UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 73

September Term, 2014

VICKY MEDFORD

v.

BRIGETTE CRUZ

(On Motion for Reconsideration)

Eyler, Deborah, S.,
Kehoe,
Raker, Irma, S.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Kehoe, J.

Filed: December 21, 2016

This case began as a dispute between adjoining property owners in a waterfront community in Pasadena, Maryland. Vicky Medford and Brigitte E. Cruz,[1] disagreed as to Cruz's right to access their jointly-owned pier. The pier lies adjacent to land (the "Disputed Area") that Medford thought she owned, although Cruz later asserted a competing claim of ownership. The matter moved to the Circuit Court for Anne Arundel County. The trial court eventually concluded that: (1) Cruz had legal and equitable title to the Disputed Area; and (2) Medford's claim to ownership based on adverse possession failed. Medford has appealed and contends that the trial court erred on both scores.

Background

Medford and Cruz own adjoining properties in a waterfront community, known at various times as "Green Haven, Armiger Addition," "Portworth," and, more recently, "High Point," located on the southerly side of Stony Creek, in Pasadena, Maryland. For consistency's sake, we will refer to the development as "Armiger Addition."

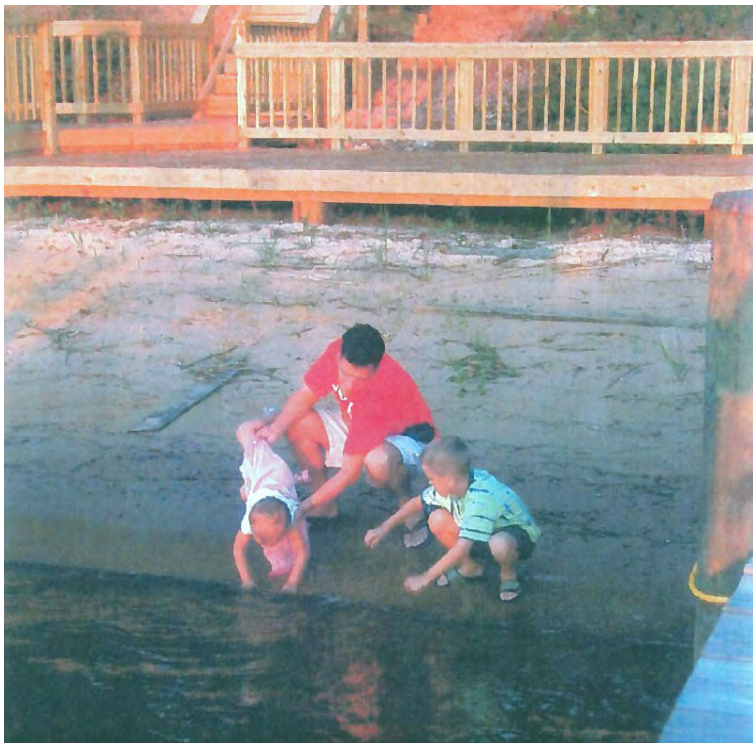
Medford and Cruz own, respectively, Lots 17 and 18 of Block E of Armiger Addition. Cruz purchased Lot 17 in 2002 and Medford Lot 18 in 2009. Medford's and Cruz's predecessors-in-title built a pier for their joint use on Lot 17. A wooden stairway leads from Medford's lot to a platform in the Disputed Area and another stairway leads to another platform, paralleling the shoreline, which provides access to the pier. The prior owners signed a joint pier agreement, wherein they agreed that the Medford and

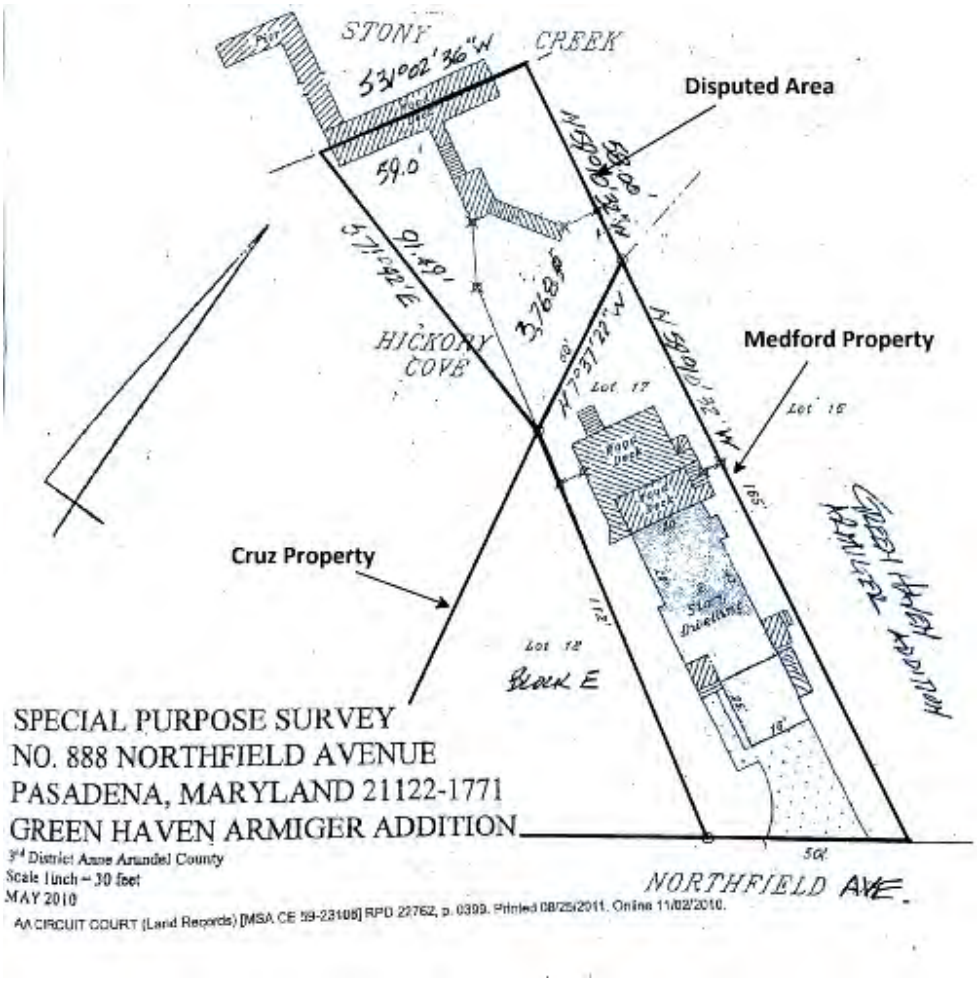
[1]Cruz holds title her property as Trustee of the Brigette E. Cruz Trust dated September 29, 1009.

