Circuit Court for Washington County
Case No. C-21-CV-20-000371

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

CONSOLIDATED CASES

Nos. 1145 & 1457

September Term, 2022

JUSTIN HOLDER & UNCLE EDDIES BROKEDOWN PALACE, LLC

v.

JEFFREY YOUNG

Shaw,
Kehoe,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: May 26, 2023

*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.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

In September of 2020, Jeffrey Young, Appellee, filed a Complaint against Justin Holder, Deena Holder, and all other interested but unknown parties, to quiet title to a piece of land in Keedysville, Maryland that he owned and to enjoin the Holders from trespassing on the property. Uncle Eddies Brokedown Palace, LLC[1] ("Uncle Eddie") responded to the Complaint as an interested party. After a bench trial in the Circuit Court for Washington County, the trial judge entered a declaratory judgment in favor of Mr. Young, finding that he was the owner of the property by deed as well as by adverse possession, that Mr. Holder did not own any part of the property, and that the Holders and Uncle Eddie did not have an easement over the land; he then enjoined them from entering onto Mr. Young's property.

Justin Holder and Uncle Eddie, Appellants,[2] appealed, presenting us with a plethora of questions, which we have renumbered and summarized:[3]

[1] Uncle Eddies Brokedown Palace, LLC is registered as a New Mexico limited liability company associated with Justin and Deena Holder.

[2] Deena Holder filed a "Brief of Appellee" in the instant case, after having failed to file a notice of appeal. In response, Mr. Young filed a "Motion to Dismiss Appeal Pursued by Deena Holder," in which he sought dismissal of Deena Holder's appeal, or in the alternative, requested that her brief be stricken. On March 13, 2023, this Court ordered Deena Holder's "Brief of Appellee" be stricken. Deena Holder, subsequently, filed a "Motion to Alter or Amend Order Striking Deena Holder's Brief," in which she asked the court to reconsider the order striking her appellee's brief. We, subsequently, denied her motion.

Jeffrey Young also filed a Motion to Impose Attorneys' Fees against Mr. and Ms. Holder to compensate his expenses for responding to Mr. Holder's two interlocutory appeals, which were dismissed as premature, and Ms. Holder's Brief of Appellee, which was stricken. We will discuss the disposition of his motions *infra*.

[3] Justin Holder's questions, as presented, were:

1. Did the trial court err in determining Appellant's quitclaim deeds

(continued…)

(…continued)

> constituted "subdivisions" under the Keedysville Subdivision Regulations?
> 2. If not, did it err in determining that the deeds were void ab initio?
> 3. Did the trial court err in declining to dismiss the case for failure to join all parties?
> 4. Did the trial court err in declining to dismiss the case for failure to state a claim for declaratory judgment?
> 5. Did the trial court err, and thus deny Appellant due process and the right to a fair trial, by prohibiting Appellant from introducing evidence relevant to his Answer and defenses at trial?
> 6. Did the trial court err in determining Appellee adversely possessed Parcel 3?
> 7. Did the trial court err in determining that Appellee had record title to Parcel 3?
> 8. Did the trial court err in striking the Appellant's Bill *Quia Timet*?
> 9. Did the trial court err in determining Appellee's "Complaint and Petition deal with questions that are only within the purview of a court and are not within the purview of a jury?"
> 10. Did the trial court err in granting relief as to Parcel 1 and other land outside of Parcels 2 and 3, and thus deny Appellant due process of law, where such relief was not sought in the Complaint, and where such land was not in rem?
> 11. Did the trial court err in failing to grant Appellant a hearing on his anti-SLAPP motion?

Uncle Eddie's questions, as presented, were:

> A. Where the trial court found the Cost Deed conveyed an express easement with intent to provide access over lands of Cost generally following the "Cost/Keedy divisional line" to the county road; did the trial court err locating easement?
> B. Was the trial court's legal conclusion in interpretation of the Cost Deed correct?
> C. If the trial court was correct that the easement was defective, did Appellant Uncle Eddie's predecessors or public acquire easement by prescription?
> D. If Cost Deed conveyed express easement, was the trial court legally correct in its determination that the express easement had been lost to estoppel?
> E. If Cost Deed conveyed express easement, was the trial court legally correct in its determination that the express easement had been lost to adverse possession?

(continued…)

1. Whether the trial court erred by denying Mr. Holder's jury demand?
2. Whether the trial court erred by declining to dismiss the case for failure to join necessary parties?
3. Whether the trial court erred by declining to dismiss the case for failure to state a claim for declaratory judgment?
4. Whether the trial court erred by dismissing Mr. Holder's Anti-SLAPP motion?
5. Whether the trial court erred by dismissing Mr. Holder's Bill *Quia Timet*?
6. Whether the trial court erred by determining that the existence and opening of public roads was a legislative function?
7. Whether the trial court abused its discretion by setting time limits for each side to present its case at trial?
8. Whether the trial court abused its discretion by granting a non-party witness a protective order and denying Mr. Holder's motion to compel?
9. Whether the trial court erred by including Parcel 1 in its Ruling?
10. Whether the trial court erred by finding Mr. Young held record title to Parcel 3?
11. Whether the trial court erred by determining that Mr. Holder's quitclaim deeds were void?

(…continued)

F. If Appellants' predecessors acquired a prescriptive easement, was the trial court legally correct in its determination that the easement had been lost to adverse possession?

G. If Appellants' predecessors acquired a prescriptive easement, was the trial court legally correct in its determination that the easement had been lost to estoppel?

H. When a covenant or easement is placed in the chain of title to property by the developer restricting land use, may a later owner of that land, or court, ignore or treat the covenant or easement as meaningless?

I. Did the trial court apply correct legal standards in the balancing test it performed in accordance with public policy related to Town of Keedysville's Subdivision Ordinance?

J. Did the trial court err or abuse its discretion when excluding evidence of Public Roads?

K. Did the trial court err or abuse its discretion in determining Petitioner's pleadings adduced sufficient evidence that Respondents were on notice of claims and relief to Parcel 1 not "in rem"?

L. Did Petitioner's pleadings adduce sufficient evidence to shift burden to Respondents to prove bona fides when it adjudicated Petitioner's title to Parcel 1 and locating the Wagon Road easement to the extent it burdened Parcel 1?

12. Whether there was sufficient evidence to support a judgment for adverse possession in Mr. Young's favor?
13. Whether the trial court erred by finding the "wagon road" easement defective?
14. Whether the defendants or their predecessors in title or the public acquired an easement by prescription or a public road by prescription over Mr. Young's property?
15. Whether the trial court erred by finding the "wagon road" easement terminated?

PROCEDURAL HISTORY

In September of 2020, Jeffrey Young filed a "Complaint and Petition to Quiet Title and for Declaratory and Injunctive Relief" against Justin Holder, Deena Holder, and all other interested but unidentified parties. Notices of the Complaint were published in a newspaper of general circulation in Washington County, for three consecutive weeks, pursuant to Section 14-615 of the Real Property Article, Maryland Code (1974, 2015 Repl. Vol., 2019 Supp.)[4] and Maryland Rule 2-122.[5] The notices requested that "any person who

[4] All statutory references to the Real Property Article are to Maryland Code (1974, 2015 Repl. Vol., 2019 Supp.).

Section 14-615 of the Real Property Article provides, in pertinent part:

> If, on affidavit of the plaintiff, it appears to the satisfaction of the court that the plaintiff has used reasonable diligence to ascertain the identity and residence of and to serve a summons on the persons named as unknown defendants and persons joined as testate or intestate successors of a person known or believed to be dead, the court shall order service by publication in accordance with Rule 2-122 of the Maryland Rules and the provisions of this subtitle.

[5] Maryland Rule 2-122(a) provides:

> In an in rem or quasi in rem action when the plaintiff has shown by affidavit that the whereabouts of the defendant are unknown and that reasonable efforts have been made in good faith to locate the defendant, the court may order service by the mailing of a notice to the defendant's last known address and:

(continued…)

has or claims an interest" in the property described by Mr. Young's Complaint, "shall file an answer." Justin and Deena Holder, thereafter, filed their Answers to Mr. Young's Complaint, and in "respon[se] to the published notice," Uncle Eddie also filed an Answer.

In his Complaint, Mr. Young sought to quiet title by deed and/or by adverse possession, real property located at 13 Dogstreet Road in Keedysville, Maryland, known as Parcels 2 and 3, as shown on Plat 2499:

> 3. The real property in question is located in Washington County, Maryland, and is more particularly shown and described as Parcels 2 and 3 on the Plat entitled "Property Line Survey for Harry Wickline" dated June 15, 1988, and recorded among the Plat Records for Washington County, Maryland, at Plat Record 2499.
>
> * * *
>
> 8. There exists an actual controversy of a justiciable issue between Plaintiff and Defendants within the jurisdiction of the Court involving the rights of the parties and ownership of the Parcels.
>
> 9. That by virtue of Deeds dated January 3, 1988, August 16, 1993, and May 28, 2017, and recorded respectively in Liber 885, Folio 110, Liber 1108, Folio 790, and Liber 5512, Folio 226 among the Land Records of Washington County, Maryland, Plaintiff claims title as sole owner of the Parcels described on the Plat and Deeds, attached hereto and incorporated herein by reference, labeled Exhibits A, B, C, D.

(…continued)

> (1) by the posting of the notice by the sheriff at the courthouse door or on a bulletin board within its immediate vicinity, or
> (2) by publishing the notice at least once a week in each of three successive weeks in one or more newspapers of general circulation published in the county in which the action is pending, or
> (3) in an action in which the rights relating to land including leasehold interests are involved, by the posting of the notice by a person authorized to serve process in accordance with Rule 2-123 (a) in a conspicuous place on the land.

> 10. The Land Records, Tax Records and Tax Maps of Washington County, Maryland, reflect that title to the Parcels is held by Jeffrey L. Young.
>
> 11. Since the execution and recording of the aforesaid Deed dated January 3, 1988, and recorded at Liber 885, Folio 110, Plaintiff has been in actual, exclusive, open, visible, notorious, continuous, peaceable, hostile, and adverse possession of the property shown as Parcels 2 and 3 on the aforesaid Plat Folio 2499.
>
> 12. From the date of said Deed forward, Plaintiff has paid the taxes in connection with the aforesaid property and has utilized and maintained the property as his own.
>
> 13. Plaintiff's actual, exclusive, open, notorious and adverse possession of the property has been for a continuous period of more than thirty-two (32) years, through actual possession and under color of title.
>
> 14. Prior to the execution and recording of the aforementioned Deeds to Plaintiff, Plaintiff's predecessors in title had also been in actual, exclusive, open, visible, notorious, continuous, peaceable, hostile, and adverse possession of the herein described property.

Mr. Young sought a declaration that he was the sole owner of Parcels 2 and 3 and that no other person had any rights or interests in such property. In addition, Mr. Young sought to enjoin the Holders from entering Parcels 2 and 3, as he alleged that Mr. Holder had entered the property on multiple occasions without permission:

> 17. Over the last several months, Defendant Justin Holder has attempted to enter the aforesaid property to construct roadway over said property, thereby damaging and destroying mature trees and underbrush. Although his efforts have been thwarted by Plaintiff and Plaintiff's neighbors, his efforts have caused repeated altercations and confrontations, with both Plaintiff and the property owners abutting Plaintiff's property.
>
> l8. After Plaintiff denied Defendant Justin Holder access to Plaintiff's land, Defendant Justin Holder offered to purchase an easement over Plaintiff's land for Five Thousand and 00/100 ($5,000.00) Dollars. When that offer was rejected, Defendant Justin Holder embarked upon prolonged campaign of harassment, bringing or attempting to bring others including surveyors, heavy equipment, electricians, and well drillers upon Plaintiff's land, some of whom reported to Plaintiff that Defendant Justin Holder claimed to them to have purchased the property from a "developer".

> 19. Defendant Justin Holder's actions in trespassing upon Plaintiff's land have caused damage to Plaintiff's property and severe emotional aggravation to Plaintiff and Plaintiff's family.

Although he named only Justin and Deena Holder, Mr. Young alleged that he also had made "reasonable and good faith efforts to locate" any interested but unknown parties:

> 20. There is no person or party, of record or in fact, having or claiming to have any hostile, right, or interest in or to said property. Plaintiff has made reasonable and good faith efforts to locate any such party by conducting thorough examination of all pertinent land, and estate and tax records for Washington County, Maryland, and has as well interrogated the owners of adjoining properties in order to uncover such claims and none have been uncovered.

