UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1318

September Term, 2014

WISH PROPERTIES, LLC

v.

ROBERT B. STONE

Woodward,
Berger,
Arthur,

JJ.

Opinion by Woodward, J.

Filed: July 13, 2015

Robert B. Stone, appellee, filed a complaint for declaratory judgment, as well as a motion for a temporary restraining order and preliminary injunction, against Wish Properties, LLC ("Wish Properties"), appellant, in the Circuit Court for Washington County. Stone alleged that he had acquired a prescriptive easement over the alley owned by Wish Properties that is adjacent to Stone's property, and that Wish Properties was unlawfully obstructing the alley. The court granted a temporary restraining order and, after a hearing, granted a preliminary injunction that ordered, among other things, Wish Properties to cease obstructing the alley.

On appeal, appellant presents one issue for our review, which we have rephrased as a question:[1]

[1] Appellant's issue, as presented in his brief, is as follows:

> 1. Whether the circuit court abused its discretion in entering a preliminary injunction enjoining Wish from interfering with or disturbing Stone's use and enjoyment of W.O.W. Alley where Stone failed to prove all of those factors necessary to be entitled to such injunctive relief.
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>   a. Whether the circuit court erred when it held that Stone demonstrated a likelihood of prevailing on the merits of his claim of a prescriptive easement over W.O.W. Alley notwithstanding the undisputed evidence that Vincent Groh gave Stone permission to use the alley and that Stone's best-case scenario fell short of demonstrating uninterrupted, adverse use of the alley for 20 years.
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>   b. Whether the circuit court abused its discretion when it held that the balance of convenience factor pertained only to the convenience derived by the parties from

(continued...)

> Did the circuit court abuse its discretion in granting a preliminary injunction?

We answer this question in the negative and, accordingly, affirm the judgment of the circuit court.

BACKGROUND

In October 1988, Stone acquired property located at 120 North Potomac Street ("the Stone Property") in Hagerstown, which he uses as his law office. The rear part of the Stone Property includes a parking lot that Stone, his employees, and his clients use. A 10.5-foot alley connects this parking lot with North Potomac Street. The alley is adjacent to the Stone Property and is part of the property located at 114 North Potomac Street. When Stone acquired the Stone Property, he believed that he "acquired from his predecessors-in-title a fully-ripened and legally enforceable prescriptive easement over [the a]lley for the purposes

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[1](...continued)

> using W.O.W. Alley and, as a result, disregarded Wish's evidence of the significant health, safety and welfare problems that would ensue if the requested injunction was granted.
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> c. Whether the circuit court abused its discretion when it held that the alleged complaints by Stone's unidentified clients regarding their inability to use W.O.W. Alley to access North Potomac Street was sufficient to demonstrate irreparable harm even though Stone admitted that clients could access his building via an enclosed stairwell adjacent to the rear parking lot or could park on North Potomac Street near the front entrance to Stone's building.

of ingress and egress to and from the parking area to the rear of the building on the Stone Property and North Potomac Street." This belief was based on his predecessors-in-title's use of the alley, as well as language found in their deeds.

In March 2014, Wish Properties acquired the property located at 114 North Potomac Street ("the Wish Property"), which is used as a retail establishment and design center. In April 2014, Wish Properties, in an effort to prevent trash from accumulating in the alley due to general public use, installed a locked gate across the alley at its entrance on North Potomac Street, and parked vehicles in the alley behind the gate, obstructing Stone's use of the alley. On May 2, 2014, Stone sent a letter to Wish Properties, demanding that it cease its obstruction of the alley. Wish Properties did not comply with Stone's demand.

On June 20, 2014, Stone filed a Complaint for Declaratory Judgment and Other Relief, a Motion for Temporary Restraining Order and Preliminary Injunction, and a Memorandum in Support of Motion for TRO and Preliminary Injunction in the circuit court. On June 24, 2014, the trial court held a hearing and granted Stone's Motion for a Temporary Restraining Order, ordering Wish Properties "to immediately remove all obstructions to [the a]lley as a means of both vehicular and pedestrian ingress and egress to and from the off-street parking area behind the building on the Stone Property and North Potomac Street." The order noted that unlocking and opening the gate between 8:00 AM and 5:00 PM Monday through Friday would constitute compliance with the temporary restraining order.

