Circuit Court for Prince George's County
Case No. CAE22-05471

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0245

September Term, 2024

MARIE A. BUTLER

v.

SANDRA GRAY

Reed,
Shaw,
Sharer, Frederick J.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: May 20, 2025

*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).

Appellant Marie Butler appeals the grant of a motion for alternative service, a declaratory judgment, and the award of a permanent injunction and damages in favor of Appellee Sandra Gray by the Circuit Court for Prince George's County. Appellant and Appellee are the owners of adjacent residential properties. In 2019, Appellant made renovations to her property and sometime, thereafter, Appellee began experiencing water drainage issues on her property. She filed a complaint in the circuit court against Appellant, and after failed attempts to serve Appellant, the court granted a motion for alternative service, allowing Appellee to serve Appellant by first-class mail.

A trial date was set, and on the scheduled date, Appellant failed to appear. Following Appellee's presentation of evidence, the court entered an order requiring Appellant to remove all renovations to her property and to return the property to its original condition within sixty days. The court also entered an award of compensatory damages in the amount of $50,241.22 and punitive damages in the amount of $150,000. Appellant noted this timely appeal, and she presents two questions for our review:

1. Did the circuit court err in granting Appellee's motion for alternative service after a single service attempt?

2. Did the circuit court improperly issue a permanent injunction and award compensatory and punitive damages based on the causes of action alleged in the complaint?

For reasons discussed below, we affirm the trial court's award of injunctive relief and compensatory damages. We vacate the court's judgment as to punitive damages and remand for further proceedings consistent with this opinion.

BACKGROUND

Appellant Marie Butler and Appellee Sandra Gray own adjacent residential properties at 6807 and 6805 Valley Park Road, Capitol Heights, Maryland 20743, respectively. Both properties were constructed in approximately 1959. In 2019, Appellant completed renovations to the exterior of her home, which included an expansion of the primary structure and a re-grading of her property.

On March 2, 2022, Appellee filed a complaint in the Circuit Court for Prince George's County, requesting injunctive relief, declaratory relief, ejectment damages, a temporary restraining order, a preliminary injunction, and a permanent injunction. Appellee alleged that Appellant's renovations caused an alteration to the water drainage system from Appellant's property to Appellee's property such that the majority of the drainage now entered Appellee's property. Appellee alleged that Appellant did not obtain proper permits for the renovations and that the increase in water flow to her property caused significant damage to the exterior and interior of her property.

Appellee attempted to serve Appellant by utilizing the Prince George's County Sheriff's Office. The Sheriff's Office was unsuccessful and prepared an affidavit of non-service. A process server, Melvin Shapiro, was then hired and attempted to serve Appellant on June 2, 2022, at 6:15 a.m. He was unsuccessful and prepared an Affidavit of Evasion. The affidavit states that Shapiro knocked on the door of the property located at 6807 Valley Park Road, Capitol Heights, Maryland 20743, and a man answered, and Shapiro asked him

if Appellant and Patty Allen[1] were present. The man indicated to Shapiro that "nobody by either defendant[']s first or last names are known here." The man then identified himself as Virgil Watson. As Shapiro was leaving the property, he obtained the Maryland vehicle tag of a car parked in the property's driveway. Shapiro ran a database check on the vehicle registration number and discovered that the vehicle in the driveway belonged to Appellant. Shapiro also confirmed that Virgil Watson is a relative of Appellant. Shapiro then prepared an Affidavit of Evasion pursuant to Maryland Rule 3-121(c).

Appellant filed a Motion for Alternative Service requesting that the court order service of process be made pursuant to Maryland Rule 2-121(c). The court granted the Motion for Alternative Service on July 7, 2022, allowing service of process to be made by first-class mail. Appellee mailed service of process by first-class mail on July 20, 2022. Thereafter, Appellant did not file an answer to Appellee's complaint. On September 28, 2022, Appellee filed a Motion for Default Judgment, and on January 9, 2023, the motion was granted. The court's order informed Appellant that she had thirty days to file a motion to vacate the order, and the court issued a hearing notice.

