Circuit Court for Garrett County
Case No.: C-11-CV-18-000179

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 50

September Term, 2021

GUNFELD COAL COMPANY

v.

JULIUS O. CAREY, et al.

Nazarian,
Leahy,
Harrell,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: March 14, 2022

"A River Runs Through It"[1] or Does It?

Gunfeld Coal Company ("Gunfeld"), appellant here, filed a complaint for declaratory judgment in the Circuit Court for Garrett County seeking an easement by necessity over the property of one and/or the other of two of its neighboring property owners (collectively, appellees here). After a bench trial, the circuit court filed a written opinion finding that Gunfeld was not entitled to the easement it sought. Gunfeld appeals, posing three questions, which we have rephrased slightly for clarity:

I. Did the trial court err by relying on facts not in evidence?

II. Did the trial court err in ruling that Gunfeld was not entitled to an easement by necessity?

III. Did the trial court err in determining that Gunfeld's claim was barred by laches?

For reasons to be explained, we shall affirm.

FACTS

Gunfeld owns the so-called Military Lot 2070 in Garrett County (the "Gunfeld Property"), which consists of approximately 59 acres. Gunfeld alleged in its complaint for declaratory relief that no public road adjoins the Property. No deeded easements providing access from a public road exists either. Gunfeld sought in the suit an easement of necessity over the property owned by Dr. Donald Pepper (the "Pepper Property"), which lies to the west and is comprised of Military Lot 2069 and a patent called "Mount Nebo", or, in the alternative, over property owned by Julius and Karmen Carey (the "Carey Property"),

[1] A 1976 novella by Norman Maclean, that was made into a movie of the same name in 1992 by Columbia Pictures.

which lies to the south and east of the Gunfeld Property and is comprised of Military Lots 2058, part of 2071, and 2079. Gunfeld's theory for the relief it sought was that, when the military lots were created and conveyed originally in 1788, the State of Maryland, as grantor, severed the Gunfeld Property from the other properties, justifying an easement of necessity over the Pepper Property or the Carey Properties. The parties do not dispute the historical and current titles to the properties at issue.

Frances Deakins, a surveyor, obtained in 1786 a patent, called "Mount Nebo," from the State of Maryland.[2] Two years later, the Maryland Legislature enacted the Acts of 1788, Chapter XLIV, giving land that belonged to the State of Maryland to soldiers in the Maryland Line to compensate them for their service during the Revolutionary War. Each enlisted man was to receive one, 50-acre lot. Each officer was to receive four, 50-acre lots. Each rank's grant extended all "privilege of roads and waters through all the [s]aid lands be re[s]erved to the public." To that end, the State commissioned Deakins to prepare a plat of the lots. The resulting plat contained 4,165 numbered Military Lots, but did not list any roads or waterways. In 1788, the State conveyed Military Lots 2070 (now the Gunfeld Property) and 2069 (now a part of the Pepper Property) to Henry Dobson. The State conveyed Military Lots 2058, 2071, and 2079 (now the Carey Property) to Thomas Mason.

In 1843, Dobson died without heirs. His lots were escheated to the State of Maryland. The State conveyed, in turn, to William Wiland Military Lot 2069 (and another

[2] Black's Law Dictionary (11th ed. 2019) defines a patent as "[t]he governmental grant of a right, privilege, or authority." A "land patent" is defined as "[a]n instrument by which the government conveys a grant of public land to a private person."

lot not relevant to the case before us) under a patent called "Blackstone." In 1882, about 40 years after the escheatment of Dobson's property, Lot 2070 was conveyed to Henry Winterburg by a patent called "Rocky Glen." When that occurred, Lot 2070 was resurveyed and found to contain the same size and rectangular boundary lines as it originally had, with the Casselman River (also known as "Little Crossings") passing through the northwest portion, flowing in a northeasterly direction. In 1900, Winterburg conveyed, in fee simple, to brothers Cortez and B. Worth Jennings a 66-foot right of way across Military Lot 2070 for use as a railroad to run from National Highway U.S. Route 40 to the northeast of the Property to the County Road (which is now Maple Road) to the southwest of the Property.

In 1965, Gunfeld purchased Lot 2070. In 1988, Julius O. and Karmen P. Carey purchased Military Lots 2058, part of 2071, and 2079. In 1992, Donald J. and Deborah C. Pepper purchased property composed of the "Blackstone" and "Mount Nebo" patents.