Wish Properties filed its Answer to Complaint for Declaratory Judgment and Other Relief on August 4, 2014. On August 11, 2014, Wish Properties filed its Opposition to Motion for Preliminary Injunction.

The trial court held a hearing on Stone's motion for a preliminary injunction on August 12 and 13, 2014. Stone testified for himself, and Wish Properties called the following witnesses: (1) Vincent Groh, who owned the Wish Property from the mid-1970s until 2007, and then again from 2011 through 2014; (2) Harry Knode, Groh's former employee; (3) Steve Sager, former mayor of Hagerstown from 1986 to 1997; and (3) Mark Wishnow, owner of Wish Properties. At the conclusion of the hearing, the court granted the preliminary injunction "on the same conditions that were set out in the Temporary Restraining Order." The court issued its Preliminary Injunction on August 26, 2014. Two days later, Wish Properties filed a timely notice of appeal.

Additional facts will be set forth as necessary to the resolution of the instant appeal.

STANDARD OF REVIEW

An appellate court's standard of review for preliminary injunctions is guided by Maryland Rule 8-131:

> **(c) Action tried without a jury.** When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

In *Schade v. Md. State Bd. of Elections*, the Court of Appeals stated that

> review of a preliminary injunction is limited because [the appellate court] do[es] not now finally determine the merits of the parties' arguments. **It is a well settled and frequently stated principle that the granting or denial of a request for injunctive relief rests within the sound discretion of the trial court. Such a decision will not be disturbed on appeal unless that discretion has been abused.** The abuse of discretion standard has been defined as discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. In other words, an abuse of discretion occurs when no reasonable person would take the view adopted by the trial court.
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> In determining whether entry of a preliminary injunction was appropriate, we consider the following factors: **(1) the likelihood that the plaintiff will succeed on the merits; (2) the balance of convenience determined by whether greater injury would be done to the defendant by granting the injunction than would result by its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest.** The burden of producing evidence to show the existence of these four factors is on the moving party and failure to prove the existence of even one of the four factors will preclude the grant of preliminary injunction relief. With regard to the factor of the likelihood of success on the merits, the party seeking the interlocutory injunction must establish that it has a real *probability* of prevailing on the merits, not merely a remote *possibility* of doing so.

401 Md. 1, 33-34, 36 (2007) (italics in original) (bold emphasis added) (citations and internal quotation marks omitted); *see also State Dep't of Health & Mental Hygiene v. Balt. Cnty.*, 281 Md. 548, 550 (1977) ("[I]t is a rare instance in which a trial court's discretionary decision to grant or deny a preliminary injunction will be disturbed by this Court"). "The four factors are simply that, *factors*, designed to guide trial judges in deciding whether a preliminary injunction should be issued." *DMF Leasing, Inc. v. Budget Rent-A-Car of Md.,*

Inc., 161 Md. App. 640, 648 (2005); *see also Eastside Vend Distribs., Inc. v. Pepsi Bottling Grp., Inc.*, 396 Md. 219, 242 (2006) ("And even if the balance of hardship is found to weigh in favor of the plaintiff, it remains merely one strong factor to be weighed alongside both the likely harm to the defendant and the public interest." (citations and internal quotation marks omitted)).

DISCUSSION

I. Likelihood of Success on the Merits

The Court of Appeals summarized the controlling law of prescriptive easements in *Kirby v. Hook*:

> An easement is "a nonpossessory interest in the real property of another." An easement can be created expressly or by implication. One form of implied easement is an easement by prescription. A prescriptive easement arises when a party makes an adverse, exclusive, and uninterrupted use of another's real property for twenty years. A party's use is adverse if it occurs without license or permission. 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. The burden then shifts to the landowner to show that the use was permissive.

347 Md. 380, 403-04 (1997) (citations omitted). "The burden, however, will not shift if the use *appears to have been by permission* . . . ." *Banks v. Pusey*, 393 Md. 688, 699 (2006) (emphasis in original). If there is any evidence in the record that would indicate permission, the burden remains with the party claiming adverse use. *Id*. at 701.