Appellant attended the hearing on April 10, 2023, and indicated that she did not receive Appellee's Motion for Default Judgment. The court reissued Appellee's Motion for Default Judgment, and Appellant filed a Motion to Vacate the Order of Default on May 3, 2023. The motion stated that Appellee "made false allegations . . . concerning the

[1] Appellee named Patty Allen as another defendant in the case below, CAE22-05471. However, Allen did not appeal the judgment against her.

construction and alternation [sic] of the ground which has not resulted in an alternation [sic] of the natural flow" of water from her property to Appellee's property. Appellant further stated that her husband, Virgil Watson, "obtained the required permits and [] passed all inspections from Prince George's County to construct a shed" on her property. Appellant argued that Appellee had been experiencing drainage issues in her basement for years prior to the renovations. Appellant stated that Appellee's issues with water drainage are due to a nearby school's drainage system, the neighborhood's poorly designed drainage system, and a lack of maintenance by Appellee and the county regarding her gutters and downspouts. Appellant also alleged that Appellee falsely stated that other neighbors had similar issues with water drainage after the renovations. Appellant did not address the issue of service of process. The court granted Appellant's Motion to Vacate the Order of Default.

On August 24, 2023, Appellee filed a Motion to Compel Discovery, and the court granted the motion by order on September 13, 2023. Appellant did not file an answer, nor did she respond to discovery requests. Appellee filed a Motion for Sanctions requesting that the relief sought in the complaint be granted. The court, on November 8, 2023, "ordered, that the relief requested by [Appellee] as stated in her Complaint is hereby granted" and ordered that Appellant respond to discovery requests within ten days from the entry of the order. Appellant did not respond.

A trial was set for March 4-5, 2024, and Appellant failed to appear. The court heard testimony from Appellee and an expert witness, Robert Eitel. Appellee testified that she

has lived at 6805 Valley Park Road, Capitol Heights, Maryland 20743 since 1976 and obtained ownership of the property after her parents predeceased her. She stated that Appellant moved into the adjacent property "a little over 15 years" ago. Appellee observed that, in 2019, Appellant added an addition to her home that was supposed to be a shed, but it expanded "all over the yard." She described the addition as being connected to the rear of Appellant's property and being "twice the size of their first home."

Appellee testified that Appellant graded her property and that "[t]hey elevated the side yard toward my kitchen door, that's elevated higher than my property." She stated that "the elevation is totally different now" such that Appellee's property sits "very low and they're very high." Appellee testified that Appellant "added more foundation back there to elevate up" and that "they didn't have any permits to build what they built[.]" After the renovations were completed, Appellee testified that the soil on her property began to erode. Appellee's property started to present water stains on the kitchen door facing Appellant's property, inside her bathroom, and on her furnace. She also began noticing mold inside her property.

Appellee testified that the water was coming from the side of her property in the rear, specifically the fence line. Appellee stated that on Appellant's property, there is "a pipe facing the middle" of her backyard that releases water. Appellee testified that, prior to Appellant's renovations, she did not experience water drainage issues on her property. Appellee testified that a repair company inspected her home and discovered that the concrete foundation was covered in condensation and that there was mold in the home.

Appellee paid the company $24,590.32 to make necessary repairs and waterproof the home. Appellee stated that her neighbors had made similar repairs to their property. Appellee testified that, at the time of the trial, the condensation issue had reoccurred in her basement since the repairs. She also indicated that when it rains, her yard is flooded with water. Appellee stated that she has installed several sump pumps on her property, but that did not remedy the issue. She also indicated that she paid a repair company $25,649.88 to make necessary repairs for property damage to her driveway and around her home "where all the soil has been eroded[.]"

Appellee stated that she contacted Prince George's County regarding the water drainage issue and was informed that Appellant had the permits to construct the renovations. Appellee then hired Robert Eitel to review the engineering of the property in April 2021 and March 2022. Appellee stated that the renovations on Appellant's property are still causing her harm and that Appellant is "going to ruin [her] financially." Appellee testified that she has stage two cancer and that the maintenance of this lawsuit has been affecting her health. Appellee testified that Appellant has not responded to her attempts to communicate since 2019. When asked by the court if Appellant had said anything to her, she responded, "[t]hey did it on purpose. No. No, they haven't."

