Circuit Court for Baltimore County
Case No. C-03-CV-23-001615

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2028

September Term, 2024

TYLER A. CHAVIS, ET AL.

v.

ROBERT BELL DEFORD, III, ET AL.

Berger,
Shaw,
Kehoe, Christopher, B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 28, 2026

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

This case arises from the subdivision of Karen Chavis' ("mother") and Tyler Chavis' ("son") (collectively, "appellants") residential lot within the Burton Subdivision in Hydes, Maryland. In 2021, appellants obtained approval from Baltimore County to subdivide their lot into two parcels and hired a contractor to build a single-family home on the newly created lot for son, his wife, and their child. Thereafter, appellants learned that their lot -- like all other lots within the Burton Subdivision -- is subject to restrictive covenants ("Burton Restrictions"). Among other things, the Burton Restrictions expressly prohibit the further subdivision of lots without prior approval from the Subdivision Committee. Appellants then endeavored to identify the Subdivision Committee, which was not active, and sought the approval to subdivide and build a new home from the other lot owners within the Burton Subdivision.

Subsequently, appellants initiated the present action naming all other lot owners within the Burton Subdivision as defendants and seeking a court order waiving application of the covenant limiting the further subdivision of parcels to appellants' subdivision. Appellants argued that the covenants are ambiguous, that approval of a majority of the lot owners constitutes approval by the subdivision committee, that the covenants have been waived, and that the doctrine of comparative hardship should absolve their violation of the Burton Restrictions. The Circuit Court for Baltimore County found no merit to appellants' arguments and enforced the covenant against further subdivision. Appellants noted a timely appeal.

On appeal, appellants present four questions for our review, which we consolidate and rephrase as one as follows:[1]

> Whether the circuit court erred in concluding that no exception to the applicability of the express written covenants was established by appellants.

For the following reasons, we affirm.

BACKGROUND

The Burton Subdivision and the Burton Restrictions

The Burton Subdivision is a 1970s development of land in Hydes, a rural area of Baltimore County ("the County"). By 1977, the developer of the Burton Subdivision, Residential Developers ("the Company"), subdivided the property, which had previously been owned as one parcel by Christine Burton, into 19 lots.

Drawn to the bucolic setting, Karl Chavis ("father") acquired a parcel in the Burton Subdivision in 1982 ("Lot 73"). At the time, Lot 73 consisted of 7.3949 acres. Father and

[1] Appellants phrased the questions as follows:

1. Did the Circuit Court err by refusing to permit subdivision when a majority of the lot owners subject to the covenants consented to the subdivision in writing?

2. Did the Circuit Court err by refusing to allow subdivision because of waiver of the covenants?

3. Did the Circuit Court err by refusing to permit subdivision because of the balance of convenience test?

4. Did the Circuit Court err by refusing to permit subdivision because of the ambiguity of the covenants?

Karen Chavis ("mother") built a single-family home on Lot 73 and in 1987, father conveyed the property to himself and mother as tenants by the entirety.

Lot 73 -- as well as all other lots within the Burton Subdivision -- is burdened by express written covenants as part of a uniform scheme of development. The Declaration of Restrictions ("Burton Restrictions")[2] "run with the land" and are "binding for a period of thirty (30) years from the date the[] covenants are recorded, after which time said covenants shall be automatically [] extended for successive periods of ten (10) years." The Burton Restrictions can be amended or revoked, in whole or in part, by an instrument signed by a majority of the lot owners subject to the restrictions and recorded in the land records of the County. No such instrument has been recorded.

The Burton Restrictions articulate the purposes for which they were created as follows:

> (1) To protect the purchasers of lots in said subdivision from depreciation in the value thereof, and to insure them of uniformity of development of said lots; and
>
> (2) To facilitate the sale by the Company, its successors and assigns of the land in said subdivision by reason of its ability to assure such purchasers of uniformity and protection against such depreciation; and
>
> (3) To make certain that said restrictions shall apply uniformly to all lots [burdened by said restrictions] to the mutual advantage of the owner, developer, mortgagees, and to all

[2] In 1975, the Company created a Declaration of Restrictions that burdened Lots 1 through 10 of the Burton Subdivision and recorded it among the land records of the County. By an additional Declaration of Restrictions created and recorded among the land records of the County in 1977, the Company added Lots 11, 14, 15, 37, 72, 73, 74, 75, and 76 to be expressly burdened by the Burton Restrictions.

> those who may in the future claim title through the owner, developer, purchaser or mortgagees[.]

The Burton Restrictions endeavor to serve these purposes by, among other things, limiting the further subdivision of lots within the Burton Subdivision and mandating that the development of said lots be limited to one single-family home per lot. Specifically, Section One of the Burton Restrictions, entitled "Land Use," provides in pertinent part:

> The land included in [the Burton Subdivision], except as hereinafter provided, shall be used for private residential purposes together with incidental agricultural purposes only, and no building of any kind whatsoever shall be erected, altered, or maintained thereon except a private dwelling house for occupancy by not more than one family . . . .
>
> No part of the land covered by these covenants, conditions and restrictions shall at any time be used for semi-detatched [sic] houses, duplex houses or other type of multiple housing units; . . . it being the intention of the Company that all of the land contained within the area covered by this Declaration shall be used solely for single family dwellings, and no other purposes, except such purposes as may be specifically reserved hereunder in the preceding and succeeding sections of this Declaration.
>
> . . .
>
> Lots or parcels covered by these covenants, conditions and restrictions shall not be further subdivided or re-subdivided into one or more lots or parcels of less area than that which presently exists within the boundaries of each lot or parcel without the prior written consent of the Subdivision Committee or its assigns[.] . . .