The trial court in the instant case issued the following oral ruling regarding Stone's likelihood of success on the merits at the hearing on Stone's motion for preliminary injunction:

> [ ] Stone took title of this piece of property in 1988. And when he did, he was using, however correctly or not, he was using with his law practice this described as an alley or a driveway, depending on who's been testifying, but we all know what we're talking about, 10½-foot wide access from North Potomac Street back to Cramer Alley. And at different times along the way between then and now certain events have occurred up to the point in 19—in 2014, when [Wish Properties] took title and blocked the alley. The—as I recall, the if not the first incident, one of the first incidents that—well let me back up. Let me go to [ ] Knode. [ ] Knode said that he started to work for the Senior Mr. Groh, that is Garland Groh, in 1977 and then continued to work for the son of Garland Groh, that is Vincent Groh, who testified, up until very recently. Up until the sale of the [Wish Property] in 2007, [ ] Knode was involved with the property although I think he continued to work for [ ] Groh after that. **And, yes, once a year at the direction of Garland Groh, he would go out and close that gate [across the alley] and it would stay closed for twenty-four hours because [ ] Groh did not want the City to be able to claim that it had a prescriptive right-of-way. There were times when [ ] Knode and the other workers parked a dump truck in the alley while they were doing work around the building. He did say, however, and I—I thought this was significant that pedestrians could still traverse the alley although it might be difficult for them to get by because of the mirrors on the trucks. But it—they still could have access even when those dump trucks were there. . . .**
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> The significant incident that [Wish Properties] points to is the letter from [ ] Stone to [ ] Groh on July 26th of 1989. That's Exhibit Two. And in that [ ] Stone expresses the following, and I'm paraphrasing, "Pursuant to our telephone conversation the day before, my understanding of our agreement, and I will draw up the necessary document, you grant to me a right-of-way, I will have access. I may not assign my right-of-way except upon sale or lease of my building, and I will not oppose your placement of a gate across the upper part

of the alley to prevent the public-at-large from using the alley. And I will use [a different route] to get from the street to the alley of my parking lot and vice versa." **I don't find that, frankly, and I want to be clear because I'll be dealing with this case again, I don't find that to be absolutely a request for permission. It appears to me to be a request to clarify what the parties want to do. And I—my—I take that initially from reading the letter itself. But and I do know that [ ] Stone said well he just wanted to clarify things and have it in writing. Even if I accept that as self-serving testimony, what really persuades me is that [ ] Groh said, "Well I never made an agreement." And that was when he had been presented with this letter as it was being introduced into evidence. "I never made any such agreement." So that tells me that he hadn't given permission. I understand again the argument that [ ] Stone was asking for permission, but I think it's more logical, more likely given the letter itself that he wanted to have some—have it in writing so that they would resolve any of these issues.** And I gather there was some degree, although there's no real testimony to this extent, but I think I can infer there was some friction that sort of continued along—along the time.

[Wish Properties] presents evidence that going back to [ ] Knode's testimony in particular that there was this annual closing of the gate. **There were times when the construction trucks, dump trucks of Mr.—working for [ ] Groh were in the alley as well and then of course there's the issue of the lift [that Groh parked in the alley for six weeks in the early 1990s during construction of the Department of Social Services Building at 122 North Potomac Street]. Those certainly were times when at least the closing of the gate and the lift when vehicles could not get back and forth, but they were of a rather temporal nature. One day a year does not exactly prevent use from being continuous in the course at least as determined by the cases that we have that have been reported by the appellate courts. I don't find, frankly, that the six weeks and the number of weeks, I'm saying six weeks, but even if it's a few weeks longer that the lift was there was sufficient to interrupt the continuous nature of the access of [ ] Stone back and forth across that alley. I won't find that he has established adverse possession today, but I think that it's likely that he can based on what he's presented so far. As far as the issue of the**

> **preliminary injunction, I've just stated, I think the likelihood is that he can succeed on the merits given the evidence before me to this point.**

(Emphasis added).

Wish Properties argues that, contrary to the trial court's finding, Stone is unlikely to succeed on the merits of his claim of a prescriptive easement over the alley, because he did not establish that his use was adverse and uninterrupted. Wish Properties contends that Stone's use of the alley was not adverse, because he requested permission to use the alley from Vincent Groh and Tim Gordon, two prior owners of the Wish Property, in 1989 and 2007, respectively. In addition, Wish Properties contends that Stone's use of the alley was not uninterrupted for a twenty-year period, because Groh closed the alley's gate "at least once every year," and "continually blocked access to [the a]lley, albeit on an irregular basis," to perform "periodic maintenance and rehabilitation work" on the Wish Property.

