Circuit Court for Baltimore County
Case No. C-03-CV-23-003269

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1272

September Term, 2024

MARK SCHERER

v.

DAVID CUNNINGHAM, *et al*.

Friedman,
Albright,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: December 11, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

Appellant Mark Scherer filed a complaint for declaratory judgment and permanent injunction against his neighbors, appellees David and Cynthia Cunningham.[1] Scherer complained that the Cunninghams had erected a fence and parked cars on the parties' shared driveway in such a way that it blocked ingress and egress from Scherer's parking pad to the driveway, in violation of a recorded easement agreement binding with the land. Scherer sought clarification of the rights and obligations of the parties under the shared driveway easement agreement, as well as a court order that the Cunninghams remove their fence.

Following a bench trial, the Circuit Court for Baltimore County ordered both parties to remove the fences they had erected on the shared driveway, as both were in violation of the easement agreement. The court further enjoined both parties from otherwise interfering with the other party's ingress or egress to and from the properties on the shared driveway.

In this appeal, Scherer argues that the circuit court's decision improperly expanded the use-in-common area of the shared driveway in contradiction of the plat of the subdivision referenced in the easement agreement. He also claims error in the court's order that he remove his fence, when that remedy was not sought by the Cunninghams. For the reasons that follow, we affirm the judgment of the circuit court.

[1] The original complaint was filed by Editha Bardoquillo, Scherer's wife, who was the sole owner of the property at the time. After filing her complaint, Bardoquillo transferred title to the property to herself and Scherer, as tenants by the entireties. Bardoquillo amended her complaint in November 2023 to add Scherer as a plaintiff to the action, but the counts in the complaint remained the same. Bardoquillo granted Scherer power of attorney to act for her in the court case and did not appear at trial. She is styled as an interested person in the appeal. For the sake of clarity, we will refer to Scherer as the sole appellant.

FACTUAL AND PROCECURAL BACKGROUND

Scherer purchased a house on Oak Summit Avenue in Parkville, Baltimore County (Lot 1), in 2016. Lot 1 was adjacent to the house the Cunninghams had owned since 2000 (Lot 2). Lot 1 and Lot 2 shared a driveway, pursuant to a 1995 plat and a 1999 Utility and Shared Driveway Easement and Maintenance Agreement. That agreement detailed the owners' rights and responsibilities relating to the shared driveway, including the area at issue before the Court, the panhandle leg of the driveway that turned left from the main portion of the driveway and continued past Lot 1 to Lot 2.[2] The easement agreement was binding upon any subsequent purchasers of the properties, and there was no dispute that both Scherer and the Cunninghams were subject to its terms.

For several years after Scherer moved into the house on Lot 1, he and the Cunninghams used the panhandle portion of the shared driveway as detailed in the easement agreement, although there were some disagreements between them about obstructions on the driveway. By 2022, the discord had grown to the point that Scherer erected a metal fence on the shared driveway to keep the Cunninghams' vehicles off his

[2] The easement agreement noted that Lot 1 and Lot 2 abutted each other and "formed a panhandle strip of land as shown on [the accompanying plat] and identified thereon as '25' R/W TO BE USED IN COMMON WITH OTHERS, hereinafter referred to as 'the Panhandle.'" *See* plat, appended to this opinion. The easement agreement went on to establish "a perpetual non-exclusive use in common of an easement for ingress and egress to Lot 1 and Lot 2 from Oak Summit Avenue over and across the Shared Driveway and that portion of the Panhandle where the Shared Driveway is located." The agreement provided that neither owner of the affected properties would "obstruct the Shared Driveway in such a way that would interfere or prevent ingress and egress over the Shared Driveway to and from Lot 1, Lot 2, and Oak Summit Avenue."

property.[3] The fence left only a portion of the driveway open and interfered with the Cunninghams' ingress and egress to their property such that the Cunninghams had to drive around the fence on the grass to reach their house until they built a "temporary" driveway in another location.

In 2023, the Cunninghams responded by erecting their own wooden fence on the shared driveway. Their fence encroached on Scherer's ingress and egress to his property and required Scherer to drive around the fence, onto the grass, and around a tree to access his parking pad. Both parties believed the fences were necessary to address the growing animosity between them regarding the use of the shared driveway.

Licensed surveyor Bryan Dietz testified as an expert for Scherer at trial. He concluded that, pursuant to the property survey he had conducted, Scherer's fence was solely on his property and outside the use-in-common area of the shared driveway. Therefore, the fence did not impact the easement. The Cunninghams' fence, however, was within the easement area and blocked Scherer's ingress and egress. Dietz agreed, however, that the plat of the subdivision did not show all the improvements or changes made to the properties since it was drafted in 1995. Indeed, Dietz testified that per the 1995 plat, the panhandle portion of the driveway was 20 feet wide, but the 1999 easement agreement noted a 25-foot-wide right of way to be used in common by Lot 1 and Lot 2. The dispute about the differences between the plat and the easement agreement relating to the width of

[3] The police were called to the property on numerous occasions following physical altercations between Scherer and David Cunningham and Scherer's destruction of Cunningham's property. In addition, Cunningham at one point obtained a peace order against Scherer.

the shared driveway and the panhandle continued throughout the testimony. Moreover, Cunningham later testified that there were a number of changes made to the property since the plat was developed in 1995 and that some aspects of the plat were inconsistent with aerial photos taken since his purchase of the property in 2000.