Section Two of the Burton Restrictions, entitled "Administration," pertains to the creation of the Subdivision Committee referenced to in Section One. Section Two states:

> The Subdivision Committee referred to herein and in the preceding and succeeding sections of this Declaration shall

> consist of one or more members appointed solely by the Company until the Company shall organize or cause to be organized a committee of individuals to exercise the powers and perform the duties conferred upon the Subdivision Committee by these restrictions; which Subdivision Committee shall have at least one member appointed by the Company and such additional members elected by the votes, on the basis of one vote per lot, of a plurality of the individual lot owners so as to be controlled by the lot owners as a group, thus making all of the provisions of these restrictions mutually enforceable by all of the lot owners; said elected Subdivision Committee shall be deemed created upon written acceptance, by the members so elected, of the responsibility of administering the Restrictions referred to in this paragraph. The Subdivision Committee, or its assigns, reserves the right to waive such portion of the protective covenants placed on this land as they, in their sole discretion, deem necessary in the best interest of the development.

Previous Lot Subdivisions

Prior to appellants endeavoring to subdivide Lot 73, two other lots within the Burton Subdivision were further subdivided without prior written consent of the Subdivision Committee. First, in 1994, the then-owners of Lot 11, Gerard Tyburski ("Tyburski") and Eva Stone ("Stone") subdivided their parcel as part of their divorce into Lot 11 and Lot 11A. Tyburski acquired title to Lot 11, a 4.909 acre parcel with a single-family home on it, by deed recorded among the land records of the County in 2008. Stone acquired title to Lot 11A, a vacant 2.56 acre parcel, by deed recorded among the land records of the County in 2008. Thereafter, in 2017, William and Barbara Grill ("the Grills") acquired title to Lot 11A by deed recorded among the land records of the County. The Grills built a single-

family home on Lot 11A at some point between 2021 and 2024.[3]

The second subdivision occurred in 2014 when the owners of Lot 2, Daniel and Joanne Marsh (collectively, "the Marshes") created a "Waiver of Restriction" and obtained the signatures of seven of ten record owners of Lots 1 through 10. The seven signatories of the Waiver of Restriction expressly waived their right to enforce the covenant against the further subdivision of lots in Section One of the Burton Restrictions. The Waiver of Restriction was recorded in the land records for the County. Subsequently, the Marshes subdivided the original Lot 2 into Lot 2A, which consists of 3.313 acres, and Lot 2B, which consists of 3.581 acres. The Marshes retained title of Lot 2A, which already had a single-family home built on it, and conveyed title of Lot 2B to Brad and Danielle Ghaner (collectively, "the Ghaners"). The deeds to both Lot 2A and Lot 2B were recorded among the land records of the County in October 2015. The Ghaners built a single-family home on Lot 2B in 2016.

Subdivision of Lot 73

Planning to build a single-family home for son and his wife next to mother and father's home, appellants filed an application with the County to subdivide Lot 73 in 2018. As part of the County's subdivision application process, appellants were required to post a

[3] Appellants assert that it is "undisputed that homes were built on the subdivided lots at least as long ago as 5-10 years before trial." Although this is accurate for Lot 2B, it is inaccurate for Lot 11A. Indeed, one of appellants' exhibits at trial -- an assessment of Lot 11A from the Maryland State Department of Assessments and Taxation -- makes clear that as of 2021, no structure had been built on Lot 11A. At trial on November 8, 2024, however, the parties did not dispute that a single-family home currently sits on Lot 11A. In our view, therefore, it is evident that a single-family home was built on Lot 11A sometime between 2021 and 2024.

"Notice of Proposed Minor Subdivision" along the road at the edge of their property for 30 days. The notice provided contact information for where neighbors could call to obtain information about the proposed subdivision. Appellants posted the notice at the bottom of their driveway along Long Green Pike for approximately 90 days. The County received no objections to the proposed minor subdivision and, by letter dated March 25, 2021, approved the subdivision of Lot 73.

The subdivision created two lots -- Lot 73 consisting of 4.903 acres and Lot 73A consisting of 2.492 acres. In June 2021, father conveyed Lot 73A to mother and son as joint tenants by deed which was subsequently recorded in the land records of the County.[4] Son proceeded to hire a contractor to draw up plans for the construction of a single-family home to be built on Lot 73A and obtained the necessary permits. Subsequently, in July 2022, father passed away.

Shortly after father passed away, mother received a letter by mail from the realtor who initially sold Lot 73 to father advising mother that Lot 73 was subject to the Burton Restrictions which may hinder her ability to subdivide the parcel. Son attempted to identify the Subdivision Committee by speaking with neighbors but was unable to do so. Thereafter, in August 2022, son created a form by which he sought the signature of fellow lot owners in the Burton Subdivision, approving the subdivision of Lot 73 and proposed construction of a home on Lot 73A ("the form"). Specifically, the form provided:

[4] In October 2022, mother added son to the title of Lot 73 by deed recorded in the land records of Baltimore County.

> To Whom It May Concern (Burton Lot Owners),
>
> There are EIGHTEEN[5] lots in the Burton subdivision. The undersigned are all owners of lots in the Burton subdivision. We sign here indicating that we are not aware of any "Subdivision Committee" in our neighborhood or anyone acting in an official capacity like a "Homeowner's Association".
>
> We are aware that Tyler Chavis and Karen Chavis have a County approved and documented subdivision of Lot 73 and have no objection to the subdivision. Tyler Chavis has received approval of plans and permits for construction of a home on Lot 73, and has offered to show us copies of his plans. We have no objection to the plans as submitted and approved for permitting by the County.

Son obtained the signatures of 14 Burton Subdivision lot owners, including mother. Meanwhile, son mentioned the Burton Restrictions to the contractor who, in turn, refused to build on Lot 73A until son obtained a court order permitting construction.

The Present Lawsuit

On April 18, 2023, appellants commenced the present lawsuit, seeking an action to quiet title, declaratory judgment, and injunctive relief. Appellants filed a Complaint against 21 Burton Subdivision lot owners seeking a waiver of Section One of the Burton Restrictions limiting the further subdivision of parcels. Five lot owners -- Lot 1 (Brian and Kristan Swehla), Lot 9 (Michael and Christine Rusk), Lot 14 (Robert Bell Deford III), Lot 74 (Hartley and Dorothy Justice), and Lot 72 (Robert and Denise Shaffer) (collectively, "appellees") -- opposed the waiver.