Stone responds that he successfully demonstrated that he will likely succeed on the merits in establishing a prescriptive easement over the alley. According to Stone, he "demonstrated at the hearing that he used the [a]lley from October, 1988 until April, 2014 as a means of both vehicular and pedestrian access . . . and that his use during this period was adverse under claim of right, exclusive, continuous and uninterrupted." Stone contends that his use was adverse, because he "testified that he never asked for or received permission to use the [a]lley from either Groh or his successors-in-title. To the contrary, he both asserted and defended his claim of right," and the successive owners of the Wish Property "accepted

and acquiesced" to such claim of right. According to Stone, the "fact that he was willing to subject his right-of-way to certain limitations" in his letter to Groh, coupled with his demand that Gordon keep the gate open during the day, both support Stone's allegation that he already had a right-of-way over the alley; in any event, Groh never responded to Stone's letter or granted permission to Stone, while Gordon acquiesced to Stone's demand. In addition, Stone argues that he demonstrated that his use of the alley was uninterrupted, because, even though "there was testimony that a *portion* of the [a]lley was blocked to vehicular traffic" at various points, or that the gate was closed for one day per year, such actions never "significantly interfered with Stone's ordinary use and enjoyment of the [a]lley when and as he wished."

A. Uninterrupted Use

Uninterrupted use is established when the claimant exercises the right

> 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.

Cox v. Forrest, 60 Md. 74, 80 (1883). In *Shuggars v. Brake*, the Court of Appeals held that a claimant's use of the land in question was uninterrupted even though he did not use the land for nine years. 248 Md. 38, 46 (1967) ("An easement may not be lost unless there is some act clearly and unequivocally indicating an intention to abandon it, and mere non-use[] is not enough."); *see also Stuart v. Johnson*, 181 Md. 145, 148-49 (1942) (holding that the

claimant established continuous use even though she moved out of the area for a few years, because, upon her return, she "resumed the use of the road to which she had been accustomed").

The circuit court heard the following testimony regarding the alleged obstruction of the alley for maintenance purposes by Wish Properties' predecessors-in-title. Stone testified that no events interfered or attempted to interfere with or obstruct his use of the alley from 1989 through 2007, when Groh owned the property, nor from 2007 through 2010, when Gordon was the owner. Knode testified that he "used to sit the dump truck in [the alley] all day long. When we was there working, we'd just sit it there all day long" while performing maintenance on the apartment buildings owned by Groh, which would last between one to five days. According to Knode, parking the dump truck in the alley prevented vehicles from traversing the alley, although pedestrians could walk through the alley, "but it was really tight." Groh also testified that his employees would park their service trucks in the alley "during the day and probably overnight lots of times," for "several days or a week or two" in connection with apartment renovations.

The circuit court also heard the following testimony regarding Groh's alleged closure of the alley. Stone testified that, when he acquired the property in 1988, there was a wooden farm gate installed across the alley between the Stone and Wish Properties, but that this gate, which was always open and eventually "disappeared," did not interfere with his use of the alley. Stone also testified that Gordon, who owned the property in 2007 through 2010,

installed three gates in 2007, but these gates were left open or unlocked and therefore did not interfere with Stone's use of the alley. Knode testified that he closed the gate for twenty-four hours every year to prevent the creation of a public right-of-way. Groh testified that he "closed the gates at least once or twice every year [ ] during a working day to keep the public from getting a prescriptive right or something."[2]

We conclude that the circuit court was not clearly erroneous in finding that Stone's use of the alley was likely uninterrupted for at least twenty years, despite the installation of gates to the alley, the annual closing of the gates, and the intermittent obstruction of the alley when Groh and his employees performed maintenance work. As the court noted, the Court of Appeals has held that a claimant's use is uninterrupted even if the claimant ceases to use the land for a period of months or years, as long as such use occurs "more or less frequently, according to the nature of the use to which its enjoyment may be applied." *Cox*, 60 Md. at 80; *see also Shuggars*, 248 Md. at 46; *Stuart*, 181 Md. at 148-49.