Gunfeld called two witnesses in its case-in-chief at trial: Michael Fribush, Gunfeld's treasurer, and Craig Ingram, a Maryland title attorney who was to be also appellees' expert in Maryland land records and real property title matters. Fribush testified that Gunfeld maintained continuous ownership of Military Lot 2070 since it purchased it in 1965. No public road adjoined the Property, which had no actual or deeded right of access across any adjacent property. He explained that Gunfeld had not used the lot since its acquisition, but now sought access for the Property so as to engage in a commercial use, particularly timber harvesting. Fribush represented that Gunfeld had never ordered a title examination of the Property, never surveyed the Property, nor conveyed any part of the Property. He claimed

to have never set foot on the Gunfeld Property, but rather stood on another property to the north of it and looked at it from across the Casselman River.

Ingram testified, as Gunfeld's witness, that he investigated the title to the Gunfeld, Carey, and Pepper Properties. Based on his investigation, he concluded that the Casselman River passes through the Gunfeld Property so that portions of the Property lie on both sides of the river. He testified further that he was unaware of any roads existing in the area in 1788 and, because the Deakins plat does not show any roads (or rivers) that may have existed in the area at the time, he was unable to say whether any roads existed at that time.

Appellees called, as witnesses, Julius Carey and Dr. Pepper, as well as Ingram and a land surveying expert, Larry McKenzie. Both Carey and Dr. Pepper testified that their properties would lose value if an easement was imposed over their properties. Carey testified that, when he purchased his property in 1988, he purchased from the then-owner of the Pepper Property (and recorded) an easement crossing over Military Lot 2069 and the patent for "Mount Nebo" to gain access to a public road. It was elicited that there is no access to a public road across any of the appellees' four Military Lots: 2069, 2058, 2071, and 2079. It is only by access over the "Mount Nebo" patent that Gunfeld may gain access to the west to a public road. The surveyor called by appellees testified that it was unclear to him whether the Gunfeld Property ends at the Casselman River or continues across the river, but in any event, there was no present bridge across the river at the Gunfeld Property. It was also elicited that the rail line across the Gunfeld Property is no longer in use, but it was unclear when it fell into disuse.

After receiving the evidence and hearing the parties' arguments, the circuit court issued a written opinion. It held that Gunfeld failed to produce persuasive evidence establishing each of the elements necessary to justify an easement by necessity be declared. According to the circuit court judge, Gunfeld failed to show that, at the time of severance of the title to the Gunfeld Property and the Carey Property as it existed in 1788 - with Lot 2070 going to Dobson (along with Military Lot 2069) and Lots 2058, 2071, and 2079 going to Mason - that Dobson lacked access to his property without going across Mason's lots. Additionally, Gunfeld failed to produce evidence that its predecessor-in-title "would not have had access to the northwesterly portion of the property [on the other side of the Casselman River] at the various times when title was severed from [Carey's] property" and did "not produce evidence that it cannot cross the river to access the southerly part of its property that adjoins the [appellees'] properties."

The court found also that Gunfeld failed to show that, at the time of severance in 1843, when the patent for "Blackstone" was issued on the warrant for escheat of Military Lot 2069 (which later became part of the Pepper Property), there was no way to access Military Lot 2070 without crossing Military Lot 2069.

Lastly, the circuit court ruled, in the alternative, that Gunfeld's claim for an easement by necessity was barred by laches. The court found that Gunfeld had owned the Property since 1965 and was aware that it was inaccessible by road. Nevertheless, Gunfeld "chose to sit on their rights and not seek a means of access to their property for over half a century."

We will provide additional facts where appropriate in our analysis.

DISCUSSION

I.

Gunfeld argues that the circuit court erred in finding that the Casselman River bisects the Gunfeld Property, a finding characterized as fundamental to the circuit court's conclusion that Gunfeld failed to prove that an easement was necessary through one or the other of appellees' properties. Appellees respond that there was evidence to support the circuit court's finding and, in any event, whether the Casselman River bisects Gunfeld's property is not critical to support the court's ultimate conclusion that Gunfeld failed to prove an easement by necessity.

Fribush, Gunfeld's treasurer, the representative of the company, testified that the company had never had the Property surveyed. He conceded that Military Lot 2070 is rectangular in shape. He was not aware of any deeds by which Gunfeld conveyed any part of the Property. Ingram, appellees' expert regarding title and survey matters, testified that when the Gunfeld Property was resurveyed in 1881 (when it passed from Dobson to Winterberg by a warrant of escheat), the surveyor's drawing showed the rectangular property was bisected by the Casselman River.[3] Additionally, both Ingram and McKenzie, appellees' other expert in surveying matters, testified that they were unaware of any out-

[3] When Winterberg acquired Military Lot 2070 in 1881 (which was referred to as "Rocky Glen"), the Property was re-surveyed and found to match the Deakins' plat's original courses and distances. The Property included approximately 53 acres and 96 perches. The first and third lines ran due east-west for a distance of 134 perches. The second and fourth lines of the rectangular parcel ran due north-south for a distance of 64 perches. The drawing of the Rocky Glen patent shows the Property to be bisected by "Little Crossings," a/k/a, the Casselman River.

conveyances of any part of the Military Lot 2070 in the chain of title from Dobson to Gunfeld.