[5] In briefing and at oral argument, appellants explained that further review of the land records revealed that there are 24 lots burdened by the Burton Restrictions.

A one-day bench trial was held on November 8, 2024, at which appellants and four appellees testified. Mother and son testified about their lack of awareness that the Burton Restrictions were still in force prior to receiving the July 2022 letter from father's realtor. Specifically, mother stated: "I have heard of covenants but my husband always said to me something about 20 years, after 20 years you could subdivide one lot. Now, I don't know. I really never read covenants, you know." Similarly, son testified: "[W]e knew that there were covenants but we always thought that they expired after 20 or 25 years."

Appellees testified about their lack of knowledge of appellants' application to subdivide Lot 73 and the County's subsequent approval thereof. First, Hartley Justice ("Justice"), whose lot is close to appellants', testified that son had come to him seeking his signature on the form -- which he did not sign -- but did not indicate whether he had been aware of appellants' lot subdivision prior to that. Next, Robert Shaffer ("Shaffer"), whose lot is next to appellants, testified:

> In fact, I did not have any notice that [appellants] were trying to do what they ultimately were able to do, which is to get approval from Baltimore County to divide their lot. Never saw the sign. It was COVID. I work near Washington, [D.C.] in Bethesda, Maryland. So I get in the car usually around 5:30 in the morning, come home late at night to try and avoid the D.C. and Baltimore traffic. So I wasn't aware of it until they came . . . .

Robert Bell Deford III ("Deford") testified that he was aware of appellants' efforts to subdivide their property, but did not state when he had become aware. Finally, Michael Rusk ("Rusk") testified that he had no knowledge of the subdivision of Lot 73 until being served.

Appellees also testified about whether they knew of or consented to the subdivision of either Lot 2 or Lot 11. Justice was unaware of the subdivision of either Lot 2 or Lot 11 and did not expressly consent to either. Similarly, Shaffer testified that he knew nothing about the subdivision of either Lot 2 or Lot 11 at the time those respective subdivisions occurred and that he did not consent to either. Deford stated that his predecessor in interest did not consent to the subdivision of Lot 2 and that he did not find out about it until approximately two years after said subdivision.[6] At the time of the subdivision of Lot 11, Deford had no interest in property within the Burton Subdivision. Rusk testified that he had no knowledge of the subdivision of Lot 2 and that he did not consent to it. As to the subdivision of Lot 11, Rusk testified that, when he purchased his property three years after the subdivision of Lot 11, he "understood that [Lot 11] -- there were two lots there because of the divorce."

Further, appellees testified as to their concerns with waiving the covenant against subdivision and allowing appellants to proceed with their plans to construct a home on Lot 73A. Justice was concerned that allowing appellants' subdivision would have a domino effect: "This one is going to split the property, the next one is going to split the property and before you know it you are going to have a rural development going on and that is what I don't -- that is really what I don't want to have happen." Shaffer testified that he was most concerned about two things: "changing the character of my home and the home of my neighbors in a way that [is] going to alter what the original intent was of the

[6] Deford acquired his lot within the Burton Subdivision through an inheritance in 2021.

community when it was set up" and "the absence of following . . . the process that was contemplated by the original covenants." Deford testified that his main concern with appellants' subdivision was that they did not "follow the process outlined in the covenants," which appellants -- and any other lot owner in the Burton Subdivision -- committed to follow when they acquired their property. Deford also spoke of the importance of preserving open and rural space in the Burton Subdivision and surrounding area. Similar to Justice, Rusk's main concern was that allowing appellants' subdivision without following the requirements delineated in the Burton Restrictions would lead to more lot owners trying to do the same.

No one who testified was aware of the existence of a Subdivision Committee. Son and Justice, however, shed some light on whether a Subdivision Committee ever existed. Son testified that, after learning that the Burton Restrictions were still in force, he attempted to identify the Subdivision Committee but found out that the Company tasked with its creation declared bankruptcy in 1976. Son was unable to locate the entity that received the transfer of the Company's rights. Justice, who has lived in the Burton Subdivision since 1981, testified about "Mr. Connors," who previously lived in the Burton Subdivision:

> [JUSTICE]: . . . Mr. Connors, he was more or less the overseer of the covenant and I thought I was going to change the color of the roof. Well, he informed me that the color stays the same. So that is why it is still green today.
>
> . . .
>
> [APPELLEES' COUNSEL]: And you say he was the -- you said he was the overseer?
>
> [JUSTICE]: Well, he worked for Mrs. Burton.

> [APPELLEES' COUNSEL]: Worked for Mrs. Burton. When you were there, what did Mr. Connors oversee?
>
> [JUSTICE]: He oversaw the properties, that development, the subdivision.
>
> [APPELLEES' COUNSEL]: And if people had to seek approvals in the subdivision for things such as subdivision, was Mr. Connors the person they went to?
>
> [JUSTICE]: That is correct.
>
> . . .
>
> [APPELLEES' COUNSEL]: How did he get that job?
>
> [JUSTICE]: I'm unaware of that.
>
> [APPELLEES' COUNSEL]: How long was he in that role to your knowledge?
>
> [JUSTICE]: Well, I know he was in there before 1981. I think since the subdivision -- since the division was done.

Justice went on to state that, after Mr. Connors passed away, which he believed was sometime around 1990 to 1995, he was unaware of anyone who had assumed Mr. Connors' role.

On December 2, 2024, the trial court filed a Memorandum Opinion and Order finding for appellees on each of appellants' theories. First, the trial court found that no waiver, either by acquiescence or abandonment, had occurred, noting that appellees had "testified that they had no knowledge of any of the violations of the Burton [Restrictions]."

Next, the trial court found no merit to appellants' argument that they should be absolved of violating the Burton Restrictions under the equitable doctrine of comparative

hardship. The trial court explained that, although appellants "originally were unaware of the other lot owners' property rights" and "acted in good faith to create the Lot 73A subdivision," appellants "had reasonable notice of the other lot owners' property rights through constructive notice of the deed." Accordingly, the trial court held:

> that the doctrine of comparative hardship does not apply here, as Plaintiffs did not follow the procedures of the Burton [Restrictions] to create an exception on their lot. Plaintiffs had constructive knowledge of the covenant on their deed, and Plaintiffs had actual knowledge of the covenants upon their plan of a new dwelling on Lot 73A. The actual and constructive knowledge weighs against Plaintiffs.