Accordingly, Mr. Young requested the following relief:

> l. That this Honorable Court decree that the Plaintiff is the owner in fee simple of the property shown as Parcels 2 and 3 on Plat 2499 referenced in the Complaint;
>
> 2. That the Court decree that the Defendants have no estate, right, title, or interest in said property or any part thereof; and
>
> 3. That Defendants be forever barred from asserting any right, title, or estate of any nature in or to said property adverse to this Plaintiff; and
>
> 4. That Defendants be enjoined from entering upon Plaintiff's said property; and
>
> 5. That the title to the aforementioned property be quieted and any cloud removed thereon; and
>
> 6. That an Order be passed pursuant to the Maryland Rules of Procedure 2-122 providing that service of process upon the unknown Defendants be accomplished as follows:
>
> > a. By posting notice of the proceedings by the Sheriff on the properties and on the Court House Door or bulletin board or in the immediate vicinity thereof; and
> > b. By publishing that same notice in newspaper of general circulation in Washington County, Maryland in three (3) successive weeks.

On October 26, 2020, the Holders and Uncle Eddie[6] filed their Answers. In Mr. Holder's Answer, he claimed record ownership of Parcels 2 and 3, and he asserted various defenses:

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. Plaintiff's claims are barred by the Statute of Limitations.
3. Plaintiff's claims are barred by Laches.
4. Plaintiff's claims are barred by Estoppel.
5. Plaintiff's claims are barred by the doctrine of Waiver.
6. Plaintiff's claims are barred by the failure to join parties under Md. Rule 2-211.
7. Plaintiff's claims are barred by the lack of necessary parties.
8. Plaintiff's claims are barred by lack of jurisdiction.
9. Defendant has superior title to Plaintiff.
10. Defendant possesses all legal and equitable rights of access, easement, title and/or necessity in and over lands claimed by Plaintiff.

Mr. Holder claimed that he "own[ed] the fee simple land claimed by Plaintiff, which land is also subject to a record-title right of way, public road, prescriptive easement, and an easement by implication." Mr. Holder also "specifically denie[d] the accuracy of plat [2499]" and "denie[d] that the Plaintiff had made reasonable good faith efforts to locate" any interested parties. In his Amended Answer, filed on September 6, 2021, Mr. Holder included a fuller explanation of his claims, and in a Second Amended Answer, filed on April 12, 2022, he included even greater explanations and four additional defenses:

- Plaintiff's reliance on the title and/or rights of 3rd parties is *ultra vires* and/or barred by non-mutual defensive collateral estoppel.

[6] Uncle Eddie initially filed his Answer on October 26, 2020, but the court found such Answer "deficient per Rule 20-203(d)," because "the party's name is not an identical reference to the name of each party[.]" As such, Uncle Eddie re-filed his Answer on October 27, 2020 with the corrected party names.

- Plaintiff's claims of Laches asserted on behalf of parties who neglected to appear in Court and avail themselves of their rights is *ultra vires* and/or barred by *res judicata*.
- Plaintiff's claims in equity are barred by the Clean Hands Doctrine.
- Plaintiff's claims in law are barred by *in pari delicto*.

In Ms. Holder's Answer, she denied Mr. Young's ownership by deed of Parcels 2 and 3 and asserted that she "possesse[d] rights over parcels claimed by Plaintiff by virtue of her own priority of title, continuous usage by predecessors, priority of title by others, and use as a public road."[7] She also claimed to possess "all legal and equitable rights of access, easement, title and/or necessity in and over lands claimed by Plaintiff." Ms. Holder then stated that "Justin Holder has lawfully acted on lands claimed by Plaintiff," and further asserted that the Complaint failed to state a claim and failed to join necessary parties, as well as that it was barred by the Statute of Limitations, laches, doctrine of waiver, estoppel, and lack of jurisdiction.

As an "interested party," Uncle Eddie also filed an Answer in "respon[se] to the published notice" of the Complaint. Uncle Eddie denied Mr. Young's ownership of Parcels 2 and 3 and asserted the same claims and defenses as Ms. Holder. The Holders and Uncle Eddie all demanded declaratory relief in their favor and for the dismissal of Mr. Young's Complaint.

[7] Deena Holder alleged in her "Motion to Dismiss for Failure to Join Necessary Parties," filed June 13, 2021, that she owned two properties, 25 and 28 Antietam Drive in Keedysville, Maryland, which were located near Mr. Young's land, and that her properties included a deeded right of way, which ran along Mr. Young's Parcels 2 and 3.

Prior to the trial in the case, Mr. Holder filed copious pleadings.[8] For purposes of this appeal, the pleadings implicated herein include the following:

[8] Pleadings filed by Mr. Holder not in issue in this appeal include:

A "Motion in Support of Deena Holder's Motion to Dismiss and Motion for Final Judgment of Recorded Title to Parcel 3." The court denied his motion with prejudice.

A "Motion to Alter or Amend" the court's denial of his motion for "Final Judgment of Recorded Title to Parcel 3." The court denied his motion.

A "Motion as a Matter of Law—Termination by Estoppel is Unavailable," in which he argued that Maryland does not recognize the termination of easements by estoppel. The court denied his motion.

A "Motion to Compel Discovery" against Mr. Young. The motion was "denied in part, and balance of the motion [was] withdrawn by movant."

A "Motion for Sanctions" under Maryland Rule 1-341 against Mr. Young. The court denied his motion with prejudice.

A "Motion to Compel Discovery" against Scott Morral, Lot Owner No. 9 of the neighboring Stonecrest subdivision development. The court denied his motion.

A "Motion to Compel Discovery" against the Town of Keedysville. The motion was granted in part and denied in part.

A "Motion to Alter or Amend Hearing Sheet for January 13th Show Cause Hearing for Non-Appearance of Carissa Meyers." The court denied his motion, explaining that while Carissa Meyer did not appear at the show cause hearing, neither did Mr. Holder.

A "Motion to Alter or Amend February 10th Order and Reschedule Show Cause Hearing for Non-Appearance of Carissa Meyer." The court denied his motion.

A "Motion Requesting Leave of Court to Reschedule the Deposition of Christopher Joliet [Plaintiff's expert] on February 16th, 2022." The court denied his motion.

A "Motion to Shorten Time" to respond to "Motion Requesting Leave of Court to Reschedule the Deposition of Christopher Joliet." The court denied his motion as moot.

A "Motion to Compel" against the Maryland Department of Natural Resources for discovery. The motion was granted in part and denied in part.

A Motion to alter or amend the court's order denying in part his motion to compel the Department of Natural Resources. The court denied his motion.

(continued…)

In May of 2021, Mr. Holder filed a motion titled, "Motion for Rule 2-211 Required Joinder of Parties," in which he urged the court to consolidate the instant case with a separate action filed by Benjamin Estes, the owner of neighboring property, which was also pending in the circuit court but was not related to the case. The court denied his motion.

Mr. Holder also filed a document titled, "Bill *Quia Timet*," in which he alleged that the "stone" used as a starting point to describe Mr. Young's land in his predecessor's 1966 deed, was the same "stone" used as a starting point to describe Mr. Holder's land in his quitclaim deeds, and therefore, requested the court to declare it as such. The court denied the motion and later denied its reconsideration. Mr. Holder appealed the denial of the decision, but we ultimately dismissed the appeal as premature.

Later in the year, Mr. Holder filed a "Counterclaim—Bill of Complaint *Quia Timet* for Declaratory Judgment of Law and Injunctive Relief in Equity," in which he requested the same declaration as in his "Bill *Quia Timet*," and to remove the cloud he alleged existed on the property. The court ultimately granted Mr. Young's motion to strike the counterclaim but noted in its order that, "[t]his order does not limit the defenses that the

(…continued)

A "Motion to Bifurcate," which the court ultimately denied as moot.

A "Red Herring" Objection, which the court ultimately denied, finding "no good cause."

An "Objection Article IV Section 23 of Maryland Constitution," with respect to the court's delay in entering a judgment. The court denied his objection.

A "Motion to Stay Order," which the court ultimately denied.

An "Objection for the record—June 7th, 2022 Ruling Limiting Trial Time to 8 Hours," which the court ultimately denied.

defendant may utilize at trial." Mr. Holder, then, filed a motion to revise the court's order striking the counterclaim, which the court denied.

Mr. Holder's attempt to garner a jury trial was the subject of a number of pleadings, which will be discussed separately. The court ultimately denied his demands for a jury trial.

Mr. Holder's attempts in the instant case to depose and request documents from Christine Morral, the owner of Lot No. 9 in Stonecrest, a neighboring development which consisted of twenty-one single family homes, was thwarted by the grant of a protective order pursued by Ms. Morral and the denial of Mr. Holder's motion to compel. Ms. Morral alleged that Mr. Holder had sued her separately for defamation and was using the instant case as a vehicle to garner discovery for the other case, in which documents had been produced and interrogatories answered by Ms. Morral. Mr. Holder deposed Ms. Morral, and thereafter, the court found "good cause" to grant Ms. Morral's protective order and to deny Mr. Holder's motion to compel.

Mr. Holder, then, filed a "Motion to Dismiss or in the Alternative Collateral Estoppel of Interested Parties." He argued that parties that he alleged were interested, such as Stonecrest Lot Owner Nos. 10-14 and the public at large, should be bound by the court's judgment and collaterally estopped from raising future claims to the land in dispute, because they had been put on "constructive notice" of the instant suit. In the motion, Mr. Holder also alleged that Mr. Young had filed his Complaint to prevent Mr. and Ms. Holder from achieving a favorable result from the local government to obtain better access for Uncle Eddie's and Ms. Holder's properties to roadways, pursuant to the Maryland Anti-SLAPP statute, Section 5-807 of the Courts and Judicial Proceedings Article, Maryland

Code (1973, 2013 Repl. Vol.).[9] The motion was denied without a hearing, as the court found "no good cause." Mr. Holder immediately appealed the denial, but this Court ultimately dismissed the appeal as premature.

Mr. Holder filed a "Motion to Dismiss—Failure to State a Claim," in which he alleged that Mr. Young had failed to identify the record owner of Parcel 3 and that Mr. Young failed to assert a justiciable controversy against the defendants, as required by the Declaratory Judgment Act, Sections 3-401 to 3-415 of the Courts and Judicial Proceedings Article. The court denied his motion. On that same day, Mr. Holder filed an Objection to the court's denial of the motion, which the court denied, finding "no good cause."

Trial Judge's Findings

In June of 2022, a three-day bench trial was held. After hearing testimony of several witnesses, including three experts, and receiving various documents in evidence, the trial judge, three months later, made various findings.

The judge found that Mr. Young had purchased real property, located at 13 Dogstreet Road in Keedysville, Maryland, from Harry and Lempi Wickline in 1988 by deed, to which a plat was attached, identified as Plat 2499. The judge explained that the parcel depicted on Plat 2499, which was approximately 10.36 acres, was comprised of three

[9] All statutory references to the Courts and Judicial Proceedings Article are to Maryland Code (1973, 2013 Repl. Vol.).

In 2004, the General Assembly enacted the Maryland Anti-SLAPP statute to "protect individuals and groups, many with few assets, from defending costly legal challenges to their lawful exercise of such constitutionally protected rights as free speech, assembly, and the right to petition the government." Dep't Legislative Servs., *Fiscal and Policy Note, House Bill 930*, at 2 (2004 Session).

smaller parcels: Parcel 1, Parcel 2, and Parcel 3. The judge described Parcel 1 as approximately 10 acres, occupying the majority of Plat 2499, upon which Mr. Young's house and accessory buildings are located, with a driveway leading to Parcel 2. The judge described Parcel 2 as approximately 0.11 acres and serving as a roadway that connects Parcel 1 to Dogstreet Road, a public road. The judge described Parcel 3 as a 0.25-acre long piece of land, situated along the northwestern area of Mr. Young's property, lying east of and bordering land which was once a farm pasture, but is now a housing development consisting of twenty-one single family homes, a stormwater management area, and a forest conversation easement, known as Stonecrest.

The judge further found that Uncle Eddie owns Parcel 414, which lies near Parcels 1, 2, and 3, but does not border such parcels, as it is separated by an abandoned railroad and a Stonecrest forest conservation easement.

The judge also found that Deena Holder owns two properties, Parcel 412 and 127, which similarly lie near Parcels 1, 2, and 3, but do not border such parcels, as they also are separated by the same railroad and forest conservation easement.

