

Circuit Court for Howard County  
Case No. 13-C-13-094319

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2692

September Term, 2016

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RICHMOND AMERICAN HOMES OF  
MARYLAND, INC., et al.

v.

DAVID MARC, et al.

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Meredith,  
Kehoe,  
Friedman

JJ.

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Opinion by Friedman, J.

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Filed: July 8, 2019

\*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.

This case concerns runoff management in the Augustine Valley development of Howard County. The management techniques used in Augustine Valley were ineffective and allowed significant amounts of runoff onto the neighboring property owned by the Marc family. The Marcs requested a permanent injunction to stop the flow of water onto their property, which the circuit court granted. Because the circuit court issued the permanent injunction without evidence that the Marcs would *continue* to suffer harm as a result of Richmond American’s actions, we reverse and remand with instructions that the permanent injunction be dissolved without prejudice to the right of the Marcs to seek injunctive relief for new injuries to their property.

### **BACKGROUND**

David and Deborah Marc reside on five acres in Elkridge. Abutting their property is a seven-acre development known as Augustine Valley, which consists of twenty homes. A company called “Emily’s Delight” originally developed Augustine Valley. When Emily’s Delight petitioned for bankruptcy protection, Richmond American bought the development. Shortly thereafter, the Marcs sought an injunction prohibiting the “diversion of excessive and unreasonable runoff” from the Augustine Valley development onto their property. The Circuit Court for Howard County dismissed the case, finding that the Marcs had failed to exhaust administrative remedies before filing suit. In an unreported opinion, this Court overturned that dismissal, holding that “the Marcs were not obligated to exhaust administrative remedies before pursuing the common-law causes of action that they have outlined in their complaint.” *Marc v. Richmond Am. Homes of Maryland, Inc.*, No. 1476, Sept. Term 2014, at \*2 (Md. Ct. Spec. App. Nov. 12, 2015).

The Marcs then filed a complaint alleging common law nuisance and trespass and seeking a permanent injunction. The complaint named Richmond American, Emily’s Delight, the Augustine Valley Homeowners Association, Inc., and many of the homeowners in the development as defendants.<sup>1</sup>

The matter proceeded to a bench trial in September 2016, around which time, Richmond American converted its runoff management system from a silt pond to a stormwater management pond. Puzzlingly, however, Richmond American failed to raise the conversion until the second day of trial. When it came up, the trial judge remarked that she was “speechless” that she was only then hearing about what occurs “after the pond converted from being a silt pond to a stormwater management pond, which apparently just happened? And we just found out about it two days ago?” The trial continued, with the trial judge making several findings of fact that the development of Richmond American’s property had caused damage to the Marc’s property *in the past*.<sup>2</sup> The trial judge summed up the situation as follows:

If nothing changes, [the issues are] likely to continue and that ... concentration of water coming onto [the Marc’s] property will cause continuing damage to [the] property if it isn’t stopped. And I have heard that the stormwater management pond has evolved out of the silt pond and there’s an expectation

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<sup>1</sup> We will refer to this group collectively as “Richmond American,” while recognizing that the eventual injunction limited the finding of trespass to the developers and noted that the Augustine Valley Homeowners Association, Inc. elected to assume responsibility for the liability of individual homeowners in the event of an injunction violation.

<sup>2</sup> For example, the trial judge found that “the intrusion of water [onto the Marc’s property from Richmond American’s property] continued at least until April of 2016 [and it] may be ongoing, *I just haven’t seen any evidence of it since that time.*”

there would [be] no further damage. I really hope that’s true. ... However, I can’t predict the future. ... It is impossible to know at this time whether the soil erosion and other problems will continue on [the Marc’s] property in the future.

The circuit court found that Richmond American had created a nuisance and trespassed on the Marc’s property, awarded nominal damages of \$1 for each offense, and issued a permanent injunction prohibiting Richmond American from

allowing or causing concentrated flow of stormwater runoff from [Richmond American’s] property or stormwater management structures onto [the Marc’s] property in an amount that causes soil erosion or other damage when rainfall is Five Point Two (5.2) inches or less in a twenty-four (24) hour period at the location of [Richmond American’s] property.

Before us now, Richmond American appeals from the issuance of the permanent injunction.

### DISCUSSION

On appeal, “we review the exercise of the trial court’s discretion to grant or deny a request for injunctive relief under an abuse of discretion standard; however, we give no such deference when we find an obvious error in the application of the principles of equity.” *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. 339, 354-55 (2001) (cleaned up); *see also O.F.C. Corp. v. Turner*, 228 Md. 105, 112 (1962) (an injunction must be “fair and equitable [as to what is] to be required of the respective parties ... to reasonably protect ... property from excess flowage of surface water due to the development of [neighboring] property”).