Further, the trial court differentiated the present case from others in which Maryland courts found in favor of covenant violators noting that in those cases, "the improvements were already completed," therefore the violators "would face great hardship compared to the property owners encumbered by the restrictive covenants if the [violators] were to comply with the restrictive covenants." In the present case, however, the trial court explained that:

> Plaintiffs did not suffer a great hardship and the dwelling is not constructed and finished. It is true that Plaintiffs suffered some hardship in creating the Lot 73A subdivision, but Plaintiffs did not suffer a great hardship compared to the harm on the Burton lot owners which is required from the doctrine of comparative hardship[.]

According to the trial court, appellees' interest "in preserving the residential integrity of their community" through enforcing the Burton Restrictions was not outweighed by appellees' desire to subdivide and build unencumbered. Indeed, the trial court concluded that, because "the dwelling has not yet been constructed" on Lot 73A, "[e]nforcement of

the covenant would not have much harm to Plaintiffs compared to [the] harm faced by the lot owners in changing the neighborhood's characteristics."

Third, the trial court determined that "the approval of a majority of lot owners does not create a formal waiver under the Burton [Restrictions]. The covenants set forth a process for waiving restrictions that requires a vote by the Subdivision Committee, not just a majority of the lot owners." Accordingly, the trial court concluded that approval by a majority of the lot owners had no impact on the violative nature of appellants' lot subdivision.

Fourth, and finally, the trial court rejected appellants' argument that the Burton Restrictions are ambiguous. The trial court reasoned that "[t]he intention of the covenants is clear: to restrict the use of the property to residential, single-family purposes, and to require Subdivision Committee approval for further subdivision." Appellants noted a timely appeal. We shall provide additional details as necessary.

STANDARD OF REVIEW

When we are called on to review an action tried without a jury, "our standard of review is governed by Maryland Rule 8-131." *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (citation omitted). Pursuant to the Maryland Rule, we "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." Maryland Rule 8-131(c). Under the clearly erroneous standard, we will not overturn a trial court's factual findings so long as they are supported by substantial evidence. *L.W. Wolfe Enters., Inc.*, 165 Md. App. at 343. Said another way, we will affirm

a trial court's factual findings unless the record is devoid of any competent or material evidence to support such findings. *See id.* We consider the evidence in the "light most favorable to the prevailing party." *Id.* (citation omitted).

Although we afford significant deference to a trial court's factual conclusions, a trial court's legal conclusions are generally subject to de novo review. *Id.* at 344. Whether the language of a covenant is ambiguous is one such question of law, which we review de novo.[7] *Dumbarton Improvement Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 55 (2013) (citation omitted). Similarly, "the interpretation of a restrictive covenant . . . is subject to de novo review as a legal question." *City of Bowie v. MIE Properties, Inc.*, 398 Md. 657, 677 (2007) (citation omitted).

DISCUSSION

I. The trial court did not err by concluding that the covenant restricting the further subdivision of lots in the Burton Subdivision is enforceable.

A. The covenants are unambiguous and approval by a majority of lot owners subject to the covenants does not suffice as approval of the Subdivision Committee.

We first address two of appellants' arguments which, in our view, are related. First, appellants contend that the covenant restricting the subdivision of lots within the Burton Subdivision without written permission from the Subdivision Committee or its assigns is

[7] Appellees contend that the trial court's conclusion that the covenants are not ambiguous is subject to the clearly erroneous standard of review. Appellees cite no authority for this proposition. Appellants, on the other hand, assert that a trial court's conclusions concerning the construction of a covenant are reviewed de novo. As we explain above, we agree with appellants that a trial court's conclusions concerning the construction of a covenant, namely whether the language of a covenant is ambiguous, is subject to de novo review. *Dumbarton Improvement Ass'n, Inc.*, 434 Md. at 55.

ambiguous because the covenants do not define "assigns" or make clear how the Subdivision Committee can assign its power to approve lot subdivisions. Because no extrinsic evidence is available, appellants assert that the ambiguity cannot be resolved, and the trial court should have construed the covenant in appellants' favor. Next, appellants argue that the Company tacitly or impliedly assigned the Subdivision Committee's power to the individual lot owners burdened by the Burton Restrictions. According to appellants, therefore, the form that they circulated and obtained a majority of the lot owners' signatures on constitutes approval by the Subdivision Committee. Appellants reason that the purpose of the Burton Restrictions is to permit further subdivision of lots subject to said restrictions and the non-existence of the Company thwarts that purpose by making it impossible to establish the Subdivision Committee pursuant to the terms of the covenants. In the alternative, appellants suggest that the form has the effect of amending the covenants.

Appellees counter that the Burton Restrictions unambiguously prohibit the further subdivision of lots absent prior written consent from the Subdivision Committee and that the trial court was correct to strictly enforce the covenant as written. Further, appellees argue that there is no basis in Maryland law to allow an enforceable restrictive covenant to be terminated or avoided based on a majority vote of those burdened by the covenants. Appellees reason that the Burton Restrictions expressly allow for waiver or amendment in two ways: an action of the Subdivision Committee or an instrument signed by a majority of the lot owners and duly recorded. Because it is undisputed that the Subdivision Committee took no such action and appellants' petition does not constitute an instrument

as contemplated by the covenants, appellees contend that no such waiver or amendment occurred.