Findings of Justiciability

The judge made findings involving the justiciability of the asserted claims. The judge found that Mr. Young sought to quiet title to Parcels 2 and 3, as shown on Plat 2499, by deed and/or by adverse possession.

The judge also found that Uncle Eddie claimed an easement over Mr. Young's property, and over other neighboring properties, for the purpose of access between Uncle Eddie's parcel and Dogstreet Road and for purposes of the construction of underground

utilities. The judge further found that Ms. Holder claimed the same easement over Mr. Young's property for the same purposes.

The judge then found that Mr. Holder claimed ownership by deed of either Parcel 3, a part of Parcel 3, or a separate area of land between Stonecrest and Parcel 3. The judge found that Mr. Holder also claimed that an easement existed over Mr. Young's land. Finally, the judge found that the Holders and Uncle Eddie contended that Mr. Young had not adversely possessed Parcel 3.

Findings Regarding Mr. Young's Record Ownership

The judge found that while Mr. Holder initially claimed ownership of Parcel 2, he had apparently abandoned the claim before trial.[10]

The judge found that Mr. Young's 1988 deed from his predecessors in title, the Wicklines, was "a valid deed of transfer of, at a minimum, Parcel 1 and Parcel 2, and it is properly recorded in the Land Records of Washington County." The judge also found that Mr. Young had purchased a quitclaim deed for Parcel 2 in 1993 from Jennifer Butts, owner

[10] On June 7, 2022, during a pre-trial conference held immediately before trial, Mr. Holder stated, "Parcel 2, Mr. Young has, I don't think there's any dispute that he's acquired or perfected his title to Parcel 2." During the second day of trial, Mr. Holder also denied any claim of ownership to Parcel 1 or 2:

> The Court: So, you are Justin Holder. You are a Defendant in this action.
>
> Mr. Holder: Yes.
>
> The Court: As we already talked about today, you are not making claim of ownership of Parcel 1.
>
> Mr. Holder: Correct.
>
> The Court: You are not making ownership, claim of ownership of Parcel 2?
>
> Mr. Holder: Correct.

of the property at the time upon which Stonecrest was built. As a result, the judge concluded that "[f]or clarity in this decision, this court finds that Plaintiff has established that he is the record title owner to Parcel 1 and Parcel 2."

The judge then found that the description of the land in Mr. Young's 1988 deed did not delineate the property as Parcels 1, 2, and 3. The judge noted, however, that the property was described as the entire perimeter of the property reflected on Plat 2499. The judge further explained that in the "BEING" clause of the 1988 deed, the lands were described as "all of Parcels 1, 2, and 3 of the lands conveyed by Roy G. Reeder and Mae H. Reeder, his wife, to Harry E. Wickline and Lempi L. Wickline by deed…and described on a plat entitled 'Property Line Survey for Harry Wickline[.]'" The judge noted that the Wickline's 1966 deed from their predecessors in title, Roy and Mae Reeder, described the three parcels separately. The judge found that the 1988 and 1966 deeds, at a minimum, gave Mr. Young "color of title"[11] to Parcel 3.

The judge, then, evaluated the deeds and plats for the neighboring Stonecrest property. The judge found that since 1996 until the present, each deed and plat that conveyed Stonecrest indicated that its eastern boundary directly abutted the western edge

[11] "Color of title" means "that which in appearance is title, but which in reality is not good and sufficient title." *Gore v. Hall*, 206 Md. 485, 490 (1955). A deed will "give color" only if it is "*prima facie* good in appearance as to be consistent with the idea of good faith on the part of the party entering under it." *Id.* at 490-91.

Mr. Young's land, which included Parcel 3.[12] Accordingly, the judge found that Mr. Young's 1988 deed and the Wickline's 1966 deed, in combination with the Stonecrest deeds, established Mr. Young's record ownership of Parcel 3:

> The deeds and plats, taken together, indicate that Plaintiff is the record owner of Parcel 3 by deed with the western boundary of Parcel 3 shown on Plat 2499 abutting and bordering the eastern boundary of Stonecrest shown on Plats 8292-93, as said plats are recorded in the Land Records of Washington County, Maryland.

Findings Regarding Mr. Young's Adverse Possession of Parcel 3

The judge also found, in the alternative, that Mr. Young adversely possessed Parcel 3, after he had purchased and moved to the property in 1988, when he lived in a camper on Parcel 1, while renovating his home and used Parcel 2 to enter and leave the property daily. The judge explained that when Mr. Young bought the property, Parcel 3 was overgrown and unkept, covered with trees, thick brush, and debris. The judge found that Mr. Young

[12] The trial judge made the following findings as to the Stonecrest deeds and plats:

> The farm pasture that became Stonecrest was conveyed from Jennifer Butts to Thomas Davis by deed in 1996. The deed indicates that the eastern boundary of the farm pasture follows the western edge of Plaintiff's property. In 2003, Davis conveyed the same property to Stonecrest Development LLC, again stating that the eastern boundary of the farm pasture follows the western edge of Plaintiff's property. Stonecrest was subdivided in 2005 by Plats 8292-93 which show the eastern boundary of the farm pasture (soon to be houses) abutting the western edge of Plaintiff's property. Specifically, Plat 8293 shows eastern boundaries of Stonecrest Lots 10-13 and part of Lot 14 as abutting the "Wire Fence Remains" with all property southeast of the "Wire Fence Remains" belonging to Plaintiff Young. On re-plat of the subdivision in 2016, Plat 10650 shows the same metes and bounds description of the boundary between Parcel 3 and Stonecrest as is shown on Plat 8293. All deeds to the individual lots within Stonecrest refer to Plats 8292-93 and 10649-50 to establish the boundaries of the Stonecrest properties.

had maintained Parcel 3 by cutting trees and mowing, but after 5 years, Mr. Young let the area "return to its natural state" and grow naturally, which resulted in mature trees and thick brush covering the area again.

The judge found that while Mr. Young did not maintain Parcel 3 as he once had, Mr. Young, nevertheless, regularly managed and used Parcel 3 for over 30 years, as he maintained "No Trespassing" signs, ejected trespassers, cleared trash and debris, hunted, and gardened within the parcel. The judge also found that Mr. Young refinanced the entire property in 1999, that he had paid taxes as the owner of Parcel 3 since its purchase, and that the local tax map reflected Mr. Young as the owner of the land abutting Stonecrest's edge. The judge found, as a result, that Mr. Young had adversely possessed Parcel 3:

> [Mr. Young] and his stepson have used Parcel 3 regularly in the same way that they use other undeveloped portions of the larger property. He has treated and used Parcel 3 as his own property, openly and against the world. He has not hidden. He has exercised dominion of the whole of Parcel 3 since 1988 as an owner would, with overt and objective action.

The judge determined that Mr. Young was operating under a color of title of Parcel 3 pursuant to his 1988 deed and satisfied his ownership, as well as that "Mr. Young has behaved for the last 34 years as the owner of Parcel 3 and has been recognized by others as the owner of Parcel 3."

Mr. Holder's Claim to Parcel 3

The judge found, from an exhaustive review of Mr. Holder's quitclaim deeds dated August of 2020, immediately prior to the suit, and other deeds dated November of 2020 and June of 2021, during the pendency of the suit, that Mr. Holder did not have valid record

title to Parcel 3. The judge reviewed Mr. Holder's quitclaim deeds from Stonecrest Development, LLC in 2020, and Jennifer Butts in 2020 and 2021:

> The first quitclaim deed is dated August 10, 2020, wherein Stonecrest Development, LLC quitclaims certain "remaining lands" to Justin Holder for $500. The "remaining lands" are described in survey attached to the deed from Fox & Associates, which describes the land as 8,296 square feet or 0.19 acres. The second quitclaim deed is dated November 3, 2020 and uses the same language to quitclaim the "remaining lands" from Jennifer D. Butts to Justin Holder for $500. Again, the "remaining lands" are described by the Fox & Associates survey as 8,296 square feet or 0.19 acres. The third quitclaim deed dated June 22, 2021 quitclaims the same land from Jennifer Butts to Justin Holder for $500.[13]

The judge relied upon Mr. Holder's own expert, George Nagel, who drafted the descriptions of the land in Mr. Holder's quitclaim deeds and who testified at trial. As to Mr. Holder's theory that his quitclaim deeds provided him ownership to land in between Stonecrest and Parcel 3, the judge found that Mr. Nagel testified that no such "Gap" of land existed, because Stonecrest directly bordered Mr. Young's land. Alternatively, as to Mr. Holder theory that the quitclaim deeds provided him with ownership of Parcel 3 itself, the judge found that Mr. Nagel testified that Parcel 3 could not have been transferred by Stonecrest Development, LLC or Ms. Butts (as predecessor to developer) to anyone, because they did not have any claim to Parcel 3, as it was not included in Stonecrest's deeds. As a result, the judge found that Mr. Holder's quitclaim deeds did not provide him

[13] The judge noted that, "[t]he only remarkable differences between the 2020 Butts-Holder deed and the 2021 Butts-Holder deed is that the newer deed contains more detailed history of alleged roads and easements in the area, and the newer deed makes reference to ownership of part of railroad bed, said bed not being at issue in this case."

with ownership of any "Gap" of land between Stonecrest and Parcel 3, nor any part of Parcel 3.

The judge also found that, even if Mr. Holder's quitclaim deeds purported to transfer him land from Stonecrest, such deeds violated the Keedysville Subdivision Ordinance, and therefore were void. The judge stated that,

> The Subdivision Ordinance provides, "[a]ll lands within the incorporated limits of the Town of Keedysville shall be subject to the provisions of this ordinance. No such land shall be subdivided and offered or negotiated for sale, sold, or ownership transferred except in accordance with the provisions of this ordinance." The regulation further defines subdivision as "the division of parcel of land into two or more lots for the purpose of transfer of ownership," excluding the "transfer or sale of land between owners of adjoining properties which does not involve the creation of any new buildable lots." A developer or subdivider is not permitted to transfer lots within subdivision unless final plat has been approved by the Planning Commission, showing all proposed lots, signed by the required parties, and filed with the Washington County Land Records.

The judge found that Stonecrest, which was subject to the Ordinance, subdivided its property in 2005 by Plats 8292 and 8293, and that such plats, as well as any subsequent amendments, did not show the "Gap" as having been subdivided from Stonecrest or any other property. Accordingly, the judge found that, "even if it were assumed that the Gap exists, which this court has determined it does not, any attempted quitclaims or conveyances by the Stonecrest developer or Ms. Butts in 2020 and 2021 to Mr. Holder did not comply with the Ordinance and they are, as such, invalid and void."

Findings Regarding the "Wagon Road" Easement Asserted by Uncle Eddie

The trial judge found that Uncle Eddie, the dominant estate, failed to establish that an easement existed for its benefit over Mr. Young's property, the servient estate.[14] The judge found that in 1872, Aaron Cost, who owned what is now Stonecrest, granted a "wagon road" easement to David Kreitzer, who owned the property subsequently deeded to Uncle Eddie and Deena Holder. Specifically, the judge found that Mr. Cost granted Mr. Kreitzer and his heirs a "wagon road" easement:

> … forever the use of a wagon road to and from said land being conveyed, commencing at a stone situated on the West margin of said Washington County Rail Road, at what said Cost called his Rail Road Crossing, and running thencer along the Western boundaries of said road, South 30 ¾ degrees East 14 perges to a stone, South 36 degrees East 10 6/10 perches to the lands of Jacob Keedy, thence along the division line between said Aaron Cost and Jacob Keedy until intersect[ing] the road leaving from said Jacob Keedy's house to the County road leading from Keedysville to Martin Eakel's Mill.

The judge found, however, that the described easement suffered a "significant and original defect," because "the road leaving from said Jacob Keedy's house to the County Road," was over land not owned by Mr. Cost, but rather by Jacob Keedy, the predecessor in title of Mr. Young's land:

> As noted by Plaintiff's expert Mr. Joliet, the original grantor, Cost, could not have granted an easement over the third-party property because Cost did not own it. Therefore, the easement cannot (and never could) allow for ingress and egress from Defendants' properties to a public road. Because the Cost Deed never lawfully provided what it purported to provide for the benefit of

[14] "When the easement is for the benefit of another property—for example, an easement to provide access to an adjacent property—the neighboring property is known as the dominant estate, while the property subject to the easement is known as the servient estate." *USA Cartage Leasing, LLC v. Baer*, 429 Md. 199, 208 (2012).