Robert Eitel testified that he is the owner of Land Design, Inc., which has existed for thirty-five years, and he specializes in civil engineering and forensic engineering. He testified that he has designed storm drainage and stormwater management systems since 1979. The court admitted Eitel as an expert in stormwater management, flood studies, and

grading. Eitel explained that he prepared a report for Appellee in April 2021 following a rainfall and testified that "there was water flowing under the fence from the neighboring property at 6807" to Appellee's property. When asked to summarize the findings of his report, Eitel testified that:

> My first observation was heading to the neighborhood there's a side street that intersects with Valley Park Drive, I believe it's called Jade Tree or Jade Leaf Road, it goes past the elementary school, intersects with Valley Park Drive.
>
> Coming downhill from the elementary school on Jade Leaf, I looked over and was surprised at the size of the house that I would eventually confirm as being next to Ms. Gray's property. The house, with the addition, is substantially out of character with the entire neighborhood, not only her street or her few houses. It's one and-a-half to two times the size of every other structure on the street.
>
> * * *
>
> So I conducted an on-site inspection of drainage. The drainage in the lots generally drain from the rear lot line to the front, to the street.
>
> The elementary school behind has a school building and parking lot that drain away from this residential neighborhood, they have their own drainage system. There's a tall slope, which is grass, between the edge of the parking lot and the back of this residential neighborhood. There were no signs of erosion, meaning not too much flow and not too high of a velocity.
>
> As I walked that area, I found the storm drainage system in existence at the bottom of the hill of the school property, and that consisted of an open channel, approximately – well, it ranged from two feet to over three feet wide, with a mounded earth berm that was also vegetated in grass, about 18 inches high. There were storm drain inlets and storm drain manholes and piping.
>
> So any of the water that was on the slope would have run downhill into that drainage system, and that system has a lot of capacity. I'm sure it's enough to capture and convey all of the flow from the school property that would come that way, to drain into the street system.

* * *

> I walked 6805, walked the 22 front [sic] edge of 6807 on the public sidewalk and walked 6809, the neighboring property on the other side of the home with the big expansion, and was struck by the fact that both rear yards in 6805 and 6809 had damage from run-off.
>
> In Ms. Gray's property it was very wet, soggy, you wouldn't want to wear dress shoes or nice shoes there. It seemed to be a problem that happened often or near constant. There was a lot of water. There was some damage to her foundation.
>
> I was also struck by the fact that Ms. Gray did tell me that she noticed this after that huge expansion had gone onto the back of the neighboring house at 6807.
>
> I walked to the other side of her property, the side yard away from this large expansion, and it was dry.
>
> That started to give me a hint that all the problems are emanating from run-off from 6807. There did not – there were no pipe systems from that large expansion to the street.
>
> When I visited the other property at 6809, it was a mirror image. There were issues on the near side abutting 6807, with flooding and with actually some areas of grass that had drowned, it turns brown at low spots, it's pretty easy to identify.

Eitel testified that he spoke to the neighbors at 6809 Valley Park Road, and they indicated that similar issues began with their property "as soon as [Appellant] put up the large expansion in the back." He examined their property "on the side yard furthest away from the expansion at 6807, and again finding a mirror image, that side of the property is dry." Eitel testified that it "was clear to [him] that run-off from this large expansion was being directed towards both properties[.]"

Using forensic engineering software called PG Atlas, Eitel presented an aerial image of both Appellant and Appellee's properties. Eitel indicated that Appellant added a large c-shaped structure that is nearly the size of her original home. Eitel stated that Appellant received permits to construct a shed; however, he noted that, in his forty-eight years of experience, he has not seen a shed that is c-shaped and bolted to a house, "which may or may not have an internal connection from the house to this new space." He stated that the "windows are not typical of a shed, they're very architectural, modern style, narrow, tall windows around the structure. It has an electrical connection."

Eitel indicated that while the addition received permits, there "was a violation notice at one point." He explained that "[i]f you apply for a shed through DPIE[2] you can avoid a site development concept plan process and review, where the reviewing agency is DPIE taking the lead, and would review for things such as storm drainage and water management." Eitel stated, "[t]hat may have been what happened here. It may have been with advice, it may have been unintentional. I don't know."