Restrictive covenants are "a species of contract[] [that] are to be enforced according to the objective intent of the original parties." *Dumbarton Improvement Ass'n, Inc.*, 434 Md. at 52 (citation omitted). Indeed, if the language of a covenant is unambiguous, we "simply give effect to that language 'unless prevented from doing so by public policy or some established principle of law.'" *Id.* at 53 (quoting *SDC 214, LLC v. London Towne Prop. Owners Ass'n*, 395 Md. 424, 434 (2006)). Where "the terms of a covenant require a particular outcome, [] it is impossible to meet the legal threshold for ambiguity, which requires that the language of a covenant be susceptible to multiple interpretations by a reasonable person." *Dumbarton Improvement Ass'n, Inc.*, 434 Md. at 53 (citing *Calomiris v. Woods*, 353 Md. 425, 435–36 (1999)). As explained *supra*, both the interpretation of a covenant and the question whether a covenant is ambiguous are questions of law which we review de novo.

The trial court concluded that "the language of the Burton [Restrictions] is not ambiguous" and that "[t]he intention of the covenants is clear: to restrict the use of the property to residential, single-family purposes, and to require Subdivision Committee approval for further subdivision." The trial court based its conclusion on language in the covenants stating that lots "shall be used for private resident purposes" "for occupancy by not more than one family" and that lots cannot be subdivided further "without the prior consent of the Subdivision Committee." We agree with the trial court's ultimate conclusion.

Section One of the Burton Restrictions, entitled "Land Use," begins by providing that:

> The land included in [the Burton Subdivision], except as hereinafter provided, shall be used for private residential purposes together with incidental agricultural purposes only, and no building of any kind whatsoever shall be erected, altered, or maintained thereon except a *private dwelling house for occupancy by not more than one family* . . . .

(emphasis added). The Section goes on to express "the intention of the Company," namely "that all of the land contained within the area covered by [the Burton Restrictions] shall be used *solely for single family dwellings*, and no other purposes, except such purposes as may be specifically reserved hereunder in the preceding and succeeding sections of this Declaration." (emphasis added). Taken together, this language makes clear that, as the trial court concluded, the intent of the covenants is to restrict the development of the lots within the Burton Subdivision to residential, single-family homes.

Section One further provides that:

> Lots or parcels covered by these covenants, conditions and restrictions shall not be further subdivided or re-subdivided into one or more lots or parcels of less area than that which presently exists within the boundaries of each lot or parcel without the prior written consent of the Subdivision Committee or its assigns . . . .

This language unambiguously evinces an intent to prohibit the further subdivision of lots in the Burton Subdivision absent one narrow exception: instances when prior written consent is obtained from "the Subdivision Committee or its assigns."[8]

[8] On March 24, 2026, twenty days after oral argument, appellants filed a Motion to Reconsider Legislation Passed After Trial Date. Specifically, appellants ask us to consider

The Subdivision Committee is subsequently defined in Section Two of the Burton Restrictions:

> The Subdivision Committee referred to herein and in the preceding and succeeding sections of this Declaration shall consist of one or more members appointed solely by the Company until the Company shall organize or cause to be organized a committee of individuals to exercise the powers and perform the duties conferred upon the Subdivision Committee by these restrictions; which Subdivision Committee shall have at least one member appointed by the Company and such additional members elected by the votes, on the basis of one vote per lot, of a plurality of the individual lot owners so as to be controlled by the lot owners as a group, thus making all of the provisions of these restrictions mutually enforceable by all of the lot owners; said selected Subdivision Committee shall be deemed created upon written acceptance, by the members so selected, of the responsibility of administering the Restrictions referred to in this paragraph. The Subdivision Committee, or its assigns, reserves the right to waive such portion of the protective covenants placed on this land as they, in their sole discretion, deem necessary in the best interest of the development.

The mere fact that "assigns" is not defined in either Section One or Two does not give us pause, nor does the fact that the process by which the Subdivision Committee may assign its powers is not addressed in these sections. Indeed, "consistent with the rules of contract construction," we must view Sections One and Two in the context of the Burton Restrictions as a whole. *Dumbarton Improvement Ass'n, Inc.*, 434 Md. at 58 (citing *Md.*

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the effect of H.B. 1466, 2025 Gen. Assemb., 447th Sess. (Md. 2025) (enacted) ("H.B. 1466") on the matter before us. Appellees counter that appellants misunderstand the issue in this case. We agree. To be sure, H.B. 1466 concerns restrictions placed on the construction of accessory dwelling units *on a single lot*. The present case, however, is centered on a restrictive covenant proscribing the circumstances under which a lot owner, such as appellants, may subdivide their lot, thereby *creating a new lot*. Accordingly, H.B. 1466 does not affect our analysis in the present case.

Agric. Land Pres. Found. v. Claggett, 412 Md. 45, 63 (2009)). To understand the process of assignment by the Subdivision Committee as contemplated by the covenants, we need look no further than Section 20 of the Burton Restrictions. Section 20, entitled "Assignment by Committee," provides in pertinent part:

> Any and all of the rights and powers (including discretionary powers and rights, and powers of consent and approval) herein reserved by or conferred upon the Subdivision Committee may be assigned or transferred by the Subdivision Committee, at its election and in its sole discretion, to any one or more corporations or associations or committees of individuals agreeing to accept same . . . . Any such assignment or transfer shall be evidenced by an appropriate instrument duly executed by the Subdivision Committee and recorded among the then proper public Land Records; and upon such recordation thereof, the grantee or grantees, transferee or transferees of such rights and powers shall thereupon and thereafter have the right to exercise and perform all the rights and powers so assigned or transferred by such instrument, in lieu of the Subdivision Committee . . . .

Section 20, therefore, unambiguously lays out the process by which the Subdivision Committee may assign its powers. Accordingly, we find no merit to appellants' contention that the covenants are ambiguous as to how the Subdivision Committee may assign its powers.

Although appellants are correct that "assigns" is not defined in the covenants, common sense dictates that "assigns" in Section One and Two merely means the party or parties to whom the Subdivision Committee assigns its powers to under Section 20. *See Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 397 (2019) (quoting *Brethren Mut. Ins. Co. v. Buckley*, 437 Md. 332, 348 (2014)) ("As a bedrock principle of contract interpretation, Maryland courts consistently 'strive to interpret contracts in accordance

with common sense.'").[9] We, therefore, conclude that the covenants are unambiguous as to both who an "assign" is and the process by which the Subdivision Committee may assign its rights and powers.

