 (2011). “The exclusive requirement means ‘the claim of user must not depend on the claim of someone else.’” *Id.* at 451 (quoting *Shuggars v. Brake*, 248 Md. 38, 45 (1966)). Uninterrupted, as a factor for a prescriptive easement, means that a person uses the land “more or less frequently, according to the nature of the use to which its enjoyment may be applied, and without objection on the part of the owner of the land, and under such circumstances as excludes the presumption of a voluntary abandonment on the part of the person claiming it.” *Turner v. Bouchard*, 202 Md. App. 428, 452 (2011) (quoting *Cox v. Forrest*, 60 Md. 74, 80 (1883)).

Here, appellee met his burden by filing a verified complaint and documentation that established there was, in fact, a prescriptive easement. Appellee’s documents established that he and “his predecessors in interest have utilized the access road to and from the public Bailey Store Road in an actual, exclusive, hostile and under claim of ownership or title, notorious, open, and uninterrupted period of time approaching forty (40) years.” As a

result, the court did not err in granting summary judgment.

**JUDGMENTS OF THE CIRCUIT COURT
FOR DORCHESTER COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**