The trial court heard Stone's testimony that the neither the gates nor the maintenance work "interfered or attempted to interfere or obstruct [his] use of the alley" from the time Stone acquired his property in 1988 through 2014, weighed it against the testimony of Wish Properties' witnesses regarding the alleged obstruction of the alley, and found that any

[2] The circuit court also heard testimony that the alley was obstructed during the course of renovations at the Department of Social Services building next door to the Stone property in 1989. Wish Properties, however, does not raise this event in its brief in support of its argument that Stone's use of the alley was not uninterrupted for twenty years, and thus we do not discuss the event here.

obstruction did not prevent Stone from continuing to use the alley in the same manner and at the same frequency as he had before. *See Cox*, 60 Md. at 80. Because "the circuit court was in the best position to evaluate the evidence, [ ] we will not disturb its factual conclusions when those conclusions are supported by competent evidence, as is the case here." *Mavromoustakos v. Padussis*, 112 Md. App. 59, 74 (1996), *cert. denied*, 344 Md. 718 (1997). As a result, the court's finding that Stone's use of the alley was likely uninterrupted for twenty years was not clearly erroneous.

B. Adverse Use

The Court of Appeals has stated that "adverse use means use without either license or permission." *Clayton v. Jensen*, 240 Md. 337, 343 (1965).

> When a person has used a right of way openly, continuously, and without explanation for twenty years it is fair to presume adverse use. In such a case, the burden then shifts to the landowner to show that the use was permissive. The burden, however, will not shift if the use *appears to have been by permission*. . . .
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> Logic dictates that a presumption of adverse use is created *only* when there is an absence of *any* evidence which would indicate that the respondent had the permission [to use the land]. Or, phrased another way, it is only when no appearance of permission permeates the record, that a presumption of adverse use will arise. In the absence of such a presumption of adverse use, the burden of establishing such use is on the party claiming it. This is supported by the general rule that the creation of an easement by prescription is not favored by the law.

Banks, 393 Md. at 699-702 (italics in original) (citations and internal quotations marks omitted).

In the case *sub judice*, Stone did not create a presumption of adverse use, because Stone's July 26, 1989 letter to Groh constituted evidence that could indicate that Stone sought permission. The letter stated:

> Pursuant to our telephone conversation of July 25, 1989, please confirm the following (my understanding of our agreement) and I will draw up the necessary document.
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> 1. **You will grant to me, my heirs and assigns, a right of way for access (vehicular and pedestrian) over the alley located between your building at 116[3] North Potomac Street, and mine at 120 North Potomac Street**. I will be able to drive across the alley onto my back lot, which will be at the same level as the alley. I may not assign the right of way except upon sale or lease of my building.
>
> 2. I will not oppose your placement of a gate across the upper part of the alley to prevent the public at large [from] using the alley as a public thoroughfare. You will allow pedestrian access, however.
>
> 3. I will use Cramer's Alley to get from the street to the alley to my parking lot and vice versa.
>
> I assume you would not object to my having snow removal from that portion of the alley which I'll be using when I have my lot cleared.

[3] The letter mistakenly states the address of Wish Properties as 116 North Potomac Street instead of 114 North Potomac Street.

> If this is also your understanding, please sign below and send the copy to me and I'll draw up an Agreement.

(Emphasis added). As a result, the burden to prove adverse use remained with Stone. *See Banks*, 393 Md. at 699.

The circuit court, however, did not err in finding that Stone met his burden of demonstrating the likelihood of adverse use, because Stone testified that he never asked Groh for permission to use the alley. As for the July 26, 1989 letter, Stone testified that this letter was not a request for permission to use the alley, but rather a request for an agreement on "the details of [his] use of the alley." Stone also testified that in the conversations leading up to the letter, Stone told Groh that he "had a right-of-way over" the alley, but that Stone would be open to negotiating his use of the alley, especially since Stone did not have much need for the alley during nights and weekends. According to Stone, he and Groh never came to any agreement, and Groh did not interfere with Stone's use of the alley. Once again, we will not disturb the trial court's factual finding that the July 26, 1989 letter did not constitute a request for permission or a license, because

> evidence offered by the parties was conflicting to some degree in many aspects. Accordingly, the responsibility for resolving those conflicts lies with the Circuit Court, *see* Maryland Rule 8-131(c), *supra*, as it is in the best position, a position far more superior than that of an appellate court, to evaluate and weigh such evidence. As noted earlier, if there is any competent, material evidence in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous.

Schade, 401 Md. at 34-35.