Having concluded that Section 20 of the Burton Restrictions unambiguously establishes the process by which the Subdivision Committee may assign its powers, we turn to the question whether the Company tacitly or impliedly assigned the Subdivision Committee's powers to the lot owners. It is undisputed that no actual assignment was made by the Company to all the individual lot owners. Indeed, appellants presented no evidence that an instrument was recorded assigning the powers of the Subdivision Committee to the lot owners as explicitly required by Section 20 of the Burton Restrictions. Although it is true that the covenants exhibit an intent that the Subdivision Committee be controlled by the lot owners as a group, it is evident that such control is to be imparted to the lot owners through an election, on the basis of one vote per lot. Appellants cite to no authority in support of their argument that we can infer such a tacit or implied assignment based on the alleged impossibility of establishing a Subdivision Committee due to the non-existence of the Company. Accordingly, we find no merit to appellants' argument that the Company tacitly or impliedly assigned the Subdivision Committee's powers to the lot owners.

Because appellants did not raise their alternative argument -- that the form which appellants obtained a majority of lot owners' signatures on constitutes an amendment of

[9] Indeed, Black's Law Dictionary defines "assign" as synonymous with "assignee," which means "[s]omeone to whom property rights or powers are transferred by another." *Assignee*, BLACK'S LAW DICTIONARY (12th ed. 2024).

the covenants -- in the proceedings below and the trial court did not opine on the issue, we decline to address it for the first time on appeal.[10]

Finally, we note that, to the extent the Company did not create or cause to be created the Subdivision Committee, we are not persuaded that the inability of the Company -- which is no longer in existence -- to now establish the Subdivision Committee and appoint a member renders the covenant requiring approval of said committee prior to the further subdivision of a lot unenforceable. Although this conclusion seemingly leaves appellants with no clear path forward, we note that, should the Company's non-existence render convening the Subdivision Committee as contemplated by the covenants impossible, nothing in the covenants precludes the lot owners from amending the covenants -- through an instrument signed by a majority of the lot owners and duly recorded -- to allow for the Subdivision Committee to be created in an alternative manner.[11] In sum, we conclude that

[10] Even if we were to address this argument, appellants concede in their Complaint that no instrument amending or revoking the Burton Restrictions has been created or recorded.

[11] Indeed, Section 18 of the Burton Restrictions expressly allows for the amendment or revocation of part or all of the covenants. Entitled "Term," Section 18 provides, in pertinent part:

> These covenants shall run with the land and shall be binding for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically be [sic] extended for successive periods of ten (10) years unless and until an instrument signed by the then recorded owners of leasehold equities or redemption or fee simple interests as the case may be . . . in a majority of the lots or parcels subject to such covenants (casting one vote for each lot or parcel so owned) into which tract shall have been

the trial court did not err in concluding that the Burton Restrictions are not ambiguous and that appellants' attempt to obtain the approval of a majority of other lot owners does not equate to approval of the Subdivision Committee.

B. The trial court's conclusion that the covenant has not been waived is not clearly erroneous.

Next, appellants contend that the trial court committed clear error by concluding that appellees did not waive, by either abandonment or acquiescence, the covenant precluding the further subdivision of lots within the Burton Subdivision absent the prior written approval of the Subdivision Committee. Appellants cite two lots that were previously subdivided without Subdivision Committee approval in support of their argument that the covenant was waived by abandonment. Further, appellants argue that because they complied with the subdivision procedures of the County -- which included a "Community Input Meeting" and the posting of a notice of the proposed minor subdivision at appellants' driveway -- the appellees' failure to object prior to the commencement of the present legal action constitutes waiver by acquiescence. Appellees counter that the trial court had substantial evidence that they lacked knowledge of any of the violations of the covenants which appellants cite, and therefore, the trial court's conclusion that appellants failed to sustain their burden of showing waiver was not clearly erroneous.

"The question of whether waiver has occurred is a question of fact, which is reviewed for clear error." *MIE Properties, Inc.*, 398 Md. at 699 (citation omitted).

> subdivided, has been recorded, by which said covenants, in whole or in part, are amended or revoked.

Accordingly, we will affirm the trial court's conclusion that no waiver occurred so long as such factual findings are supported by substantial evidence in the record. *L.W. Wolfe Enters., Inc.*, 165 Md. App. at 343.

"Maryland appellate courts have long recognized the equitable defense of waiver in restrictive covenant cases." *MIE Properties, Inc.*, 398 Md. at 697–98 (collecting cases). A waiver "deems unenforceable a covenant because some word or act of the covenantee communicated to the covenantor that the covenant would not be enforced." *Id.* at 698 (citing *Speer v. Turner*, 33 Md. App. 716, 728 (1976)).

There are two ways in which the defense of waiver manifests. First, "[w]aiver by abandonment occurs when an individual benefiting from a restrictive covenant relinquishes [their] right to enforce the covenant, because [they have] previously allowed a violation of the covenant by other individuals burdened by the covenant." *Shader v. Hampton Improvement Ass'n, Inc.*, 443 Md. 148, 171 (2015) (citing *MIE Properties, Inc.*, 398 Md. at 697). Second, a waiver by acquiescence occurs when a person benefiting from a restrictive covenant relinquishes their right to enforce said covenant because they have abided by a violation of the covenantor. *MIE Properties, Inc.*, 398 Md. at 698 (citing *Kirkley v. Seipelt*, 212 Md. 127, 136 (1957)). For either form of "waiver to occur, the covenantee must be aware of the covenantor's acts or uses and their possible violative nature." *MIE Properties, Inc.*, 398 Md. at 699 (citing *Chevy Chase Village v. Jaggers* 261 Md. 309, 319–20 (1971)). In the present case, therefore, if there is substantial evidence in the record that appellees lacked knowledge of (1) the previous two lot subdivisions completed without Subdivision Committee approval; and (2) appellants' subdivision

process with the County, we must affirm the trial court's conclusion that no waiver occurred.