Cruz Lots would enjoy a 50/50 ownership interest in the pier, as well as a joint right of access to the pier. The pier itself lies over the water and a strip of land consisting of a sandy beach (the "Sandy Beach Area"). Neither Cruz nor Medford claim title to the Sandy Beach Area. Below are three images, generally depicting the locations of the Disputed Area in relationship to the Sandy Beach Area and Medford's and Cruz's Property. The first is a photograph showing that the Disputed Area slopes down from Medford's parcel to the water and that the deck providing immediate access to the pier is located on the landward side of the Sandy beach Area. The second is a photograph showing the Sandy Beach Area from a closer proximity, where it abuts the deck that lies on the land where the Disputed Area begins. The last image is a plat depicting the general boundaries of Cruz's and Medford's lots, and the Disputed Area.[2]

[2]All three images are cropped, enhanced, and not to scale. We have added identifiers to generally show the boundary lines of the relevant properties, but we note that these boundary lines are approximate and not exact.


The Disputed Area
The Sandy Beach Area





Although we do not agree with its ultimate conclusions, we recognize that the trial court provided an excellent summary of the factual background of this case. We set out part of it below, with some slight modifications.

(1) The Recent History of the Medford and Cruz Lots

In 1983, Marlene Andrus, purchased the adjacent Lots 15, 16, 17 (now owned by Medford), and 18 (now owned by Cruz), in Block "E" of Armiger Addition. At the time,

Andrus resided in a dwelling located on Lot 16, while Lots 17 and 18 remained unimproved land. After purchasing the four lots, Andrus began maintaining all of them up to the Sandy Beach Area. Her maintenance efforts included: mowing, removing trash and debris, and removing dead foliage such as trees. In 1999, Andrus constructed and moved into a dwelling on the Medford Lot and sold the Cruz Lot to Rob Williams. The next year, Ms. Andrus applied to the High Point Improvement Association (the "Association") and the County to build a pier off the beach area in front of the Medford Lot. The Association approved the Pier Construction Agreement, and the County issued the permit, but Andrus never built the pier. Shortly after obtaining the permit, she sold the Medford Lot to Dean Carter.

Carter proceeded with the construction of the pier. In order to avoid interfering with an existing pier on Lot 16, Carter's pier encroached into the pier construction envelope for Lot 18, then owned by Williams. Therefore, Carter and Williams executed a Joint Use Pier Agreement (the "Agreement"), and the pier was built. The Agreement gave each lot owner a 50% ownership interest in the pier for "boat slips, areas for boatlift, mooring area access . . . equally divided between property owners." The agreement was intended to benefit their respective successors and assigns. Accordingly, the Agreement was recorded among the land records of Anne Arundel County.

In 2002, Cruz purchased the Cruz Lot, which was then still unimproved. The property was advertised to her as non-riparian, but with riparian access to the Joint Use

Pier, in common with the Medford Lot. Cruz visited the property a minimum of five times a year, passing through the Disputed Area which she referred to as "community property."

Around 2004, Mr. Carter fenced in his property and the Disputed Area. The fence extended into the Sandy Beach Area, and stopped where the land on the hill became marshy and impassable. The fence obstructed Cruz's access to the pier. Cruz asked Carter to remove the fence; instead, he agreed to allow Cruz to enter through the Medford Lot through a gate and then walk down through the Disputed Area to access the pier. Apparently, this understanding was not reduced to writing. In addition to the fence, Mr. Carter constructed landings, stairs, and a lower deck in the Disputed Area that connected to the pier.

In 2007, Carter passed away and Medford purchased the property, also with notice of the Agreement. In 2008, Cruz constructed a dwelling on her Lot and began residing there permanently. Cruz continued to access the pier through the gate, as had been permitted by Carter. Medford objected to this; she notified Cruz that she was trespassing, and placed "No Trespassing" signs along the fence line. To access the pier, Cruz then began to climb over the fence in the Disputed Area, and maintained that she wasn't trespassing because it was "community property."

Neither Medford's nor Cruz's deed included the Disputed Area. In 2010, Medford obtained a quitclaim deed from the High Point Improvement Association. Not to be

outdone, in 2011, Cruz obtained a quitclaim deed from the heirs of Leo H. Miller. (We will explain Mr. Miller's connection to the Disputed Area later.)

(2) The Current Litigation

The parties were unable to resolve their dispute and each filed a complaint in the circuit court to quiet title, together with related relief, to the Disputed Area. The cases were consolidated for a non-jury trial.

At trial, and in very brief summary, Medford contended that she had title to the Disputed Area based upon either of two, mutually exclusive, theories of adverse possession. *First*, Medford contended that she and her predecessors-in-title had been in open, continuous and hostile possession of the Disputed Area since 1993. *Second*, Medford asserted that the High Point Improvement Association had been in open, continuous and hostile possession of the Disputed Area, as well as other waterfront areas of the Armiger Addition, for the requisite statutory period and that the Association had conveyed its interest in the Disputed Area to her by means of the 2010 quitclaim deed to her. In response, Cruz contended that both of Medford's adverse possession claims failed. Morever, she contended that she held legal and equitable title to the Disputed Area by virtue of her 2011 quitclaim deed from the children of Leo Miller.

The trial court issued a memorandum opinion, declaratory judgment, and permanent injunction on March 6, 2014. The court declared that Cruz held title to the Disputed Area, subject to an easement appurtenant to Lot 17 (Medford) for access to the

pier. The trial court permanently enjoined Medford from impeding access to the property. Medford noted an appeal from the judgment.

We will reverse the judgment of the trial court. As we will explain, Cruz has neither legal nor equitable title to the Disputed Area. Turning to Medford's adverse possession claims, we agree with the trial court that Medford failed to prove that the High Point Improvement Association adversely possessed the Disputed Area. However, we conclude that there was substantial and undisputed evidence that Medford and her predecessors-in-title displayed sufficient indicia of ownership and exercised sufficient control over the Disputed Area for the requisite statutory period. Medford's ownership remains subject to Cruz's right to access the jointly-owned pier. We will remand this case for entry of a declaratory judgment consistent with this opinion.

Analysis

I. Standard of Review

Rule 8-131(c) governs our standard of review for bench trials:

> 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.

Under the clearly erroneous standard, our review is limited to "deciding whether the circuit court's factual findings were supported by substantial evidence in the record."

L.W. Wolfe Enterprises, Inc. v. Maryland National Golf, L.P, 165 Md. App. 339, 343 (2005). "The appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *Id.* (quoting *GMC v. Schmitz*, 362 Md. 229, 234 (2001)). We review any legal conclusions by the trial court under the *de novo* standard of review. *Id.* at 344.

II. Cruz's Title Theory

A.