> the dominant estate—a way to access a road—it was defective from the start and remains wholly defective today.

As a result, the "wagon road" easement was "an easement to nowhere":

> Using present-day plats, experts Mr. Joliet and Mr. Nagel both agree that the easement ran from [Deena Holder and Uncle Eddie's] properties, through the forest conservation easement of Stonecrest, across Lot 9 of Stonecrest, across Lot 10 of Stonecrest, and then into [Mr. Young's] Parcel 3. Both experts agree that the easement stopped within Parcel 3, at the back corner of Stonecrest Lot 14, and did not extend to any other lands, any road, or to Dogstreet Road. Thus, experts on both sides confirm that the Cost deed never lawfully provided a way to access a road. It was an easement to nowhere.

In response to Uncle Eddie's assertion, the judge, alternatively, found that the "wagon road" easement had been terminated by estoppel and/or by adverse possession. The judge found that the easement had been terminated by estoppel due to non-use of the easement for egress and ingress since 1988, as well as Mr. Young's reliance on such non-use by allowing Parcel 3 "to go back to nature," and the dominant estates' acquiescence to Mr. Young's use of the easement until May 2020, when Mr. Holder attempted to cut a path through Parcel 3. The judge also found that the other servient estates, Stonecrest and the Town of Keedysville, also relied on non-use of the easement, by "subdividing, approving, and constructing Stonecrest," which was laid on top of the easement. The judge found, as a result, that "the dominant estates allowed their 'rights to lie fallow and unused,' thus, 'manifested such an intention of abandoning the right' so as to be estopped from now claiming it." (quoting *United Fin. Corp. v. Royal Realty Corp.*, 172 Md. 138 (1937)).

The judge further found that the "wagon road" easement also had been terminated by adverse possession, because Mr. Young had demonstrated the required "incompatible or irreconcilable" use of the easement sufficient for termination by adverse possession. By

permitting Parcel 3 to go back to nature with the growth of mature trees and thick brush, the judge found that Mr. Young's "maintenance of Parcel 3 was absolutely inconsistent with the use of the [easement] for ingress and egress, whether by car or on foot." The judge stated that Mr. Young's management of Parcel 3, including ejecting trespassers and maintaining "No Trespassing" signs, was "actionable by the dominant estates at all times," and yet the dominant estates did not exercise such rights for 32 years.

On the basis of his findings, the judge entered a declaratory judgment in Mr. Young's favor, which provided:

> **ORDERED**, the relief requested in Plaintiff Jeffrey Young's "Complaint and Petition to Quiet Title and for Declaratory and Injunctive Relief" is granted as indicated herein.
>
> **ORDERED**, Plaintiff Jeffrey Young is the owner of Parcel 1, Parcel 2, and Parcel 3 as shown on Plat 2499, one of the land records of Washington County, Maryland.
>
> **ORDERED**, no other person has any ownership interest or claim in Parcel l, Parcel 2, or Parcel 3.
>
> **ORDERED**, the western boundary of Parcel 3 as shown on Plat 2499 abuts and borders the eastern boundary of the Stonecrest development as shown on Plats 8292-93, as said plats are recorded in the Land Records of Washington County, Maryland. There is no additional strip of land or Gap between Parcel and the Stonecrest development.
>
> **ORDERED**, any deed purporting to transfer or quitclaim any part of Parcel l, Parcel 2, or Parcel 3 (as defined herein) to Justin Holder or to any other person is invalid and void.
>
> **ORDERED**, the "Wagon Road" easement created in 1872 by Aaron Cost and Malinda Cost, and recorded at W.McK.K. 6, folio 363 among the Land Records of Washington County, Maryland, is terminated in total across Plaintiffs lands and across the lands that comprise any part of the Stonecrest development and the appurtenant forest conservation area as shown on Plats 8292-93. However, nothing in this Order is to negatively affect the rights of Defendants Deena Holder (Tax Parcel 127 and Parcel 412) and Uncle Eddies Brokedown Palace, LLC (Tax Parcel 414) for ingress and egress to their

> properties from Antietam Drive in Keedysville, Maryland and the access lane thereto as shown on Plats 8292-93.
>
> **ORDERED**, Defendants Justin Holder, Deena Holder, Uncle Eddies Brokedown Palace, LLC, and any member or agent thereof, be and are hereby permanently enjoined from entering Plaintiff's land as described in the Opinion and this Order.

In a separate order, the judge also declared Mr. Holder's quitclaim deeds void:

> This matter came to the court for a three-day trial on the merits, beginning June 21, 2022. In an Opinion and Order issued this same date, this court determined that any deed purporting to transfer or quitclaim any part of Parcel 1, Parcel 2, or Parcel 3 (as defined therein) to Justin Holder or to any other person is invalid and void. Consistent with the Opinion and Order, it is this 6th day of September 2022, by the Circuit Court for Washington County, Maryland hereby:
>
> **ORDERED**, the following deeds are void and shall be indicated as void in the Land Records of Washington County, Maryland:
>
> 1. Liber 6370, folio 249, Stonecrest Development, LLC to Justin Holder dated August 10, 2020
>
> 2. Liber 6414, folio 219, Jennifer Butts Baker to Justin Holder dated November 3, 2020
>
> 3. Liber 6729, folio 365, Jennifer Butts Baker to Justin Holder dated June 22, 2021

Justin Holder and Uncle Eddie timely appealed.

STANDARD OF REVIEW

Appellate review of a judgment entered following a bench trial is governed by Maryland Rule 8-131(c), which provides:

> 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.

The trial court's "factual finding is clearly erroneous if there is no competent and material evidence in the record to support it." *Hillsmere Shores Improvement Ass'n v. Singleton*, 182 Md. App. 667, 690 (2008) (internal citations omitted). "A court's decision to grant or deny declaratory relief is generally assessed under an 'abuse of discretion' standard." *Falls Road Cmty. Ass'n v. Baltimore Cnty.*, 437 Md. 115, 135 (2014). Legal conclusions, however, are reviewed *de novo*, without deference to the trial court. *Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md. App. 562, 576 (2007).

DISCUSSION

Demand for Jury Trial

Mr. Holder argues that the trial judge erred by denying him his right to a trial by jury, while Mr. Young contends that Mr. Holder failed to timely file for a jury trial.

Article 5 of the Maryland Declaration of Rights provides, in pertinent part, "[t]hat the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law[.]" It is well-established that,

> [t]he constitutional guarantee of a trial by jury extends only to the type of cases in which the right of a trial by jury existed at the time of the adoption of the constitution. In this State there is no right to a jury trial in a court of equity.

Impala Platinum Ltd. v. Impala Sales (U.S.A.), Inc., 283 Md. 296, 320 (1978) (internal citations omitted). "[T]he jury trial right in civil cases relates to 'issues of fact' in legal actions. It does not extend to issues of law, equitable issues, or matters which historically were resolved by the judge rather than by the jury." *Murphy v. Edmonds*, 325 Md. 342, 371 (1992). *See Maryland Dep't of Env't v. Underwood*, 368 Md. 160, 183 (2002) (explaining

that courts consider how the causes were historically tried and the remedy sought by the plaintiff when determining whether a claim gives rise to a jury trial).

Maryland Rule 2-325 sets the time within which a trial by jury must be demanded or it will be waived:

> (a) **Demand.** Any party may elect a trial by jury of any issue triable of right by a jury by filing a demand therefor in writing either as a separate paper or separately titled at the conclusion of a pleading and immediately preceding any required certificate of service.
>
> (b) **Waiver.** The failure of a party to file the demand within 15 days after service of the last pleading filed by any party directed to the issue constitutes a waiver of trial by jury.

"Whether [Mr. Holder] was entitled to a jury trial pursuant to Maryland 2-325 is a legal question, and so we review the lower court's decision without deference." *Scarfield v. Muntjan*, 444 Md. 264, 270 (2015).

In the present case, Mr. Young filed a Complaint to quiet title by record and/or by adverse possession to Parcels 2 and 3, as well as a declaration that he was the sole owner of the property. On October 26, 2020, Mr. Holder timely filed an Answer, in which he asserted ownership of Mr. Young's land, denied Mr. Young's adverse possession of the disputed property, and included various defenses. Neither the Complaint nor the Answer filed by Mr. Holder included a jury demand. In July of 2021, however, Mr. Holder filed a separate jury demand, which Mr. Young moved to strike. The court struck the jury demand and ordered a "two-day bench trial."

Two months later after the denial of his jury demand, Mr. Holder, however, filed an Amended Answer, in which he demanded a jury trial as well as raised the same defenses

as in his initial Answer, expanded on his claim to ownership of Parcels 2 and 3, as well as on his right to use any easements on the land, but added no new defenses. Several months later, Mr. Holder filed a Second Amended Answer, in which he included a jury demand, the same ten defenses he asserted in his first two Answers, even more explanation of his right to ownership of the land, as well as four additional defenses:

- Plaintiff's reliance on the title and/or rights of 3rd parties is *ultra vires* and/or barred by non-mutual defensive collateral estoppel.
- Plaintiff's claims of Laches asserted on behalf of parties who neglected to appear in Court and avail themselves of their rights is *ultra vires* and/or barred by *res judicata*.
- Plaintiff's claims in equity are barred by the Clean Hands Doctrine.
- Plaintiff's claims in law are barred by *in pari delicto*.

The court denied Mr. Holder's request for a jury trial, explaining that the "Complaint and Petition deal with questions that are only within the purview of a court and not within the purview of a jury."

The judge did not err in denying Mr. Holder's request for jury trial. Mr. Young's Complaint to quiet title and declaratory judgment was an action in equity. *See Porter v. Schaffer*, 126 Md. App. 237, 273, *cert. denied*, 355 Md. 613 (1999) ("Historically, quiet title was an equitable remedy[.]"). The only issue triable by a jury was Mr. Young's claim to ownership by adverse possession. *See Maryland Coal & Realty Co. v. Eckhart*, 25 Md. App. 605, 622, *cert. denied*, 275 Md. 753 (1975) ("[Whether title by adverse possession occurred] is obviously a question of law for the court, but whether facts exist is a question for the jury." (quoting *Town of New Windsor v. Stocksdale*, 95 Md. 196, 214 (1902))). Mr. Holder, however, failed to demand a jury trial within 15 days after he filed his Answer on

October 26, 2020, which addressed Mr. Young's claim of adverse possession, and therefore, waived his right to a jury trial under Maryland Rule 2-325. *See State, Dept. of Econ. & Cmty. Dev. v. Attman/Glazer P.B. Co.*, 323 Md. 592, 607 (1991) ("Although either party in the instant case might have been entitled to a jury trial on the legal issues generated in the State's original complaint seeking a declaratory judgment and AG's answer…both waived that right under Md. Rule 2-325(b).").

A party's previously waived demand for a jury, however, may be revived in an amended pleading, if such a pleading raises a "new substantive issue." *Luppino v. Gray*, 336 Md. 194, 198-99 (1994). *See Scarfield*, 444 Md. at 266 ("An exception to this waiver rule applies when a party files an amended complaint, asserting a new substantive issue and demanding a jury trial.").

In *Luppino*, Mr. Luppino sued Mr. and Mrs. Gray for fraud, intentional concealment, and negligent misrepresentation, and did not demand a jury trial. 336 Md. at 197. Mr. Luppino later attempted to revive his waiver by filing an amended complaint that asserted four new counts and included a jury demand. *Id.* The circuit court dismissed all but one of the new counts, intentional omission, and denied the Gray's motion to strike the jury demand. *Id.* at 197-98. On appeal, our Supreme Court (then the Court of Appeals of Maryland[15]) agreed with the intermediate court that the jury demand should have been struck, because the only surviving new count was "merely the restatement of a claim for

[15] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals to the Supreme Court of Maryland.

(continued…)

fraud already set forth in two other counts of the complaint; it did not add a new substantive issue." *Id.* at 198.

In Mr. Holder's Amended Answer, he included a jury demand, but it was filed later than what was required to adequately demand a jury trial. The Amended Answer also did not raise any new substantive issue, however, so it could not revive the waived jury demand.

Although in Mr. Holder's Second Amended Answer, he also included a jury demand, as well as four additional defenses, he did not raise any "new substantive issues" for which he had entitlement to a jury trial. *Luppino*, 336 Md. at 198. *See also Scarfield*, 444 Md. at 275 ("The filing of a demand for jury trial pursuant to [Rule 2-325] does not entitle a party to a jury trial in cases where the right does not otherwise exist."). Accordingly, the judge did not err in denying Mr. Holder's repeated jury trial demands.