Prior to appellants endeavoring to subdivide their lot, two other lots within the Burton Subdivision were subdivided. First, Lot 11 was subdivided in 1994 into Lots 11 and 11A as part of a divorce of the then-owners of the original Lot 11. Although there was a single-family home on Lot 11, it was not until sometime after 2017 that a single-family home was built on Lot 11A. Second, Lot 2 was subdivided in 2014 into Lots 2A and 2B after the owners of Lot 2 obtained and recorded a "Waiver of Restriction" with the signatures of seven of ten record owners of Lots 1 through 10. As of 2016, there is a single-family home on both Lots 2A and 2B. Appellants argue that the trial court's conclusion that these prior subdivisions -- which were unobjected to by appellees -- did not constitute a waiver by abandonment was clearly erroneous. We are unpersuaded.

To be sure, Justice, Shaffer, and Rusk[12] each testified that they knew nothing of the Lot 2 subdivision at the time it occurred. Further, neither Justice nor Shaffer was aware of the Lot 11 subdivision until sometime after it occurred.[13] It is clear, therefore, that there

[12] The other appellee who testified, Deford, did not have an ownership interest in any lot within the Burton Subdivision at the time either Lot 2 or 11 was subdivided. Therefore, he would have had no corresponding right to enforce the Burton Restrictions at the time either lot was subdivided. His knowledge, or lack thereof, of the subdivision of either Lot 2 or 11, therefore, has no bearing on whether there was a waiver by abandonment.

[13] Rusk testified that he purchased his lot within the Burton Subdivision approximately three years after Lot 11 was subdivided and that he knew Lot 11 consisted of two lots at that time. Rusk, however, had no right to enforce the Burton Restrictions against the Lot 11 owners at the time of the subdivision.

was substantial evidence that appellees had no knowledge of the subdivision of either Lot 2 or 11. Without such knowledge, appellees cannot be said to have waived by abandonment their right to enforce the covenant against the further subdivision of lots within the Burton Subdivision.

Similarly, we are unpersuaded by appellants' argument that there was a wavier by acquiescence. Indeed, there was substantial evidence that appellees lacked knowledge of appellants' lengthy process with the County to subdivide their lot at a time at which they could object. Of note, Shaffer testified that, despite living next door to appellants, he "did not have any notice that [appellants] were trying to [subdivide]" until son came to ask him to sign the form approving subdivision. Appellants contend that Shaffer's assertion that he did not see the "Notice of Proposed Minor Subdivision" which appellants had at the end of the driveway for approximately 90 days was akin to someone sticking their head in the sand. We disagree. Shaffer testified that, because he leaves for work early and comes home late, he did not see the notice that appellants had posted at the edge of their lot. The trial judge, who is best equipped to judge the credibility of witnesses, clearly credited this testimony and it is not our role to conduct a secondary fact finding.

The trial court's conclusion was buttressed by Rusk's testimony that he had not become aware of appellants' subdivision until being served in the present action. Further, no appellee testified that they were aware of appellants' subdivision before appellants sought their consent to said subdivision via their signature on the form. What is more, appellants' exhibit depicting the "Notice of Proposed Minor Subdivision" which they posted at the end of their driveway is merely a closeup picture of the sign that does nothing

in the way of indicating its size or how easily it would have been seen by other Burton Subdivision lot owners. In such circumstances, there was substantial evidence that appellees had no knowledge of appellants' lot subdivision. Therefore, any failure to act prior to the initiation of the present action cannot constitute a waiver by acquiescence. Accordingly, we conclude that the trial court's conclusion that there was no waiver by either abandonment or acquiescence was not clearly erroneous.

C. The trial court's conclusion that the doctrine of comparative hardship does not apply is not clearly erroneous.

Finally, appellants argue that the trial court's conclusion that the doctrine of comparative hardship does not apply is clearly erroneous.[14] In so arguing, appellants challenge two of the trial court's findings. First, appellants contend that the trial court erred by imputing constructive knowledge of the covenants through the land records in concluding that appellants violation was not an innocent mistake. Appellants reason that the land records would not provide them with information as to whether the covenants had expired and how to seek the Subdivision Committee's approval to subdivide. Second, appellants contend that, because they have spent $150,000 to subdivide their property and prepare to build a home on Lot 73A, enforcement of the covenant would cause them more harm than the corresponding benefit that enforcement of the Burton Restrictions would bestow upon appellees.

[14] Appellants, appellees, and the trial court use "comparative hardship" and "balance of convenience test" interchangeably. For clarity, we use the term "doctrine of comparative hardship" or "comparative hardship" here.

Appellees counter that there was substantial evidence, namely the fact that it was undisputed that the Burton Covenants are recorded among the land records, to support the trial court's conclusion that any hardship suffered by appellants was of their own making. Further, appellees assert that the trial court did not err in concluding that the hardship appellants would face if the Burton Restrictions were enforced did not outweigh appellees' interest in the continued protection and preservation of the rural character of their neighborhood.

"Maryland courts [] have recognized that the equitable doctrine of comparative hardship may be applied by a court to absolve a defendant of violating a restrictive covenant and refuse to enjoin the use barred by the covenant." *MIE Properties, Inc.*, 398 Md. at 688 (citing *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 396 (2000)). Exercise of the doctrine of comparative hardship, however, is only appropriate when: (1) "the violation is committed innocently or mistakenly"; and (2) "enforcement of the covenant would visit much greater harm on the violator compared to the slight amount of harm the beneficiary of the covenant would experience if the covenant was not enforced." *MIE Properties, Inc.*, 398 Md. at 688 (citing *Easter v. Dundalk Holding Co.*, 199 Md. 303, 305 (1952)).

