UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0738

September Term, 2016

TREVILLIAN PROPERTIES, LLC

v.

CALVIN ETHERIDGE, ET AL.

Wright,
Graeff,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: May 17, 2017

This appeal arises from an order of the Circuit Court for Anne Arundel County that granted summary judgment in favor of appellees, owners of lots in the Arundel Hills Subdivision. On May 21, 2015, appellant, Trevillian Properties, LLC ("Trevillian"), owner of Lot 24 in the Arundel Hills Subdivision, had filed a complaint for declaratory judgment, asking the circuit court to declare that Trevillian could "construct a public road and utilities across and under Lot 24" as such judgment "does not violate the covenants and restrictions set forth in [Arundel Hills's] Declaration." That same day, Trevillian also filed a motion for summary judgment. Thereafter, appellees filed an answer, counterclaims for declaratory judgment and permanent injunctive relief, as well as their own motion for summary judgment.

The circuit court held a motions hearing on May 16, 2016. On June 3, 2016, the court issued a memorandum opinion and order denying Trevillian's motion for summary judgment while granting appellees' motion. On June 22, 2016, Trevillian timely appealed, presenting a single question for our review:

> Did the trial [c]ourt err when it found that [Trevillian]'s proposal to construct a road over Lot #24 of the Arundel Hills Subdivision to access an adjacent 22 lot residential subdivision violated the restrictive covenants of Arundel Hills because said road would not be a residential use of said Lot #24?

For the reasons that follow, we affirm the circuit court's judgment.

Facts

The facts of this case are undisputed. On January 2, 2010, Hogan Development, LLC ("Hogan") entered into a Land Purchase Agreement with Frank A. Ruff and Doris

L. Ruff, whereby Hogan contracted to purchase 4.71 acres of land depicted on Anne Arundel Tax Map 4, Grid 10, as "Parcel 429." On February 1, 2011, Hogan entered into a Land Purchase Agreement with Nathan S. Harris and Kristie M. Springston, whereby Hogan contracted to purchase property located at 1148 McHenry Drive, Glen Burnie, Maryland, or "Lot 24" of the subdivision known as Arundel Hills Plat No. 2 ("Arundel Hills Subdivision"). Parcel 429 is located directly behind Lot 24, but is not part of the Arundel Hills Subdivision. On July 2, 2013, by way of an Assignment Agreement, Hogan assigned its rights as purchaser of both properties to Trevillian.

Subsequently, Trevillian submitted plans to the Anne Arundel County Office of Planning and Zoning, seeking to subdivide Parcel 429 into 22 residential lots ("Enclave Subdivision"). In relevant part, Trevillian proposed to demolish the house on Lot 24 in order to create a road, to be dedicated to Anne Arundel County and made public, to connect the Enclave Subdivision to McHenry Drive in the Arundel Hills Subdivision. According to Trevillian, public water and sewer lines would be extended from McHenry Drive under the roadway, and Enclave Subdivision would be subject to restrictive covenants established via Declaration of Covenants ("Declaration") executed on July 27, 1954, by the original developer of the Arundel Hills Subdivision.

The first restrictive covenant of the Declaration provides: "Said land shall be occupied and used for residential purposes only, and no building now or hereafter erected thereon shall be occupied by more than two families . . . ." Trevillian asserted that the construction of an access road across Lot 24, as well as water and sewer lines underneath it, would not violate the Arundel Hills covenants. Appellees disagreed.

As a result, on May 21, 2015, Trevillian filed its complaint for declaratory judgment, asking the circuit court to allow it to proceed with its plan to create the Enclave Subdivision. Thereafter, Trevillian and appellees filed cross-motions for summary judgment. In their motion, appellees specifically contended that "[t]he proposed use of Lot 24 as the location of a road into an abutting development is not a residential use of that lot and therefore is in violation of the Declaration[.]"