The party seeking the easement bears the burden of establishing its elements by a preponderance of the evidence. *Calvert Joint Venture #140 v. Snider*, 373 Md. 18, 67 (2003). Md. Rule 8-131(c) requires us to review a circuit court's findings of fact under a "clearly erroneous" standard, giving "due regard to the opportunity of the trial court to judge the credibility of the witnesses." Additionally, the Rule requires that the evidence presented, and all reasonable references to be drawn from it, be viewed in the light most favorable to the prevailing party. *See also Cosden v. Mercantile-Safe Deposit and Trust Co.*, 41 Md. App. 519, 531, *cert. denied*, 444 U.S. 941 (1979). We review without deference the circuit court's application of the law to the facts. *Storetrax.com, Inc. v. Gurland*, 397 Md. 37, 49-50 (2007).

Based on the evidence presented, the circuit court's findings that the Casselman River bisects Gunfeld's Property, and thus Gunfeld owns property on both sides of the river, was, to the extent germane to the circuit court's disposition, not clearly erroneous and was supported amply by the evidence presented and rational inferences deducible from the evidence.

II.

Gunfeld argues the circuit court erred in not granting it an easement by necessity. Gunfeld submits that the evidence showed that its property and the neighboring properties were created simultaneously in 1788 by a common grantor, the State of Maryland, and the Gunfeld Property is landlocked and inaccessible without the requested easement.

Appellees retort that the circuit court ruled correctly that Gunfeld was not entitled to an easement by necessity because Gunfeld failed to prove any of the elements of entitlement to such an easement. Specifically, Gunfeld failed to prove that the subject properties had one common severance or that a basis for an easement by necessity was created when the properties were severed from each other.

An easement is the "nonpossessory interest in the real property of another" and arises in several different manners, including by prescription, necessity, filing of plats, estoppel, and implied grant. *Boucher v. Boyer*, 301 Md. 679, 688 (1984) (citations omitted). In *Condry v. Laurie*, 184 Md. 317, 321 (1945), the Court of Appeals explained that the doctrine of easements by necessity "is based upon public policy, which is favorable to full utilization of land and the presumption that parties do not intend to render land unfit for occupancy." The Court recognized, however, that grants of easements by necessity "are looked upon with jealousy and are construed with strictness by the courts." *Id.* (citation omitted). "A way of necessity ceases to exist when the necessity for it ceases." *Id.* (citation omitted). Moreover, "[m]ere inconvenience will not be sufficient to justify the finding of a way of necessity. It is only in [the] case of strictest necessity, where it would not be reasonable to suppose that the parties intended the contrary, that the principle of implied easement can be invoked." *Id.* at 322 (citations omitted).

Three elements must be met before declaring an easement by necessity to exist: 1) there was unity of title, that is there was a time when the relevant tracts were owned by the same owner; 2) title to the properties has been severed; and 3) an easement is necessary to cross one property so as to permit access by the other, both at the time when the titles were

severed *and* at the time of exercise of the easement. *Stansbury v. MDR Dev., LLC*, 390 Md. 476, 489 (2006) (emphasis added) (citation omitted).

The necessity sufficient to establish an easement by necessity must be determined from conditions as they existed at the time of the relevant conveyance(s), *Shpak v. Oletsky*, 280 Md. 355, 367 (1977), and will not arise just because a necessity develops later. *Hancock v. Henderson*, 236 Md. 98, 104-05 (1964) (citations omitted). Moreover, "[a] right of way of necessity can only be raised out of the land granted or reserved by the grantor, and never out of the land of a stranger." *Oliver v. Hook*, 47 Md. 301, 310 (1877) (citations omitted).

We agree with appellees that no Maryland case has answered the question whether a sovereign's original title to property that later became separated tracts can serve as the unified title element required to establish an easement by necessity. Other jurisdictions seem split on this issue. *See Malulani Grp., Ltd. v. Kaupo Ranch, Ltd.*, 329 P.3d 330, 335-38 (Haw. Ct. App. 2014) (discussing cases). We need not answer this question here because, regardless of whether unity of title in the State of Maryland satisfies the threshold element, Gunfeld failed to prove that any easement of necessity existed over either the Carey or Pepper Properties at the time of separation or that there is a contemporaneous necessity.