Motions to Dismiss

"Generally, the 'standard of review of the grant or denial of a motion to dismiss is whether the trial court was legally correct.'" *Blackstone v. Sharma*, 461 Md. 87, 110 (2018) (quoting *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 284 (2018)). Mr. Holder argues that the court erred by denying his motions to dismiss for failure to join necessary parties, as well as for failure to state an actual controversy, and for having denied

(…continued)

The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules, or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland….").

his claim that Mr. Young was attempting to intimidate him under the Maryland Anti-SLAPP statute.

Joinder of Necessary Parties

Mr. Holder argues that the court erred by declining to dismiss the case for failure to join necessary parties, because, he alleges, Stonecrest Lot Owners 9-14, as well as the Town of Keedysville and the State of Maryland were necessary parties.

The quiet title statute, Section 14-108 of the Real Property Article, provides:

> (a) Any person in actual peaceable possession of property, or, if the property is vacant and unoccupied, in constructive and peaceable possession of it, either under color of title or claim of right by reason of the person or the person's predecessor's adverse possession for the statutory period, when the person's title to the property is denied or disputed, or when any other person claims, of record or otherwise to own the property, or any part of it, or to hold any lien encumbrance on it, regardless of whether or not the hostile outstanding claim is being actively asserted, and if an action at law or proceeding in equity is not pending to enforce or test the validity of the title, lien, encumbrance, or other adverse claim, *the person may maintain a suit in accordance with Subtitle 6 of this title* in the circuit court for the county where the property or any part of the property is located to quiet or remove any cloud from the title, or determine any adverse claim.
>
> (b) The proceeding shall be deemed in rem or quasi in rem so long as the only relief sought is a decree that the plaintiff has absolute ownership and the right of disposition of the property, and an injunction against the assertion by the person named as the party defendant, of the person's claim by any action at law or otherwise. *Any person who appears of record, or claims to have a hostile outstanding right, shall be made a defendant in the proceedings.*

(emphasis added).

Accordingly, Section 14-108(b) of the Real Property Article requires that a person who claims to have an adverse claim or "a record owner of property that is subject to an action to quiet title is a necessary party and must be joined as a defendant to the action." *Estate of Zimmerman v. Blatter*, 458 Md. 698, 732 (2018). Notably, Section 14-108(a)

instructs that a "person may maintain suit in accordance with Subtitle 6 of this title." Subtitle 6, Sections 14-601 to 14-621 of the Real Property Article, "set forth general procedures governing actions to quiet title and provide specific procedures by which a plaintiff may file an action to quiet title and join all necessary defendants, despite the existence of a defendant who is not known to the plaintiff." *Wilkinson v. Board of Cnty. Comm'rs*, 255 Md. App. 213, 260 (2022) (quoting *Zimmerman*, 458 Md. at 722).

Under Section 14-609 of the Real Property Article, "[i]f the name of a person required to be named as a defendant is not known to the plaintiff, the plaintiff shall state in the complaint that the name is unknown and shall name as parties all persons unknown in the manner provided under § 14-613 of this subtitle." Section 14-613 of the Real Property Article requires a plaintiff to include the following language when unknown defendants may exist: "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to the plaintiff's title, or any cloud on the plaintiff's title to the property." In addition, under Section 14-615 of the Real Property Article, if the court finds that the plaintiff used "reasonable diligence" to identify any unknown defendants, "the court shall order service by publication in accordance with

Rule 2-122[16] of the Maryland Rules and the provisions of this subtitle."

The trial court did not err in declining to dismiss Mr. Young's Complaint. Mr. Young satisfied the requirements under the Real Property Article for joining necessary parties.

In his Complaint, Mr. Young averred that, "[t]he last title owner of Parcel 3, shown on the aforesaid Plat, is unknown." Mr. Young then included the following language in the caption page of his Complaint, under Justin and Deena Holder's name:

> AND ALL UNKNOWN PERSONS, HEIRS. DEVISEES, LEGATEES, ASSIGNS, CORPORATIONS OR OTHER ENTITIES OF WHATSOEVER NATURE OR KIND THAT AMY CLAIM ANY RIGHT, TITLE OR INTEREST IN THE REAL ESTATE DESCRIBED AS PARCELS 2 AND 3, WASHINGTON COUNTY PLAT NO. 2499 LOCATED ON DOGSTREET ROAD, KEEDYSVILLE, MARYLAND WASHINGTON COUNTY TAX MAP, GRID 19, PARCEL 180.

Mr. Young then explained that he had used "reasonable and good faith efforts" to locate any interested parties, as he examined the land, as well as the estate and tax records of the

---

[16] Maryland Rule 2-122(a) provides:

> In an in rem or quasi in rem action when the plaintiff has shown by affidavit that the whereabouts of the defendant are unknown and that reasonable efforts have been made in good faith to locate the defendant, the court may order service by the mailing of a notice to the defendant's last known address and:
>
> (1) by the posting of the notice by the sheriff at the courthouse door or on a bulletin board within its immediate vicinity, or
> (2) by publishing the notice at least once a week in each of three successive weeks in one or more newspapers of general circulation published in the county in which the action is pending, or
> (3) in an action in which the rights relating to land including leasehold interests are involved, by the posting of the notice by a person authorized to serve process in accordance with Rule 2-123 (a) in a conspicuous place on the land.

property, and interrogated neighbors of adjacent lands. Mr. Young further averred that he did not find any other interested parties and requested that the court pass an order "pursuant to the Maryland Rules of Procedure 2-122 providing that service of process upon the unknown defendants be accomplished," by publishing notice of the Complaint in a newspaper of general circulation in Washington County. The notice was then published for three weeks in a Washington County newspaper. Mr. Young complied with the requirements to join necessary parties, and only Uncle Eddie responded.[17]

The trial judge did not err in denying the motion to dismiss for failure to join necessary parties.

[17] In addition, Section 14-616 of the Real Property Article provides, in pertinent part:

> (a) If the court orders service by publication, the plaintiff shall:
> (1) Post, not later than 10 days after the date the order is issued, a copy of the summons and complaint in a conspicuous place on the property that is the subject of the action; and
> (2) File proof that the summons has been served, posted, and published as required in the order.

In January of 2022, Mr. Young filed a "Motion to Waive Posting Requirement," in which he explained that he had inadvertently failed to post the summons and complaint on the property but urged the court to waive the requirement. He contended that no prejudice resulted from the lack of posting, because the defendants had "not[ed] a deposition of neighbors and landowners near the Plaintiff's property and no one has come forward as an interested party." The court granted Mr. Young's motion and required that he post the property. Mr. Young, subsequently, followed the court's order and filed proof that the summons and complaint had been posted.

The later posting has not been raised as an issue on appeal, and we shall not address it.

Actual Controversy in Declaratory Judgment

Mr. Holder also argues that the court erred by denying his motion to dismiss for failure to state a claim, because, he alleges, Mr. Young failed to identify an actual controversy in his Complaint.

Under Section 3-409(a) of the Courts and Judicial Proceedings Article:

> [A] court may grant declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if:
>
> (1) An actual controversy exists between contending parties;
>
> (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or
>
> (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

In *State v. G & C Gulf, Inc.*, 442 Md. 716, 721 (2015), our Supreme Court iterated the standards to be applied to determine whether a "justiciable controversy" exists in a declaratory judgment action:

> In *Hamilton v. McAuliffe*, 277 Md. 336, 339-40 (1976), we summarized the [definition of what] a justiciable controversy [is]:
>
> > That the existence of a justiciable controversy is a prerequisite to the maintenance of a declaratory judgment in Maryland is well settled. A controversy is justiciable "when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded." It is thus clear that the declaratory judgment process is not available to decide purely theoretical questions or questions that may never arise, or questions which have become moot, or merely abstract questions. That the declaratory judgment process should not be used where a declaration would not serve a useful purpose or terminate a controversy is equally well settled.

(internal citations and quotations omitted).

In his Complaint, Mr. Young asserted "adverse claims upon a state of facts which [had] accrued":

> 8. There exists an actual controversy of a justiciable issue between Plaintiff and Defendants within the jurisdiction of the Court involving the rights of the parties and ownership of the Parcels.
>
> * * *
>
> 17. Over the last several months, Defendant Justin Holder has attempted to enter the aforesaid property to construct roadway over said property, thereby damaging and destroying mature trees and underbrush. Although his efforts have been thwarted by Plaintiff and Plaintiff's neighbors, his efforts have caused repeated altercations and confrontations, with both Plaintiff and the property owners abutting Plaintiff's property.
>
> l8. After Plaintiff denied Defendant Justin Holder access to Plaintiff's land, Defendant Justin Holder offered to purchase an easement over Plaintiff's land for Five Thousand and 00/100 ($5,000.00) Dollars. When that offer was rejected, Defendant Justin Holder embarked upon prolonged campaign of harassment, bringing or attempting to bring others including surveyors, heavy equipment, electricians, and well drillers upon Plaintiff's land, some of whom reported to Plaintiff that Defendant Justin Holder claimed to them to have purchased the property from a "developer".
>
> 19. Defendant Justin Holder's actions in trespassing upon Plaintiff's land have caused damage to Plaintiff's property and severe emotional aggravation to Plaintiff and Plaintiff's family.

The Complaint was sufficient to allege a justiciable controversy.

Maryland Anti-SLAPP Suit

Mr. Holder also moved for dismissal of the lawsuit based on his allegation that it was a tactic employed by Mr. Young to intimidate him to abandon a claim he had made against the Town of Keedysville to gain an access road to Uncle Eddie's and Ms. Holder's properties, based upon his invocation of the Maryland Anti-SLAPP statute, Section 5-807 of the Courts and Judicial Proceedings Article.

"A SLAPP suit is commonly defined as a lawsuit designed to shut down a person's right to participate in public discourse through a lawsuit that the plaintiff has filed not because he thinks he can win, but to intimidate or punish someone else." Nicole J. Ligon, *Solving SLAPP Slop*, 57 U. Rich. L. Rev. 459, 466 (2023) (citations omitted). To combat such suits, various states have enacted Anti-SLAPP statutes, which provide "procedural protections for citizens who find themselves on the receiving end of lawsuits intended to punish them for speaking out on public matters." *Id.* at 468.

The purpose of such statutes is "'to weed out and deter lawsuits brought for the improper purpose of harassing individuals who are exercising their protected right to freedom of speech.'" *MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condo., Inc*., 253 Md. App. 279, 296 (2021) (quoting *Fairfax v. CBS Corp.*, 2 F.4th 286, 296 (4th Cir. 2021)). "SLAPP suits 'are by definition meritless suits.'" *Id.* (quoting *Duracraft Corp. v. Holmes Prods. Corp.*, 691 N.E.2d 935, 940 (Mass. 1998)).

In 2004, the Maryland General Assembly enacted an Anti-SLAPP law to "protect individuals and groups, many with few assets, from defending costly legal challenges to their lawful exercise of such constitutionally protected rights as free speech, assembly, and the right to petition the government." Dep't Legislative Servs., *Fiscal and Policy Note, House Bill 930*, at 2 (2004 Session). Maryland's Anti-SLAPP statute, which is codified in Section 5-807 of the Courts and Judicial Proceedings Article, provides:

> (a) *"SLAPP suit" defined*. In this section, "SLAPP suit" means a strategic lawsuit against public participation.
>
> (b) *Nature*. A lawsuit is a SLAPP suit if it is:

> (1) Brought in bad faith against a party who has communicated with a federal, State, or local government body or the public at large to report on, comment on, rule on, challenge, oppose, or in any other way exercise rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern;
>
> (2) Materially related to the defendant's communication; and
>
> (3) Intended to inhibit or inhibits the exercise of rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights.

(c) *Scope of Immunity*. A defendant in a SLAPP suit is not civilly liable for communicating with a federal, State, or local government body or the public at large, if the defendant, without constitutional malice, reports on, comments on, rules on, challenges, opposes, or in any other way exercises rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern.

(d) *Remedies of defendant*. A defendant in an alleged SLAPP suit may move to:

> (1) Dismiss the alleged SLAPP suit, in which case the court shall hold a hearing on the motion to dismiss as soon as practicable; or
> (2) Stay all court proceedings until the matter about which the defendant communicated to the government body or the public at large is resolved.