On May 16, 2016, the circuit court held a motions hearing, at which time the parties agreed that "there's no dispute as to . . . the facts" and that "it's ripe for summary judgment." Accordingly, there was no testimony given; the court heard only legal arguments. On June 3, 2016, the circuit court issued a memorandum opinion and order denying Trevillian's motion for summary judgment while granting appellees' motion. Citing *Eisenstadt v. Barron*, 252 Md. 358 (1969), and *Namleb Corp. v. Garrett*, 149 Md. App. 163 (2002), the court found, in pertinent part:

> Though the wording of the restrictive covenant in the instant case does not contain the phrases "single dwelling" or "single family dwelling," the covenant still restricts the use of Lot 24 to "residential uses." [] The Court of Appeals has clearly determined that the construction of a road to service multiple homes outside of the development benefitted by the restrictive covenant is not a "residential use." *See Eisenstadt*, 252 Md. at 367; *Namleb*, 149 Md. App. at 170. The reasoning of the *Namleb* court focused on the function of the road at issue and its intended purpose to service the new housing development, rather than the fact that the proposed road was a "structure" outside the meaning of a "single dwelling" or "single family dwelling." *Namleb*, 149 Md. App. at 170. The proposed road in the instant case is also intended to serve the unbenefited housing development, and as such, this Court finds that it's [sic] function renders the construction of the road not a "residential use" within the meaning of *Eisenstadt* and *Namleb* or within the intention of the restrictive covenant.

> Furthermore, this Court disagreed with [Trevillian's] conclusion that the presence of roads within the original housing development show the developer's intention that all roads constructed thereafter be considered a "residential purpose." As stated by the [appellees], the existence of roads within a subdivision is a practicality; however, the subsequent construction of a new road to benefit a different community is an entirely different matter as its function clearly differs from the function of the original roads within the subdivision.
>
> Finally, though [Trevillian's] counsel attempted to differentiate between the usage of the words "lot" and "plat" within the restrictive covenant in the instant case and in both *Eisenstadt* and *Namleb*, this Court notes that in its opinion the *Eisenstadt* court repeatedly referred to the encumbered property as a "plat," indicating to this Court that there is no substantive legal difference between the use of the two words when referring to the restricted property.

Additional facts will be included, below, as they become relevant to our discussion.

Standard of Review

Pursuant to Md. Rule 2-501(a), "[a]ny party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." When appellate courts review a grant of summary judgment, "'we must make the threshold determination as to whether a genuine dispute of material fact exists, and only where such dispute is absent will we proceed to review determinations of law.'" *Stachowski v. Sysco Food Servs. of Balt., Inc.*, 402 Md. 506, 515-16 (2007) (quoting *Remsburg v. Montgomery*, 376 Md. 568, 579 (2003)).

The Court of Appeals has stated that "[a] material fact is 'a fact the resolution of which will somehow affect the outcome of the case.'" *Taylor v. NationsBank, N.A.*, 365

Md. 166, 173 (2001) (quoting *Jones v. Mid-Atlantic Funding Co.*, 362 Md. 661, 675 (2001)). "When both sides file cross-motions for summary judgment . . . the judge must assess each party's motion on its merits, drawing all reasonable factual inferences against the moving party, but it does not follow that the circuit court must grant one of the motions, for the filing of cross-motions for summary judgment is not dispositive of the absence of a genuine dispute of material fact." *Rupli v. S. Mountain Heritage Soc., Inc.*, 202 Md. App. 673, 683 (2011) (internal citations and quotations omitted). "But where the litigants file cross-motions for summary judgment *and there are no disputes of material fact,* 'it is clear that one of these motions should be granted.'" *Id.* (quoting *Cook v. Alexandria Nat'l Bank*, 263 Md. 147, 149 (1971)).

Because under Maryland's summary judgment rule, a trial court determines issues of law, makes rulings as a matter of law, and resolves no disputed issues of fact, "the standard for appellate review of a trial court's grant of a motion for summary judgment is simply whether the trial court was legally correct." *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737 (1993) (citations omitted). *See also Messing v. Bank of Am., N.A.*, 373 Md. 672, 684 (2003) ("The standard of review of a trial court's grant of a motion for summary judgment on the law is *de novo*, that is, whether the trial court's legal conclusions were legally correct.") (Citations omitted).

Discussion

Trevillian argues that the circuit court erred "when it granted summary judgment in favor of the appellee[s] and denied summary judgment to [Trevillian]" because

Trevillian's proposed "use of Lot 24 as an access road was [] residential." According to Trevillian, the court misapplied *Eisenstadt*, which it avers, found that the proposed roadway on the Lot violated the restrictive covenant only because the proposed use was not in compliance with the portion of the covenant that prohibited any structure that was not a "single dwelling." Likewise, Trevillian contends that the circuit court misapplied *Namleb*, which it avers, concluded that the roadway in that case violated only the portion of the restrictive covenant that prohibited any "residence other than one detached single-family dwelling."