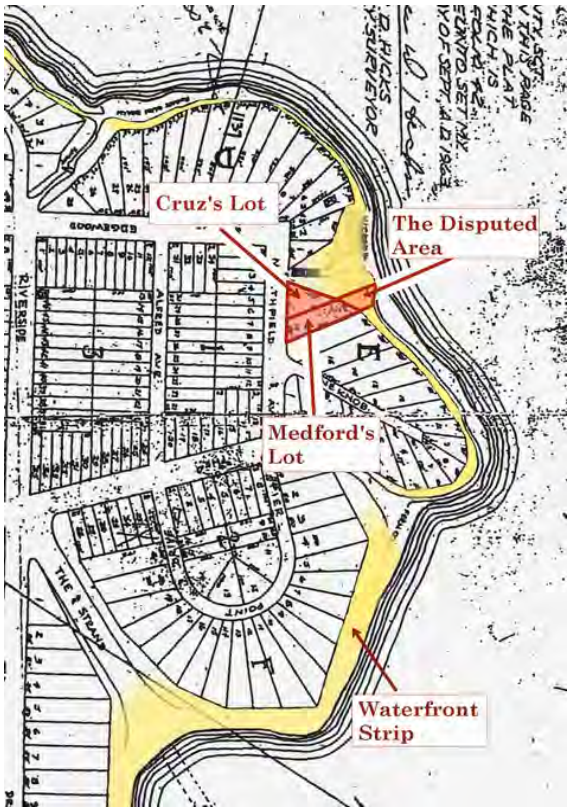
Cruz's claim of title to the Disputed Area arises from the chain of title to the unsold portions of the Armiger Addition subdivision. Assessing its merits requires us to examine Armiger Addition's checkered and very complicated history.

(1) The Early Years

In 1923, Charles M. Christian and Grace Christian, his wife, and Frederick R. Peddicord and Mabel S. Peddicord, his wife, acquired a 200 acre waterfront parcel abutting Stony Creek in Anne Arundel County. The property was conveyed by a metes and bounds description. In 1925, the Christians and the Peddicords recorded the original plat for the property, creating more than a thousand lots in a subdivision named "Green Haven, Armiger Addition." The Armiger Addition subdivision was divided into blocks, each consisting of a number of individual lots, typically between 30 to 50 lots per block.

The blocks were either numbered, 1 through 50, or lettered, A through S.[3]

None of the lots depicted on the 1925 plat extended to Stony Creek. Instead, the developers reserved a strip of land, of varying and not precisely-defined width, between the lots closest to Stony Creek and the Creek itself. The parties refer to this area as the "Waterfront Strip." The original plat is depicted below;[4] it is enhanced and modified to identify the Waterfront Strip, the Disputed Area, and Cruz's and Medford's lots.



[3]For some reason, the plat does not appear to have Blocks "I," "O," or "Q."

[4]The image is cropped and not to scale.

The 1925 plat depicts several areas or features within the Waterfront Strip, including a “wharf”, a “proposed wharf,” “Fern Cove,” “Forest Glen Beach,” and“Hickory Cove.” Its name notwithstanding, “Hickory Cove” shown on the 1925 plat was not a body of water but was instead part of the Waterfront Strip. The Disputed Area lies within Hickory Cove.

The 1925 plat also depicted a series of lakes or ponds, Spring Lake, Glen Lake, Forest Lake and Turtle Lake, that were located adjacent to one another and, taken together, bisected the Armiger Addition development.[5] To the west of this line of lakes were located Blocks L, M, P and S, as well as Blocks 23, 23 and 36. The Waterfront Strip is located entirely to the east of this line of lakes.

Finally, the 1925 plat set aside two areas, apparently for community or public use. The first was called “The Plaza” and is now Highpoint Park, which is owned by Anne Arundel County. The second parcel was titled “Merry Weather Field.” The 1925 plat depicts this parcel as containing a baseball diamond, a track, several tennis courts, and a football field. This is now the location of High Point Elementary School.

[5]The lakes appear to have been artificial and to have been located in the floodplain of an existing stream. It isn’t clear whether any of these lakes were ever constructed or, if they were, whether they still exist.

(2) The Deeds between the Christians and the Peddicords

In 1927, the Christians and the Peddicords ended their partnership and divided the remaining unsold lots in the subdivision between them through a mutual exchange of deeds. The first deed recorded in the land records was from the Peddicords to the Christians. This deed conveyed to the Christians, by means of a metes and bounds description, all of the subdivision located to the west of the center lines of Forest, Glen and Turtle Lakes. None of this property is adjacent to any portion of the Waterfront Strip. Additionally, and in the same deed, the Peddicords conveyed to the Christians twenty-five specific lots, identified by block and lot number, that were located east of the center lines of the lakes. Included in the latter category was what is now Medford's lot. This deed contained the restriction that "all streets, avenues, coves, beaches and paths. . . shall be forever kept open and maintained as such for public use and benefit."

In the second deed, the Christians conveyed to the Peddicords all of the Christians' one-half interest in:

> that tract or parcel of ground fully described in . . . [the 1925 plat] excepting therefrom the parcels hereinafter noted, that is, the lots that have been heretofore conveyed by the parties hereto and excepting [the property conveyed by the Peddicords to the Christians in the previous deed].

The deed also provided that "all streets, avenues and paths as shown on [the 1925 plat] shall be maintained as such for public use and benefit." In contrast to the deed to the

Christians, the deed to the Peddicords made no mentions of "coves" or "beaches." Neither deed made any mention of the Waterfront Strip.

(3) Subsequent Conveyances By the Peddicords and Their Successors

The Peddicords then conveyed their lots to the Portworth Land Corporation ("Portworth"). Portworth signed a mortgage conveying these same lots as security for repayment of a mortgage. For the next few years Portworth sold lots to private purchasers, but did not convey any part of the Waterfront Strip.

In 1931, the mortgage was assigned to the First National Bank of Hagerstown ("First National").

(4) The Receivership

First National, like many other financial institutions in the Great Depression, failed. In 1931, the Office of the Comptroller of the Currency declared First National insolvent and appointed Claude Gilbert ("Gilbert") as receiver to oversee the liquidation of its assets. The Circuit Court for Washington County appointed Gilbert as receiver for First National in the same year. Thereafter, Gilbert, and his successor receivers, were subject to supervision by both the Comptroller and the Circuit Court for Washington County.

Over the next seven or eight years, the Portworth Land Corporation sold a number of lots in Armiger Addition, including Cruz's. None of these deeds mentioned the

Waterfront Strip.