(e) *Applicability*. This section:

> (1) Is applicable to SLAPP suits notwithstanding any other law or rule; and
> (2) Does not diminish any equitable or legal right or remedy otherwise available to a defendant in a SLAPP suit.

Pursuant to the statute, Mr. Holder filed a "Motion to Dismiss or in the Alternative Collateral Estoppel of Interested Parties," in which he argued:

> The Plaintiff has filed this lawsuit with knowledge that Defendant was actively pursuing redress under the 1st Amendment with the Public 'writ

> large. The Plaintiff has filed this action to harass and annoy Defendants for vexatious purposes, and the action cannot and will not do substantial justice.

Mr. Holder explained that he had sought redress from the Town of Keedysville "to survey and set out fences in the road which is part of this instant dispute." Mr. Holder claimed that Mr. Young filed his lawsuit "in bad faith." He then quoted the Anti-SLAPP statute's required elements under Subsection (b) and the remedies to an alleged SLAPP suit under Subsection (d).

The trial judge did not hold a hearing regarding whether to grant or dismiss Mr. Young's Complaint. Mr. Holder seeks to reverse and remand the case to the trial judge to grant the motion to dismiss.

When a hearing is required under a statute or a rule, and the hearing has not occurred, we have explored whether remanding for a hearing would serve any "practical purpose." In *Briscoe v. Mayor & City Council of Baltimore*, 100 Md. App. 124 (1994), the City had filed a motion to dismiss Mr. Briscoe's complaint and requested a hearing. The court granted the motion to dismiss without a hearing and did not state its reasons for doing so. *Id.* at 128. On appeal, Mr. Briscoe argued that a hearing was required under Maryland Rule 2-311(f),[18] because the City requested a hearing, and the motion was dispositive of Mr. Briscoe's claims. *Id*. at 127-28.

[18] Maryland Rule 2-311(f) provides:

> A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading "Request for Hearing." The title of the motion or

(continued…)

On appeal, we held that the court erred by failing to hold the mandatory hearing under Maryland Rule 2-311. *Id.* at 128. Nevertheless, we explained that "no practical purpose would be served by remanding this matter for a hearing. Thus, we shall decide the merits on this appeal." *Id.* Because the motion only involved issues of law, and the trial court did not state its reasons for dismissing the suit, we evaluated the statute at issue and found that the court was legally correct in dismissing the complaint, as Mr. Briscoe's complaint did not meet the required statutory elements, and therefore, failed to state a cause of action upon which relief could be granted. *Id*. at 130-31.

In *MCB Woodberry Developer, LLC v. Council of Owners of Millrace Condominium, Inc*., 253 Md. App. 279 (2021), we also determined that the Maryland Anti-SLAPP statute required a legal, rather than evidentiary, hearing. In the case, residents of a community filed a motion to dismiss a developer's (MCB) complaint against them in accordance with Maryland Anti-SLAPP statute. *Id.* at 294. The court dismissed MCB's complaint on the face of the pleadings, after holding a hearing. *Id.* at 295.

On appeal, MCB argued that, "the circuit court should not have determined the element of 'bad faith' on a motion to dismiss because it is a factual question that… could

(…continued)

> response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, *but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.*

(emphasis added).

not be decided on a preliminary motion." *Id.* at 298-99. We disagreed, explaining that the Anti-SLAPP statute does not require an evidentiary hearing, but rather a legal hearing on the pleadings. *Id.* ("If the determination of bad faith necessitated always an evidentiary proceeding, subsection (d) would be rendered nugatory because a defendant could never satisfy the threshold criteria of the statute and obtain dismissal."). We held that "there are cases in which the allegations of the pleadings, exhibits incorporated therein, and other matters capable of being noticed judicially, supply evidence from which bad faith may be discernable as a matter of law." *Id.* at 307-08. Accordingly, from the face of the pleadings, the court dismissed the original suit, determining that the residents' motion to dismiss was sufficient to invoke the Anti-SLAPP statute.

In the present case, while the court may have erred by denying the motion to dismiss without holding a hearing, we find that "no practical purpose would be served by remanding this matter for a hearing," *Briscoe*, 100 Md. App. at 128, because Mr. Holder's motion to dismiss was facially *insufficient* to invoke the Anti-SLAPP law.

Mr. Holder facially failed to demonstrate that he was entitled to pursue an Anti-SLAPP lawsuit, as he failed to satisfy the required elements. There were no bases alleged regarding Mr. Young's bad faith; any relationship between the suit and Mr. Holder's statements; or how Mr. Young intended to inhibit Mr. Holder's further communication with local government, as required under Section 5-807 of the Courts and Judicial Proceedings Article. As a result, the judge did not err.

Denial of Bill *Quia Timet*

Mr. Holder filed a "Bill *Quia Timet*" that requested a declaration be made that the "stone" referenced as the starting point to describe Mr. Young's land in his predecessor's 1966 deed, was the same "stone" used as the starting point to describe Mr. Holder's land in his quitclaim deeds. Mr. Holder alleged that such a declaration would allow the court to determine the boundary line between Stonecrest and Mr. Young's property. The court ultimately denied the bill and the request for reconsideration.

"*Quia timet*" is Latin for "because he fears" and is defined as "[a] legal doctrine that allows a person to seek equitable relief from future probable harm to a specific right or interest." *Quia Timet*, Black's Law Dictionary (11th ed. 2019). In 1891, our Supreme Court explained that a "bill *quia timet*" was used to "remove a cloud upon the title of real estate," in order "to prevent future litigation by removing existing causes of controversy as to title." *Livingstone v. Hall*, 73 Md. 386 (1891). Actions to quiet title, under a bill of peace, however, were used to determine who held title to the property, in order to "put an end to vexatious litigation respecting the property." *Id*.

In 1955, the bill *quia timet* was apparently subsumed in the quiet title statute, enacted as Article 16 Section 131A of the 1951 Maryland Code, which provided:

> 131A. Any person in actual peaceable possession of lands in the State of Maryland or, in the event said lands be vacant and unoccupied, in constructive and peaceable possession thereof, either under color of title, or under claim of right by reason of his or his predecessor's adverse possession for the statutory period, may, when his title thereto, or any part thereof, is denied or disputed, or when any other person claims or is claimed, of record or otherwise, to own said lands, or any part thereof, or any interest therein, or to hold any lien or encumbrance thereon, whether such hostile outstanding claim is being actively asserted or not, and when no action at law or any

> proceeding in equity is pending to enforce or test the validity of such title, lien or encumbrance, or other adverse claim, maintain a suit in equity in the Circuit Court of the county in which said lands should lie therein, *to quiet, or remove any such cloud from said title, or determine any such adverse claims*[…]

1955 Maryland Laws, ch. 376 (emphasis added).[19]

The court did not err in denying Mr. Holder's Bill *Quia Timet*, essentially itself a quiet title action. Under Section 14-108(a) of the Real Property Article, an action to quiet title is only available when "an action at law or proceeding in equity is not pending to enforce or test the validity of the title, lien, encumbrance, or adverse claim." As Mr. Young's Complaint to quiet title was an action to enforce an adverse claim against the property at issue, Mr. Holder was not eligible to file another action to quiet title.

Mr. Holder, later, filed a "Counterclaim—Bill of Complaint *Quia Timet* for Declaratory Judgment of Law and Injunctive Relief in Equity," in which he requested the same declaration as in his "Bill *Quia Timet*," and to remove the cloud he alleged existed on the property. Mr. Holder's counterclaim was filed on November 18, 2021, over a year after he filed his initial answer. Mr. Young moved to strike the counterclaim, arguing that the acceptance of the counterclaim would prejudice him, because the court had already denied Mr. Holder's similar Bill *Quia Timet*, and "considerable discovery" had been conducted among the parties during the past year. The court granted Mr. Young's motion

[19] Our caselaw supports the apparent encapsulation of the bill *quia timet* into the quiet title statute. *See Cherry v. Siegert*, 215 Md. 81, 85-87 (1957); *Wathen v. Brown*, 48 Md. App. 655, 657-58 (1981).

to strike the counterclaim but noted in its order that, "[t]his order does not limit the defenses that the defendant may utilize at trial."

Maryland Rule 2-331(d) requires counterclaims to be filed within 30 days after the time for filing that party's answer, and if not, another party may move to strike the counterclaim within 15 days of service. In the instant case, waiting over a year to file a counterclaim substantially adversely affected the pursuit of the claims, considering the discovery that had already occurred. Further, Mr. Holder was able to present the bases for his *quia timet* allegations at trial. Accordingly, the court did not err in dismissing Mr. Holder's Bill *Quia Timet.*

Existence of Public Roads

Mr. Holder argues that the court erred in failing to determine whether a public road existed or should be opened over Parcel 2 and 3 in Keedysville, Maryland, because the judge explained that such a determination is a legislative, rather than a judicial, function.

Mr. Holder filed a pre-trial statement, in which he discussed the issue of public roads over Parcels 2 and 3:

> During the time period between 1988 and 2001 Defendant Justin Holder regularly crossed over "parcel 3" on a Trek Mountain Bike and a 1995 Honda CR25 motocross bike, sometimes throwing rocks at Plaintiff in his square body Chevrolet Truck with utility bed ("Roosting") on the way to what is now Rockingham Development in Keedysville where many members of the Public road bicycles and ATVs.
>
> * * *
>
> The Public Road that burdens "parcel 2" as shown in the Town of Keedysville 1974 comprehensive plan as a local road was also depicted on the 1872 Atlas of the Town of Keedysville as a Public Road.
>
> "Parcel 2" has been in use as a Public road for over 100 years which is demonstrated by multiple maps, documents and land records.

Thereafter, Mr. Holder wrote a letter to the court, in which he summarized the issues for trial, one of which involved "clouds on the title of subject properties":

> 4. Outstanding Claims and clouds on the title of subject properties, not named but apparent from inspection of the Property and Public Record, including claims by the Local Government in which Defendants have requested redress. (Interlocutory Appeal pending).

At the pre-trial conference, the trial judge acknowledged the letter and issues Mr. Holder raised, including "number four, whether there are claims or clouds that are out there regarding public roads on [Parcels 2 or 3]."

The judge specifically explained that the existence of public roads was a "legislative function" and that evidence of road usage was not going to be presented in the case:

> Let's go to number 4. And I sort of rename it or redescribe it as whether there are roads, town roads, county roads, that affect parcel 2 or parcel 3 that may traverse over the Young property. Separate from a private easement, these are government held roads. To me, that is not relevant in the case that we are having two weeks from now. I will not hear evidence on public roads. And the reason is if there are roads owned by the county or the town, whether those roads are open for use, whether they should be re-opened, whether they still exist, is a legislative function of government. It is not right now a judicial function and therefore we will not be discussing roads.

In 1954, Article XI-E of the Maryland Constitution was ratified by Maryland voters in the general election. 1954 Maryland Laws, ch. 53. Article XI-E grants municipalities the power to enact their own local charters to identify its structures, powers, and procedures. The Town of Keedysville adopted in charter in 2003, which provides in part, "the town has control of all public ways in town except those that are under the jurisdiction of the State Highway Administration." Charter of the Town of Keedysville, Public Ways and Sidewalks, § 72 (2003), available at https://perma.cc/H7TR-QPL6.

Because Parcels 2 and 3 are in Keedysville, the Town is authorized to exert control over whether a road therein is open, closed, or exists. Accordingly, the court did not err.

Trial Time

During the pre-trial conference, the trial judge announced that he had added a third trial day to assure "that each party had sufficient time to get into evidence what they wanted to get into evidence." The attendant schedule included one hour for openings and closings, and 16 hours for the parties to present their case, which when split evenly, resulted in each side receiving 8 hours to present evidence. Mr. Holder alleges that the trial judge erred in allotting the defendants only the 8 hours.

Judges have wide discretion in setting time limits for the course of trial. *See City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 684 (2007) ("As a general proposition, '[t]rial judges have the widest discretion in the conduct of trials, and the exercise of that discretion should not be disturbed on appeal in the absence of clear abuse.'" (quoting *Tierco Md., Inc. v. Williams*, 381 Md. 378, 426 (2004))). The judge in the instant case did not abuse his discretion in allotting 8 hours to each side to present evidence and nothing has been adduced to show such an abuse. Accordingly, we find no error.