In response, appellees argue that the circuit court did not err when it granted their motion for summary judgment. According to appellees, the court correctly found that Trevillian's plan to use Lot 24 "not as a home or a residence but for the construction of a street to serve an adjacent twenty-two lot subdivision violates a covenant restricting the use of that lot to 'residential purposes only.'" Appellees further assert that the circuit court properly relied on *Eisenstadt* and *Namleb*, which prohibited access roads similar to the one here because they "would serve more homes than allowed by the restriction to which the lot was subject."

In *Eisenstadt*, the appellant acquired land in Washington County that was "subject to the conditions, restrictions, reservations, easements, rights-of-way, and streets as shown on the aforesaid Plat." 252 Md. at 359. One restriction provided that "[t]he lots shown on this plat shall be used for residential purposes only, and no structure shall be erected . . . thereon except a single dwelling." *Id.* at 360. Following the acquisition, appellant "proceeded to construct an access driveway through his lot to his apartment

development located beyond the confines of the platted area." *Id.* at 361. Appellees, who were the neighboring residents, then "brought suit to enjoin use of the lot for other than residential purposes[.]" *Id.* The circuit court granted the injunction, *id.*, which the Court of Appeals upheld, explaining:

> *[I]t might be argued* that since the Eisenstadt use is a residential use and the roadway is incidental to such residential use such use is not precluded by the restriction. In this regard, however, *one must examine the entire restriction*. In carefully examining the restrictions imposed we note that the lots were to be used for residential purposes only, that no structure was to be erected thereon except a single dwelling and that this was modified by the permission granted for a private garage. All such restrictions must be interpreted in the light of reason. *We conclude it was the intent of the restriction to permit erection on the premises only of a dwelling calculated to accommodate a single family unit* as differentiated from a double house or an apartment house. We see no other interpretation that could be put on the word 'single' inserted prior to the word 'dwelling.' This would carry with it the right to erect such other structures (sidewalks, garage, etc.) as might be incidental to the use of such single dwelling. A roadway is a type of structure. This roadway was not a single family structure-nor was it to serve one. Therefore, the use of the property as a means of access to an apartment house or apartment houses on adjoining land not within the subdivision is not a use permitted under the restriction.

Id. at 369 (emphasis added).

Trevillian mistakenly avers that the *Eisenstadt* Court held that when a proposed roadway is residential in nature, then its use is not precluded by the restriction. But, the Court's actual conclusion was that the entire restriction must be examined in its entirety and interpreted in the light of reason. *Id.* In *Eisenstadt*, that analysis led to the determination that "it was the intent of the restriction to permit erection on the premises only of a dwelling calculated to accommodate a single family unit." *Id.* In so concluding, the *Eisenstadt* Court acknowledged the frequent application of "the rule of

strict construction in favor of the unrestricted use of property" by Maryland courts. *Id.* at 368 (citations omitted). It added, however, that "this does not mean that language must be so narrowly construed as to defeat its general purpose." *Id.*

Thirty-three years later, this Court applied the reasoning in *Eisenstadt* when it decided *Namleb*. *See Namleb*, 149 Md. App. at 170. In *Namleb*, an appellant purchased a lot in the Beaufort Park subdivision in Howard County, subject to the following covenant:

> No lot shall be used except for residential purposes, however, a medical doctor may maintain an office in his home provided he is a bona fide resident. No residence other than one detached single-family dwelling shall be erected on any one lot in said subdivision.