Eitel testified that he returned to Appellee's property in March 2022. He observed "cracking in her foundation, water damage on her tile floor and on her basement walls." He concluded that there were no other potential causes and "that the home is being damaged in [sic] a long-term basis by water being discharged from 6807[.]" He stated that if Appellant removed the structure and restored the ground to a vegetative condition, it

[2] DPIE refers to the Prince George's County Department of Permitting, Inspections and Enforcement.

would remedy the water drainage problem. He also stated that Appellant could construct a proper storm drainage system that would direct run-off towards the public street. Eitel indicated that major renovations could be made to Appellee's property to remedy the problem, including an extensive amount of grading, drainage, and underground systems. However, that remedy would be complicated and expensive. He concluded that "[r]emoving all or part of the addition or installing proper storm drainage systems on 6807 may be the best solution." He stated that his professional opinion is that Appellant is responsible for the damage to Appellee's property.

The court found in favor of Appellee and awarded compensatory damages in the amount of $50,241.22 and punitive damages in the amount of $150,000. The court also ordered Appellant to remove any structures, additions, buildings, grading, landscaping, and other fixtures at the rear and side of the primary residence and to restore the property to its condition prior to the renovations in 2019 within sixty days. Following its ruling, the court stated:

> [L]et me make the record very clear. I have been paying attention to the testimony, I looked at the pictures, I was following along with the Exhibits. I did not need to get off the bench to figure out that this was a mess for the Plaintiff.
>
> And I find it outrageous that it's been since 2019 and they haven't even said a word to her, let alone the attorney. And I think that is worth the $150,000 in punitive.

The court entered a written order on March 5, 2024. Appellant noted this timely appeal.

STANDARD OF REVIEW

"Where an order involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court's conclusions are legally correct under a de novo standard of review." *Mayor & City Council of Balt. v. Thornton Mellon, LLC*, 478 Md. 396, 410 (2022) (quoting *Schisler v. State*, 394 Md. 519, 535 (2006)). A grant of injunctive relief is reviewed "under an abuse 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). "When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence." Md. Rule 8-131(c). This Court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous." *Id.* We give "due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id.*

DISCUSSION

I. The circuit court did not err in granting the motion for alternative service.

Appellant argues that Appellee failed to properly serve her because Appellee did not make a good faith effort. Appellant contends that Appellee did not inquire about her whereabouts, employment, or work, nor did she call, email, or text Appellant. Appellee argues that the summons and complaint could have been given to Virgil Watson, pursuant to Md. Rule 1-121(a). She argues that the order allowing service via first-class mail was facially defective because it did not include Md. Rule 2-121(b)'s second requirement of

serving a copy of the process on a person of suitable age and discretion at Appellant's employer.

Appellee argues that the court properly granted the motion for alternative service and that Appellant was not required to research Appellant's whereabouts or work hours or email, call, or text Appellant in order to demonstrate a good faith attempt to serve her. Appellee also contends that Appellant submitted herself to the jurisdiction of the trial court by filing an order to vacate the court's order for default.

"The purpose of service of process is to give the defendant fair notice of the action against him and the resulting fair opportunity to be heard." *Conwell L. LLC v. Tung*, 221 Md. App. 481, 500 (2015) (cleaned up). Maryland Rule 2-121(b) provides:

> When proof is made by affidavit that a defendant has acted to evade service, the court may order that service be made by mailing a copy of the summons, complaint, and all other papers filed with it to the defendant at the defendant's last known residence and delivering a copy of each to a person of suitable age and discretion at the place of business of the defendant.

According to Maryland Rule 2-121(c):

> When proof is made by affidavit that good faith efforts to serve the defendant pursuant to section (a) of this Rule have not succeeded and that service pursuant to section (b) of this Rule is inapplicable or impracticable, the court may order any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice.

In the case at bar, Appellee filed a Motion for Alternative Service pursuant to Md. Rule 2-121(c) and not Md. Rule 2-121(b). In filing her motion, Appellee's documents attested that good faith efforts had been made and that service pursuant to Md. Rule 2-121(b) was inapplicable or impracticable. We observe that the parties do not dispute that

the Prince George's County Sheriff's Office attempted to serve Appellant but failed. It is also uncontested that Mr. Shapiro, a private process server, attempted to serve Appellant, and he provided an Affidavit of Evasion, detailing his failed attempt. There is, in addition, evidence that Appellant's husband, Virgil Watson, during that encounter, falsely stated that Appellant did not live at her listed address.