The circuit court entered its written order on August 23, 2024. In it, the circuit court found all the witnesses to be credible in their testimony. The court acknowledged that as between "the plat from 1995 and the details about the property lines, there was some question about the accuracy of the property lines." Nonetheless, it was clear to the court that the later 1999 easement agreement established a 25-foot-wide area of the driveway, described as the panhandle, to be shared by the owners of Lot 1 and Lot 2. The circuit court found that the metal fence erected by Scherer "unilaterally narrowed the shared driveway and thus violates the easement, interfering with the Defendants['] ingress and egress to and from the property." The court similarly found that the wooden fence erected by the Cunninghams "encroaches upon the easement and interferes with the ingress and egress of the Plaintiffs to and from their property."

The circuit court therefore ordered that both fences must be removed. In addition, the court enjoined and restrained both parties from interfering with the other party's ingress or egress to and from the properties on the shared driveway, whether "by way of erected structures, vehicles, or other obstacles that interferes therewith."

Scherer filed a timely notice of appeal of the circuit court's order.

DISCUSSION

Although Scherer's informal brief is not a model of clarity, it appears that his dissatisfaction with the circuit court's order rests primarily on the court's determination that the use-in-common area of the panhandle portion of the shared driveway is 25 feet wide, per the easement agreement, rather than 20 feet wide, as it appears to be denoted on the accompanying plat. He asks that we reverse the circuit court's order that he remove his fence because, according to the plat, it is outside the 20-foot-wide use-in-common area and therefore does not affect the easement. Scherer also avers that the court had no basis upon which to order the removal of his fence in any event because the Cunninghams did not request that remedy in responsive pleadings or a counter-complaint.

Because Scherer disputes only issues of law, we review the decision of the circuit court to determine whether it was legally correct. *Lindsay v. Annapolis Roads Prop. Owners Ass'n*, 431 Md. 274, 289 (2013) (quoting *White v. Pines Cmty. Improvement Ass'n, Inc.,* 403 Md. 13, 31 (2008) ("'The interpretation of mortgages, plats, deeds, easements and covenants has been held to be a question of law.'")).

The "primary consideration in construing the scope of an express easement is the language of the grant." *Chevy Chase Land Co. v. United States*, 355 Md. 110, 143 (1999). We focus on the "language of the agreement itself, seeking to discern what a reasonable person in the position of the parties would have meant at the time it was effectuated." *Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 432 Md. 292, 314 (2013) (cleaned up). "These principles require consideration of the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution." *Chevy Chase Land Co.,* 355 Md.

at 123 (cleaned up). "If the language of [an easement] contract is unambiguous, we give effect to its plain meaning and do not contemplate what the parties may have subjectively intended by certain terms at the time of formation." *Cochran v. Norkunas*, 398 Md. 1, 16 (2007).

Here, there is a deviation between the language of the easement agreement, which states that the panhandle strip of land includes a 25-foot-wide right of way to be used in common between Lot 1 and Lot 2 for ingress and egress, and the plat, which shows the panhandle as being only 20 feet wide. At trial, Scherer advocated for the circuit court to find that the plat was correct and that his fence was therefore outside the 20-foot-wide panhandle portion of the easement.

The evidence tended to show, however, that the plat, created in 1995, did not accurately reflect the property and was inconsistent with aerial photos taken of the subdivision in 2000, shortly after the easement was created. Therefore, despite "some question about the accuracy of the property lines," the circuit court found that it was clear that the easement agreement, created after the approval of the plat, intended to, and did, establish a 25-foot-wide area consistently described as the panhandle in front of Lot 1 and Lot 2 and bound the parties to its terms. The language of the easement agreement is unambiguous, and we find no legal error in the court's determination.