Christine Morral's Protective Order and Mr. Holder's Motion to Compel

Christine Morral, a non-party in the instant case, was served on July 28, 2021, with a subpoena duces tecum to appear at a deposition on September 13, 2021, at which time she was also to produce various documents, identified in an attached schedule.

On September 2, 2021, Ms. Morral, represented by an attorney, filed a Motion for Protective Order, in which she urged the court to quash the subpoena duces tecum and the

deposition notice, because her attorney had been unsuccessful in resolving the issues with Mr. Holder. Ms. Morral argued that the documents requested in the subpoena were duplicative of the extensive discovery Mr. Holder had requested in a separate action he had brought against her for defamation. In the motion, Ms. Morral compared Mr. Holder's document requests in the instant case to the document requests responded to in the defamation action to reflect their duplication. She also alleged that a protective order was necessary to seek "protection from a deposition that was more geared towards annoyance, embarrassment, oppression, and placing an undue burden or expense on her than for legitimate discovery purposes."

Although her motion sought to cancel the deposition and the document production, Ms. Morral did appear with substitute counsel on September 13, 2021 to be deposed by Mr. Holder, because apparently she was afraid that Mr. Holder "would issue a body attachment for Ms. Morral if she did not appear." Subsequent to the deposition, the court found "good cause" to grant Ms. Morral's protective order to quash the subpoena duces tecum and deposition notice, on September 28, 2021.

Mr. Holder, thereafter, filed a motion to compel answers to ten questions that Ms. Morral did not answer in her deposition, as well as "documents that were not produced in any other matter." In response, Ms. Morral again asserted that such questions were relevant only to the separate defamation lawsuit and that the court's protective order had not been vacated. On January 27, 2022, the court denied the motion to compel, "noting that this Court granted a Motion for Protective Order and quashed the deposition subpoena by court

order dated September 28, 2021, noting that such protective order has not been vacated, and determining that no sufficient cause had been indicated to vacate the protective order."

Mr. Holder, then, filed a motion to vacate the protective order, arguing that Ms. Morral had not demonstrated "good cause" in her motion. On March 3, 2022, the court denied the motion, as it found "no sufficient cause to vacate."

We note that the deposition of Ms. Morral did happen, and therefore, the motion for protective order, relative to the deposition, was essentially moot. Insofar as Mr. Holder continued to seek answers to questions that Ms. Morral did not answer, as well as seek documents that were not produced, we determined that the trial judge did not err in granting the protective order.

A protective order may be granted to protect a person "from annoyance, embarrassment, oppression, or undue burden or expense" of discovery. Maryland Rule 2-403. We review the grant of a protective order under an abuse of discretion standard. *Tanis v. Crocker*, 110 Md. App. 559, 573 (1996). *See Forensic Advisors, Inc. v. Matrixx Initiatives, Inc.*, 170 Md. App. 520, 530 n.6 (2006) ("This Court applies the abuse of discretion standard when reviewing the circuit court's ruling on a motion to quash a subpoena filed by a non-party witness."). The trial judge did not abuse his discretion, because we agree, based upon our review of the record, that the requested documents were duplicative of earlier responded to discovery in a separate action for defamation, and the ten questions posited were not relevant to Ms. Morral's involvement in the present case.

Trial Court's Inclusion of Parcel 1 in its Ruling

Mr. Holder argues that the trial judge erred in granting relief as to Parcel 1, because Parcel 1 was not the subject of the Complaint. During oral arguments before us, Mr. Holder's attorney requested that we remand the instant case to the trial court to quiet title as to Parcel 1. We decline to do so, although we will remand the declaratory judgment to the trial court to remove the reference to Parcel 1.

"This Court, on numerous occasions, has reiterated that 'whether a declaratory judgment action is decided for or against the plaintiff, there should be a declaration in the judgment or decree defining the rights of the parties under the issues made.'" *Bowen v. City of Annapolis*, 402 Md. 587, 608 (2007) (quoting *Case v. Comptroller*, 219 Md. 282, 288 (1959)). "The failure to enter a proper declaratory judgment is not a jurisdictional defect, however. This Court, in its discretion, 'may review the merits of the controversy and remand for entry of an appropriate declaratory judgment by the circuit court.'" *Lovell Land, Inc. v. State Highway Admin.*, 408 Md. 242, 256 (2009) (quoting *Bushey v. Northern Assurance Co.*, 362 Md. 626, 651 (2001)).

Mr. Young's Complaint sought to quiet title to Parcels 2 and 3 and requested a declaration that he was the sole owner of the two parcels. Parcel 1 was not a subject of the suit. In the Judge's Order, however, he granted relief not only to Parcels 2 and 3, but also as to Parcel 1, which was not appropriate because Parcel 1 was not a subject of the quiet title action.

Accordingly, we shall remand the declaratory judgment for the trial judge to remove any reference to Parcel 1.

Mr. Young as Record Owner of Parcel 3

Mr. Holder argues that the trial court erred by concluding that Mr. Young was the record owner of Parcel 3, because such land was described in Mr. Holder's alleged quitclaim deeds. The judge found that Mr. Holder's quitclaim deeds did not establish superior title to Parcel 3.

Mr. Holder argues that the court erred by declaring his three quitclaim deeds void, because the Keedysville Subdivision Ordinance did not apply to his deeds, and Mr. Holder was a bona fide purchaser.

The trial judge found that Mr. Holder's quitclaim deeds were void because they violated the express language of the Ordinance, which provides, "[n]o such land shall be subdivided and offered or negotiated for sale, sold, or ownership transferred except in accordance with the provisions of this ordinance." The judge found that Mr. Holder's quitclaim deeds purported to transfer ownership of Parcel 3 or a part of Parcel 3 from the Stonecrest subdivision to Mr. Holder but found that such land described in the quitclaim deeds was not included in Stonecrest's final approved plats, as required by the Ordinance.

"We construe local ordinances and charters under the same canons of statutory interpretation as we apply to statutes." *Cherry v. Mayor of Baltimore Cty.*, 475 Md. 565, 598 (2021). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature." *120 W. Fayette St., LLLP v. Mayor of Baltimore Cty.*, 413 Md. 309, 331 (2010). "The plain language of the local ordinance is the primary source of legislative intent." *Cherry*, 475 Md. at 598. We assign words in a local ordinance "their

ordinary and natural meaning and avoid adding or deleting words to impose a meaning inconsistent with the plain language" of an ordinance. *120 W. Fayette St.*, 413 Md. at 331.

In *Stitzel v. State*, 195 Md. App. 443, 454 (2010), we explained that a transaction is void if violative of an ordinance. In the instant case, the transfers in the quitclaim deeds were violative of the Ordinance requirements, as noted by the trial judge. We find no error.

Alternatively, Mr. Holder argues that his deeds should not have been declared void, because he was a bona fide purchaser.

The judge found that Mr. Holder purchased three quitclaim deeds to Parcel 3 in August of 2020, after the controversy existed, and in November of 2020 and June of 2021, after the suit was filed.

To qualify as a bona fide purchaser, a person must (1) give value for the property, (2) in good faith, and (3) without notice or knowledge of any defects in title. *Washington Mut. Bank v. Homan*, 186 Md. App. 372, 394-95 (2009) ("It is a well-settled principle that one who purchases real property without notice of prior equities is protected as a *bona fide purchaser* for value.").

The trial judge found that Mr. Holder purchased the quitclaim deeds with knowledge of Mr. Young's claim to the land, and therefore, he did not err.

Adverse Possession

Mr. Holder argues that the court erred in determining that Mr. Young had adversely possessed Parcel 3.

To establish title by adverse possession, a claimant must show possession of the property for twenty years. Section 5-103 of the Courts and Judicial Proceedings Article.

"'Such possession must be actual, open, notorious, exclusive, hostile, under a claim of title or ownership, and continuous or uninterrupted.'" *White v. Pines Cmty. Improvement Ass'n*, 403 Md. 13, 36 (2008) (quoting *Costello v. Staubitz*, 300 Md. 60, 67 (1984)). The test for adverse possession is objective: "'the pertinent inquiry is whether the claimant has proved the elements 'based on the claimant's objective manifestation of adverse use, rather than on the claimant's subjective intent.'" *Hillsmere Shores Improvement Ass'n v. Singleton*, 182 Md. App. 667, 692 (2008) (quoting *Porter v. Schaffer*, 126 Md. App. 237, 276 (1999)). Every element must be shown to confer title. *Hungerford v. Hungerford*, 234 Md. 338, 340 (1964).

The trial judge found that Mr. Young had adversely possessed Parcel 3 for over 30 years; his findings were supported by the evidence. The trial judge did not err.

Mr. Young's Motion for Attorneys' Fees Against Deena and Justin Holder

Mr. Young moved to impose attorneys' fees to recover his expenses spent on responding to Ms. Holder's "Brief of Appellee," which was struck by this Court, and Mr. Holder's two interlocutory appeals, which were denied as premature.

Maryland Rule 1-341, which governs the imposition of attorneys' fees for bringing or defending an action, provides:

> In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

In determining whether to grant attorneys' fees under the Rule, the court engages in a two-step process. *Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. 1, 20-21 (2018). First, the court "must find that the conduct of a party during a proceeding, in defending or maintaining the action," was in bad faith or without substantial justification. *Id.* "Bad faith" exists under Maryland Rule 1-341, when a party litigates "vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons." *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991). *See Christian*, 459 Md. at 20-21. The "bad faith" prong addresses instances of "intentional misconduct." *Talley v. Talley*, 317 Md. 428, 438 (1989). An order sanctioning a party for bad faith conduct "requires clear evidence that the action is…taken for other improper purposes amounting to bad faith." *Needle v. White, Mindel, Clarke & Hill*, 81 Md. App. 463, 473 (1990).

To constitute "substantial justification," a party's position "must be fairly debatable and within the realm of legitimate advocacy." *Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 676 (2003). A claim lacks "substantial justification" if a party has no "reasonable basis for believing that a case will generate a factual issue for the fact-finder at trial." *Inlet Assocs.*, 324 Md. at 268. *See Christian*, 459 Md. at 23 ("[F]rivolous claims, or claims that 'indisputably ha[ve] no merit' lack substantial justification." (quoting *Blanton v. Equitable Bank, Nat'l Ass'n*, 61 Md. App. 158, 165-66 (1985))).

If such findings are made, the court must then use its discretion and "determine whether the wrongdoing actually warrants the imposition of sanctions." *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999). *See Garcia*, 155 Md. App. at 677 ("Indeed, a court has discretion to refuse sanctions, even if there is a finding of bad faith.").

If sanctions are warranted, "[a] party must demonstrate, by a preponderance of the evidence, that it has the right to the amount of attorney's fees sought." *Christian,* 459 Md. at 30. *See Frison v. Mathis*, 188 Md. App. 97, 106 (2009) ("[T]he attorney's fees recoverable are limited to those that reimburse the party for actual expenses incurred.").

Maryland Rule 1-341 "functions primarily as a deterrent against abusive litigation," *Christian,* 459 Md. at 19, and is "not punitive but is intended to merely compensate the aggrieved party for their reasonable costs and expenses[.]" *Beery v. Maryland Med. Lab'y, Inc*., 89 Md. App. 81, 102 (1991). As such, an award of attorneys' fees under the Rule is an "extraordinary remedy, which should be exercised only in rare and exceptional cases." *Barnes*, 126 Md. App. at 105 (internal quotations omitted). *See Black v. Fox Hills N. Cmty. Ass'n*, 90 Md. App. 75, 84 (1992) ("The redress available under Rule 1-341 applies only when a suit is patently frivolous and devoid of any colorable claim. Rule 1-341 sanctions should be imposed only when there is a clear, serious abuse of judicial process.").

In *Blanton v. Equitable Bank, National Association,* 61 Md. App. 158 (1985), we recognized that an appellate court has the power to award attorneys' fees. We explained that Rule 1-341, as opposed to the former Rule 604(b), applies to all courts:

> [Maryland Rule 1-341] is contained in Title 1 of the Maryland Rules. Rule 1–101 provides that "Title 1 applies to procedure in all courts of this State, except the Orphans' Court...." Rule 1–202(i) instructs that "'Court' when used in Title 1 applies to any court of this State and means the court in which the action or proceeding is cognizable." Thus a general rule permitting the sanction of reasonable attorney's fees and costs "is applicable for the first time to ... the appellate courts." P. Niemeyer and L. Richards, *Maryland Rules Commentary* 40 (1984).