In 1938, the Portworth mortgage went into default and Gilbert assigned the mortgage for foreclosure. In his capacity as receiver, Gilbert purchased the property at the foreclosure sale. The deed conveyed to the receiver all the remaining lots and parcels of land situate in Armiger Addition . . . excepting those lots already conveyed and released from the lien of the mortgage." In 1939, W. T. Osborne ("Osborne") replaced Gilbert as receiver for First National. During that year, Osborne, in his capacity as receiver, sold a number of the lots in Armiger Addition owned by Portworth, but none of these transactions affected the Waterfront Strip.

In 1940, Osborne offered for sale by auction the remaining assets of First National "consisting of real estate, bills, receivables, judgments, overdrafts, and other choses in action and chattels[.]" In connection with the sale, Osborne prepared a 26-page itemized list of the "Remaining Assets and Stock Assets of the First National Bank of Hagerstown, Maryland, Sold at Public Sale on September 21, 1940." The list identified with various notes, stock assessments, overdrafts, securities, furniture and fixtures. The total book value of the remaining assets was $832,607. Neither the Disputed Area nor the Waterfront Strip are listed as assets in the inventory.

Of interest to this appeal are Asset Nos. 626 and 627 on page 10 of the accounting, which state as follows:

626 Portworth Land Corporation $ 592.97
Ind: Fred R. Peddicord (Deceased)
(Estate closed)
627 Portworth Land Corporation
Ind: Fred R. Peddicord (Deceased) 1.00
(Estate closed)
(Asset Nos. 626 and 627 represent *the balances due on two notes* formerly secured by a mortgage which was foreclosed by this trust and said property sold at Public Sale.

(Emphasis added).

Asset 627 is also described separately on page 16 of the accounting as follows:

627 Portworth Land Corporation 1.00
(This amount represents title to the unsold Real Estate acquired by this trust through foreclosure action.)
Block L, Lots 1 to 17, inclusive
[Block] S, Lots 1 to 21, [inclusive]
[Block] 36, Lots I to 20, [inclusive]
[Block] 24, Lots 1 to 34, [inclusive]
[Block] F, Lots 1 to 22, [inclusive]
[Block] E, Lots 1 to 28 [inclusive]
[Block] 23, Lots 1 to 15, [inclusive]
and [indecipherable] add [sic] lots in a separate parcel facing Turtle Lake.

(*It is understood that conveyance will be made by receiver's or quitclaim deed* without warranty of any kind or character and that through the deeds the trust will be conveying only whatever interest it has in the properties.)

(Emphasis added).

It appears that this list was inaccurate. At trial, Cruz's title expert testified that, with the exception of Block L, the lots listed in Item 627 were not owned by the Receiver

because those lots were part of the lands retained by Christian in 1927. Moreover, Item 627 did not include: the Plaza, Merry Weather Field, the Waterfront Strip, or the beds to any of the roads within the subdivision.

The auction was conducted on September 21, 1940. The successful bidder was Leo H. Miller, a Hagerstown, Maryland lawyer.[6] On September 27, 1940, the Comptroller approved the sale, instructing Osborne that "a detailed list of the assets should be made a part of your petition and the court's order thereon" and that the

> *court papers should contain full legal descriptions of any and all real estate included in the sale*, and the court order should provide that all conveyances of real estate are to be made by receiver's or quitclaim deeds subject to all liens of record, including taxes.

(Emphasis added.)

In 1940, Osborne petitioned the Circuit Court for Washington County to approve the sale. Paragraph 7 of the petition specifically states "[t]hat all conveyances of real estate which are to be made by your Receiver as aforesaid are to be made by Receiver's deed, and subject to all liens of record. . . ." By order dated October 9, 1940, the circuit court authorized Osborne to accept Miller's bid of $925 "for the remaining assets and choses in action of [First National], as more particularly set forth in said Petition and marked "Exhibit 'B[.]'" Exhibit B was the 26 page list of assets prepared by Osborne for

[6]Miller's was bid was $925, about .001% of the book value of the assets sold.

the sale. A copy of this exhibit was attached to the court's order. The court's order also specifically authorized the receiver "to deliver to the purchaser of said assets a Receiver's Deed, subject to all liens of record. . . ."

The record contains no deeds from Osborne to Miller in 1940 or 1941. In 1942, Osborne, as receiver, conveyed to Miller three lots in the Mt. Pleasant Beach, a different subdivision in Anne Arundel County.[7] Insofar as we can tell from the record, neither Osborne nor his successor receivers ever conveyed any interest in Armiger Addition to Miller. The record is similarly bereft of any evidence that Miller ever asserted a claim to any Armiger Addition parcel.

(5) Subsequent Conveyances by the Receiver of Properties in Armiger Addition to Third Parties

The record contains two other deeds from the receiver of First National. On August 21, 1944, R. C. Parsons, a successor receiver for First National, executed a quitclaim deed for 7.32 acres to the Board of Education of Anne Arundel County. The property is described as "Merry Weather Field" on the 1925 plat and has been the site of High Point Elementary School since 1945. In 1950, J. T. Connolly, another successor receiver for First National, petitioned the Circuit Court for Washington County, asserting

[7]These lots were identified separately in the inventory of assets attached to the court order authorizing the sale to Miller.

that he had been appointed receiver by the Comptroller of the Currency on November 30, 1949, and that a predecessor had sold certain property in Armiger Addition, but "failed to dispose of a certain tract." On March 17, 1950, the Circuit Court for Washington County authorized Connolly to "convey by quit claim deed" the specifically identified property. Connolly did so by a deed dated March 23, 1950, in which he conveyed a portion of the bed of what appears to be a paper street as well as an unnamed pond. This conveyance did not include any portion of the Waterfront Strip.

Miller passed away in 1981. His three adult children were his residuary legatees. As we have related, in 2011, Cruz obtained quitclaim deeds from Miller's children conveying to her any and all interest they might have in the Waterfront Strip. This deed is the basis of her claim to the Disputed Area.

(6) The Trial Court's Decision

Based on this evidence, the trial court concluded that Cruz had both legal and equitable title to the Disputed Area. In reaching this result, the trial court placed great weight upon the fact that the receiver's petition, the notice of sale and the court's order "all stated that [the] sale included the remaining assets of First National Bank of Hagerstown." The court concluded that "[w]hether or not Mr. Miller got a deed from the Receiver is immaterial. What Mr. Miller did receive in the transaction is a Court Order for the remaining assets." The trial court discounted the significance of the 1944 and

1950 conveyances by subsequent receivers.

B.

The conclusions we reach from the evidence are quite different from those of the trial court. We will analyze the 1925 plat, the relevant deeds, and the court records in chronological order. "The interpretation of mortgages, plats, deeds, easements and covenants has been held to be a question of law." *Webb v. Nowak*, 433 Md. 666, 681 (2013). So too, of course, is the interpretation of court orders.