Severance occurred between Gunfeld's property and Carey's property in 1788 when, pursuant to the Act of 1788, Dobson acquired Military Lots 2070 and 2069 and Thomas Mason acquired Military Lots 2058, 2071 and 2079. We find no error in the circuit court holding that Gunfeld produced no evidence that Dobson could not gain access for

Lot 2070 other than crossing over Mason's lots, as Lot 2070 was not surrounded by those properties. Additionally, Gunfeld failed to present any evidence that, when its Property was severed from what is now the Pepper Property in 1843 when a patent was issued for "Blackstone", Gunfeld's predecessor could not gain access for the Property other than crossing over Military Lot 2069. Moreover, as the circuit court observed, Gunfeld failed to prove that the Casselman River would not have provided access to Lot 2070 when the severances of title occurred. *See Stanbury,* 390 Md. at 496 (the modern view for navigable waters and easements is that '"a way of necessity may exist over the land of the grantor even though the grantee's land borders on a waterway, if the water route is not available or suitable to meet the requirements of the uses to which the property would be reasonably put."') (citation omitted). The feasibility of use of the river as access for the proposed use of harvesting timber was not explored on this record.

III.

Gunfeld argues also that the circuit court erred in holding that its claims were barred by laches. Specifically, Gunfeld claims that the court erred because it failed to make any findings that Gunfeld's delay of 53-years before asserting its claims prejudiced appellees. Appellees' respond that there was sufficient evidence presented for the circuit court to determine that Gunfeld's claim for an easement by necessity was barred by laches.

"Laches is a defense in equity against stale claims[] and is based upon grounds of sound public policy by discouraging fusty demands for the peace of society." *Ross v. State Bd. of Elections*, 387 Md. 649, 668 (2005) (quotation marks and citation omitted). "[I]ts existence must be determined by the facts and circumstances of each case." *Parker v. Bd.*

of Election Supervisors, 230 Md. 126, 130 (1962) (citation omitted). Laches may apply when two elements are met: "there is an unreasonable delay in the assertion of one's rights and that delay results in prejudice to the opposing party." *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 117 (2000) (citation omitted). Prejudice is "generally held to be any thing that places [the defendant] in a less favorable position." *Ross*, 387 Md. at 670 (quotation marks and citation omitted). "[S]ince laches implies negligence in not asserting a right within a reasonable time after its discovery, a party must have had knowledge, or the means of knowledge, of the facts which created his cause of action in order for him to be guilty of laches." *Parker*, 230 Md. at 131.

The question of whether laches applies is a mixed question of fact and law. *Liddy v. Lamone*, 398 Md. 233, 245 (2007). Whether the elements of laches have been met is a question of fact we review under a clearly erroneous standard, but the circuit court's ultimate determination of the issue we shall review under a *de novo* standard. *Id*. at 246, 248-49 (citations omitted). *See also Anderson v. Great Bay Solar I, LLC*, 243 Md. App. 557, 611 (2019), *cert. denied*, 468 Md. 224 (2020).

The "clock" commenced to run regarding the assertion of Gunfeld's claims in 1965 when it bought the Property and tolled when it brought suit for an easement by necessity in 2018, a span of 53 years. When the Careys purchased their property in 1988, it had no access and, thus, the Careys purchased an easement for same from the predecessor-in-ownership of the Pepper Property, paying to create and maintain it. When Dr. Pepper purchased his property in 1992, he expended likewise resources to obtain and maintain access for his property. The Careys and Dr. Pepper had no notice that 20-plus years after

they purchased their properties, Gunfeld would seek to press its claims to burden a portion of their lands. Had they been aware of Gunfeld's claims earlier, they could have sought alternative properties or negotiated lower prices for what they acquired. Gunfeld offered no explanation why it delayed 53 years before seeking an easement of necessity.

Gunfeld's argument that the circuit court erred because it never found explicitly that the Careys and/or Dr. Pepper were prejudiced by Gunfeld's delay in seeking an easement by necessity is without merit. "It is a well-established principle that [t]rial judges are presumed to know the law and to apply it properly[,]" and "[i]t is equally well-settled that . . . trial judges are not obliged to spell out in words every thought and step of logic." *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (quotation marks and citations omitted). As a result, a "trial judge need not articulate each item or piece of evidence she or he has considered in reaching a decision. . . . The fact that the court did not catalog each factor and all the evidence which related to each factor does not require reversal." *Id.* (quotation marks and citations omitted). Here, the record supports a conclusion that the circuit court took into account the obvious prejudice to the appellees due to Gunfeld's delay. Accordingly, we find no error by the trial court in finding, in the alternative, that Gunfeld's easement by necessity claims were barred by laches.

JUDGMENT OF THE CIRCUIT COURT FOR GARRETT COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.