Regarding Stone's conversations with Gordon in 2007, Stone testified that, after Gordon installed a gate across the alley, Stone told Gordon "that that gate had to be open during the day for [his] clients to use it, to use the alley to get to the front of the building. [Gordon] said he didn't want to interfere with that so he left the gate open." Stone's testimony, which the trial court credited, was that this conversation was not a request for permission; on the contrary, Stone was asserting his right-of-way over the alley, to which Gordon apparently acquiesced, because he left the gate open following that conversation. Accordingly, the court did not err in finding that Stone was likely to demonstrate that his use of the alley was adverse for the twenty-year period.

II. Balance of Convenience

The balance of convenience factor, also referred to as the balance of hardships factor, is "determined by whether greater injury would be done to the defendant by granting the injunction than would by its refusal." *Schade*, 401 Md. at 36. This Court has stated that "of the four factors to be considered by the trial court, the balance of hardships is the most important." *Antwerpen Dodge, Ltd. v. Herb Gordon Auto World, Inc.*, 117 Md. App. 290, 304, *cert. denied*, 347 Md. 681 (1997). If the balance of hardship weighs in favor of the plaintiff, the likelihood of success factor becomes less important. *Eastside Vend Distributors, Inc.*, 396 Md. at 242; *see also Antwerpen Dodge, Ltd.*, 117 Md. App. at 304.

In its oral ruling, the trial court stated the following regarding the balance of convenience factor:

> The balance of convenience is, and I'm using [Wish Properties's] opposition of the Motion to walk me through, the next consideration is balance of convenience. And that one is interesting. I've wrestled with that a fair amount in my thinking and tried to pay attention to arguments to see if I could get some guidance. It's interesting that we—we're all a bunch of gray-haired folks here, those legal folks. Let me just say as an aside, I think even—even some gray-haired folks don't appreciate how much judges rely on lawyers to help them make decisions. Those arguments are really important. And I've been listening for some of the things that have been of significance to me. And I mention specifically balance of convenience because **it certainly is inconvenient for [Wish Properties's owner] based on his testimony to be out every day having to clean up and deal with the issues at his business. It sounds to me as if the, on the other hand, the use of the property by [ ] Stone is for clients primarily to get from the parking lot and back to the front of the building. But it seems to me that what's to be considered in terms of balance of convenience has to do—should be in relation to the—the access the alley provides, that is, vehicular and pedestrian access. The issues that [Wish Properties] raises don't have to do with convenience for him getting to and from his building. They do for [ ] Stone. The issues that [Wish Properties] has are significant. I don't mean to, pardon the expression, wish them away. But they are a problem of general police enforcement of ordinances and public order. They're not unique to the access provided by this alley or driveway. And, therefore, it seems to me that the focus I should take is the convenience as it relates to the use of the acc—the transport of the alley either by pedestrian or vehicular traffic. And I find that certainly is in—in—weighs on the side of [ ] Stone**.

(Emphasis added).

Wish Properties argues that "the circuit court wrongly limited the balance of convenience factor to consideration only of the relative convenience to the parties of the access provided by [the a]lley." According to Wish Properties, the court erred in considering only "whether the *use of the claimed easement* would be more convenient for Stone that it

would be for Wish," when it should have considered "how the *injunction*, if granted," would cause greater injury to Wish Properties than the injury Stone would suffer if the injunction was denied. Stone responds that the trial court "*did* consider the inconvenience to Wish of keeping the [a]lley open," but simply found that such inconvenience was outweighed by the inconvenience to Stone if the gate to the alley remained locked.

As stated above, the balance of convenience depends on whose harm will be greater: the defendant's harm if the preliminary injunction is granted, or the plaintiff's harm if the preliminary injunction is denied. Contrary to Wish Properties's assertion, the trial court did not consider Wish Properties's harm irrelevant; the court stated that such harm was "significant," and recognized that "it certainly is inconvenient for [Wish Properties's owner] based on his testimony to be out every day having to clean up and deal with the issues at his business." The trial court simply found that the lack of access weighed more heavily in favor of Stone than the obligation of general police enforcement and cleanup weighed in favor of Wish Properties. Accordingly, the court did not err in finding that Stone would suffer greater harm if his clients could not use than alley, than Wish Property's harm in dealing with the consequences of leaving the gate open or unlocked.