First, the Waterfront Strip, together with the various lakes, the athletic fields, and the park depicted on the 1925 plat are part of "the common scheme of development" of Armiger Addition. There is a rebuttable presumption that these areas are subject to an implied easement for the lot owners of Armiger Addition. This principle has been discussed and applied when applicable in numerous Maryland cases. *See, e. g., Kobrine, LLC v. Metzger*, 380 Md. 620, 639 (2004); *Boucher v. Boyer*, 301 Md. 679, 691 (1984); and *Williams Realty Co. v. Robey*, 175 Md. 532, 540 (1938).[8]

Second, the Christians' 1927 deed to the Peddicords conveyed to the latter party

[8]What the Peddicords and the Christians intended is unclear because, as we have explained, the reservations provisions in their 1927 deeds to one another were different. However, by that time, they had sold numerous lots to third parties and the horse was probably out of the stable.

all of the Christians' interest in the Waterfront Strip, the streets and roads and the park sites. The Waterfront Strip was also part of the property conveyed to the Portworth Land Corporation and were part of the property that was subject to the mortgage, which was assigned to First National. Gilbert, in his capacity as receiver, purchased all of Portworth's interest in Armiger Addition at the foreclosure auction. Thus we agree with what we understand to be the opinions of the parties' real estate expert witnesses that legal title to the Waterfront Strip was held by the receiver at the time of the 1940 sale.

Third, the order of the Circuit Court for Washington County approving the sale of First National's assets to Miller is problematic because it approved the sale to Miller of "the remaining assets and choses of action of [First National], as more particularly set forth in . . . Exhibit 'B.'" As we have explained, Exhibit "B," that is, the list of First National's assets offered for sale by the receiver, did not include the Waterfront Strip, the parks, or the streets and roads in Armiger Addition.[9] The trial court concluded, and Cruz asserts to us, that the 1940 court order vested legal and equitable title to the Waterfront Strip to Miller, whose residuary beneficiaries conveyed the Waterfront Strip to her.

[9]Exhibit "B" also included a number of lots that had been conveyed to the Christians in 1927.

This reasoning is not persuasive. Subject to very narrow exceptions[10] that are not relevant to the issues before us, the only means by which *legal*, that is, record, title to real property can be transferred in Maryland is by recording a deed in the land records of the county in which the property is located. *See* Md. Code Real Property Article ("RP") § 3-101(a) ("[N]o estate of inheritance or freehold, . . . may pass or take effect unless the deed granting it is executed and recorded.").[11] Consistent with this principle, the 1940 order of the Circuit Court for Washington County specifically authorized the receiver "to deliver to the purchaser of said assets a Receiver's Deed, subject to all liens of record" for real property included in the sale. No receiver ever delivered a deed to Miller for the Waterfront Strip.

We also disagree with the trial court's conclusion as to equitable title, but for different reasons. Equitable title would have passed to Miller if the receiver's interest in

[10]For example, in eminent domain proceedings, legal title is transferred by recording the trial court's inquisition in the land records. *See* Md. Rule 12-212(a).

[11]For this reason, in any judicial, sheriff's, or tax sale, a deed by a trustee or other authorized person is necessary to complete the transfer of title. *See Empire Properties, LLC v. Hardy*, 386 Md. 628, 646 (2005) ("[T]he purchaser of property at a foreclosure sale [does] not yet have legal title until ratification of the sale by the court and the purchase price paid, as well as the delivery of the deed[.]"); Md. Rule 2-644(d) "After ratification of the sale by the court, the sheriff shall execute and deliver to the purchaser a deed conveying the debtors' interest in the property[.]"; Tax Property Article § 14-847(a) ("A judgment foreclosing the equity of redemption in a tax sale shall direct the collector to execute a deed to the holder of the certificate of sale[.]").

the Waterfront Strip was intended to be conveyed in the 1940 sale.[12] We conclude, however, that the 1940 sale did not convey equitable title.

The 1940 order of the Circuit Court for Washington County stated that it approved the sale to Miller of "the remaining assets and choses of action of [First National], *as more particularly set forth* in . . . Exhibit 'B.'" (Emphasis added.) We interpret the italicized phrase as being one of limitation. *See Montgomery County v. Lindsay,* 50 Md. App. 675, 678–79 (1982) ("[I]t is well settled that specific terms covering a given subject matter prevail over general language of the same or another statute which might otherwise prove controlling."). To put it another way, the 1940 order authorized the receiver to transfer the assets set out in exhibit B, no more and no less. This interpretation explains why the court subsequently approved two transfers of property in Armiger Addition to grantees other than Miller. The actions of the court and the successor receivers would be inexplicable unless the court and the receivers interpreted its 1940 order in the manner that we do.[13]

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[12]*See, e,g, Washington Mut. Bank v. Homan*, 186 Md. App. 372, 392 (2009) ("Under the doctrine of equitable conversion, a purchaser of land under a sales contract acquires equitable title to the property.").

[13]Cruz suggests that our analysis in *Knapp v. Smethurst*, 139 Md. App. 676 (2001), supports her contention that she has equitable and legal title. We don't agree.

Knapp involved a failed financial institution and its facts are nearly as

(continued...)

In conclusion, Miller did not obtain equitable or legal title to the Waterfront Strip as a result of the 1940 sale. Because Cruz's claim to legal and equitable title stem solely from her deed from Miller's residuary legatees, her claim of ownership of the Disputed Area necessarily fails.

III. Medford's Title Theory

Medford asserts that she has title to the Disputed Area because either she and her predecessors-in-title, or the Association, has adversely possessed the area for over twenty years. She claims that the Association has manifested its intent to adversely possess the

[13](...continued)
complicated as those in the case before us. In a nutshell, a bank held a deed of trust on property owned by a developer, Wyemoor. Wyemoor subdivided the property and sold two lots (the "Knapp lots") to a builder. The bank agreed to release the Knapp lots from its lien in return for the net proceeds of sale. The settlement sheets for the closing indicate that the net proceeds were to be paid to the bank but it was unclear whether the settlement company ever actually forwarded the proceeds. In any event, the bank never released the Knapp lots. However, subsequent dealings between the bank and Wyemoor indicated that both the bank and Wyemoor were acting under the assumption that the Knapp lots had been released. Wyemoor defaulted on the loan and the bank filed a foreclosure action against other lots in the development but did not attempt to enforce its deed of trust against the Knapp lots. The bank then failed and its successor then filed a foreclosure action against the Knapp lots. This Court concluded that the trial court had been clearly erroneous in finding that the bank had not been paid the release fees for the Kanpp lots. *Id.* at 700–01.

Knapp is different from the instant case because, in *Knapp*, the bank's actions after the sale of the two lots was inconsistent with the notion that the bank retained a lien on the properties. In contrast, the Circuit Court for Washington County's orders approving the two Armiger Addition transfers in 1944 and 1950 were completely consistent with our interpretation of its 1940 order.