The critical fact to understanding this case is that there is a fundamental difference between a silt pond and a stormwater management pond. A *silt pond* is a temporary

structure made to stop sediment flow that results from disruption and earthmoving during construction. A *stormwater management pond* is a permanent structure meant to manage stormwater after construction has concluded. Compare MD. CODE ENV'T (“EN”), § 4-105(a)(3)(v) (“A person may not *begin or perform any construction* unless the person [i]mplements any sediment control measures reasonably necessary to control sediment runoff”) (emphasis added) with EN § 4-203(b)(1) (“[The Maryland Department of the Environment] shall adopt rules and regulations which establish criteria and procedures for stormwater management in Maryland. The rules and regulations shall [i]ndicate that the primary goal of the State and local programs will be to maintain *after development*, as nearly as possible, the predevelopment runoff characteristics”) (emphasis added), and HOWARD COUNTY DEPARTMENT OF PUBLIC WORKS, HOWARD COUNTY DESIGN MANUAL – VOLUME I, STORM DRAINAGE 5-1 (June 2008), <https://perma.cc/X9WP-6YYA> (noting that stormwater management in Howard County is intended to “maintain *after development*[,] as nearly as possible, the predevelopment runoff characteristics”) (emphasis added).<sup>3</sup>

The trial judge—thanks in no small part to the presentation by the parties—confused the two structures and entered a permanent injunction against both (1) a silt pond that no longer existed; and (2) a stormwater management pond that had not yet caused any damage

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<sup>3</sup> The difference between the two types of ponds is further highlighted by the State’s guiding documents on development, which explain that “installation of stormwater management measures” and “removal of sediment controls” are separate and distinct steps to be taken as the sequence of construction comes to a close. MARYLAND DEPARTMENT OF THE ENVIRONMENT, 2011 MARYLAND STANDARDS AND SPECIFICATIONS FOR SOIL EROSION AND SEDIMENT CONTROL A-10 (Dec. 2011), <https://perma.cc/5AWG-FUDN>.

to the Marc's property. As to the silt pond, the evidence was overwhelming that at the time of trial, the silt pond that had harmed the Marc's property no longer existed. The law is clear that a court cannot enjoin a problem that no longer exists. *El Bey*, 362 Md. at 353 (“injunctive relief is a preventative and protective remedy, aimed at future acts, and is not intended to redress past wrongs”) (cleaned up). Therefore, the permanent injunction must be dissolved as it applies to the silt pond.<sup>4</sup> As to the stormwater management pond, there was no evidence at the time of trial that this new facility had or would cause harm to the Marc's property in the future. The law is clear that permanent injunctions can only be issued to address current and future harms. *Id.* (same); *Brown v. Smith*, 173 Md. App. 459, 487 (2007) (holding that an injunction is not necessary when there is no evidence of a *continued* trespass). Therefore, the permanent injunction must also be dissolved as it applies to the stormwater management pond.

As both halves of the permanent injunction must be dissolved, we return the matter with instructions to the Circuit Court for Howard County to dissolve its permanent injunction. We qualify, however, that this resolution is without prejudice to the right of the Marcs to seek injunctive relief for any unreasonable runoff experienced subsequent to the conversion of the runoff management structure from a silt pond to a stormwater management pond. Because there was no evidence before the trial court to suggest that the stormwater management pond was not functioning properly, such a request for a new

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<sup>4</sup> The trial court also awarded damages in the amount of \$1 for nuisance and \$1 for trespass to compensate the Marcs for damages that the defective silt pond had done to their property.

injunction would not be barred by res judicata. *See Eberly v. Balducci*, 61 Md. App. 80, 84-88 (1984) (holding that a second petition for injunctive relief could not be barred as res judicata because the “substantive issues of th[e] dispute ha[d] not been decided” in the original hearing).<sup>5</sup>

**JUDGMENT OF THE CIRCUIT COURT  
FOR HOWARD COUNTY REVERSED;  
CASE REMANDED TO THAT COURT  
WITH INSTRUCTION TO DISSOLVE ITS  
INJUNCTION ISSUED ON JANUARY 9,  
2017; COSTS TO BE PAID BY APPELLEE.**

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<sup>5</sup> As correctly noted by Richmond American, however, if a new injunction is sought, the injunction must address Howard County’s role in maintaining the structural elements of the stormwater management pond to comply with Maryland Rule 15-502(e). *See Chesapeake Outdoor Enterprises, Inc. v. Mayor and City Council of Baltimore*, 89 Md. App. 54, 78 (1991) (noting that “an order granting an injunction should be sufficiently specific to give a defendant a fair guide as to what is expected”) (cleaned up).