As to the first prong, "innocence" requires that the violator acted in good faith when violating the covenant at issue. *Urb. Site Venture II Ltd. P'ship v. Levering Assocs. Ltd. P'ship*, 340 Md. 223, 232 (1995) (citation omitted). Typically, that requires the party seeking to avoid enforcement of a restrictive covenant to establish that they either (1) had no reasonable notice of the other party's property rights; or that, (2) with knowledge of the

other party's property rights, any encroachment on those rights was a good faith error. *Id.* (citing *Griffin v. Red Run Lodge, Inc.*, 610 F.2d 1198, 1202–03 (4th Cir. 1979)). As to the former, reasonable notice includes constructive notice, which exists when the party seeking to avoid the covenant could have discovered an encumbrance in the land records. *McClure v. Montgomery Cnty. Plan. Bd. of Md.-Nat'l Cap. Park & Plan. Comm'n*, 220 Md. App. 369, 384 (2014). Regarding the latter, a "good faith error" typically involves a surveyor's definite opinion as to a property line which is subsequently encroached upon by the violator in reliance of said opinion. *Amabile v. Winkles*, 276 Md. 234, 243 (1975) (noting that defendant landowner's encroachment onto plaintiff landowner's property would have been innocent if surveyors had erroneously located an easement); *Dundalk Holding Co. v. Easter*, 215 Md. 549, 557 (1958) (holding that defendant's encroachment onto plaintiff's property was an innocent mistake where defendant hired a leading surveyor and relied on the surveyor's work to construct the encroaching wall).

In the present case, appellants contend that the trial court's conclusion that appellants' violation of the Burton Restrictions was not an innocent mistake is clearly erroneous.[15] The trial court held that:

[15] Notably, there is an apparent discrepancy as to whether an innocent mistake is a prerequisite to the application of the doctrine of comparative hardship or if it is merely a factor to be considered. *Compare MIE Properties, Inc.*, 398 Md. at 688 (noting that the doctrine of comparative hardship is only applicable "when the violation is committed innocently or mistakenly" *and* "enforcement of the covenant would visit much greater harm on the violator compared to the slight amount of harm the beneficiary of the covenant would experience if the covenant was not enforced"); *and Amabile*, 276 Md. at 242 (noting that, where the violation of the party seeking cover under the doctrine of comparative hardship is not innocent, "courts will refuse to balance the equities or conveniences" and will instead find the doctrine inapplicable) *and Urb. Site Venture II Ltd. P'ship*, 340 Md.

> [Appellants] originally were unaware of the other lot owners' property rights. . . . [Appellants] acted in good faith to create the Lot 73A subdivision and invested time and money to create the new home. However, [appellants] had reasonable notice of the other lot owners' property rights through constructive notice of the deed.
>
> This Court holds that the doctrine of comparative hardship does not apply here, as [appellants] did not follow the procedures of the Burton Restrictive Covenants to create an exception on their lot. [Appellants] had constructive knowledge of the covenant on their deed, and [appellants] had actual knowledge of the covenants upon their plan of a new dwelling on Lot 73A. The actual and constructive knowledge weighs against [appellants]. . . .

We find no error in this conclusion. Indeed, it is undisputed that the Burton Restrictions were recorded among the land records of the County. Appellants conceded that they knew the Burton Restrictions existed, and merely stated that they were mistaken as to whether they had expired. As noted *supra*, the Burton Restrictions clearly provide that they are automatically renewed absent revocation or amendment by the lot owners pursuant to the procedures laid out. Moreover, the present case is distinguishable from cases in which our courts have concluded a landowner made a good faith mistake, despite knowing their land was encumbered. To be sure, appellants here did not rely on a definite opinion of a surveyor, realtor, attorney, or the like as to whether appellants' lot was still encumbered by

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at 231 (explaining that it is proper for a trial court "to first find that the [violation] resulted from an innocent mistake before balancing the equities") *with Jaggers*, 261 Md. at 320 ("Innocent mistake on the part of the party [seeking to avoid enforcement of a covenant] is a factor to be considered in applying the doctrine [of comparative hardship].") *and Colandrea*, 361 Md. at 395 n.7 ("An innocent mistake on the part of the party in breach of the covenant can be considered in th[e] analysis [under the doctrine of comparative hardship]."). Because neither party in the present case has addressed this ostensible discrepancy, we do not endeavor to reconcile it here.

the Burton Restrictions. In these circumstances, it is evident that appellants had at least constructive knowledge of the Burton Restrictions and, therefore, their violation of said restrictions was not an innocent mistake.

Turning to the second prong of the doctrine of comparative hardship, "the court will balance the benefit of [enforcing the covenant to those seeking its enforcement] against the inconvenience and damage to the [violator of the covenant], and where the [violation] does no damage to the [party seeking enforcement] except the mere" violation of an insignificant nature, "the court may decline to" enforce the covenant against the violator. *Easter*, 199 Md. at 305 (citation omitted).

In the present case, the trial court concluded that appellants' desire to subdivide their lot and build a new home did not outweigh appellees' interest in preserving the residential integrity and rural characteristics of their community. The trial court explained that "[a]lthough [appellants] spent time and money creating the Lot 73A subdivision, the dwelling has not been constructed," therefore, "[e]nforcement of the covenant would not have much harm to [appellants] compared to the harm faced by the lot owners in changing the neighborhood's characteristics." In our view, the trial court's conclusion is supported by substantial evidence. Of note, all appellees who testified expressed their interest in maintaining the rural nature of their community and ensuring that other lots do not further subdivide without following the process required by the Burton Restrictions, that is, without first obtaining approval of the Subdivision Committee. Although enforcement of the Burton Restrictions against appellants will surely inconvenience them as they have already expended time and money on the process of subdividing, we cannot say that the

trial court's conclusion that such hardship does not outweigh appellees' interests in enforcing the covenant is at all clearly erroneous. We, therefore, find no error in the trial court's conclusion that the doctrine of comparative hardships is inapplicable in the present case.

CONCLUSION

For the foregoing reasons, we conclude that the trial court did not err in determining that the Burton Restrictions are unambiguous. We also conclude that the trial court did not err in holding that appellants' form containing the signature of a majority of lot owners within the Burton Subdivision did not constitute approval of the Subdivision Committee as required by the Burton Restrictions. Additionally, we conclude that there is substantial evidence to support the trial court's finding that there was no waiver of the covenants. Finally, we conclude that there is substantial evidence to support the trial court's decision that the doctrine of comparative hardships is inapplicable. We, therefore, affirm the judgment of the circuit court.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.