Waterfront Strip for over twenty years through a series of documents, such as agreements between the Association and lot owners pertaining to the Waterfront Strip. Alternatively, she claims that she and her predecessors-in-title have exerted control over the Disputed Area for over twenty years, and asserts that the trial court made factual errors in arriving at its legal conclusions. We will examine the trial court's determinations for both of Medford's adverse possession theories.

"To establish title by adverse possession, the claimant must show possession of the claimed property for the statutory period of 20 years. . . . Such possession must be actual, open, notorious, exclusive, hostile, under claim of title or ownership, and continuous or uninterrupted." *White v. Pines Cmty. Improvement Ass'n*, 403 Md. 13, 36 (2008) (internal citations omitted). "The burden of proving title by adverse possession is on the claimant." *Hillsmere Shores Improvement Ass'n, Inc. v. Singleton*, 182 Md. App. 667, 692 (2008) (quoting *Costello v. Staubitz*, 300 Md. 60, 67 (1984)). "In evaluating a claim, 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.'" *Porter v. Schaffer*, 126 Md. App. 237, 276 (1999) (quoting *Barchowsky v. Silver Farms, Inc.*, 105 Md. App. 228, 241 (1995)).

In *Senez v. Collins*, 182 Md. App. 300, 324 (2008), this Court said that the elements of adverse possession can be broken down into three general categories:

> (1) actual, open and notorious, and exclusive; (2) continuous or uninterrupted for the requisite period; and (3) hostile, under claim of title or ownership.

The trial court analyzed Medford's adverse possession claims in terms of these three categories. We will examine whether the evidence in the record supported its legal conclusion that neither the Association nor Medford and her predecessors in interest adversely possessed the Disputed Area.

– Medford's Adverse Possession Theory #1:
The Highpoint Improvement Association –

The trial court concluded that the Association had not adversely possessed the Waterfront Strip because the Association has neither historically "actually" possessed the Waterfront Strip, nor has its claim to the Waterfront Strip ever been "hostile." With regard to actual possession, the court recognized that the Association at times exerted some control over the Waterfront Strip, such as when it entered into agreements with lot owners permitting the lot owners to construct piers, bulkheads, and rip raps. However, the court also recognized that the Association made no effort to stop lot owners from engaging in activities such as constructing fences and other structures on the Waterfront Strip. The court described the Association's control over the Waterfront Strip as "inconsistent at best."

With regard to hostility, the court noted that the Association has repeatedly

disavowed ownership of the Waterfront Strip. Its finding is supported by the record. For instance, on the community website, the Association stated that it: "will not pursue ownership of any of the shoreline property in [Green Haven], with the exception of the Community Beach and Boat Ramp." Other evidence included an email sent by Medford to Cruz where she stated: "The community also confirmed to me that they will not get involved in neighbor disputes and will not ever ask me to remove or alter structures that have already been privately purchased." This evidence supports the trial court's conclusion that the Association's possession of the Waterfront Strip was not actual or hostile, and thus its conclusions on this issue were not clearly erroneous.[14]

– Medford's Adverse Possession Theory #2: Possession By Herself and Her Predecessors-In-Title –

Medford's second adverse possession theory is that she and her predecessors-in-title, dating back to Ms. Andrus, have adversely possessed the Disputed Area. Medford argues that the trial court's factual findings supporting its conclusion that Medford and her predecessors-in-title did not adversely possess the Disputed Area were clearly

[14]Furthermore, although not dispositive, we are unconvinced that the pier, bulkhead, and rip rap construction agreements that the Association entered into with a number of property owners were evidence of the Association's control over the Waterfront Strip. These agreements were required by Anne Arundel County as part of its permitting process and there was evidence that these agreements were viewed by the Association, as least at some points, as little more than legal fictions.

erroneous because the court disregarded uncontested portions of Ms. Andrus's and Ms. Powell's testimony. We agree.

Crucial to the trial court's adverse possession analysis were the following factual findings:

> When Andrus owned [the Medford Lot], she did little, if anything, to physically occupy the property. She did not go onto the property, she did not clear the overgrown vegetation or maintain the area. . . . When Carter took ownership of [the Medford Lot] in 1999[15], he also did little to possess the Disputed Area. . . . It was not until 2004, when Carter fenced the property that would put someone on notice. The fence was the first outward manifestation that someone was intending to occupy the land.

These factual findings were contrary to Ms. Andrus's and Ms. Powell's uncontested testimony; both testified that Ms. Andrus and Mr. Carter had maintained the Disputed Area since 1983.[16] Ms. Andrus testified:

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[15]We note that, in fact, Mr. Carter took ownership of the Medford Lot in 2001, not 1999; in 1999, Ms. Andrus sold the Cruz Lot to Cruz's predecessor in title, Williams.

[16]At one point in Cruz's testimony, she does describe some property as overgrown and unmaintained, but she was referring to the strip of land between *her* lot and the water—not the Disputed Area:

> [COUNSEL TO CRUZ]: . . . . When you first purchased Lot 18, Block E, describe how the property looked. . . . what did the water look like *between your lot* and Stoney Creek?
>
> [CRUZ]: It was severely overgrown and the terrain dropped to a ravine from my side, from Lot 17, and also from the left side. . . . It was steep and

(continued...)

[COUNSEL TO MEDFORD]: So did you clean up the [Disputed Area]?

[MS. ANDRUS]: Yes.

[COUNSEL TO MEDFORD]: Did you mow the grass?

[MS. ANDRUS]: Yes.

[COUNSEL TO MEDFORD]: Did you remove trees that would—needed to come down because they had died?

[MS. ANDRUS]: Yes, we did.

[COUNSEL TO MEDFORD]: If you saw strangers on that area, what would you do?

[MS. ANDRUS]: Well, if they were in my private area, I would ask them to leave.

In addition to Ms. Andrus's testimony, Ms. Powell, who has been the owner of Lot 16 since 1999, and has a clear view of the Disputed Area, also testified that Ms.

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[16](...continued)
very, because of all of these slopes it was a muddy bog, and there was also a sulfur spring which kept it wet all year long because of the spring. And thorns and vines, underbrush, tall trees . . . . So it was all very natural, overgrown.

[COUNSEL TO CRUZ]: Did you see any evidence that anyone was maintaining this land?

[CRUZ]: No.

This cannot be taken as evidence that the Disputed Area was similarly overgrown and unmaintained.

Andrus always maintained the Disputed Area. During direct examination, the following colloquy occurred:

> [COUNSEL TO MEDFORD]: . . . . Now, can you explain for the Court how [Ms. Andrus] and Mr. Carter have used the front yard of [the Medford Lot]?
>
> [MS. POWELL]: Well, they've always used it as their own. They've landscaped it, they've cut grass, they've taken care of it. You know.