Id. at 161. *See Allnut v. Comptroller of the Treasury*, 77 Md. App. 424, 430 (1988), *cert. denied*, 315 Md. 307 (1989) ("Rule 1-341 applies to all courts.").

Mr. Young argues that he is entitled to attorneys' fees for responding to Ms. Holder's "Brief of Appellee," because she was clearly an "appellant" seeking reversal, and as such, was required to file a notice of appeal and an appellant's brief. In response, Ms. Holder explained that she was not requesting any relief adverse to Mr. Young, but rather requesting that the court find an easement by necessity, as the court had determined that her claimed easement was defective and/or terminated.

Clearly, Ms. Holder, having failed to note an appeal, was not entitled to file a brief, let alone one that was requesting a reversal of the judgment of the trial court, even though veiled, in a disingenuous way, as somehow an "affirmance." We agree with Mr. Young that he is entitled to attorneys' fees for Ms. Holder's filing an appellee brief without substantial justification and remand for the trial court to make the requisite findings regarding the amount of the fees payable by Ms. Holder to Mr. Young.

Mr. Young also argues that he is entitled to attorneys' fees for responding to Mr. Holder's two interlocutory appeals, which were ultimately denied as premature. Mr. Holder's first interlocutory appeal concerned the trial court's denial of his Bill *Quia Timet*, while his second concerned the trial court's failure to dismiss the alleged Anti-SLAPP suit. We deny Mr. Young's motion as to the two premature appeals, because the interlocutory appeals did not demonstrate clear evidence of bad faith or a lack of substantial justification.

Uncle Eddie's Assertions as to the "Wagon Road" Easement

Creation of Easement

The trial judge found that Uncle Eddie claimed that a "wagon road" easement allegedly existed over Parcel 3 to its benefit. The judge found that in 1872 Aaron Cost, who owned what is now Stonecrest, granted a "wagon road" easement to David Kreitzer, who owned the property subsequently deeded to Uncle Eddie:

> … forever the use of a wagon road to and from said land being conveyed, commencing at a stone situated on the West margin of said Washington County Rail Road, at what said Cost called his Rail Road Crossing, and running thencer along the Western boundaries of said road, South 30 ¾ degrees East 14 perges to a stone, South 36 degrees East 10 6/10 perches to the lands of Jacob Keedy, thence along the division line between said Aaron Cost and Jacob Keedy until intersect[ing] the road leaving from said Jacob Keedy's house to the County road leading from Keedysville to Martin Eakel's Mill.

The judge ultimately found that the alleged "wagon road" easement, however, was defective, because it purported to grant an easement over the land of a third-party, Jacob Keedy, and therefore, it was "an easement to nowhere."

"[A]n easement is a 'nonpossessory interest in the real property of another.'" *USA Cartage Leasing, LLC v. Baer*, 429 Md. 199, 207 (2012) (quoting *Rogers v. P-M Hunter's Ridge, LLC*, 407 Md. 712, 729 (2009)). "When the easement is for the benefit of another property—for example, an easement to provide access to an adjacent property—the neighboring property is known as the dominant estate, while the property subject to the easement is known as the servient estate." *Id.* at 208.

An easement can be created by express grant in a deed and may be either general or specific. *Id.* An easement is general "when it is clear from the intentions of parties that an easement has been created, but without a precise location." *Id.* An easement is specific "when its location is easily discernable, such as from a metes and bounds description, plat map, or a call." *Id.*

We apply the basic principle of contract interpretation when construing the language of a deed. *Garfink v. Cloisters at Charles, Inc*., 392 Md. 374, 392 (2006). "In deeds granting easements, ambiguity only exists when the particular location point at issue cannot be determined, not in instances where the location point is clear from the language of the deed." *Weems v. Cnty. Comm'rs of Calvert Cnty.*, 397 Md. 606, 614 (2007). If an easement is specific, "we look no further than the plain meaning of the language in the deed used to describe the location and confine our analysis to the four corners of the instrument." *Rogers v. P-M Hunter's Ridge, LLC*, 407 Md. 712, 731-32 (2009).

Notably, an easement over property owned by another cannot be granted. *Buckler v. Davis Sand & Gravel Corp*., 221 Md. 532, 538 (1960) ("It is also certain that the easement cannot be extended by the owner of the dominant estate to accommodate land which he did not own when the easement was acquired."); *see also* 4 Powell on Real Property § 34.04 (2013 ed.) ("A conveyor cannot create an easement with respect to land that he or she does not own."); Jon W. Bruce & James W. Ely, *The Law of Easements and Licenses in Land* § 3.4 (2023 ed.) ("One cannot grant or reserve an easement over land one does not own.").

Uncle Eddie argues that the trial judge erred in finding the easement defective, because Mr. Cost intended to grant Mr. Kreitzer access to "a County road," and therefore, the court should enforce the original intent of the easement by finding that the easement ended at a public road, and if not, take judicial discretion to find that the easement ended at a public road.

The trial judge recognized that the purpose of the "wagon road" easement was to provide Mr. Kreitzer's land with access to a public road. However, based upon the plain language of the deed and agreement by both plaintiff and defense experts, the judge found that the terms of Mr. Cost's deed granted Mr. Kreitzer an easement over the land of a third-party, Jacob Keedy, predecessor in title to Mr. Young's land.

Easement by Prescription or Public Road by Prescription

Uncle Eddie also argues that Mr. Cost, predecessor in interest of the Stonecrest development, could grant an easement to Mr. Kreitzer, the predecessor in interest to Uncle Eddie, over Mr. Young's land, formerly owned by Jacob Keedy, because, Uncle Eddie alleges that the "wagon road" language in his chain of title, referred to "the road leaving from said Jacob Keedy's house to the County road," and thus created an easement by prescription or a public road by prescription.

In Maryland, "in order to establish an easement by prescription, a person must make an adverse, exclusive, and uninterrupted use of another's real property for twenty years." *Banks v. Pusey*, 393 Md. 688, 699 (2006). "For a party's use to be considered adverse, it must occur without license or permission." *Jurgensen v. New Phoenix Atl. Condo. Council of Unit Owners*, 380 Md. 106, 123 (2004). "'When a person has used a right of way openly,

continuously, and without explanation for twenty years,' it is fair to presume adverse use." *Banks*, 393 Md. at 699 (quoting *Kirby v. Hook*, 347 Md. 380, 392 (1997)). "[T]he burden is on the party seeking the easement to establish the elements of prescriptive use." *Rupli v. S. Mountain Heritage Soc'y, Inc*., 202 Md. App. 673, 686-87 (2011).

There was no evidence adduced to satisfy the requirements of an easement by prescription.

Further, "[a] public road may be established by… long, uninterrupted use by the public as a road, for twenty years or more, 'which, though not strictly prescription, yet bears so closely an analogy to it that it is not inappropriate to apply to the right thus acquired the term prescriptive.'" *Wilkinson v. Board of Cnty. Comm'rs*, 255 Md. App. 213, 245-46 (2022) (quoting *Thomas v. Ford*, 63 Md. 346, 351-52 (1885)). "The use [of another's land by the public] must be adverse and hostile to the rights of the owner, and under color or claim of right to so use the land." *Easter v. Overlea Land Co.*, 129 Md. 627 (1917). *See Layman v. Gnegy*, 26 Md. App. 114, 117 (1975) (explaining that use of a road by owners of the property and visitors attending church who needed to cross the road was not a public use); *Garrett v. Gray*, 258 Md. 363, 378 (1970) (finding public use where "members of the public freely passed over [the road] without seeking permission of the owners through whose property the road passed, and it was a continued and uninterrupted use by persons other than the property owners whose property is traversed by the road.").

There was no evidence adduced to satisfy the requirements of a public road by prescription. Accordingly, the court did not err.

Termination of Easement

The trial judge found that, alternatively, the "wagon road" easement had been terminated by estoppel and/or by adverse possession. Uncle Eddie argues that the trial judge erred, because termination by estoppel is not recognized in Maryland, and there was insufficient evidence to find termination by adverse possession.

It is well established that an easement may be terminated by estoppel. *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 197-98 (2011), *aff'd*, 429 Md. 199 (2012). In *USA Cartage Leasing*, we explained the difference between termination by abandonment and by estoppel:

> To the extent that the two doctrines differ, the distinction between ordinary abandonment and abandonment by estoppel rests on whose actions are at issue. Non-use is an essential, but by itself insufficient, ingredient for termination under either theory. For abandonment, there must also be a positive action on the part of the owner of the dominant estate. In the estoppel cases, the dominant owner's acquiescence to actions by the *servient* owner, performed in reliance on the dominant owner's non-use, is substituted for acts by the dominant owner.

202 Md. App. at 197-98 (internal citations omitted) (emphasis in original).

Termination by estoppel "consists of the creation of a reasonable belief that in the future the dominant owner intends not to make the use of the servient tenement authorized by the easement." *Id.* at 196. Further, there must be "conduct on the part of the servient owner in reliance upon the above-described appearances, under such circumstances that a continuance of the easement would be seriously harmful to the servient owner." *Id.* (quoting 4 Powell on Real Property § 34.22 (2013 ed.)). In other words, termination by

estoppel requires non-use, reliance on non-use by the servient estate, and acquiescence by the dominant estate.

As termination by estoppel is recognized in Maryland, the judge found non-use of the easement for egress and ingress since 1988, reliance on such non-use by the servient estate as Mr. Young allowed Parcel 3 to return to nature, and acquiescence by the dominant estate of such use without objection, including acquiescence by Uncle Eddie and Ms. Holder. We find no error.

An easement may also be terminated by adverse possession. *Purnell v. Beard & Bone, LLC*, 203 Md. App. 495, 527 (2012); *USA Cartage Leasing*, 202 Md. App. at 200. *See also* 3 Herbert T. Tiffany, *The Law of Real Property* § 827 (3rd ed. 1939, 2004 Supp.) ("An easement may be extinguished by the user of the servient tenement in a manner adverse to the exercise of the easement for the period required to give title to land by adverse possession…."). To terminate an easement by adverse possession, the servient owner must not only satisfy the required elements of adverse possession (actual, open, notorious, exclusive, hostile, and continuous use for twenty years), but also establish that his use of the land was "incompatible or irreconcilable with the authorized right of use":

> The use of the land by the servient tenant must be one that is incompatible or irreconcilable with the authorized right of use.... Where the dominant owner abstains from use of the easement, the servient owner, in the exercise of the privilege to use his or her own land in any manner desired not interfering with the exercise of the easement, has an enlarged scope of privileged action. It is, therefore, under these circumstances more difficult for the servient owner to establish the adverse character of behavior. Unless the conduct is actionable by the dominant owner, it cannot result in a prescriptive extinguishment of the easement.

4 Powell on Real Property § 34.21 (2013 ed.).

As the trial judge had already established that Mr. Young met the elements to adversely possess Parcel 3, he further found that Mr. Young had demonstrated the required "incompatible or irreconcilable" use of the easement by permitting Parcel 3 to go back to nature, with the growth of mature trees and thick brush, which was "absolutely inconsistent with the use of [the easement] for ingress and egress, whether by car or on foot." We find no error.

CONCLUSION

In conclusion, we hold that the court did not err in declining Mr. Holder's jury trial demand, or his motions to dismiss for failure to join necessary parties, failure to state a claim for declaratory judgment, and for an alleged Anti-SLAPP suit. The court also did not err in denying Mr. Holder's Bill *Quia Timet* or evidence of public roads, nor did it abuse its discretion by limiting time at trial or by granting a protective order to a non-party witness. The court further did not err in finding Mr. Young's ownership of Parcel 2 and 3 by record and/or by adverse possession, and the court properly found Mr. Holder's quitclaim deeds void. Finally, the court did not err in finding the claimed easement defective at creation, or alternatively, terminated by estoppel and/or adverse possession. We shall remand the case to the circuit court, however, to revise its declaratory judgment by removing any mention of Parcel 1, and to make the requisite findings as to attorneys' fees payable by Deena Holder to Jeffrey Young.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED TO THE CIRCUIT COURT FOR WASHINGTON COUNTY FOR THE PURPOSE OF ENTERING A DECLARATORY JUDGMENT CONSISTENT WITH THIS OPINION RELATIVE TO PARCEL 1 AND DETERMINING THE AMOUNT OF ATTORNEYS' FEES PAYABLE BY DEENA HOLDER TO JEFFREY YOUNG RELATIVE TO THE FILING OF HER APPELLEE'S BRIEF. COSTS TO BE PAID BY APPELLANTS.