III. Irreparable Injury

The Court of Appeals, in reviewing a preliminary injunction based on a prescriptive easement claim, has stated that such claim sufficiently establishes irreparable injury if the complainant states facts to support the allegation "that the only reasonable and convenient access which [the complainant] has to his property is through the obstructed way." *Smith v.*

Shiebeck, 180 Md. 412, 421-22 (1942) (citations and internal quotation marks omitted). More recently, the Court stated that irreparable injury "need not be beyond all possibility of compensation in damages, nor need it be very great"; rather, such injury "is suffered whenever monetary damages are difficult to ascertain or are otherwise inadequate." *El Bey v. Moorish Sci. Temple of Am., Inc*., 362 Md. 339, 355 (2001) (citations and internal quotation marks omitted). "In examining irreparable injury, the circuit court may consider the necessity to maintain the status quo pending a final outcome." *LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 301 (2004) (citations and internal quotation marks omitted). That status quo is "the last, actual, peaceable, noncontested status which preceded the pending controversy." *Ehrlich v. Perez*, 394 Md. 691, 734 (2006) (citations and internal quotation marks omitted).

In the case *sub judice*, the trial court stated its findings on irreparable injury as follows:

> As to irreparable injury, there has not been a great deal of testimony in that regard. But it's true that . . . Stone's clients . . . do not have access to the front of his building, which seems to have—seems to be customary, from the parking area. He has a parking lot that he uses in connection with his practice. But it is of no help to his clients when they park there if they have to go so far around, you can't use that alley. As far as the irreparable injury, there has not been a dollar amount put on it. But it is that much more difficult for his clients, and I think that it's a small moment, but it—it possibly shifts the scale on his side.

Wish Properties argues that "Stone presented no evidence below of any actual and imminent harm, let alone irreparable harm, that would befall him in the absence of injunctive

relief." According to Wish Properties, because Stone "did not quantify how many of his clients allegedly made such a complaint [about their obstructed access to the alley,] nor give any indication as to whether any of the complaining clients had ongoing matters with his firm that would require them to visit the office in the future," any harm alleged by Stone was "purely speculative, rather than actual and imminent." Furthermore, Wish Properties contends that any harm was not irreparable, because clients could access his office from the parking lot via a rear stairwell, and any inconvenience that this would cause would not rise to the level of irreparable harm.

Stone responds that he demonstrated irreparable harm, because the "essence of irreparable injury is that it is difficult or impossible to quantify, or that it may be very small, if reduced to monetary terms." According to Stone, the "loss of the only reasonable and convenient access to one's property is inherently irreparable in nature." Stone argues that his harm is not how much it would cost to refit his building to allow clients to access his office from the parking lot, but rather the harm to his business if his clients are unable to use the alley to access the off-street parking lot behind his building. As a result, and given the importance of preserving the status quo, Stone concludes that substantial evidence supports the court's finding that Stone's injury was irreparable.

The trial court did not err in finding that Wish Properties' obstruction of the alley deprived Stone and his clients of the "only reasonable and convenient access" between Stone's parking lot and his law office, because Stone testified that his clients, many of whom are elderly, have "rant[ed] to [him] about their inability to walk from [the] parking lot and

come up—come up the alley into the front door." Stone testified that, because Wish Properties obstructed the alley, his clients had "to go around through Cramer's Alley up Franklin Street and up North Potomac Street, which it's [sic] about a ten-minute walk." Stone testified further that it is not currently possible to allow his clients to access his office via the rear entrance, as he and his staff do, because he would have to create a reception area in the current storage room at the back of his office, and install a camera and remote entry system, as well as an elevator.

Because Stone's clients cannot *currently* access his office via the rear entrance, and the walk around Cramer's Alley and Franklin Street is a much longer distance than that through the alley, the trial court's finding that the alley constituted the only reasonable and convenient access to Stone's law office from his parking lot was not clearly erroneous. Furthermore, the last noncontested status preceding the pending controversy was the unobstructed use of the alley. Accordingly, the trial court correctly preserved the status quo when it granted the preliminary injunction. *See Ehrlich*, 394 Md. at 734.[4]

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED; APPELLANT TO PAY COSTS.

[4] Wish Properties does not contest the fourth factor, the public interest, and thus we have no need to review the court's findings as to that factor.