Subsequently, during cross-examination, the following occurred:

> [COUNSEL TO CRUZ]: And prior to [the fence's construction] it was just a jungle, overgrown vegetation?"
>
> [MS. POWELL]:Well, no. [Ms. Andrus] took care of it. It was mowed and everything.

This combination of uncontested testimony from both Ms. Andrus and Ms. Powell stands in opposition to the trial court's factual determination that Ms. Andrus did not clear the vegetation or maintain the Disputed Area.

Cruz, relying on *Starke v. Starke*, 134 Md. App. 663, 680 (2000), alleges that the trial court did not clearly err in its findings of fact, but that this is an instance of non-persuasion. In *Starke*, this Court explained the difference between findings of fact based on instances of persuasion versus non-persuasion, and how the clearly erroneous standard of review applies to each:

> [I]t is far easier to sustain as not clearly erroneous the decisional phenomenon of not being persuaded than it is to sustain the very different

> decisional phenomenon of being persuaded. Actually to be persuaded of something requires a requisite degree of certainty on the part of the fact finder (the use of a particular burden of persuasion) based on legally adequate evidentiary support (the satisfaction of a particular burden of production by the proponent). There are with reasonable frequency reversible errors in those regards. Mere non-persuasion, on the other hand, requires nothing but a state of honest doubt. It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard.

Id. at 680-81.

The trouble with Cruz's argument is that the trial court's finding of fact was not only contrary to uncontested testimony, but was also unsupported by any evidence in the record. Even if the trial court was unpersuaded by Ms. Powell's and Ms. Andrus's testimony that the Disputed Area was consistently maintained since Ms. Andrus's purchase in 1983, there remains no evidence in the record to support the court's positive factual finding that Ms. Andrus never entered the Disputed Area, never cleared vegetation from the Disputed Area, or ever maintained the Disputed Area in any way. Furthermore, the trial court never expressed, explicitly or implicitly, that it disbelieved any of the testimony of these two witnesses. Simply put, the record is devoid of evidence to support the conclusion that the court's factual findings resulted from an instance of non-persuasion, and the positive factual findings on this point were clearly erroneous. Next, we will examine the elements of adverse possession and whether, in light of the correct factual finding, the trial court's analysis stands.

– Actual Possession –

The first group of elements for adverse possession, which are generally described together, are that possession must be actual, open and notorious, and exclusive. *Senez v. Collins*, 182 Md. App. 300, 324–25 (2008). As we stated in *Senez*, actual notice to the title owner is not required when actual possession is "open and notorious," acting as constructive notice of possession. *Id.* at 325. "Exclusive possession means that the claimant must possess the land as his own and not for another." *Id.* In *Blickenstaff v. Bromley*, 243 Md. 164, 173 (1966), the Court of Appeals explained that an adverse claimant's possession need not be absolute, it need only be "a type of possession which would characterize an owner's use."

Furthermore, the degree of occupancy required is dependent on the character of the land involved, and a court "must consider the character and location of the land and the uses and purposes for which the land is naturally adapted." *Senez*, 182 Md. App. at 326 (quoting *Orfanos Contractors, Inc. v. Schaefer*, 85 Md. App. 123, 129 (1990)). "[A]cts sufficient to demonstrate possession of wild, undeveloped forest may fall short of the activity needed to establish possession of developed property." *Id.* (quoting *Porter v. Schaffer*, 126 Md. App. 237, 277 (1999)).

The Disputed Area is part of a waterfront strip that lies within the Critical Area buffer for the Chesapeake Bay. Md. Code Ann. (1974, 2012 Repl.) § 8-1807(a)(2) of the

Natural Resources Article (Defining the Critical Area as encompassing "[a]ll land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article."). State regulations significantly restrict a property owner's ability to develop, and even to engage in such routine maintenance activities as clearing trees and shrubs within the Critical Area buffer is limited. *See* COMAR 27.01.09.01 *et seq.* As such, we believe actual occupancy of land lying within the Critical Area buffer is more akin to use of land occupied with wild, undeveloped forest, rather than land that is in a residential or developed area.

In light of this, engaging in conduct such as mowing, removing debris, and cutting down dead foliage is sufficient evidence of occupancy of the Disputed Area. These activities constitute the type of "ordinary management" that one would expect of an actual owner considering the status of the area as Critical Area buffer. There was uncontroverted evidence on the record that Ms. Andrus and Mr. Carter engaged in these activities beginning in 1983.

– Continuity –

The second element of adverse possession is continuity; in the present case the key question is whether each successive lot owner's possession of the Disputed Area tacked onto the prior owner's possession, e.g., whether there was privity of estate. In

Senez, we stated that "even where privity exists between successive possessors, it must be privity of estate *in the adversely possessed land*." *Senez*, 182 Md. App. at 332 (emphasis theirs). As the trial court noted, quoting *Senez*, 182 Md. App. at 332–33:

> the land in dispute need not be included in the deed by which the last occupant claims title, 'provided the land in question [is] contiguous to that described in a deed, and that lands both titled and untitled [are] part of a close, apparent by reason of physical boundaries such as fences or hedges.'

The *Senez* Court goes on to state: : "'[T]wo possessions will be tacked if it appears that the adverse possessor actually turned over possession of that part as well as of that portion of the land expressly included in his deed.'" *Id.* at 333 (quoting *Freed v. Cloverlea Citizens Ass'n*, 246 Md. 288, 304 (1967)). In the present case, the trial court concluded there was no continuity because:

> When Carter took possession of [the Medford Lot] from Andrus, there was no indication of physical boundaries including the Disputed Area. The grass and shrubbery for [the Medford Lot] was maintained, but the Disputed Area was overgrown. There was no fence, or other markings to designate the physical boundaries of the land, there was only a Deed which did not include the Disputed Area.

The court's reasoning was based on its erroneous factual conclusion that the Disputed Area was overgrown and unmaintained prior to 2004. However, in light of the evidence that the Disputed Area was maintained since 1983, we conclude that there was sufficient evidence of privity of estate. There were no physical boundaries until 2004, but, given the character of the land, that is, that it was within the development-restricted

Critical Area Buffer, we do believe that it was necessary to place a fence or a hedge in order make it contiguous to the land described in the deed. Indeed, we recognize that such disturbances should be discouraged on land in the protected Critical Area buffer.