Id. at 166. On the same day, appellant "also purchased a large tract of land known as Lot 14, located adjacent to the Beaufort Park subdivision," which it later proposed to subdivide into nine lots to be accessed by constructing a road on the Beaufort Park lot. *Id.* Thereafter, appellees, who were Beaufort Park residents, "filed a Verified Complaint for Declaratory and Injunctive Relief" alleging that appellant's "construction of access driveways over Beaufort Park Lot 20 would violate Beauford Park's restrictive covenant limiting the use of lots to single family dwellings for residential use only." *Id.* at 167. "Appellees alleged that the road was for the commercial development of Beaufort Estates, not for the residential use of Beauford Park Lot 20." *Id.*

On appeal, "we regard[ed] *Eisenstadt* as controlling." *Id.* at 169. We stated:

> [A]ppellants wish to construct an access road over a lot subject to a covenant restricting use to a single family residence. The proposed access road would serve more than one residence, all of which would be located outside of the subdivision. We disagree with appellant's assertion that,

> because the proposed building in *Eisenstadt* was an apartment building, *Eisenstadt* is distinguishable. The decision was premised on the fact that the proposed road would service multiple residences. Whether for apartments or multiple homes, the proposed road in *Eisenstadt* and the proposed road in this case were intended to serve multiple residences and, in both instances, outside of the subdivision. Applying the reasoning in *Eisenstadt*, we hold that the proposed access road(s) is prohibited by the restrictive covenant.

Id. at 170. In so ruling, we noted that "there is a disagreement among courts as to whether a covenant limiting use of property to a single family dwelling and for residential purposes only prohibits an access road intended to serve property not subject to the restrictive covenant." *Id.* at 172-73. Nonetheless, we reiterated that "the holding in *Eisenstadt* was premised on the conclusion that such an access road violated the covenant because it served multiple residences located outside of the restricted properties." *Id.* at 173.

The present case is very similar to *Eisenstadt* and *Namleb*. Like appellants in those cases, Trevillian purchased a lot within appellees' subdivision and proposed to create a roadway on it in order to access a separate subdivision. As in the previous two cases, the lot at issue was subject to a covenant restricting its use "for residential purposes only." Thus, we reach the same conclusion as the *Eisenstadt* and *Namleb* Courts, and hold that Trevillian's proposed access road is prohibited by the restrictive covenant. *Eisenstadt*, 252 Md. at 369 ("Therefore, the use of the property as a means of access to an apartment house or apartment houses on adjoining land not within the subdivision is not a use permitted under the restriction."); *Namleb*, 149 Md. App. at 170 ("Applying the reasoning in *Eisenstadt*, we hold that the proposed access road(s) is prohibited by the

restrictive covenant."). Allowing Trevillian to build a roadway, where a house once stood, for the purpose of connecting two subdivisions, would change the character of the Arundell Hills community in a manner that goes against the expectations of its residents.

Trevillian contends that *Eisenstadt* and *Namleb* are distinguishable because the covenants in those cases specifically provided that only one single family home could be built on a lot, while the covenant here "merely limits the number of families that can occupy one building." Therefore, Trevillian asserts that placing a road through Lot 24 would be permissible because it would not create a building to be occupied by more than two families. We find no merit in this argument. As appellees correctly state, the circuit court understood that the *Namleb* Court focused on the function of the road at issue and its intended purpose to service a new housing development, rather than the fact that the proposed road was a "structure" outside the meaning of a "single family dwelling." *See Namleb*, 149 Md. App. at 170. Moreover, as the Court of Appeals acknowledged in *Eisenstadt*, 252 Md. at 368, although Maryland courts frequently apply "the rule of strict construction in favor of the unrestricted use of property," it "does not mean that language must be so narrowly construed as to defeat its general purpose." *Id.*

We likewise reject Trevillian's contention that the proposed roadway would not violate the covenant because "[t]he restrictive covenants in the case at bar not only apply to the Lots but also apply to all streets in the subdivision." This argument is flawed because it fails to acknowledge that the streets within the subdivision benefit Arundel Hills, while the proposed roadway would only benefit the new Enclave Subdivision. In other words, because "the proposed road in this case [was] intended to serve multiple

residences . . . outside of the subdivision," it is "prohibited by the restrictive covenant." *Namleb*, 149 Md. App. at 170.

Lastly, Trevillian relies on *Lake Arrowhead, Inc. v. Jolliffe*, 639 N.W.2d 905 (Neb. 2002), to argue that summary judgment should have been granted in its favor. As we stated in *Namleb*, 149 Md. App. at 170, however, "[t]he problem with relying on [an out-of-state case] is that it is not the law in Maryland." Rather, because *Eisenstadt* and *Namleb* are controlling, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.