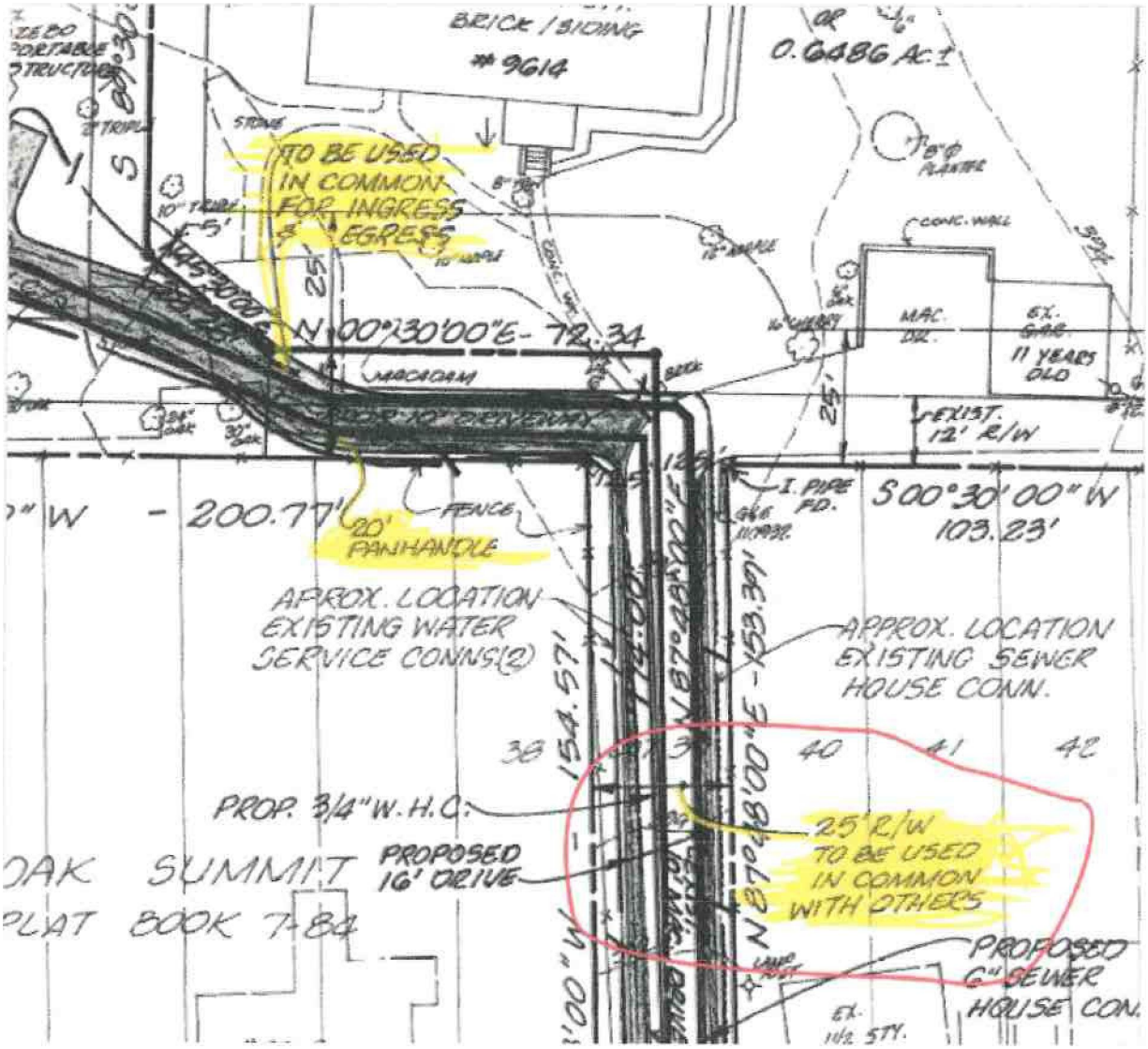
The circuit court went on to find that the erection of both Scherer's and the Cunninghams' fences narrowed the panhandle portion of the shared driveway in such a way as to encroach upon the other party's ingress and egress to and from their property, in violation of the clear language and purpose of the easement agreement. The court,

therefore, required the removal of both fences. We find no error in this ruling. As a matter of law, a party to an express easement "may not unilaterally narrow the right-of-way easement … by the installation of fences." *Miller v. Kirkpatrick*, 377 Md. 335, 348 (2003). Moreover, "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.

Finally, Scherer asserts that the circuit court should not have ordered the removal of his fence because the Cunninghams did not ask that it be removed. We point out, however, that in his opening statement, the Cunninghams' attorney advised the court that the Cunninghams "want both parties to take down their fence, have this matter resolved" and would welcome a court order requiring that nothing obstruct the panhandle driveway as per the terms of the shared driveway easement. Thus, the Cunninghams did in fact seek the removal of Scherer's fence. In addition, in fashioning its declaratory judgment and remedy, the court properly considered and addressed all the obstacles placed in the easement area, not just the ones about which Scherer complained.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.

APPENDIX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TO BE USED IN COMMON FOR INGRESS & EGRESS
N 00°30'00"E - 72.34
MACADAM
CONC. WALL
MAC. DR.
EX. SHD.
11 YEARS OLD
EXIST. 12' R/W
S 00°30'00" W
103.23'
20' PANHANDLE
FENCE
APPROX. LOCATION EXISTING WATER SERVICE CONNS(2)
APPROX. LOCATION EXISTING SEWER HOUSE CONN.
154.57'
PROP. 3/4" W.H.C.
PROPOSED 16' DRIVE
25' R/W TO BE USED IN COMMON WITH OTHERS
PROPOSED 6" SEWER HOUSE CON.
OAK SUMMIT
PLAT BOOK 7-84