Based on this record, the court had before it sufficient evidence to conclude that Appellee had made good faith efforts to serve Appellant. We hold that the court did not err in granting Appellee's Motion for Alternative Service and in ordering that proper service could be effectuated by first-class mail.

Assuming, *arguendo,* that the court erred in granting the Motion for Alternative Service, we nevertheless hold that Appellant submitted herself to the jurisdiction of the court when she filed a motion to vacate the court's order for default judgment. While a court does not have jurisdiction over a defendant until he or she has been properly served, a defendant may waive service by voluntary appearance. *Tung*, 221 Md. App. at 498. "Once a party speaks to the merits of a case, the individual has made 'a voluntary appearance, submitting himself to the jurisdiction of the court for all subsequent proceedings.'" *LVI Env't Servs v. Academy of IRM*, 106 Md. App. 699, 707 (1995) (quoting *Guen v. Guen*, 38 Md. App. 578, 587 (1978)).

In her motion to vacate the default judgment, Appellant averred to the merits of the case and her defense by commenting on the validity of her construction permits, the quality of Appellee's drainage system, issues with a nearby school's drainage system, the lack of

maintenance by Prince George's County, and whether or not her neighbors were experiencing similar issues. As we see it, when Appellant filed her motion to vacate and addressed the merits of the case, she waived service. Her actions constituted a voluntary appearance.

II. The court did not err in granting Appellee injunctive relief, declaratory relief, or compensatory damages.

Appellant argues that the trial court erred in granting relief and damages. Appellant argues that the court erred in granting injunctive relief because Appellee failed to prove that Appellant's renovations resulted in irreparable harm, and the court did not consider adequate legal and equitable factors. Appellant argues that Appellee failed to state a claim for a declaratory judgment because the controversy is nonjusticiable. Appellant contends that Appellee's claim for ejectment failed as a matter of law and that compensatory damages were improper in this case because the basis of Appellee's claim is equitable in nature and Appellee failed to prove adequate evidence of harm. Appellant further contends that punitive damages were not appropriate because Appellee failed to prove by clear and convincing evidence that Appellant acted with actual malice or reckless indifference in renovating her home. Appellant argues that punitive damages are improper where the basis for the award is equitable in nature.

Appellee argues that the court did not err in awarding damages and injunctive relief because it granted the relief requested in Appellee's complaint pursuant to Maryland Rule 2-433(a). Appellee contends that Appellant waived the issue of punitive damages because she did not raise it before the trial court. If considered, Appellee asserts that the court

properly awarded punitive damages because it heard testimony regarding Appellant's failure to obtain proper permits, the significant damage to Appellee's property, and her failure to participate in the lawsuit. Appellee posits that Appellant did not raise the issue of compensatory damages below, and thus, has also waived that issue. If considered, Appellee argues that the court heard testimony that her property was significantly damaged. As for the injunctive relief ordered by the court, Appellee insists that the issue is waived, but notes that the court heard sufficient testimony to conclude that the water drainage problem would be ongoing without intervention and that the most economical remedy was to restore Appellant's property to its pre-construction condition.

"Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable[.]" Md. Rule 8-131(a). Because Appellant failed to appear for trial, Appellee argues that she is precluded from presenting issues on appeal. Indeed, Appellant was absent at trial; however, the merits of the issues presented by Appellant in her brief were decided by the trial court. Accordingly, we will address Appellant's contentions.

Md. Rule 2-433(a) provides:

> Upon a motion filed under Rule 2-432 (a), the court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just, including one or more of the following:
>
> * * *
>
> (3) An order striking out pleadings or parts thereof, or staying further proceeding until the discovery is provided, or dismissing the action or any

> part thereof, or entering a judgment by default that includes a determination as to liability and all relief sought by the moving party against the failing party if the court is satisfied that it has personal jurisdiction over that party. If, in order to enable the court to enter default judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court may rely on affidavits, conduct hearings or order references as appropriate, and, if requested, shall preserve to the plaintiff the right of trial by jury.
>
> Instead of any of those orders or in addition thereto, the court, after opportunity for hearing, shall require the failing party or the attorney advising the failure to act or both of them to pay the reasonable costs and expenses, including attorneys' fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of costs and expenses unjust.