What is more, the evidence in the record supports the conclusion that Ms. Andrus and Mr. Carter intended to convey the Disputed Area when they transferred the deed to the property. As Ms. Andrus stated, she believed the Disputed Area was part of her property; this stated belief, coupled with the fact that Mr. Carter continued to maintain the area and built structures on it, indicates that Mr. Carter believed he obtained the Disputed Area as part of his deed from Ms. Andrus. The same is true of Medford. Medford specifically stated that, when she was considering buying the house, she relied on the fact that she was obtaining the land where the decks, landings, and stairs were constructed—i.e., the Disputed Area—even though the pier attached to the deck was jointly owned. These facts are sufficient to create a privity of estate for tacking—thus the possession was continuous for the twenty year period.

– Hostility –

The final necessary element for an adverse possession claim is hostility of possession. As the trial court correctly noted, there are two general ways to demonstrate hostility. A claim can be either made under "color of title," or under a "claim of right." *Yourik v. Mallonee*, 174 Md. App. 415, 427–28 (2007). As the Court of Appeals

explained in *Yourik*, a "'claim of title' arises from an assertion of ownership based on defective 'paper title' or a mistake as to the location of a property boundary specified in a deed, this species of hostility is more narrowly described as 'color of title.'" *Id.* at 427. Whereas a "claim of right" arises when a claimant "assert[s] ownership over the property and claim[s] it against the title holder and world, without any assertion of "paper title" or any mistake as to boundary lines." *Id.* at 428.

As we stated *supra*, the burden of proving title by adverse possession is on the claimant. However, in *Senez*, we stated that: "once a claimant has made a satisfactory showing as to open, continuous use for the statutory period, 'the burden then shifts to the landowner to show that the use was permissive.'" *Senez*, 182 Md. App. at 340 (quoting *Kirby v. Hook*, 347 Md. 380, 392, 701 A.2d 397 (1997)). "In establishing the hostility of a particular use, a showing that the use has been made 'openly, continuously, and without explanation for twenty years,' 'justifies a presumption that such use was adverse.'" *Yourik*, 174 Md. App. at 428–29.

The trial court committed two legal errors in its determination that Medford's occupancy of the land was not hostile. First, the trial court stated that: "Medford . . . does not assert a claim under color of title on behalf of herself . . . . In other words, there is no document purporting to give . . . Medford title to the Disputed Area." While this is true, the Court of Appeals stated in *Yourik* that color of title also includes instances of

mistakes as to boundary lines. Ms. Andrus and Medford both stated that they believed that the land up to the Sandy Beach Area belonged to them. Although we have no statement from Mr. Carter expressing a similar belief, the evidence—such as Mr. Carter maintaining the area and eventually constructing decks, stairs, and a fence around the area—indicates that Mr. Carter shared a similar belief to Ms. Andrus and Medford.

Secondly, regardless of its intent, the trial court misapplied the burden of proof. He stated that "the pertinent inquiry is whether the claimant has proved the elements based on the claimant's objective manifestation of adverse use[.]" However, this is not the test for hostility if the claimant has met her burden of showing actual possession, as Medford did in this case. Thus it was Cruz's burden to show that Medford and her predecessors-in-title's use was not hostile.

Cruz failed to meet this burden. There is evidence in Cruz's testimony that Mr. Carter permitted her to cross the Disputed Area to get to the jointly owned pier, but it is insufficient to show that Mr. Carter's possession was not hostile. She described her interactions with Mr. Carter as follows:

> [COUNSEL TO CRUZ]: . . . . [Y]ou saw Mr. Carter and you would travel over his portion then down to the public part?
>
> [CRUZ]: I met him many times and he gave me permission to go down on his, below, even through his property not just at the public land. . . . And he put a gate [into the fence] for me. He said because I need to have access.

Regardless of what Mr. Carter may or may not have actually said to Cruz concerning the Disputed Area, the evidence shows that Mr. Carter permitted Cruz to enter onto his land, and then proceed through his deeded lot to get to the jointly owned pier through the Disputed Area. Thus, all that Cruz's evidence shows is that Mr. Carter was providing Cruz with reasonable access to the pier that they jointly owned; it is not sufficient to show that Mr. Carter's possession of the Disputed Area was not hostile. In light of the evidence, we conclude that Ms. Andrus, Mr. Carter, and Medford satisfied all of the elements for an adverse possession in the Disputed Area, including that their possession tacked with each transferral of title; thus, the trial court erred in its finding that Medford does not have title to the property through adverse possession.

Recapitulation

We conclude that Cruz has neither legal and equitable title to the Disputed Area. Medford has established that she has title to the Disputed Area through adverse possession for the reasons that we have previously explained. Medford's ownership of the Disputed Area is subject to Cruz's right to have reasonable access to the parties' jointly-owned pier. We have not considered whether Cruz can obtain reasonable access without entering upon the Disputed Area.

We will reverse the judgment of the circuit court and remand the case to it for the court to enter a declaratory judgment in Medford's favor as to title to the Disputed Area.

If the parties are unable to resolve the access issue, then the court can address it either in the declaratory judgment or as supplemental relief to the declaratory judgment. *See* Courts and Judicial Proceedings Article § 3-412.

The Motion for Reconsideration

In her motion for reconsideration, Cruz argues that Medford and her predecessors-in-title could not adversely possess the Disputed Property because that parcel was *in custodia legis* during most of the relevant twenty year period. Assuming that Cruz's *in custodia legis* argument is properly before the Court,[17] it is not persuasive.

The principle that the doctrine of adverse possession is inapplicable when the property in question is *in custodia legis* is correct but factually inapposite. Property does not pass into the custody of the court when a receiver is appointed, but rather when the court-appointed receiver takes, or at least attempts to take, possession. *See Ivy Hill Ass'n*

[17]The *in custodia legis* issue was not presented to or decided by the trial court nor was it briefed by the parties. A member of this Panel broached the issue for the first time at oral argument by means of a question to Medford's counsel. Cruz did not address the *in custodia legis* issue at oral argument. Accordingly, her ability to raise it for the first time in a motion for reconsideration is questionable. *See* Md. Rule 8-131(a) (Other than issues of jurisdiction, "[o]rdinarily, the appellate court will not decide any . . . issue unless it plainly appears from the record that it was raised in or decided by the trial court[.]"); and Rule 8-605(b) ("A motion [for reconsideration] or response ordinarily shall be limited to addressing one or more of the following: (1) whether the Court's opinion or order did not address a material factual or legal matter raised in the lower court and argued by a party in its submission to the Court . . . .").

v. Kluckhuhn, 298 Md. 695, 699-700 (1984) (citing, among other authorities, E. Miller, EQUITY PROCEDURE § 616, at 723 (1897) ("Property is not taken under the protection of the court by the order appointing a receiver and by the bonding of the latter; the summary jurisdiction of the court is not to be interposed until the property is taken charge of by the receiver.")). Cruz points to nothing in the record that suggests that any of the various receivers attempted to take possession of, or otherwise exercise control over, the Disputed Area.

THE JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS REVERSED AND THIS CASE IS REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.