On August 24, 2023, Appellee filed a motion to compel, which the court granted, and she then submitted a motion for sanctions pursuant to Md. Rules 2-401, 2-432(b), and 2-433. The court, on November 8, 2023, "[o]rdered, that the relief request by the Plaintiff as stated in her Complaint is hereby granted[.]" The court then held a trial and determined the amount of damages, the rights of the parties, and the nature of the injunctive relief. Under Md. Rule 2-433(a), Appellee was permitted to request the relief sought in her complaint. We hold the trial court did not err in determining what, if any, relief was necessary.

Appellant asserts that Appellee failed to state a claim for declaratory relief regarding whether Appellant obtained the proper permits. In our review, we cannot discern from the record a declaratory judgment as to that issue. Pursuant to Md. Rule 8-131(a), we, therefore, decline to address this contention as it was not decided by the trial court.

Appellant also argues that Appellee's ejectment claim failed as a matter of law because "Appellee did not allege in her complaint that Appellant was in possession of Appellee's property." Appellant relies on Md. Real Property Code Ann. § 14-108.

Generally, ejectment actions are a remedy in landlord-tenant lawsuits. Md. Code Ann., Real Prop. § 8-402.2. Statutory ejectment actions are thus inapplicable to property disputes between two parties who are not leasing their properties. There is, however, a common-law form of an ejectment claim, which can be described as follows:

> Ejectment, in its nascency, was a common law action brought by one claiming a right to possess real property against another in possession. Ejectment began as a very narrow remedy, designed to give the lessee of property a cause of action against anyone who ejected the lessee, including the lessee's lessor. Over time, common-law ejectment evolved and became the principal means employed by landlords to evict tenants for overstaying the terms of their leases, nonpayment of rent, or other breach of lease covenants. **Courts in this State have repeatedly recognized that, to succeed on an ejectment action under the common law, a plaintiff must be clothed with both the legal title, and the immediate right of possession. In other words, when a party brings a common-law ejectment claim, the party is seeking repossession of its possessory interest.**

MKOS Props. LLC v. Johnson, 264 Md. App. 465, 485 (2025) (cleaned up) (emphasis added). "A **trespass** is a tort involving an intentional or negligent intrusion upon or to **the possessory interest in property of another**." *Id.* at 486 (emphasis added).

Count II of Appellee's complaint, titled "Ejectment[,]" stated that Appellant "has been in possession of her [p]roperty as described hereinabove." Appellee's ejectment claim was based on "[t]he [d]efendants' conduct in **trespassing** onto the [p]laintiff's [p]roperty, while also threatening the viability of plaintiff's property rights in that

[d]efendants **have not provided sufficient and uninterrupted access to the [p]roperty**." (emphasis added). At trial, Appellee and Mr. Eitel testified that Appellant's renovations caused significant damage to Appellee's yard, driveway, and the exterior and interior of her property, such that she can no longer enjoy full use of those areas. Notably, Appellee did not cite to a statute in asserting her ejectment claim, and as we see it, Appellee's ejectment claim is based on the common law remedy of reclaiming a possessory interest in property as a result of a trespass. We find that Appellee's ejectment claim did not fail as a matter of law. We note, however, that the court's determination was not based on this claim.

In order for the court to grant permanent injunctive relief, the moving party must prove that she "'will sustain substantial and irreparable injury as a result of the alleged wrongful conduct.'" *Yaffe v. Scarlett Place Residential Condo., Inc.*, 205 Md. App. 429, 457 (2012) (quoting *El Bey,* 362 Md. at 355). Irreparable harm will warrant the grant of a permanent injunction when:

> it is of such a character that a fair and reasonable redress may not be had in a court of law, so that to refuse the injunction would be a denial of justice—in other words, where, from the nature of the act, or from the circumstances surrounding the person injured, or from the financial condition of the person committing it, it cannot be readily adequately, and completely compensated for with money.

El Bey, 362 Md. at 356.

In *Yaffe v. Scarlett Place Residential Condominium, Inc.*, the appellants claimed that the court abused its discretion because the court relied on an analysis of the four

factors[3] that are required to obtain a preliminary injunction rather than a permanent injunction. 205 Md. App. at 457. There, we clarified that the permanent injunction standard requires an analysis of only one factor from the preliminary injunction factors– "whether the [p]laintiff will suffer irreparable injury unless the injunction is granted[.]" *Id.* at 458 (internal quotation marks omitted).

Here, as in *Yaffe*, Appellant erroneously states that the court was required to consider the four factors necessary for a preliminary injunction. Appellant argues that Appellee failed to prove that irreparable harm would occur absent injunctive relief. However, Appellee testified that if Appellant continued to ignore the damage the renovations were causing to her property, then it is "going to ruin [her] financially." Appellee, who was suffering from stage two cancer at the time of the trial, stated that maintenance of the lawsuit was also affecting her health. Mr. Eitel testified to the significant damage to Appellee's property and stated that if the issues continue, the property will continue to experience major structural problems. The court also heard testimony from Mr. Eitel that, in order to remedy the drainage problem, the best solution was for Appellant to remove the structure and return the property to its pre-construction state or for the Appellant to construct a drainage system. Based on this record, we find that the court did not err in granting permanent injunctive relief.

[3] The four factors required for a preliminary injunction include the likeliness of success on the merits, the balancing of interests between injury to the defendant versus the plaintiff, whether the plaintiff will suffer irreparable harm in the absence of an injunction, and the interest of the public in granting the injunction. *Yaffe,* 205 Md. App. at 457.

Compensatory damages "attempt to make the plaintiff whole again by monetary compensation." *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 414 (2013) (internal quotation marks omitted). Compensatory damage rewards "are not intended to grant to the plaintiff a windfall as a result of the defendant's tortious conduct." *Id.* Such awards "must be anchored to a rational basis on which to ensure that the awards are not merely speculative." *Id.*

As stated above, Appellee's complaint was not based solely on her request for equitable relief, but also because of tortious acts and she requested compensatory damages. At trial, Appellee testified that she paid a repair company $24,590.32 to make necessary repairs and to waterproof the home. Appellee also installed several sump pumps on her property and paid another repair company $25,649.88 to make necessary repairs for property damage to her driveway and around her home. Based on this testimony and the exhibits admitted, we hold that the court did not err. The award of compensatory damages was not barred and there was sufficient evidence presented for the court's award.

The Maryland Supreme Court has explained, "[t]here are two threshold conditions that parties must meet before being entitled to receive an award of punitive damages" which are "that there be a compensatory damages award underlying an award of punitive damages" and that the tort was "committed with malice." *Caldor, Inc. v. Bowden*, 330 Md. 632, 661 (1993); *Bontempo v. Lare*, 444 Md. 344, 377 (2015) ("This Court has repeatedly held that an award of punitive damages is not available as an equitable remedy."). "It is well-settled Maryland law that an award of punitive damages is only permitted in a tort

case if the plaintiff has proved that the tortfeasor acted with actual malice." *Darcars Motors of Silver Spring, Inc. v. Borzym*, 150 Md. App. 18, 27 (2003). The standard of proof is clear and convincing evidence. *Id.* at 53. Actual malice is defined "as the performance of an unlawful act, intentionally or wantonly, without legal justification or excuse but with an evil or rancorous motive influenced by hate; the purpose being to deliberately and wilfully injure the plaintiff." *Id.* at 28. "Maryland has consistently recognized the validity of allowing 'actual malice' to be inferred from, to wit, to be implied by, circumstantial evidence" and the Maryland Supreme Court has indicated that "[m]alice, fraud, deceit and wrongful motive are oftenest inferred from acts and circumstantial evidence. They are seldom admitted and need not be proved by direct evidence." *Id.* at 32.

"In making fact-specific determinations, a reviewing court considers the facts in the record, and the reasonable inferences drawn from those facts[.]" *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 301 (2007). We review a trial court's factual findings under a clearly erroneous standard. Md. Rule 8-131(c).

In awarding punitive damages, the trial court stated that the lawsuit was "a mess for the [p]laintiff" and that it was "outrageous" that Appellant failed to participate. The court, however, did not make a factual finding of actual malice or articulate its analysis regarding any factual inferences that it made from the evidence regarding malice. We, therefore, vacate the court's punitive award judgment and remand this matter to the circuit court for a full consideration of the established elements of a punitive damage award.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED IN PART AND AFFIRMED IN PART; COSTS TO BE PAID BY APPELLANT.